

**Department of State Health Services
Agenda Item for State Health Services Council
January 31, 2007**

Agenda Item Title: Repeal of 25 TAC, §§265.131, 265.141-265.149 and 265.151-265.159, and New Rules §§140.101-140.119 Concerning the Registration of Sanitarians

Agenda Number: 5c

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The proposed repeal of §§265.131, 265.141-265.149 and 265.151-265.159, and new §§140.101-140.119 are necessary to consolidate existing Professional Licensing and Certification Unit program rules in 25 TAC, Chapter 140, Health Professions Regulation. The rules also constitute the Registered Sanitarian Advisory Committee review required by 25 TAC, §265.131(e).

Sections 265.131, 265.141-265.149 and 265.151-265.159 constitute the agency review of rules required by Government Code, §2001.039. The rule review is due to be completed in August 2007.

Summary:

Existing rule text is being transferred and updated in the new rules. No significant changes are proposed, and no new requirements are being imposed on applicants or registrants. The rules clarify that applicants may pass the examination required for registration either as a Texas candidate or as a part of the National Environmental Health Association (NEHA) Registered Environmental Health Specialist/Registered Sanitarian certification process.

Summary of Stakeholder Input to Date (including advisory committees):

The rules were reviewed and discussed by the Registered Sanitarian Advisory Committee (Committee) on August 11, 2006. The Committee also met on October 20, 2006, and took public comments regarding the draft rules. There were no comments in opposition to the rules as proposed.

The rules are not anticipated to be controversial.

Proposed Motion:

Motion to recommend HHSC approval for publication of rules contained in agenda item 5c.

Agenda Item Approved by: _____

Presented by: Debbie Peterson

Title: Unit Manager

Program/Division: PLC **Contact Name/Phone:** Debbie Peterson 834-2725

Date Submitted

11/22/06

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 265. General Sanitation
Subchapter J. Advisory Committee
Repeal §265.131
Subchapter K. Registration of Sanitarians
Repeal §§265.141 - 265.149 and §§265.151 - 265.159
Chapter 140. Health Professions Regulation
New Subchapter C. Sanitarians
New §§140.101 - 140.119

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§265.131, 265.141-265.149 and 265.151–265.159 and new §§140.101-140.119, concerning the registration of sanitarians.

BACKGROUND AND PURPOSE

The proposed repeal and new rules are necessary to consolidate existing Professional Licensing and Certification Unit program rules in 25 Texas Administrative Code (TAC), Chapter 140, Health Professions Regulation. The rules also constitute the advisory committee review required by 25 TAC, §265.131(e) which will be located in §140.119. The new rules transfer and update existing language, and do not impose any new requirements or fees on applicants or licensees. The new rules also clarify that applicants may pass the examination required for registration either as a Texas candidate or as a part of the National Environmental Health Association (NEHA) Registered Environmental Health Specialist / Registered Sanitarian certification process.

Government Code, §2001.039, requires that each state agency review and consider for reoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 265.131, 265.141 - 265.149, and 265.151 - 265.159 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed; however, the department is proposing to repeal the existing sections and adopt the rules in 25 TAC, Chapter 140, Health Professions Regulation.

SECTION-BY-SECTION SUMMARY

The repeal of §§265.131, 265.141 - 265.149, and 265.151 - 265.159 is necessary in order to combine the Professional Licensing and Certification Unit rules in one chapter, 25 TAC, Chapter 140, Health Professions Regulation.

New §140.101 sets forth purpose and scope of the rules. New §140.102 includes definitions for terms used within the rules. New §140.103 lists the fees required for application, registration,

upgrade, renewal, and issuance of a duplicate certificate. New §140.104 describes application procedures. New §140.105 lists qualification for registration as a sanitarian or a sanitarian in training, including types of acceptable experience. New §140.106 lists the types of college courses considered acceptable or not acceptable to meet the requirement for initial registration. New §140.107 sets forth information concerning the administration, content, grading, and other procedures for examination for registration. The new rules clarify that applicants may pass the examination required for registration either as a Texas candidate or as a part of the National Environmental Health Association (NEHA) Registered Environmental Health Specialist / Registered Sanitarian certification process. New §140.108 describes the procedures and criteria for approval or disapproval of an application by the department. New §140.109 provides timelines for the processing of initial and renewal applications, and for refunds to be issued if the timelines are exceeded without sufficient cause. New §140.110 covers procedures for the issuance of a certificate of registration, including duplicates and name changes. New §140.111 sets forth information concerning registration renewal and late renewal, including renewal procedures for a registration on active military duty. New §140.112 covers exemption from renewal and continuing education requirements for retired registered sanitarians. New §140.113 sets forth continuing education requirements. New §140.114 covers exemptions from the requirement for registration. New §140.115 sets out the guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain registration. New §140.116 lists the grounds for denial, suspension or revocation of a registration. New §140.117 details standards related to advertising by a registrant. New §140.118 sets out violations and prohibited actions, procedures concerning complaints, and actions the department may take against a person when violations have occurred. New §140.119 covers the membership and operations of the advisory committee, and establishes the next review date as September 1, 2011.

FISCAL NOTE

Debbie Peterson, Manager, Professional Licensing and Certification Unit, has determined that for each year of the first five-year period that the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Peterson has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This determination was made because the repeal and new rules do not impose any new requirements. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Peterson has also determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the registration and regulation of sanitarians.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Yvonne Feinleib, Program Director, Sanitarian Registration Program, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/834-4521 or by email to Yvonne.Feinleib@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed repeal and new rules are authorized by Occupations Code, §1953.051, which authorizes the adoption of rules regarding sanitarians; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments affect the Occupations Code, Chapter 1953; Government Code, 531; and Health and Safety Code, Chapter 1001.

Sections for Repeal.

§265.131. Registered Sanitarian Advisory Committee.

§265.141. Purpose and Scope.

- §265.142. Definitions.
- §265.143. Fees.
- §265.144. Application Procedures.
- §265.145. Qualifications for Registration as a Sanitarian or Sanitarian-in-Training.
- §265.146. Educational Requirements.
- §265.147. Continuing Education Requirements.
- §265.148. Examinations.
- §265.149. Application Approval or Disapproval.
- §265.151. Sanitarian Registration Procedures.
- §265.152. Sanitarian Registration Renewal.
- §265.153. Grounds for Suspension or Revocation.
- §265.154. Registration of Persons with Criminal Backgrounds.
- §265.155. Violations, Complaints, Investigations, and Disciplinary Actions.
- §265.156. Processing Applications.
- §265.157. Exemptions.
- §265.158. Advertising.
- §265.159. Exemption from Renewal and Continuing Education for Retired Professional Sanitarians.

Legend: Proposed New Rules
Regular Print = Proposed new language

§140.101. Purpose and Scope.

(a) Purpose. This subchapter implements the Sanitarian Registration Act, Occupations Code, Chapter 1953, which requires the Executive Commissioner of the Health and Human Services Commission to adopt rules to implement a program for the registration of sanitarians.

(b) Scope. These sections apply to persons whose duties in consumer health require the application of scientific knowledge to recognize, evaluate, and control hazards associated with the distribution of contaminated, adulterated, unsafe and misbranded foods, drugs, medical devices, and cosmetics and to persons whose duties in environmental health or sanitation require the application of scientific knowledge to recognize, evaluate, and control environmental hazards and to preserve and improve environmental factors for the achievement of the health, safety, comfort, and well-being of humans. The sections cover purpose and scope; definitions; fees; application procedures; qualifications for registration as a sanitarian or a sanitarian-in-training; educational requirements; examinations; application approval or disapproval; processing applications; sanitarian registration procedures; sanitarian registration renewal; exemption from renewal and continuing education for retired professional sanitarians; continuing education requirements; exemptions; registration of persons with criminal backgrounds; grounds for denial, suspension or revocation; advertising; violations, complaints, investigations, and disciplinary actions; and registered sanitarian advisory committee.

§140.102. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings.

- (1) Act—Occupations Code, Chapter 1953, concerning the registration of sanitarians.
- (2) Advanced mathematics—A mathematics course equivalent to or beyond calculus that was taken at an accredited college or university.
- (3) Applicant—A person who applies for registration under the Act.
- (4) Applied science—The application of general principles from environmental science, agricultural science, public health, epidemiology, food science, medical science, and sanitary engineering to solve problems.
- (5) Basic Science—Science such as anatomy, bacteriology, biochemistry, biology, chemistry, geology, microbiology, pathology, physiology and physics.
- (6) Consumer health—The application of scientific knowledge to recognize, evaluate, and control hazards associated with the distribution of contaminated, adulterated, unsafe, and misbranded foods, drugs, medical devices, cosmetics, toys or consumer products.

(7) Continuing education unit—Fifty minutes of continuing education training or experience, applicable to consumer health, environmental health or sanitation and pre-approved by the department or its designee. Acceptable continuing education opportunities include conferences, home-study training modules (including professional journals requiring successful completion of a test document), lectures, panel discussions, seminars, accredited college or university courses, video or film presentations, field demonstrations or other activities pre-approved by the department or its designee.

(8) Department—The Department of State Health Services.

(9) Education—The educational requirements for registration as a sanitarian require a bachelor's degree from an accredited college or university with not less than 30 semester hours or its equivalent in basic or applied science.

(10) Environmental health or sanitation—The application of scientific knowledge to recognize, evaluate, and control environmental hazards and to preserve and improve environmental factors for the achievement of the health, safety, comfort, and well being of humans, to include disaster preparedness and response to suspected or known acts of bioterrorism.

(11) Examination—The examination prescribed by the department.

(12) Executive Commissioner—The executive commissioner of the Health and Human Services Commission.

(13) Experience—Not less than two years of full-time experience in the fields of consumer health, environmental health or sanitation.

(14) Full-time experience—Employment, self-employment, or independent contracting for not less than thirty-two hours per week in the practice of consumer health, environmental health or sanitation.

(15) Natural Science—Branches of science such as physics, chemistry and biology that deal with matter, energy, and their interrelations and transformations or with objectively measurable phenomena.

(16) Registered sanitarian—A department registered public health professional qualified by specific education, specialized training and field experience to protect the health, safety and general welfare of the public from adverse environmental determinants.

(17) Registrant—A person registered under the Act.

(18) Registration—The procedure by which the department accepts, processes, and approves applications for registration of sanitarians including the furnishing, replacement or duplication of certificates.

(19) Sanitarian-in-Training—A person registered in accordance with §140.105 (c) of this title (relating to Qualifications for Registration as a Sanitarian or Sanitarian-in-Training).

(20) Scope of professional practice—Includes, but not limited to, evaluating, planning, designing, managing, organizing, enforcing, or implementing programs, facilities, or services that protect public health and the environment. The scope of practice also includes educating, communicating, and warning communities of factors that may adversely affect the general health and welfare. The scope of practice may be in the areas of food quality and safety, on-site wastewater treatment and disposal, solid and hazardous waste management, ambient and indoor air quality, drinking and bathing water quality, insect and animal vector control, recreational and institutional facility inspections, consumer health, and occupational health and safety.

§140.103. Fees.

(a) All fees shall be made payable to the Department of State Health Services and are not refundable.

(b) The schedule of fees is as follows:

(1) initial fee for application and registration:

(A) sanitarian-in-training—\$125; or

(B) registered sanitarian (including reciprocity)—\$140;

(2) registration renewal fee:

(A) sanitarian-in-training (one-time renewal for a two year period)—\$150;

or

(B) registered Sanitarian (for a two year term)—\$150;

(3) reinstatement (late) fee—\$75;

(4) processing fee for upgrading from a sanitarian-in-training to a sanitarian—\$90;

(5) certificate of registration (framing size) or identification card (billfold size) replacement fee—\$20;

(6) examination fee—\$50 for a department exam or the actual cost of any prescribed exam;

(7) reexamination fee—\$50 for a department exam or the actual cost of any prescribed exam;

(8) continuing education sponsor approval fee—\$100 per sponsor. Pre-approved providers are exempt from this fee; and

(9) exemption fee for retired sanitarians—\$150.

(c) The month the initial registration is issued will establish the anniversary date for future registration renewal.

(d) For all applications and renewal applications, the department is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.

(e) For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

§140.104. Application Procedures.

(a) Purpose. The purpose of this section is to set the application requests and procedures for registration as a sanitarian. Applications may be submitted for registration as a sanitarian or sanitarian-in-training.

(b) General.

(1) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official department forms.

(2) The department must receive all required application materials at least 30 days prior to the date the applicant wishes to take the examination, including the application fee.

(3) An application not completed within 30 days after the date of the department's notice of deficiency may be voided.

(c) General application materials. The application packet must contain the following items to be complete:

(1) specific information regarding personal data, social security number (used to coordinate information with the applicant's college or university transcript), birth date, place of employment, and misdemeanor or felony convictions;

(2) other state registrations and certifications held, including whether or not the applicant is currently certified by the National Environmental Health Association (NEHA) as a Registered Environmental Health Specialist/Registered Sanitarian (REHS/RS);

(3) the educational qualifications of the applicant (graduation with a bachelor's degree from an accredited college or university that included not less than 30 semester hours or its equivalent in a basic or applied science);

(4) qualifying experience;

(5) a statement that the applicant has read Occupations Code, Chapter 1953 (Act), and these rules and agrees to abide by them;

(6) a statement that the applicant shall return to the department any registration upon the expiration and nonrenewal, revocation, or suspension of the registration;

(7) a statement that the applicant understands that fees submitted in the registration process are nonrefundable unless the processing time is exceeded without good cause as set out in §140.109 of this title (relating to Processing Applications);

(8) a statement that the applicant understands that materials submitted in the registration process become the property of the department and are not returnable;

(9) a statement that the information in the application is truthful and that the applicant understands that providing false and misleading information on items which are material in determining the applicant's qualifications may result in the voiding of the application, or denial or the revocation of any registration issued; and

(10) the signature of the applicant which has been dated.

(d) Documents. The following documents shall be submitted:

(1) an official transcript from an accredited college or university (sealed as a true and exact copy of an unaltered original) showing graduation with a bachelor's degree from an accredited college or university that included not less than 30 semester hours or its equivalent in a basic or applied science; and

(2) proof of certification by NEHA as an REHS/RS (if applicable).

§140.105. Qualifications for Registration as a Sanitarian or a Sanitarian-in-Training.

(a) The purpose of this section is to set out the qualifications of applicants for examination and registration as a sanitarian or sanitarian-in-training.

(b) An applicant for registration as a Professional Sanitarian who qualifies under Occupations Code, §1953.102(a), must have:

(1) graduated with a bachelor's degree from an accredited college or university that included not less than 30 semester hours or its equivalent in a basic or applied science;

(2) not less than two years of full-time experience in the fields of consumer health, environmental health or sanitation which may include the following:

(A) regulatory inspections or evaluations of retail food establishments; retail grocery stores; food warehousing facilities; food manufacturing facilities; food service at special

events; mobile food service vehicles and facilities; producer dairy farms; dairy product manufacturing facilities; frozen dessert manufacturing facilities; on site sewage facilities; asbestos abatement processes; mass gathering events; industrial pretreatment processes (sewage); municipal sewage facilities and wastewater plants; public and semi-public swimming pools; child care facilities; long term care facilities; hospitals; correctional facilities; public and private schools; youth camps; and recreational areas for children; radiation hazards, including lasers and microwaves; and private and public water systems;

(B) site evaluation and design of on-site sewage system facilities as specified in Texas Commission on Environmental Quality rules;

(C) Hazard Analysis and Critical Control Point (HACCP) systems or processes;

(D) investigation of food borne illnesses; water borne illnesses; vector borne illnesses; zoonotic illnesses; food product contamination or adulteration; the environmental conditions surrounding reported elevated blood lead in children and adults; consumer, governmental agency or industry complaints; and animal bites;

(E) performance of vector control activities related to mosquitoes, flies and rodents; environmental assessments; code enforcement activities; and food handler or certified food service manager training;

(F) first responder to hazardous material spills and incidents; and natural and man-made disasters; or

(G) regulatory review of plans and specifications for food establishments; plans and specifications for public, semi-public and private swimming pools; and plans and specifications for on-site sewage systems facilities;

(3) regularly assigned duties which must have included consumer health, environmental health or sanitation. The applicant need not have had the titles "sanitarian" or "sanitarian-in-training";

(4) passed the prescribed examination as set forth in §140.107 of this title (relating to Examinations);

(5) filed the documents and application required by §140.104 of this title (relating to Application Procedures); and

(6) paid the appropriate fees.

(c) An applicant for registration as a Sanitarian-in-Training who qualifies under Occupations Code, §1953.102(b), must have:

(1) graduated with a bachelor's degree from an accredited college or university that included not less than 30 semester hours or its equivalent in a basic or applied science;

(2) passed the prescribed examination as set forth in §140.107 of this title;

(3) filed the documents and application required by §140.104 of this title; and

(4) paid the appropriate fees.

(d) On proper application, and in accordance with Occupations Code, §1953.103, the department may grant a certificate of registration to a licensee or registrant of another state, commonwealth, or territory of the United States that has requirements equivalent to or higher than those in effect in this state for the registration of a sanitarian or sanitarian-in-training.

§140.106. Educational Requirements.

(a) Purpose. This section sets out the initial educational requirements for examination and registration as a sanitarian or sanitarian-in-training.

(b) Core educational requirements for initial registration include the following.

(1) Acceptable courses are air pollution; anatomy; animal science; bacteriology; biochemistry; biology; biomedical science; biophysics (no more than six semester hours or its equivalent); biostatistics; botany; cell physiology; chemical engineering; chemistry; community health; computer science (no more than six semester hours or its equivalent); dairy science; ecology; embryology (no more than six semester hours or its equivalent); entomology; environmental health; environmental science; environmental diseases; environmental law; epidemiology; food bacteriology; food science; food technology; genetics; geophysics; geology; hazardous waste; histology; hydrogeology; hydrology; industrial hygiene; infectious diseases; limnology; mathematics (beyond algebra - no more than six semester hours or its equivalent); courses taken in an accredited allopathic or osteopathic school of medicine (no more than six semester hours or its equivalent); meteorology (no more than six semester hours or its equivalent); microbiology; molecular biology; occupational health; occupational safety; parasitology; pathology; physics (no more than six semester hours or its equivalent); physiology; plant taxonomy; public health; public health education (no more than six semester hours or its equivalent); public health law; radiological health; sanitary engineering; soil science; statistics (no more than six semester hours or its equivalent); toxicology; vector control; veterinary medical courses (no more than six semester hours or its equivalent); veterinary public health; virology; wastewater treatment; water quality; and zoology.

(2) Courses considered not acceptable are anthropology; archaeology; astronomy; education; geography; government; history; kinesiology; languages; physical education; psychology; and sociology.

(3) Courses not listed may be submitted for consideration for acceptance by the department.

§140.107. Examinations.

(a) Purpose. This section sets out provisions governing the administration, content, grading, and other procedures for examination for registration as a sanitarian and sanitarian-in-training.

(b) Examination. The examination shall consist of a written examination prescribed by the department under the supervision of a person or agency designated by the department. The examination may be administered by:

(1) the department or the department's designee; or

(2) the National Environmental Health Association (NEHA) or designee as a part of the certification process for the REHS/RS.

(c) Application for examination.

(1) An applicant must file an application in accordance with §140.104 of this title (relating to Application Procedures).

(2) An applicant meeting the requirements of §140.105 of this title (relating to Qualifications for Registration as a Sanitarian or Sanitarian-in-Training) who is not currently certified by the National Environmental Health Association (NEHA) as a Registered Environmental Health Specialist/Registered Sanitarian (REHS/RS) shall be approved to take the exam. The department will notify the applicant of his or her eligibility for examination. Applications that are incomplete or late may cause the applicant to miss the examination deadline. The notice shall include instructions for scheduling to take the examination. The notice of eligibility for examination must be presented at the examination station prior to taking the examination.

(3) The notice of eligibility to take the examination must be submitted to the department or the department's designee by the applicant with the required examination fee on or before the deadline set by the department.

(4) The examination will be conducted in the English language. The exam may be taken in an individual's native language if the individual notifies the department at least 60 days in advance. The applicant will be responsible for any fee or consideration to be paid to an acceptable interpreter and/or translator whose services are necessary for the examination. The interpreter or translator must be acceptable to the department or the department's designee.

(5) An applicant with a disability must inform the department of special accommodations needed for the examination at least 20 days prior to the exam. The documentation of disability on a form provided by the department shall be completed and signed by a person familiar with the applicant's disability and the appropriate accommodations needed. The person should be a physician, psychologist, rehabilitation counselor, educator or other professionally qualified individual.

(d) Date and location. Examinations will be held on dates and in locations determined and announced by the department or the department's designee.

(e) Grading. Examinations will be graded by the department or the department's designee.

(f) Notice. The department shall notify each examinee of the results of the examination within 30 days of the date of the examination. However, if an examination is graded or reviewed by a national testing service, the department shall notify examinees of the results of the examination not later than the 14th day after the day on which the department receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the department shall notify the examinee of the reason for the delay before the 90th day.

(g) Failures.

(1) If requested in writing by a person who fails the prescribed examination administered under the Act, the department shall furnish the person with an analysis of the person's performance on the examination. The written request must be submitted within 21 days from the date of the notification of failure. The department will respond to the request within 30 working days.

(2) A person who fails the examination may retest after 90 days and after paying another examination fee. All retests must be completed not later than one year after the initial date of examination eligibility or the person's application will be voided.

(h) Failure to apply. Any applicant who fails to apply for and take the examination within a period of three months after an examination approval notice is mailed by the department will have such approval voided by the department.

(i) Refunds. No refunds will be made to examination candidates who fail to appear for an examination unless an extenuating circumstance exists such as illness, death, injury or a vehicular accident.

§140.108. Application Approval or Disapproval.

(a) The department shall approve or disapprove all applications received for registration as a sanitarian and sanitarian-in-training.

(b) Notices of application approval, disapproval, or deficiency shall be in accordance with §140.109 of this title (relating to Processing Applications).

(c) An application for registration shall be disapproved if the person has:

(1) not met the requirements in §140.105 of this title (relating to Qualifications for Registration as a Sanitarian or Sanitarian-in-Training);

(2) failed to pass the examination prescribed by the department as set out in §140.107 of this title (relating to Examinations);

(3) failed to or refused to properly complete or submit any application form, documents, or fee or deliberately presented false information on any form or document required by the department;

(4) violated any provisions of the Occupations Code, Chapter 1953, or this subchapter;

(5) been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a registered sanitarian or sanitarian-in-training as set out in §140.115 of this title (relating to Registration of Persons with Criminal Backgrounds); or

(6) had a certificate or license to engage in a profession in this state or elsewhere revoked for unprofessional conduct, fraud, deceit, negligence, or misconduct in the practice of the profession; or

(7) satisfactory proof is presented to the board establishing that the person has been found guilty of unprofessional conduct, fraud, deceit, negligence, or misconduct in the practice of a profession.

(d) If after review, the department determines that the application should be denied, the department shall give the applicant written notice of the reason for the decision and provide notice and an opportunity for a hearing in accordance with the provisions of the Administrative Procedure Act (APA), Government Code, Chapter 2001, applicable state and federal statutes, the Rules of Practice and Procedures of the State Office of Administrative Hearings (SOAH) and this chapter.

§140.109. Processing Applications.

(a) Time periods. The department shall comply with the following procedures in processing applications for initial registration and registration renewal.

(1) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(A) letter of acceptance of application for sanitarian registration or sanitarian-in-training registration - 30 working days;

(B) letter of application or renewal deficiency - 30 working days; and

(C) issuance of registration renewal or letter of renewal deficiency - 30 working days.

(2) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. The time periods are as follows:

(A) letter of approval for examination - 20 working days;

(B) initial letter of approval for registration - 30 working days;

(C) letter of denial of registration - 30 working days; and

(D) issuance of registration renewal - 10 working days.

(b) Reimbursement of fees.

(1) In the event an application is not processed in the time periods stated in subsection (a) of this section, the applicant has the right to request reimbursement of all fees paid in that particular application process and to withdraw the application. Application for reimbursement shall be made to the department. If the department does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(2) Good cause for exceeding the time period is considered to exist if the number of applications for registration and registration renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; if another public or private entity relied upon by the department in the application process caused the delay; or any other condition exists giving the department good cause for exceeding the time period.

(c) Appeal. If a request for reimbursement under subsection (b) of this section is denied by the department, the applicant may appeal to the commissioner of the department for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner at the address of the department that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The commissioner shall provide written notice of the decision to the applicant and the department. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made. The decision of the commissioner is final and the applicant is not entitled to a hearing for reimbursement.

(d) Contested cases. The time periods for contested cases related to the denial of registration or registration renewals are not included within the time periods stated in subsection

(a) of this section. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the department is final and appealable.

§140.110. Sanitarian Registration Procedures.

(a) Purpose. The purpose of this section is to set out the sanitarian registration procedures of the department.

(b) Issuance of certificates of registration.

(1) The department will send each applicant whose application has been approved and who has passed the examination a sanitarian registration and an identification card containing the registration number.

(2) A certificate of registration issued under this Act is valid for a two year term, as determined by the department, and may be renewed on payment of the required renewal fee and documentation of the required continuing education contact hours.

(3) Any registration or identification card remains the property of the department and must be surrendered on demand by the department.

(c) Replacement registration. The department will replace a lost, damaged, or destroyed registration or identification card upon written request from a registrant and payment of the registration or identification card replacement fee. The request shall include a statement describing the loss or destruction of the original registration or identification card or be accompanied by the damaged registration or card.

(d) Name change. Before another registration or identification card will be issued by the department due to a name change, the registrant must document the name change with a duly executed affidavit provided by the department and a notarized copy of a marriage license, court decree evidencing such change, or a copy of a Social Security card reflecting the new name. The registrant shall return any previously issued registration or identification card and remit the registration or identification card replacement fee as set out in §140.103 of this title (relating to Fees).

§140.111. Sanitarian Registration Renewal.

(a) Purpose. The purpose of this section is to set forth the rules governing registration renewal for sanitarians.

(b) General.

(1) A registrant must renew the registration every two years, as determined by the department.

(2) Each registrant is responsible for renewing the registration before the expiration date and shall not be excused from paying the renewal fee. Failure to receive notification from the department prior to the expiration date of the registration will not excuse the sanitarian from renewing.

(3) The department will not renew the registration of a registrant who is in violation of the Act or this subchapter at the time of application for renewal.

(4) Notices of renewal approval, disapproval, or deficiency shall be in accordance with §140.109 of this title (relating to Processing Applications).

(5) The department shall deny renewal of the registration of the registrant if renewal is prohibited by the Education Code, §57.491.

(c) Registration renewal.

(1) At least 45 days prior to the expiration date of a person's registration, the department will send notice to the registrant at the address in the department's records of the expiration date of the registration, the amount of the renewal fee due, and a renewal form which the registrant must complete and return to the department with the required renewal fee.

(2) The renewal form shall require the provision of the preferred mailing address, primary employment address and telephone number, and a statement of all misdemeanor and felony offenses for which the registrant has been convicted.

(3) A registrant shall renew the registration by mailing the renewal form, proof of completion of continuing education units, and the required renewal fee to the department prior to the expiration date of the license. The postmark date shall be considered as the date the renewal was filed.

(4) The department shall issue a registrant who has met all requirements for renewal an identification card.

(d) Late Renewal Reinstatement.

(1) A registered sanitarian whose registration has expired for not more than one year may renew the registration by submitting to the department the registration renewal form, the renewal fee, proof of completion of continuing education units, and the reinstatement fee. The renewal must be mailed to the department not more than one year after the expiration date of registration. The postmark date shall be considered as the date the renewal was filed.

(2) A person whose registration has been expired for more than one year may not renew. The person may apply for a new registration by meeting the then current requirements and procedures for registration as a sanitarian.

(e) Registration Expiration.

(1) A registered sanitarian whose registration has expired may not claim to be a sanitarian or sanitarian-in-training or use the titles "sanitarian" or "sanitarian-in-training".

(2) A registered sanitarian who fails to renew a registration is required to surrender the certificate of registration to the department not later than after 90 days from expiration of the registration or prior to that date at the request of the department.

(f) Military duty. If a registrant fails to timely renew a registration because the registrant is or was on active duty with the uniformed services of the United States of America serving outside the State of Texas, the registrant may renew the registration in accordance with this subsection.

(1) Renewal of the registration may be requested by the registrant, the registrant's spouse, or an individual having power of attorney from the registrant. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) Renewal may be requested before or after the expiration of the registration.

(3) A copy of the official orders or other official documentation showing that the registrant is or was on active duty serving outside the State of Texas shall be filed with the department along with the renewal form.

(4) A copy of the power of attorney from the registrant shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.

(5) A registrant renewing under this subsection shall only pay the applicable renewal fee. There will be no reinstatement fee charged.

(6) A registrant renewing under this subsection shall not be required to complete continuing education for the period of the active duty service.

§140.112. Exemption from Renewal and Continuing Education for Retired Professional Sanitarians.

(a) An individual who has been continuously registered for at least ten years as a professional sanitarian in Texas may use the titles "Retired Professional Sanitarian" and "R.S. (retired)" in accordance with the following conditions:

(1) the individual must have applied to the department and been approved for the exemption in accordance with subsection (c) of this section;

(2) the individual may not be employed in the field of environmental health, consumer health, or sanitation; and

(3) the individual may not represent him or herself to be currently registered as a sanitarian in Texas by the Department of State Health Services.

(b) Once an individual is approved for the exemption under this subsection, he or she must submit a new application for registration which meets the then current requirements for registration, including passing the examination, and receive a new, current registration card, prior to using the title "Professional Sanitarian" or "RS" again.

(c) An individual who wishes to request an exemption under this subsection must:

- (1) submit a request form specified by the department;
- (2) submit the required fee; and
- (3) hold a current registration on the date the request is postmarked.

(d) An individual may not be approved for an exemption if an unresolved complaint under §140.118 of this title (relating to Violations, Complaints, Investigations and Disciplinary Actions) is on file against him/her with the department.

(e) No renewal form, renewal fee or continuing education is required for individuals approved under this subsection.

(f) Transition. An individual who meets the following requirements is automatically approved under this subsection and may use the titles "Retired Professional Sanitarian" and "R.S. (retired)" without submission of a form or a fee to the department:

- (1) meets the requirements of both subsection (a)(2) and (a)(3) of this section;
- (2) was continuously registered for at least ten years as a professional sanitarian in Texas prior to September 1, 2000; and
- (3) his or her registration lapsed prior to August 28, 2003.

§140.113. Continuing Education Requirements.

(a) Each sanitarian registered by the department must meet the renewal requirements set out in this section. Registered sanitarians-in-training are not required to complete continuing education.

(b) Each registered sanitarian must obtain and show proof of not less than 24 continuing education contact hours related to the fields of consumer health, environmental health or sanitation as defined in §140.102 of this title (relating to Definitions) taken within the 24 months preceding renewal for a registration issued for a two-year term.

(c) Only the following continuing education activities shall serve as a basis for registration renewal:

(1) approved by the department or its designee in accordance with this section; or

(2) approved by another professional regulatory agency in the State of Texas as acceptable continuing education for registration renewal.

(d) Only continuing education activities provided by one of the following types of sponsors shall be approved by the department in accordance with these rules:

(1) a governmental agency;

(2) an accredited college or university;

(3) an association with a membership of 25 or more persons; or

(4) a commercial education business.

(e) Government agencies, non-profit organizations, and accredited colleges and universities are pre-approved as sponsors for continuing education when the activity is conducted or sponsored in compliance with these rules and is directly related to environmental health, consumer health, or sanitation.

(f) Continuing education activities conducted by approved sponsors must meet the following criteria:

(1) the activity must have significant educational or practical content to maintain appropriate levels of competency;

(2) the activity must have a record keeping procedure provided by the sponsor which includes a register of who took the course and the number of continuing education units earned;

(3) the sponsor must include procedures for verifying participant's attendance as well as comprehension of subject matter presented. These procedures may include, but are not limited to, examinations, post-activity questionnaires, field demonstrations, in-class workbooks or handout materials, and/or question and answer periods to assure participant understanding of the subject matter;

(4) the activity must be at least 50 minutes in length of actual instruction time. Round table discussions and more than one speaker for the total of 50 minutes per activity is permissible. No credit will be given for time used to promote the sponsor or other nonrelevant activities; and

(5) the sponsor must ensure the activity complies with all applicable federal and state laws, including the Americans with Disabilities Act (ADA) requirements for access to activities.

(g) Acceptable continuing education activities include the following:

- (1) conferences;
- (2) home-study training modules (including professional journals requiring successful completion of a test document);
- (3) lectures;
- (4) panel discussions;
- (5) seminars;
- (6) accredited college or university courses;
- (7) video or film presentations with live instruction;
- (8) field demonstrations;
- (9) teleconferences;
- (10) computer based training; or
- (11) other activities approved by the department.

(h) Continuing education instructors must have one of the following credentials or hold one of the following positions:

- (1) certification as a registered sanitarian by the department;
- (2) instructor at the Texas Engineering Extension Service;
- (3) faculty member at an accredited college or university;
- (4) employee of the department; or
- (5) teaching or work experience determined by the sponsor to be sufficient.

(i) To obtain department approval to provide approved continuing education, the sponsor must submit:

- (1) a completed application on department forms;
- (2) the fee prescribed in §140.103(b)(8) of this title (relating to Fees); and
- (3) any additional information or material requested by the department.

(j) The application and information must be submitted to the department at least 60 days in advance of the first date on which the sponsor plans to provide continuing education activities.

(k) The department shall approve, reject, or request additional information within 30 days of receipt of the application.

(l) Each approved continuing education sponsor shall be sanctioned for one year from date of approval. Sponsors who wish to continue approval should submit a sponsor approval form and fee as prescribed in §140.103(b)(8) of this title at least 30 days prior to the end of the one-year period.

(m) Sponsors of approved continuing education activities shall:

(1) at the conclusion of the activity distribute to those registered sanitarians who have successfully completed the activity a certificate of completion which shall include the name of the sponsor, the date and name of the activity, and the continuing education units earned; and

(2) maintain a copy of the register for two years and provide it to the department upon request.

(n) Each registered sanitarian shall collect and keep certificates of completion from all courses completed. These certificates of completion will be used to document a registered sanitarian's attendance at approved courses. Transcripts showing coursework in environmental or consumer health from an accredited college or university, or written verification of hours approved by the National Environmental Health Association (NEHA) will also be accepted. The department will conduct random audits for compliance with this requirement.

(o) The department may deny, revoke, or refuse to renew approval if the sponsor fails to maintain or provide records related to the provision of continuing education to the department, or fails to comply with any other requirements that are a basis for approval or that are a part of this subchapter.

(p) A registered sanitarian or sponsor may file a written request for an extension of time for compliance with any deadline in this subsection. Such request for extension, not to exceed 90 days, shall be granted by the department if the registered sanitarian or sponsor files appropriate documentation to show good cause for failure to comply timely with the requirements of this subsection. Good cause includes, but is not limited to, extended illness, extended medical disability, or other extraordinary hardship which is beyond the control of the person seeking the extension.

§140.114. Exemptions.

(a) In accordance with Occupations Code, §§1953.002 - 1953.003, those persons such as physicians, dentists, engineers, and doctors of veterinary medicine, who are duly licensed by another official state licensing agency, who by nature of their employment or duties might be construed to come under the provisions of the Act, shall be exempt from the provisions of the Act.

(b) This state or a political subdivision of this state is not required to employ a person registered under the Act if the state or political subdivision engages in sanitation. However, if this state or a political subdivision of the state employs a person who uses the title "sanitarian", or uses any title containing the word "sanitarian," the person must be registered under the Act.

§140.115. Registration of Persons with Criminal Backgrounds.

(a) This section sets out the guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain registration as a sanitarian or sanitarian-in-training.

(b) Criminal convictions which directly relate to the occupation of sanitarian shall be considered by the department as follows.

(1) The department may suspend or revoke an existing registration, disqualify a person from receiving a registration, or deny a person the opportunity to be examined for a registration because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities under that registration in accordance with Occupations Code, §53.022.

(2) In considering whether a criminal conviction directly relates, the department shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a registration as a sanitarian;

(C) the extent to which a registration might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a sanitarian or sanitarian-in-training. In determining the present fitness of a person, the department shall consider the evidence described in Occupations Code, §53.023.

(c) The following felonies and misdemeanors directly relate because these criminal offenses indicate an inability or a tendency for the person to be unable to perform or to be unfit for registration:

(1) the misdemeanor of violating the Occupations Code, Chapter 1953;

(2) a conviction relating to deceptive business practices;

(3) a misdemeanor or felony offense involving:

(A) bribery;

- (B) forgery;
- (C) tampering with a governmental record;
- (D) perjury;
- (E) burglary; or
- (F) arson;

(4) a conviction for practicing another profession without a certification, license, or registration required by state or federal law;

(5) a conviction relating to delivery, possession, manufacturing, or use of:

- (A) controlled substances; or
- (B) dangerous drugs;

(6) a conviction involving moral turpitude;

(7) a misdemeanor or felony offense under the following titles of the Texas Penal Code:

- (A) Title 5 concerning offenses against the person;
- (B) Title 7 concerning offenses against the property;
- (C) Title 9 concerning offenses against public order and decency;
- (D) Title 10 concerning offenses against public health, safety, and morals;

or

(E) Title 4 concerning offenses of attempting or conspiring to commit any of the offenses in this subsection; and

(8) other misdemeanors and felonies which indicate an inability or tendency for the person to be unable to perform as a registrant or to be unfit for registration.

(d) Procedures for revoking, suspending, or denying a registration to persons with criminal backgrounds shall be as follows.

(1) The department shall give a written notice to the person that the department proposes to deny the application or suspend or revoke the registration in accordance with the provisions of §140.118 of this title (relating to Violations, Complaints, Investigations and Disciplinary Actions).

(2) In accordance with Occupations Code, §53.051, the department shall notify the person in writing of:

(A) the reason for the suspension, revocation, denial, or disqualification;

(B) the review procedure provided by Occupations Code, §53.052; and

(C) the earliest date the person may appeal the action of the licensing authority.

§140.116. Grounds for Denial, Suspension or Revocation.

(a) An application for registration may be denied if the applicant:

(1) had a certificate or license to engage in a profession in this state or elsewhere revoked for unprofessional conduct, fraud, deceit, negligence, or misconduct in the practice of the profession; or

(2) satisfactory proof is presented to the department establishing that the person has been found guilty of unprofessional conduct, fraud, deceit, negligence, or misconduct in the practice of a profession.

(b) A registration may be suspended or revoked if the certificate holder:

(1) practiced fraud or deceit in obtaining the certificate; or

(2) acted in a manner constituting gross negligence, incompetency, or misconduct in the practice of sanitation.

§140.117. Advertising.

(a) A registrant shall not use advertising that is false, misleading, or deceptive or advertising that is not readily subject to verification.

(b) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(1) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes a customer/client likely to create an unjustified expectation about the results of a service or procedure;

(3) compares a professional's service with another professional's services unless the comparison can be factually substantiated;

(4) causes confusion or misunderstanding as to the credentials, education, or registration of a professional; or

(5) advertises or represents in the use of a professional name, a title, or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(c) A registrant shall make a reasonable attempt to notify each client of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department by providing notification:

(1) on each written contract for services of a registrant; or

(2) on a sign prominently displayed in the primary place of business of each registrant; or

(3) in a bill for services provided by a registrant to a client or third party.

§140.118. Violations, Complaints, Investigations, and Disciplinary Actions.

(a) Purpose. The purpose of this section is to set out:

(1) violations and prohibited actions under the Occupations Code, Chapter 1953, and this chapter;

(2) procedures concerning complaints alleging violations of the Act or this chapter; and

(3) department actions against a person when violations have occurred.

(b) Compliance. A registrant or applicant must comply with the Act and this chapter.

(c) Filing complaints.

(1) Any person may complain to the department alleging that a sanitarian or a sanitarian-in-training has violated the Act or this chapter.

(2) A person wishing to file a complaint against a sanitarian or a sanitarian-in-training shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the department's office.

(3) Upon receipt of a complaint, the department shall send to the complainant an acknowledgment letter and the department's complaint form, which the complainant must complete and return to the department before further action can be taken. If the complaint is made by visit to the department's office, the form may be given to the complainant at that time; however, it must be completed and returned to the department before further action can be taken.

(4) Anonymous complaints may be investigated by the department if the complainant provides sufficient information to conduct an investigation.

(d) Investigation of complaints.

(1) The department may investigate any complaint.

(2) If the department determines that the complaint does not come within the department's jurisdiction, the department shall advise the complainant and, if possible, refer the complainant to the appropriate governmental agency for handling such a complaint.

(3) The department shall notify the parties quarterly as to the status of the complaint until its final disposition.

(4) If the department determines that there are insufficient grounds to support the complaint, the program department shall dismiss the complaint and give written notice of the dismissal to the registrant or person against whom the complaint has been filed and the complainant.

(5) If the department determines that there are sufficient grounds to support the complaint, the department may propose to deny, suspend, revoke, or not renew a registration. The department may also impose an administrative penalty.

(e) Disciplinary actions.

(1) The department may deny an application or registration renewal or suspend or revoke a registration.

(2) Prior to institution of formal proceedings to revoke or suspend a registration, the department shall give written notice to the registrant of the facts or conduct alleged to warrant revocation or suspension, and the registrant shall be given an opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter, including the opportunity to request an informal conference.

(3) If denial, revocation, or suspension of a registration is proposed, the department shall give written notice to the applicant or registrant that the applicant or registrant must request, in writing, a hearing within 20 days of receipt of the notice. The notice shall state the basis for the proposed action. Receipt of the notice is presumed to occur on the 5th day after the notice is mailed to the last address known to the department unless another date is reflected on a United States Postal Service return receipt.

(4) If no timely request for a hearing is received, the applicant or registrant is deemed to have waived the hearing and be in agreement with the allegations and proposed action.

(5) If the applicant or registrant fails to appear or be represented at the scheduled hearing or informal conference, the person is deemed to be in agreement with the allegations and proposed action and to have waived the right to a hearing.

(6) If the hearing is waived, the application or registration shall be denied, suspended, or revoked by an order of the commissioner of the department.

(7) The hearing shall be conducted according to the hearing procedures in §140.115 of this title (relating to Registration of Persons with Criminal Backgrounds), if applicable and in accordance with the provisions of the Administrative Procedure Act (APA), Government Code, Chapter 2001, applicable state and federal statutes, the Rules of Practice and Procedures of the State Office of Administrative Hearings (SOAH) and this chapter.

(f) Denial, suspension, or revocation.

(1) If the department suspends or revokes a registration, the suspension or revocation shall remain in effect until the department or the department determines that the reason for suspension or revocation no longer exists unless an order specifies a time period. The department or the department shall investigate prior to making a determination.

(2) During the time of suspension, the suspended registration holder shall return his or her certificate of registration and identification card to the department.

(3) If the suspension overlaps a registration renewal date, the suspended registration holder may comply with the renewal procedures in this chapter; however, the department may not renew the registration until the department determines that the reason for suspension no longer exists or the period of suspension is completed.

(4) If the department suspends or revokes a registration, a person may not reapply for a period of one year after suspension or three years after revocation. The department may refuse to issue a registration if the reason for suspension or revocation continues to exist.

(5) Upon revocation, a registration holder shall return the certificate of registration and identification card to the department.

(g) The department may assess administrative penalties for a violation of the Act or this chapter in accordance with the procedures established in Occupations Code, Chapter 1953.

§140.119. Registered Sanitarian Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be the Registered Sanitarian Advisory Committee (committee).

(2) The committee is established under the Health and Safety Code, §11.016, which allows the Health and Human Services Commission to establish advisory committees.

(b) Applicable law. The committee is subject to the Government Code, Chapter 2110, concerning state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the Executive Commissioner of the Health and Human Services Commission in the area of rules regarding registered professional sanitarians.

(d) Tasks. The committee shall advise the Executive Commissioner of the Health and Human Services Commission concerning rules relating to the registration and regulation of professional sanitarians and carry out any other tasks given to the committee by the Executive Commissioner of the Health and Human Services Commission.

(e) Review and duration. By September 1, 2011, the department will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of seven members appointed by the Executive Commissioner of the Health and Human Services Commission. The composition of the committee shall include:

(1) three registered sanitarians;

(2) one professional engineer, or one on-site sewage facility (OSSF) professional who is not and has never been registered as a professional sanitarian in Texas;

(3) two consumers, one of which must be a member of an industry or occupation which is regulated either by a city or county environmental health unit or department or equivalent, or by the department; and

(4) one person involved in education in the field of public, consumer, or environmental health sciences.

(g) Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.

(1) Members shall be appointed for staggered terms so that the terms of a substantial equivalent number of members will expire on December 31st of each odd-numbered year.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The Executive Commissioner of the Health and Human Services Commission shall appoint a presiding officer and an assistant presiding officer to begin serving on September 1 of each odd-numbered year.

(1) Each officer shall serve through August 31 of each odd year, or until the Executive Commissioner of the Health and Human Services Commission appoints a replacement.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will complete the unexpired portion of the term of the office of presiding officer.

(4) If the office of assistant presiding officer becomes vacant, it may be temporarily filled by vote of the committee until the Executive Commissioner of the Health and Human Services Commission appoints a successor.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members.

(1) The Executive Commissioner of the Health and Human Services Commission, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the Executive Commissioner of the Health and Human Services Commission, the department, or the committee.

(2) The committee and its members may not participate in legislative activity in the name of the department or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) A committee member should not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(4) A committee member should not disclose confidential information acquired through his or her committee membership.

(5) A committee member should not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.

(6) A committee member who has a personal or private interest in a matter pending before the committee shall publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(o) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110, a committee member may receive reimbursement for the

member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

~~§265.131. Registered Sanitarian Advisory Committee.~~

~~(a) The committee. An advisory committee shall be appointed under and governed by this section.~~

~~(1) The name of the committee shall be the Registered Sanitarian Advisory Committee (committee).~~

~~(2) The committee is established under the Health and Safety Code, §11.016 which allows the Texas Board of Health (board) to establish advisory committees.~~

~~(b) Applicable law. The committee is subject to the Government Code, Chapter 2110, concerning state agency advisory committees.~~

~~(c) Purpose. The purpose of the committee is to provide advice to the board in the area of rules regarding registered professional sanitarians.~~

~~(d) Tasks.~~

~~(1) The committee shall advise the board concerning rules relating to registered professional sanitarians.~~

~~(2) The committee shall advise the department in establishing regulations regarding the registration of professional sanitarians.~~

~~(3) The committee shall carry out any other tasks given to the committee by the board.~~

~~(e) Review and duration. By September 1, 2007, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.~~

~~(f) Composition. The committee shall be composed of seven members appointed by the board. The composition of the committee shall include:~~

~~(1) three registered sanitarians;~~

~~(2) one professional engineer, or one on-site sewage facility (OSSF) professional who is not and has never been registered as a professional sanitarian in Texas;~~

~~(3) two consumers, one of which must be a member of an industry or occupation which is regulated either by a city or county environmental health unit or department or equivalent, or by the Texas Department of Health; and~~

~~(4) one person involved in education in the field of public, consumer, or environmental health sciences.~~

~~(g) Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.~~

~~(1) Members shall be appointed for staggered terms so that the terms of a substantial equivalent number of members will expire on December 31st of each odd numbered year.~~

~~(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.~~

~~(h) Officers. The committee shall elect from its members a presiding officer and an assistant presiding officer to begin serving on September 1 of each odd numbered year.~~

~~(1) Each officer shall serve until the next regular election of officers.~~

~~(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex officio member of any subcommittee of the committee.~~

~~(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will complete the unexpired portion of the term of the office of presiding officer.~~

~~(4) If the office of assistant presiding officer becomes vacant, it may be filled by vote of the committee.~~

~~(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.~~

~~(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.~~

~~(i) Meetings. The committee shall meet only as necessary to conduct committee business.~~

~~(1) A meeting may be called by agreement of Texas Department of Health (department) staff and either the presiding officer or at least three members of the committee.~~

~~(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.~~

~~(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.~~

~~(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.~~

~~(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.~~

~~(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.~~

~~(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.~~

~~(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.~~

~~(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.~~

~~(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.~~

~~(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.~~

~~(k) Staff. Staff support for the committee shall be provided by the department.~~

~~(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.~~

~~(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.~~

~~(2) Each member shall have one vote.~~

~~(3) A member may not authorize another individual to represent the member by proxy.~~

~~(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.~~

~~(5) Minutes of each committee meeting shall be taken by department staff.~~

~~(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.~~

~~(B) After approval by the committee, the minutes shall be signed by the presiding officer.~~

~~(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.~~

~~(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.~~

~~(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.~~

~~(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.~~

~~(n) Statement by members.~~

~~(1) The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.~~

~~(2) The committee and its members may not participate in legislative activity in the name of the board, the department or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.~~

~~(3) A committee member should not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.~~

~~(4) A committee member should not disclose confidential information acquired through his or her committee membership.~~

~~(5) A committee member should not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.~~

~~(6) A committee member who has a personal or private interest in a matter pending before the committee shall publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.~~

~~(o) Reports to board. The committee shall file an annual written report with the board.~~

~~(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, and anticipated activities of the committee for the next year.~~

~~(2) The report shall identify the costs related to the committee's existence, including the cost of department staff time spent in support of the committee's activities and the source of funds used to support the committee's activities.~~

~~(3) The report shall cover the meetings and activities in the preceding 12 months and shall be filed with the board each September. It shall be signed by the presiding officer and appropriate department staff.~~

~~(p) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.~~

~~(1) No compensatory per diem shall be paid to committee members unless required by law.~~

~~(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.~~

~~(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.~~

~~(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.~~

~~(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.~~

~~§265.141. Purpose and Scope.~~

~~(a) Purpose. This subchapter implements the Sanitarian Registration Act, Occupations Code, Chapter 1953, which requires the Texas Department of Health to adopt rules to implement a program for the registration of sanitarians under the authority of the Texas Board of Health.~~

~~(b) Scope. These sections apply to persons whose duties in consumer health require the application of scientific knowledge to recognize, evaluate, and control hazards associated with the distribution of contaminated, adulterated, unsafe and misbranded foods, drugs, medical devices, and cosmetics and to persons whose duties in environmental health or sanitation require the application of scientific knowledge to recognize, evaluate, and control environmental hazards and to preserve and improve environmental factors for the achievement of the health, safety, comfort, and well being of humans. The sections cover purpose, scope and transition; definitions; fees; application procedures; qualifications for registration as a sanitarian or sanitarian in training; educational requirements; continuing education; examinations; application approval or disapproval; sanitarians in training preceptorship; sanitarian registration procedures; sanitarian license renewal; grounds for suspension or revocation; registration of persons with criminal backgrounds; violations, complaints, investigations, and disciplinary actions; processing applications; exemptions; and advertising.~~

~~§265.142. Definitions.~~

~~The following words and terms, when used in this subchapter, shall have the following meanings.~~

~~(1) Act—Occupations Code, Chapter 1953, concerning the registration of sanitarians.~~

~~—————(2) Administrator—The department employee designated as the administrator of registration activities authorized by the Act.~~

~~—————(3) Advanced mathematics—A mathematics course equivalent to or beyond calculus that was taken at an accredited college or university.~~

~~—————(4) Applicant—A person who applies for registration under the Act.~~

~~—————(5) Applied science—The application of general principles from environmental science, agricultural science, public health, epidemiology, food science, medical science, and sanitary engineering to solve problems.~~

~~—————(6) Basic Science—Science such as anatomy, bacteriology, biochemistry, biology, chemistry, geology, microbiology, pathology, physiology and physics.~~

~~—————(7) Board—The Texas Board of Health.~~

~~————— (8) Consumer health —The application of scientific knowledge to recognize, evaluate, and control hazards associated with the distribution of contaminated, adulterated, unsafe, and misbranded foods, drugs, medical devices, cosmetics, toys or consumer products.~~

~~————— (9) Continuing education unit —Fifty minutes of continuing education training or experience, applicable to consumer health, environmental health or sanitation and pre approved by the department or its designee. Acceptable continuing education opportunities include conferences, home study training modules (including professional journals requiring successful completion of a test document), lectures, panel discussions, seminars, accredited college or university courses, video or film presentations, field demonstrations or other activities pre approved by the department or its designee.~~

~~————— (10) Department —The Texas Department of Health.~~

~~————— (11) Education —The educational requirements for registration as a sanitarian require a bachelor's degree from an accredited college or university with not less than 30 semester hours or its equivalent in basic or applied science.~~

~~————— (12) Environmental health or sanitation —The application of scientific knowledge to recognize, evaluate, and control environmental hazards and to preserve and improve environmental factors for the achievement of the health, safety, comfort, and well being of humans, to include response to suspected or known acts of bioterrorism.~~

~~————— (13) Examination —The examination prescribed by the department.~~

~~————— (14) Experience —Not less than two years of full time experience in the fields of consumer health, environmental health or sanitation.~~

~~————— (15) Full time experience —Employment, self employment, or independent contracting for not less than thirty two hours per week in the practice of consumer health, environmental health or sanitation.~~

~~————— (16) Natural Science —Branches of science such as physics, chemistry and biology that deal with matter, energy, and their interrelations and transformations or with objectively measurable phenomena.~~

~~————— (17) Registered sanitarian —A department registered public health professional qualified by specific education, specialized training and field experience to protect the health, safety and general welfare of the public from adverse environmental determinants.~~

~~————— (18) Registrant —A person registered under the Act.~~

~~————— (19) Registration —The procedure by which the department accepts, processes, and approves applications for registration of sanitarians including the furnishing, replacement or duplication of certificates.~~

~~————— (20) Sanitarian in Training — A person registered in accordance with §265.145(e) of this title (relating to Qualifications for Registration as a Sanitarian or Sanitarian in Training).~~

~~————— (21) Scope of professional practice — Includes, but not limited to, evaluating, planning, designing, managing, organizing, enforcing, or implementing programs, facilities, or services that protect public health and the environment. The scope of practice also includes educating, communicating, and warning communities of factors that may adversely affect the general health and welfare. The scope of practice may be in the areas of food quality and safety, on-site wastewater treatment and disposal, solid and hazardous waste management, ambient and indoor air quality, drinking and bathing water quality, insect and animal vector control, recreational and institutional facility inspections, consumer health and occupational health and safety.~~

~~§265.143. Fees.~~

~~(a) All fees shall be submitted in the form of a certified check, cashier's check or money order; checks from state agencies, municipalities, counties, or other political subdivisions of the state are also acceptable. All fees shall be made payable to the Texas Department of Health and are not refundable.~~

~~(b) The schedule of fees is as follows:~~

~~————— (1) application processing fee:~~

~~————— (A) sanitarian in training — \$75; or~~

~~————— (B) registered sanitarian (including reciprocity) — \$90;~~

~~————— (2) initial registration fee:~~

~~————— (A) sanitarian in training (in effect for two years after date of issue) — \$50;~~

~~————— (B) registered sanitarian (for a one year term) — \$25; or~~

~~————— (C) registered sanitarian (for a two year term) — \$50;~~

~~————— (3) registration renewal fee:~~

~~————— (A) sanitarian in training (one time renewal for a two year period) — \$150;~~

~~or~~

~~————— (B) registered Sanitarian (for a one year term) — \$75; or~~

~~————— (C) registered Sanitarian (for a two year term) — \$150;~~

~~————— (4) reinstatement (late) fee — \$75;~~

~~————— (5) processing fee for upgrading from a sanitarian in training to a sanitarian — \$90;~~

~~————— (6) certificate of registration (framing size) or identification card (billfold size) replacement fee — \$20;~~

~~————— (7) examination fee — \$50 for a department exam or the actual cost of any prescribed exam; or~~

~~————— (8) reexamination fee — \$50 for a department exam or the actual cost of any prescribed exam;~~

~~————— (9) continuing education sponsor approval fee — \$100 per sponsor. Pre-approved providers are exempt from this fee; or~~

~~————— (10) exemption fee for retired sanitarians — \$150.~~

~~(c) The month the initial registration is issued will establish the anniversary date for future registration renewal.~~

~~(d) For all applications and renewal applications, the department is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.~~

~~(e) For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.~~

~~§265.144. Application Procedures.~~

~~(a) Purpose. The purpose of this section is to set the application requests and procedures for registration as a sanitarian. Applications may be submitted for registration as a sanitarian or sanitarian in training.~~

~~(b) General:~~

~~————— (1) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official department forms.~~

~~————— (2) The department must receive all required application materials at least 30 days prior to the date the applicant wishes to take the examination, including the application fee.~~

~~————— (3) An application not completed within 30 days after the date of the department's notice of deficiency may be voided.~~

~~(c) General application materials. The application packet must contain the following items to be complete:~~

~~————— (1) specific information regarding personal data, social security number (used to coordinate information with the applicant's college or university transcript), birth date, place of employment, other state registrations and certifications held, and misdemeanor or felony convictions;~~

~~————— (2) the date of the application;~~

~~————— (3) the educational qualifications of the applicant (graduation with a bachelor's degree from an accredited college or university that included not less than 30 semester hours or its equivalent in a basic or applied science);~~

~~————— (4) qualifying experience;~~

~~————— (5) a statement that the applicant has read Occupations Code, Chapter 1953 (Act), and these rules and agrees to abide by them;~~

~~————— (6) a statement that the applicant shall return to the department any registration upon the expiration and nonrenewal, revocation, or suspension of the registration;~~

~~————— (7) a statement that the applicant understands that fees submitted in the registration process are nonrefundable unless the processing time is exceeded without good cause as set out in §265.156 of this title (relating to Processing Applications);~~

~~————— (8) a statement that the applicant understands that materials submitted in the registration process become the property of the department and are not returnable;~~

~~————— (9) a statement that the information in the application is truthful and that the applicant understands that providing false and misleading information on items which are material in determining the applicant's qualifications may result in the voiding of the application, or denial or the revocation of any registration issued; and~~

~~————— (10) the signature of the applicant which has been dated and notarized.~~

~~(d) Documents. The following documents shall be submitted:~~

~~————— (1) a full face photo of a minimum size of 1-1/2 by 1-1/2 inches signed on the reverse side with the applicant's signature as it appears on the application. The photograph must have been taken within the two year period prior to application; and~~

~~— (2) an official transcript from an accredited college or university (sealed as a true and exact copy of an unaltered original) showing graduation with a bachelor's degree from an accredited college or university that included not less than 30 semester hours or its equivalent in a basic or applied science.~~

~~§265.145. Qualifications for Registration as a Sanitarian or Sanitarian in Training.~~

~~(a) The purpose of this section is to set out the qualifications of applicants for examination and registration as a sanitarian or sanitarian in training.~~

~~(b) An applicant for registration as a Professional Sanitarian who qualifies under Occupations Code, §1953.102(a), must have:~~

~~— (1) graduated with a bachelor's degree from an accredited college or university that included not less than 30 semester hours or its equivalent in a basic or applied science;~~

~~— (2) not less than two years of full time experience in the fields of consumer health, environmental health or sanitation which may include the following:~~

~~— (A) regulatory inspections or evaluations of retail food establishments; retail grocery stores; food warehousing facilities; food manufacturing facilities; food service at special events; mobile food service vehicles and facilities; producer dairy farms; dairy product manufacturing facilities; frozen dessert manufacturing facilities; on site sewage facilities; asbestos abatement processes; mass gathering events; industrial pretreatment processes (sewage); municipal sewage facilities and wastewater plants; public and semi-public swimming pools; child care facilities; long term care facilities; hospitals; correctional facilities; public and private schools; youth camps; and recreational areas for children; radiation hazards, including lasers and microwaves; and private and public water systems;~~

~~— (B) site evaluation and design of on site sewage system facilities as specified in Texas Commission on Environmental Quality rules;~~

~~— (C) Hazard Analysis and Critical Control Point (HACCP) systems or processes;~~

~~— (D) investigation of food borne illnesses; water borne illnesses; vector borne illnesses; zoonotic illnesses; food product contamination or adulteration; the environmental conditions surrounding reported elevated blood lead in children and adults; consumer, governmental agency or industry complaints; and animal bites;~~

~~————— (E) performance of vector control activities related to mosquitoes, flies and rodents; environmental assessments; code enforcement activities; and food handler or certified food service manager training;~~

~~————— (F) first responder to hazardous material spills and incidents; and natural and man made disasters; or~~

~~————— (G) regulatory review of plans and specifications for food establishments; plans and specifications for public, semi-public and private swimming pools; and plans and specifications for on-site sewage systems facilities;~~

~~————— (3) regularly assigned duties which must have included consumer health, environmental health or sanitation. The applicant need not have had the titles "sanitarian" or "sanitarian in training";~~

~~————— (4) passed the prescribed examination as set forth in §265.148 of this title (relating to Examinations);~~

~~————— (5) filed the documents and application required by §265.144 of this title (relating to Application Procedures); and~~

~~————— (6) paid the appropriate fees.~~

~~(c) An applicant for registration as a Sanitarian in Training who qualifies under Occupations Code, §1953.102(b), must have:~~

~~————— (1) graduated with a bachelor's degree from an accredited college or university that included not less than 30 semester hours or its equivalent in a basic or applied science;~~

~~————— (2) passed the prescribed examination as set forth in §265.148 of this title;~~

~~————— (3) filed the documents and application required by §265.144 of this title; and~~

~~————— (4) paid the appropriate fees.~~

~~(d) On proper application, the department may grant a certificate of registration to a licensee or registrant of another state, commonwealth, or territory of the United States that has requirements equivalent to or higher than those in effect in this state for the registration of a sanitarian or sanitarian in training.~~

~~§265.146. Educational Requirements.~~

~~(a) Purpose. This section sets out the initial educational requirements for examination and registration as a sanitarian or sanitarian in training and the requirements for license renewal.~~

~~(b) Core educational requirements for initial registration include the following.~~

~~—————(1) Acceptable courses are air pollution; anatomy; animal science; bacteriology; biochemistry; biology; biomedical science; biophysics (no more than six semester hours or its equivalent); biostatistics; botany; cell physiology; chemical engineering; chemistry; community health; computer science (no more than six semester hours or its equivalent); dairy science; ecology; embryology (no more than six semester hours or its equivalent); entomology; environmental health; environmental science; environmental diseases; environmental law; epidemiology; food bacteriology; food science; food technology; genetics; geophysics; geology; hazardous waste; histology; hydrogeology; hydrology; industrial hygiene; infectious diseases; limnology; mathematics (beyond algebra — no more than six semester hours or its equivalent); courses taken in an accredited allopathic or osteopathic school of medicine (no more than six semester hours or its equivalent); meteorology (no more than six semester hours or its equivalent); microbiology; molecular biology; occupational health; occupational safety; parasitology; pathology; physics (no more than six semester hours or its equivalent); physiology; plant taxonomy; public health; public health education (no more than six semester hours or its equivalent); public health law; radiological health; sanitary engineering; soil science; statistics (no more than six semester hours or its equivalent); toxicology; vector control; veterinary medical courses (no more than six semester hours or its equivalent); veterinary public health; virology; wastewater treatment; water quality; and zoology.~~

~~—————(2) Courses considered not acceptable are anthropology; archaeology; astronomy; education; geography; government; history; kinesiology; languages; physical education; psychology; and sociology.~~

~~—————(3) Courses not listed may be submitted for consideration for acceptance by the department.~~

~~§265.147. Continuing Education Requirements.~~

~~(a) Each sanitarian registered by the department must meet the renewal requirements set out in this section.~~

~~(b) Each registered sanitarian must obtain and show proof of not less than 12 continuing education contact hours related to the fields of consumer health, environmental health or sanitation as defined in §265.142 of this title (relating to Definitions) within the 12 months preceding renewal of a registration issued for a one year term, or 24 hours taken within the 24 months preceding renewal for a registration issued for a two year term.~~

~~(c) Only the following continuing education activities shall serve as a basis for registration renewal:~~

~~————— (1) approved by the department or its designee in accordance with this section; or~~

~~————— (2) approved by another professional regulatory agency in the State of Texas as acceptable continuing education for license renewal.~~

~~(d) Only continuing education activities provided by one of the following types of sponsors shall be approved by the department in accordance with these rules:~~

~~————— (1) a governmental agency;~~

~~————— (2) an accredited college or university;~~

~~————— (3) an association with a membership of 25 or more persons; or~~

~~————— (4) a commercial education business.~~

~~(e) Government agencies, non-profit organizations, and accredited colleges and universities are pre-approved as sponsors for continuing education when the activity is conducted or sponsored in compliance with these rules and is directly related to environmental health, consumer health, or sanitation.~~

~~(f) Continuing education activities conducted by approved sponsors must meet the following criteria:~~

~~————— (1) the activity must have significant educational or practical content to maintain appropriate levels of competency;~~

~~————— (2) the activity must have a record keeping procedure provided by the sponsor which includes a register of who took the course and the number of continuing education units earned;~~

~~————— (3) the sponsor must include procedures for verifying participant's attendance as well as comprehension of subject matter presented. These procedures may include, but are not limited to, examinations, post activity questionnaires, field demonstrations, in class workbooks or handout materials, and/or question and answer periods to assure participant understanding of the subject matter;~~

~~————— (4) the activity must be at least 50 minutes in length of actual instruction time. Round table discussions and more than one speaker for the total of 50 minutes per activity is permissible. No credit will be given for time used to promote the sponsor or other nonrelevant activities; and~~

~~————— (5) the sponsor must ensure the activity complies with all applicable federal and state laws, including the Americans with Disabilities Act (ADA) requirements for access to activities.~~

~~(g) Acceptable continuing education activities include the following:~~

- ~~———— (1) conferences;~~
- ~~———— (2) home study training modules (including professional journals requiring successful completion of a test document);~~
- ~~———— (3) lectures;~~
- ~~———— (4) panel discussions;~~
- ~~———— (5) seminars;~~
- ~~———— (6) accredited college or university courses;~~
- ~~———— (7) video or film presentations with live instruction;~~
- ~~———— (8) field demonstrations;~~
- ~~———— (9) teleconferences;~~
- ~~———— (10) computer based training; or~~
- ~~———— (11) other activities approved by the department.~~

~~(h) Continuing education instructors must have one of the following credentials:~~

- ~~———— (1) certification as a registered sanitarian by the department;~~
- ~~———— (2) instructors at the Texas Engineering Extension Service;~~
- ~~———— (3) hold a faculty position at an accredited college or university;~~
- ~~———— (4) department personnel; or~~
- ~~———— (5) teaching or work experience determined by the sponsor to be sufficient.~~

~~(i) To obtain department approval to provide approved continuing education, the sponsor must submit:~~

- ~~———— (1) a completed application on department forms;~~
- ~~———— (2) the fee prescribed in §265.143(b)(9) of this title (relating to Fees); and~~
- ~~———— (3) any additional information or material requested by the department.~~

~~(j) The application and information must be submitted to the department at least 60 days in advance of the first date on which the sponsor plans to provide continuing education activities.~~

~~(k) The department shall approve, reject, or request additional information within 30 days of receipt of the application.~~

~~(l) Each approved continuing education sponsor shall be sanctioned for one year from date of approval. Sponsors who wish to continue approval should submit a sponsor approval form and fee as prescribed in §265.143(b)(9) of this title at least 30 days prior to the end of the one year period.~~

~~(m) Sponsors of approved continuing education activities shall:~~

~~————— (1) at the conclusion of the activity distribute to those registered sanitarians who have successfully completed the activity a certificate of completion which shall include the name of the sponsor, the date and name of the activity, and the continuing education units earned;~~

~~————— (2) maintain a copy of the register for two years and provide it to the department upon request.~~

~~(n) Each registered sanitarian shall collect and keep certificates of completion from all courses completed. These certificates of completion will be used to document a registered sanitarian's attendance at approved courses. Transcripts showing coursework in environmental or consumer health from an accredited college or university, or written verification of hours approved by the National Environmental Health Association (NEHA) will also be accepted. The department will conduct random audits for compliance with this requirement.~~

~~(o) The department may deny, revoke, or refuse to renew approval if the sponsor fails to maintain or provide records related to the provision of continuing education to the department, or fails to comply with any other requirements that are a basis for approval or that are a part of this subchapter.~~

~~(p) A registered sanitarian or sponsor may file a written request for an extension of time for compliance with any deadline in this subsection. Such request for extension, not to exceed 90 days, shall be granted by the department if the registered sanitarian or sponsor files appropriate documentation to show good cause for failure to comply timely with the requirements of this subsection. Good cause includes, but is not limited to, extended illness, extended medical disability, or other extraordinary hardship which is beyond the control of the person seeking the extension.~~

~~(q) Transition. Course sponsors who submitted one or more activities to the department and received approval between September 1, 2000, and September 1, 2002, will be approved for one year without payment of a fee upon completion and submission of the sponsor approval form within 90 days of the effective date of these rules.~~

~~§265.148. Examinations.~~

~~(a) Purpose. This section sets out provisions governing the administration, content, grading, and other procedures for examination for registration as a sanitarian and sanitarian-in-training.~~

~~(b) Examination. The examination shall consist of a written examination prescribed by the department under the supervision of a person or agency designated by the department.~~

~~(c) Application for examination.~~

~~—————(1) An applicant must file an application in accordance with §265.144 of this title (relating to Application Procedures).~~

~~—————(2) An applicant meeting the requirements of §265.145 of this title (relating to Qualifications for Registration as a Sanitarian or Sanitarian-in-Training) shall be approved to take the exam. The department will notify the applicant of his or her eligibility for examination. Applications that are incomplete or late may cause the applicant to miss the examination deadline. The notice shall include instructions for scheduling to take the examination. The notice of eligibility for examination must be presented at the examination station prior to taking the examination.~~

~~—————(3) The notice of eligibility to take the examination must be submitted to the department or the department's designee by the applicant with the required examination fee on or before the deadline set by the department.~~

~~—————(4) The examination will be conducted in the English language. The exam may be taken in an individual's native language if the individual notifies the department at least 60 days in advance. The applicant will be responsible for any fee or consideration to be paid to an acceptable interpreter and/or translator whose services are necessary for the examination. The interpreter or translator must be acceptable to the department or the department's designee.~~

~~—————(5) An applicant with a disability must inform the department of special accommodations needed for the examination at least 20 days prior to the exam. The documentation of disability on a form provided by the department shall be completed and signed by a person familiar with the applicant's disability and the appropriate accommodations needed. The person should be a physician, psychologist, rehabilitation counselor, educator or other professionally qualified individual.~~

~~(d) Date and location. Examinations will be held on dates and in locations determined and announced by the department or the department's designee.~~

~~(e) Grading. Examinations will be graded by the department or the department's designee.~~

~~(f) Notice. The department shall notify each examinee of the results of the examination within 30 days of the date of the examination. However, if an examination is graded or reviewed by a national testing service, the department shall notify examinees of the results of the examination not later than the 14th day after the day on which the department receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the department shall notify the examinee of the reason for the delay before the 90th day.~~

~~(g) Failures.~~

~~————— (1) If requested in writing by a person who fails the prescribed examination administered under the Act, the department shall furnish the person with an analysis of the person's performance on the examination. The written request must be submitted within 21 days from the date of the notification of failure. The department will respond to the request within 30 working days.~~

~~————— (2) A person who fails the examination may retest after 90 days and after paying another examination fee. All retests must be completed not later than one year after the initial date of examination eligibility or the person's application will be voided.~~

~~(h) Failure to apply. Any applicant who fails to apply for and take the examination within a period of three months after an examination approval notice is mailed by the department will have such approval voided by the department.~~

~~(i) Refunds. No refunds will be made to examination candidates who fail to appear for an examination unless an extenuating circumstance exists such as illness, death, injury or a vehicular accident.~~

~~§265.149. Application Approval or Disapproval.~~

~~(a) The department shall approve or disapprove all applications received for registration as a sanitarian and sanitarian in training.~~

~~(b) Notices of application approval, disapproval, or deficiency shall be in accordance with §265.156 of this title (relating to Processing Applications).~~

~~(c) An application for registration shall be disapproved if the person has:~~

~~————— (1) not met the requirements in §265.145 of this title (relating to Qualifications for Registration as a Sanitarian or Sanitarian in Training);~~

~~————— (2) failed to pass the examination prescribed by the department as set out in §265.148 of this title (relating to Examinations);~~

~~————— (3) failed to or refused to properly complete or submit any application form, documents, or fee or deliberately presented false information on any form or document required by the department;~~

~~————— (4) violated any provisions of the Occupations Code, Chapter 1953 or this subchapter;~~

~~————— (5) been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a registered sanitarian or sanitarian in training as set out in §265.154 of this title (relating to Registration of Persons with Criminal Backgrounds); or~~

~~————— (6) had a certificate or license to engage in a profession in this state or elsewhere revoked for unprofessional conduct, fraud, deceit, negligence, or misconduct in the practice of the profession; or~~

~~————— (7) satisfactory proof is presented to the board establishing that the person has been found guilty of unprofessional conduct, fraud, deceit, negligence, or misconduct in the practice of a profession.~~

~~(d) If after review, the department determines that the application should not be approved, the administrator shall give the applicant written notice of the reason for the decision and provide notice and an opportunity for a hearing in accordance with the provisions of the Administrative Procedure Act (APA), Government Code, Chapter 2001, applicable state and federal statutes, the Rules of Practice and Procedures of the State Office of Administrative Hearings (SOAH) and this chapter.~~

~~§265.151. Sanitarian Registration Procedures.~~

~~(a) Purpose. The purpose of this section is to set out the sanitarian registration procedures of the department.~~

~~(b) Issuance of certificates of registration.~~

~~————— (1) The department will send each applicant whose application has been approved and who has passed the examination a sanitarian registration and an identification card containing the registration number.~~

~~————— (2) A certificate of registration issued under this Act is valid for a one or two year term, as determined by the department, and may be renewed on payment of the required renewal fee and documentation of the required continuing education contact hours.~~

~~—————(3) Any registration or identification card remains the property of the department and must be surrendered on demand by the department.~~

~~(c) Replacement registration. The department will replace a lost, damaged, or destroyed registration or identification card upon written request from a registrant and payment of the registration or identification card replacement fee. The request shall include a statement describing the loss or destruction of the original registration or identification card or be accompanied by the damaged registration or card.~~

~~(d) Name change. Before another registration or identification card will be issued by the department due to a name change, the registrant must document the name change with a duly executed affidavit provided by the department and a notarized copy of a marriage license, court decree evidencing such change, or a copy of a Social Security card reflecting the new name. The registrant shall return any previously issued registration or identification card and remit the registration or identification card replacement fee as set out in §265.143 of this title (relating to Fees).~~

~~§265.152. Sanitarian Registration Renewal.~~

~~(a) Purpose. The purpose of this section is to set forth the rules governing registration renewal for sanitarians.~~

~~(b) General.~~

~~—————(1) A registrant must renew the registration annually or every two years, as determined by the department.~~

~~—————(2) Each registrant is responsible for renewing the registration before the expiration date and shall not be excused from paying the renewal fee. Failure to receive notification from the department prior to the expiration date of the registration will not excuse the sanitarian from renewing.~~

~~—————(3) The department will not renew the registration of a registrant who is in violation of the Act or this subchapter at the time of application for renewal.~~

~~—————(4) Notices of renewal approval, disapproval, or deficiency shall be in accordance with §265.156 of this title (relating to Processing Applications).~~

~~—————(5) The department shall deny renewal of the registration of the registrant if renewal is prohibited by the Education Code, §57.491.~~

~~(c) Registration renewal.~~

~~—————(1) At least 45 days prior to the expiration date of a person's registration, the department will send notice to the registrant at the address in the department's records of the~~

expiration date of the registration, the amount of the renewal fee due, and a renewal form which the registrant must complete and return to the department with the required renewal fee.

~~————— (2) The renewal form shall require the provision of the preferred mailing address, primary employment address and telephone number, and a statement of all misdemeanor and felony offenses for which the registrant has been convicted.~~

~~————— (3) A registrant has renewed the registration when the registrant has mailed the renewal form, proof of completion of continuing education units, and the required renewal fee to the department prior to the expiration date of the license. The postmark date shall be considered as the date the renewal was filed.~~

~~————— (4) The department shall issue a registrant who has met all requirements for renewal a registration and identification card.~~

~~(d) Late Renewal Reinstatement.~~

~~————— (1) The department shall inform a person who has not renewed a registration within 30 working days following the expiration of the registration of the amount of the renewal fee and reinstatement fee required for renewal and the date the registration expired.~~

~~————— (2) A registered sanitarian whose registration has expired for not more than one year may renew the registration by submitting to the department the registration renewal form, the renewal fee, proof of completion of continuing education units, and the reinstatement fee. The renewal must be mailed to the department not more than one year after the expiration date of registration. The postmark date shall be considered as the date the renewal was filed.~~

~~————— (3) A person whose registration has been expired for more than one year may not renew. The person may apply for a new registration by meeting the then current requirements and procedures for registration as a sanitarian.~~

~~(e) Registration Expiration.~~

~~————— (1) A registered sanitarian whose registration has expired may not claim to be a sanitarian or sanitarian in training or use the titles "sanitarian" or "sanitarian in training".~~

~~————— (2) A registered sanitarian who fails to renew a registration is required to surrender the certificate of registration to the department not later than after 90 days from expiration of the registration or prior to that date at the request of the department.~~

~~(f) Military duty. If a registrant fails to timely renew a registration because the registrant is or was on active duty with the uniformed services of the United States of America serving outside the State of Texas, the registrant may renew the registration in accordance with this subsection.~~

~~————— (1) Renewal of the registration may be requested by the registrant, the registrant's spouse, or an individual having power of attorney from the registrant. The renewal form shall include a current address and telephone number for the individual requesting the renewal.~~

~~————— (2) Renewal may be requested before or after the expiration of the registration.~~

~~————— (3) A copy of the official orders or other official documentation showing that the registrant is or was on active duty serving outside the State of Texas shall be filed with the department along with the renewal form.~~

~~————— (4) A copy of the power of attorney from the registrant shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.~~

~~————— (5) A registrant renewing under this subsection shall only pay the applicable renewal fee. There will be no reinstatement fee charged.~~

~~————— (6) A registrant renewing under this subsection shall not be required to complete continuing education for the period of the active duty service.~~

~~§265.153. Grounds for Suspension or Revocation.~~

~~A registration or license may be suspended or revoked if the certificate holder:~~

~~—— (1) practiced fraud or deceit in obtaining the certificate; or~~

~~—— (2) acted in a manner constituting gross negligence, incompetency, or misconduct in the practice of sanitation.~~

~~§265.154. Registration of Persons with Criminal Backgrounds.~~

~~(a) This section sets out the guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain registration as a sanitarian or sanitarian-in-training.~~

~~(b) Criminal convictions which directly relate to the occupation of sanitarian shall be considered by the department as follows.~~

~~————— (1) The department may suspend or revoke an existing registration, disqualify a person from receiving a registration, or deny a person the opportunity to be examined for a registration because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities under that registration in accordance with Occupations Code, §53.022.~~

~~————— (2) In considering whether a criminal conviction directly relates, the department shall consider:~~

~~_____ (A) the nature and seriousness of the crime;~~

~~_____ (B) the relationship of the crime to the purposes for requiring a registration as a sanitarian;~~

~~_____ (C) the extent to which a registration might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and~~

~~_____ (D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a sanitarian or sanitarian in training. In determining the present fitness of a person, the department shall consider the evidence described in Occupations Code, §53.023.~~

~~(e) The following felonies and misdemeanors directly relate because these criminal offenses indicate an inability or a tendency for the person to be unable to perform or to be unfit for registration:~~

~~_____ (1) the misdemeanor of violating the Occupations Code, Chapter 1953;~~

~~_____ (2) a conviction relating to deceptive business practices;~~

~~_____ (3) a misdemeanor or felony offense involving:~~

~~_____ (A) bribery;~~

~~_____ (B) forgery;~~

~~_____ (C) tampering with a governmental record;~~

~~_____ (D) perjury;~~

~~_____ (E) burglary; or~~

~~_____ (F) arson;~~

~~_____ (4) a conviction for practicing another profession without a certification, license, or registration required by state or federal law;~~

~~_____ (5) a conviction relating to delivery, possession, manufacturing, or use of:~~

~~_____ (A) controlled substances; or _____~~

~~_____ (B) dangerous drugs;~~

~~_____ (6) a conviction involving moral turpitude;~~

~~_____ (7) a misdemeanor or felony offense under various titles of the Texas Penal Code:~~

~~_____ (A) Title 5 concerning offenses against the person;~~

~~_____ (B) Title 7 concerning offenses against the property;~~

~~_____ (C) Title 9 concerning offenses against public order and decency;~~

~~_____ (D) Title 10 concerning offenses against public health, safety, and morals;~~
or

~~_____ (E) Title 4 concerning offenses of attempting or conspiring to commit any of the offenses in this subsection; and~~

~~_____ (8) other misdemeanors and felonies which indicate an inability or tendency for the person to be unable to perform as a registrant or to be unfit for licensure.~~

~~(d) Procedures for revoking, suspending, or denying a license to persons with criminal backgrounds shall be as follows:~~

~~_____ (1) The administrator shall give a written notice to the person that the department proposes to deny the application or suspend or revoke the registration in accordance with the provisions of §265.155 of this title (relating to Violations, Complaints, Investigations and Disciplinary Actions).~~

~~_____ (2) In accordance with Occupations Code, §53.051, the administrator shall notify the person in writing of:~~

~~_____ (A) the reason for the suspension, revocation, denial, or disqualification;~~

~~_____ (B) the review procedure provided by §53.052; and~~

~~_____ (C) the earliest date the person may appeal the action of the licensing authority.~~

~~§265.155. Violations, Complaints, Investigations, and Disciplinary Actions.~~

~~(a) Purpose. The purpose of this section is to set out:~~

~~_____ (1) violations and prohibited actions under the Occupations Code, Chapter 1953, and this chapter;~~

~~_____ (2) procedures concerning complaints alleging violations of the Act or this chapter; and~~

~~—————(3) department actions against a person when violations have occurred.~~

~~(b) Compliance. A registrant or applicant must comply with the Act and this chapter.~~

~~(c) Filing complaints.~~

~~—————(1) Any person may complain to the department alleging that a sanitarian or a sanitarian in training has violated the Act or this chapter.~~

~~—————(2) A person wishing to file a complaint against a sanitarian or a sanitarian in training shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the administrator's office.~~

~~—————(3) Upon receipt of a complaint, the administrator shall send to the complainant an acknowledgment letter and the department's complaint form, which the complainant must complete and return to the administrator before further action can be taken. If the complaint is made by visit to the administrator's office, the form may be given to the complainant at that time; however, it must be completed and returned to the department before further action can be taken.~~

~~—————(4) Anonymous complaints may be investigated by the department if the complainant provides sufficient information to conduct an investigation.~~

~~(d) Investigation of complaints.~~

~~—————(1) The department may investigate any complaint.~~

~~—————(2) If the administrator determines that the complaint does not come within the department's jurisdiction, the administrator shall advise the complainant and, if possible, refer the complainant to the appropriate governmental agency for handling such a complaint.~~

~~—————(3) The department shall notify the parties quarterly as to the status of the complaint until its final disposition.~~

~~—————(4) If the administrator determines that there are insufficient grounds to support the complaint, the program administrator shall dismiss the complaint and give written notice of the dismissal to the registrant or person against whom the complaint has been filed and the complainant.~~

~~—————(5) If the administrator determines that there are sufficient grounds to support the complaint, the administrator may propose to deny, suspend, revoke, or not renew a registration.~~

~~(e) Disciplinary actions.~~

~~—————(1) The department may deny an application or registration renewal or suspend or revoke a registration.~~

~~————— (2) Prior to institution of formal proceedings to revoke or suspend a registration, the department shall give written notice to the registrant of the facts or conduct alleged to warrant revocation or suspension, and the registrant shall be given an opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter, including the opportunity to request an informal conference.~~

~~————— (3) If denial, revocation, or suspension of a registration is proposed, the department shall give written notice to the applicant or registrant that the applicant or registrant must request, in writing, a hearing within 20 days of receipt of the notice. The notice shall state the basis for the proposed action. Receipt of the notice is presumed to occur on the 5th day after the notice is mailed to the last address known to the department unless another date is reflected on a United States Postal Service return receipt.~~

~~————— (4) If no timely request for a hearing is received, the applicant or registrant is deemed to have waived the hearing and be in agreement with the allegations and proposed action.~~

~~————— (5) If the applicant or registrant fails to appear or be represented at the scheduled hearing or informal conference, the person is deemed to be in agreement with the allegations and proposed action and to have waived the right to a hearing.~~

~~————— (6) If the hearing is waived, the application or registration shall be denied, suspended, or revoked by an order of the commissioner of health.~~

~~————— (7) The hearing shall be conducted according to the hearing procedures in §265.154 of this title (relating to Registration of Persons with Criminal Backgrounds), if applicable and in accordance with the provisions of the Administrative Procedure Act (APA), Government Code, Chapter 2001, applicable state and federal statutes, the Rules of Practice and Procedures of the State Office of Administrative Hearings (SOAH) and this chapter.~~

~~(f) Denial, suspension, or revocation.~~

~~————— (1) If the department suspends or revokes a registration, the suspension or revocation shall remain in effect until the administrator or the department determines that the reason for suspension or revocation no longer exists unless an order specifies a time period. The administrator or the department shall investigate prior to making a determination.~~

~~————— (2) During the time of suspension, the suspended registration holder shall return his or her certificate of registration and identification card to the department.~~

~~————— (3) If the suspension overlaps a registration renewal date, the suspended registration holder may comply with the renewal procedures in this chapter; however, the department may not renew the registration until the administrator determines that the reason for suspension no longer exists or the period of suspension is completed.~~

~~————— (4) If the department suspends or revokes a registration, a person may not reapply for a period of one year after suspension or three years after revocation. The department may refuse to issue a registration if the reason for suspension or revocation continues to exist.~~

~~————— (5) Upon revocation, a registration holder shall return the certificate of registration and identification card to the department.~~

~~(g) The department may assess administrative penalties for a violation of the Act or this chapter in accordance with the procedures established in Occupations Code, Chapter 1953.~~

~~§265.156. Processing Applications.~~

~~————— (a) Time periods. The department shall comply with the following procedures in processing applications for initial registration and registration renewal.~~

~~————— (1) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:~~

~~————— (A) letter of acceptance of application for registration or sanitarian in-training registration — 30 working days;~~

~~————— (B) letter of application or renewal deficiency — 30 working days; and~~

~~————— (C) issuance of registration renewal or letter of renewal deficiency — 30 working days.~~

~~————— (2) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. The time periods are as follows:~~

~~————— (A) letter of approval for examination — 20 working days;~~

~~————— (B) initial letter of approval for registration — 30 working days;~~

~~————— (C) letter of denial of registration — 30 working days; and~~

~~————— (D) issuance of registration renewal — 10 working days.~~

~~(b) Reimbursement of fees.~~

~~————— (1) In the event an application is not processed in the time periods stated in subsection (a) of this section, the applicant has the right to request reimbursement of all fees paid in that particular application process and to withdraw the application. Application for reimbursement shall be made to the administrator. If the administrator does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.~~

~~————— (2) Good cause for exceeding the time period is considered to exist if the number of applications for registration and registration renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; if another public or private entity relied upon by the department in the application process caused the delay; or any other condition exists giving the department good cause for exceeding the time period.~~

~~(c) Appeal. If a request for reimbursement under subsection (b) of this section is denied by the administrator, the applicant may appeal to the commissioner of the department for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner at the address of the department that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The commissioner shall provide written notice of the decision to the applicant and the administrator. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made. The decision of the commissioner is final and the applicant is not entitled to a hearing for reimbursement.~~

~~(d) Contested cases. The time periods for contested cases related to the denial of registration or registration renewals are not included within the time periods stated in subsection (a) of this section. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the department is final and appealable.~~

~~§265.157. Exemptions.~~

~~(a) In accordance with Occupations Code, §§1953.002 — 1953.003, those persons such as physicians, dentists, engineers, and doctors of veterinary medicine, who are duly licensed by another official state licensing agency, who by nature of their employment or duties might be construed to come under the provisions of this Act, shall be exempt from the provision of this Act.~~

~~(b) This state or a political subdivision of this state is not required to employ a person registered under this Act if the state or political subdivision engages in sanitation. However, if this state or a political subdivision of the state employs a person who uses the title "sanitarian", or uses any title containing the word "sanitarian," the person must be registered under this Act.~~

~~§265.158. Advertising.~~

~~(a) A registrant shall not use advertising that is false, misleading, or deceptive or advertising that is not readily subject to verification.~~

~~(b) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:~~

~~—————(1) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;~~

~~—————(2) makes a customer/client likely to create an unjustified expectation about the results of a service or procedure;~~

~~—————(3) compares a professional's service with another professional's services unless the comparison can be factually substantiated;~~

~~—————(4) causes confusion or misunderstanding as to the credentials, education, or registration of a professional; or~~

~~—————(5) advertises or represents in the use of a professional name, a title, or professional identification that is expressly or commonly reserved to or used by another profession or professional.~~

~~(c) A registrant shall make a reasonable attempt to notify each client of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department by providing notification:~~

~~—————(1) on each written contract for services of a registrant; or~~

~~—————(2) on a sign prominently displayed in the primary place of business of each registrant; or~~

~~—————(3) in a bill for services provided by a registrant to a client or third party.~~

~~§265.159. Exemption from Renewal and Continuing Education for Retired Professional Sanitarians.~~

~~(a) An individual who has been continuously registered for at least ten years as a professional sanitarian in Texas may use the titles "Retired Professional Sanitarian" and "R.S. (retired)" in accordance with the following conditions:~~

~~—————(1) the individual must have applied to the department and been approved for the exemption in accordance with subsection (c) of this section;~~

~~—————(2) the individual may not be employed in the field of environmental health, consumer health, or sanitation; and~~

~~—————(3) the individual may not represent him or herself to be currently registered as a sanitarian in Texas by the Texas Department of Health.~~

~~(b) Once an individual is approved for the exemption under this subsection, he or she must submit a new application for registration which meets the then current requirements for registration, including passing the examination, and receive a new, current registration card, prior to using the title "Professional Sanitarian" or "RS" again.~~

~~(c) An individual who wishes to request an exemption under this subsection must:~~

~~—————(1) submit a request form specified by the department;~~

~~—————(2) submit the required fee; and~~

~~—————(3) hold a current registration on the date the request is postmarked.~~

~~(d) An individual may not be approved for an exemption if an unresolved complaint under §265.155 of this title (relating to Violations, Complaints, Investigations and Disciplinary Actions is on file against him/her with the department.~~

~~(e) No renewal form, renewal fee or continuing education is required for individuals approved under this subsection.~~

~~(f) Transition. An individual who meets the following requirements is automatically approved under this subsection and may use the titles "Retired Professional Sanitarian" and "R.S. (retired)" without submission of a form or a fee to the department:~~

~~—————(1) meets the requirements of both subsection (a)(2) and (a)(3) of this section;~~

~~—————(2) was continuously registered for at least ten years as a professional sanitarian in Texas prior to September 1, 2000; and~~

~~—————(3) his or her registration lapsed prior to the effective date of these rules.~~

~~§265.131. Registered Sanitarian Advisory Committee.~~

~~(a) The committee. An advisory committee shall be appointed under and governed by this section.~~

~~—————(1) The name of the committee shall be the Registered Sanitarian Advisory Committee (committee).~~

~~—————(2) The committee is established under the Health and Safety Code, §11.016 which allows the Texas Board of Health (board) to establish advisory committees.~~

~~(b) Applicable law. The committee is subject to the Government Code, Chapter 2110, concerning state agency advisory committees.~~

~~(c) Purpose. The purpose of the committee is to provide advice to the board in the area of rules regarding registered professional sanitarians.~~

~~(d) Tasks.~~

~~————— (1) The committee shall advise the board concerning rules relating to registered professional sanitarians.~~

~~————— (2) The committee shall advise the department in establishing regulations regarding the registration of professional sanitarians.~~

~~————— (3) The committee shall carry out any other tasks given to the committee by the board.~~

~~(e) Review and duration. By September 1, 2007, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.~~

~~(f) Composition. The committee shall be composed of seven members appointed by the board. The composition of the committee shall include:~~

~~————— (1) three registered sanitarians;~~

~~————— (2) one professional engineer, or one on-site sewage facility (OSSF) professional who is not and has never been registered as a professional sanitarian in Texas;~~

~~————— (3) two consumers, one of which must be a member of an industry or occupation which is regulated either by a city or county environmental health unit or department or equivalent, or by the Texas Department of Health; and~~

~~————— (4) one person involved in education in the field of public, consumer, or environmental health sciences.~~

~~(g) Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.~~

~~————— (1) Members shall be appointed for staggered terms so that the terms of a substantial equivalent number of members will expire on December 31st of each odd numbered year.~~

~~————— (2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.~~

~~(h) Officers. The committee shall elect from its members a presiding officer and an assistant presiding officer to begin serving on September 1 of each odd numbered year.~~

~~—————(1) Each officer shall serve until the next regular election of officers.~~

~~—————(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.~~

~~—————(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will complete the unexpired portion of the term of the office of presiding officer.~~

~~—————(4) If the office of assistant presiding officer becomes vacant, it may be filled by vote of the committee.~~

~~—————(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.~~

~~—————(6) The committee may reference its officers by other terms, such as chairperson and vice chairperson.~~

~~(i) Meetings. The committee shall meet only as necessary to conduct committee business.~~

~~—————(1) A meeting may be called by agreement of Texas Department of Health (department) staff and either the presiding officer or at least three members of the committee.~~

~~—————(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.~~

~~—————(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.~~

~~—————(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.~~

~~—————(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.~~

~~—————(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.~~

~~————— (7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.~~

~~(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.~~

~~————— (1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.~~

~~————— (2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.~~

~~————— (3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.~~

~~(k) Staff. Staff support for the committee shall be provided by the department.~~

~~(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.~~

~~———— (1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.~~

~~————— (2) Each member shall have one vote.~~

~~————— (3) A member may not authorize another individual to represent the member by proxy.~~

~~————— (4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.~~

~~————— (5) Minutes of each committee meeting shall be taken by department staff.~~

~~————— (A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.~~

~~————— (B) After approval by the committee, the minutes shall be signed by the presiding officer.~~

~~(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.~~

~~————— (1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.~~

~~————— (2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.~~

~~————— (3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.~~

~~(n) Statement by members.~~

~~————— (1) The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.~~

~~————— (2) The committee and its members may not participate in legislative activity in the name of the board, the department or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.~~

~~————— (3) A committee member should not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.~~

~~————— (4) A committee member should not disclose confidential information acquired through his or her committee membership.~~

~~————— (5) A committee member should not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.~~

~~————— (6) A committee member who has a personal or private interest in a matter pending before the committee shall publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.~~

~~(o) Reports to board. The committee shall file an annual written report with the board.~~

~~————— (1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, and anticipated activities of the committee for the next year.~~

~~————— (2) The report shall identify the costs related to the committee's existence, including the cost of department staff time spent in support of the committee's activities and the source of funds used to support the committee's activities.~~

~~————— (3) The report shall cover the meetings and activities in the preceding 12 months and shall be filed with the board each September. It shall be signed by the presiding officer and appropriate department staff.~~

~~(p) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.~~

~~————— (1) No compensatory per diem shall be paid to committee members unless required by law.~~

~~————— (2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.~~

~~————— (3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.~~

~~————— (4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.~~

~~————— (5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.~~