

**Department of State Health Services
Agenda Item for State Health Services Council
October 5, 2006**

Agenda Item Title: Amendments to 25 TAC 295.301-295.338 Relating To Regulation And Licensure of Mold-Related Activities That Affect Indoor Air Quality.

Agenda Number: 3i

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The original rules became effective May 16, 2004. The proposed amendments bring the rules in compliance with the provisions of House Bill (HB) 74, HB 1328, and HB 2746, 79th Legislature, 2005. Additional proposed amendments are to delete expired language and to clarify existing rule language.

Summary:

Rule amendments are needed due to recent legislation to: 1) allow licensed school district employees to perform both mold assessment and mold remediation on the same project for their school district; 2) require the Certificate of Mold Remediation be provided by the seller to the new owner only if the certificate is issued within the preceding five years; and 3) lower the passing grade for the state exam from 80% to 70%. A proposed rule change lowers the required passing grade for exams given in accredited training courses for licensees from 80% to 70% to be consistent with the legislative revised state exam passing grade described above.

There are also amendments from a complete review of the rules conducted by the department in accordance with Government Code, §2001.039. These amendments reflect changes in the name and function of the agency and programs, delete expired language, correct errors in language and punctuation, and make additions or rewording to provide better clarity.

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

Stakeholder input has been solicited through verbal and written communication with stakeholders and through the program website. The draft proposed rules are posted on the website. No written or verbal requests for changes have been received.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in the agenda item # 3i.

Agenda Item Approved by: Vick Cowling for Richard Bays

Presented by: Annabelle Dillard **Title:** Manager

Program/Division: PSQA-Environmental Health/Division for Regulatory Services

Contact Name/Phone: Quade R. Stahl/(512) 834-6773 Ext. 2444

**Date
Submitted**

6/22/06

Title 25. HEALTH SERVICES
Part I. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 295. Occupational Health
Subchapter J. Texas Mold Assessment and Remediation Rules
Amendments §§295.301 - 295.338

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), proposes amendments to §§295.301 - 295.338 concerning the regulation of mold-related activities that affect indoor air quality.

BACKGROUND AND PURPOSE

The amendments implement three House Bills (HB) passed during the 79th Legislature, Regular Session (2005). HB 74 added §1958.155(d) to the Occupations Code, which allows licensed school district employees to perform both mold assessment and mold remediation on the same project for their school district. HB 1328 that amended §1958.154(b) of the Occupations Code requires the seller of a property to provide the Certificate of Mold Remediation only if issued within the preceding five years to the new owner. HB 2746 added §1958.105(b) to the Occupations Code, which requires lowering the passing grade for the state exam from 80% to 70%. For consistency with this legislative requirement, the passing grade requirement for exams given in accredited training courses is proposed to be lowered from 80% to 70%.

Other amendments delete language that has expired; revise the language to reflect changes in the name and function of the agency, programs, and staff; clarify the legislative intent; correct incorrect language; revise the fee information to reflect the two-year license as standard and the addition of the Texas Online subscription fee; change the number of questions for the refresher course test to a lower number; change the notification requirements to enable a more effective on-site investigation; and correct grammatical and punctuation errors in the rules. Expired language in the rules that refers to requirements applicable only prior to January 1, 2005, was deleted. An unnecessary requirement requiring about half the renewing licensees to take an additional refresher course caused by staggering the one-year and two-year license renewals was deleted. Agency contact information was added. Additions or rewording were done to provide better clarity or to remove unnecessary restrictions on the applicants.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 295.301 - 295.338 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

In §295.301, a new subsection (e) was added to provide agency contact information and summarize information available on the website.

In §295.302, Definitions, a new definition, “Certificate of Mold Damage Remediation,” was added to clarify that the certificate referred to in the rules is the one provided by the Texas Department of Insurance (TDI). The new definition “Managing agent” was added to clarify the intent of this term. In the definition “Facility,” the word “structure” was deleted, as it was not in compliance with legislative intent. The definitions of “Project” and “Start date” were reworded to be more consistent with legislative intent. Language was added to the definition of “Start date” to clarify that preparation work is not considered part of mold remediation. The definition of “Stop date,” was reworded for clarity. In the definition of “Supervise,” the language “within ten minutes” was added after “accessible by telephone” to ensure adequate supervision is available when necessary in an emergency.

In §§295.302, 295.308(b), 295.309(b), 295.310(c), 295.318(b)(3), and 295.325(b), language affected by the agency’s reorganization was revised to reflect the changes or deleted as appropriate. For example, in §295.302, the definitions of “Commissioner” and “Department” were reworded to be consistent with the new title and agency’s name. The definition of “Program Administrator” was deleted, as the position is no longer applicable after the reorganization. In the other sections, all references to Program Administrator were reworded to the appropriate new contact; the “Texas Department of Health” was changed to “Department of State Health Services”; invalid telephone numbers were deleted; and obsolete division and program names were replaced with the appropriate new unit or group name.

In §§295.302(25)-(26), 295.302(39), 295.302(40), 295.308(a)(2), 295.308(g), 295.309(c)(1), 295.309(d), 295.309(d)(2), 295.315(f), 295.315(f)(5), 295.315(f)(9), 295.322(d), 295.325(a)-(d), 295.330(c)(2), §295.334(b), 295.335(c), 295.336 and 295.337, punctuation, grammar, and minor language changes (rewording, additions, and deletions) were made to improve the clarity of the sections.

In §295.303(f), the second sentence was reworded to clarify that only unlicensed but supervised persons doing mold remediation are required to be registered.

In §295.304(b)(1), the word “license” was replaced by the broader word “credential.”

In §§295.305(e)(2), and 295.305(e)(3), the phrase “and no earlier than 12 months prior to the expiration date of the license,” and in §295.305(g)(3), the phrase “before the expiration date of the license but no earlier than 12 months prior to the expiration date of the license and” was deleted because this requirement caused an extra and unnecessary refresher training for a significant number of licensees and registrants.

In §§295.305(e)(1), 295.305(e)(2), 295.305(e)(3), 295.305(h), 295.308(a)(2), 295.310(a)(2), 295.311(a), 295.311(c), 295.311(e), 295.312(a), 295.312(c), 295.312(e), 295.314(a), 295.315(a), 295.315(c), 295.315(e), and 295.316(a), the expired language in these paragraphs was deleted and reworded as necessary for clarity. Language that referred to activities that were grandfathered (applicable only before January 1, 2005) was deleted in these paragraphs.

In §§295.305(f), 295.310(a)(1), 295.310(e), 295.311(e)(1)(D), and 295.312(e)(1)(C), the passing grade for the state exam was changed from 80% to 70% as required by the legislation. In §295.315(e)(1)(D), the 70% requirement for passing the state exam was added for clarity. To be consistent with this state exam requirement, in §§295.318(b)(10) and 295.320(g), the record keeping exam requirement and the passing score requirement for the training providers was changed from “80%” to “70%”.

In §295.306(c), the language “and the property owner, if not the same” was added so that the property owner receives a copy of the Consumer Mold Information Sheet.

In §295.306(d), the language was changed to allow credentialed persons to give notification of violations by the next business day instead of within 24 hours.

In §295.307, a new subsection (c) was added to allow licensed school district employees to perform both mold assessment and mold remediation on the same project for their school district as required by the legislation.

In §295.308(a)(2), the wording was changed so only individuals that are applying for credentials are required to submit facial photographs. Also, the language “one-inch by one-inch” was replaced with “one-inch square” for consistency with other section of the rules.

In §§295.308(a)(2), 295.318(f)(6)(C), 295.318(f)(7)(B), and 295.320(d)(5)(B), the language “passport-quality color” was added before the word photograph to indicate the quality of photograph required by the department.

In §§295.308(c) and 295.319(c), language was added to let the credentialed persons know that they have 90 days to respond to a department deficiency notice or the application will be denied.

In §295.308(e), language was added to let the credentialed persons know that they are responsible “to renew their certificate whether or not they have received the notification from the department.”

In §295.309(b), the notice of cancellation for insurance policies was changed from 30-day to 10-day period to make the insurance more readily available.

In §295.309(d)(2), the language “the policy shall promptly be renewed or replaced without any lapse in coverage” was deleted because it was an unnecessary requirement.

In §295.310(f), this section was reworded to allow the department to provide either written or verbal analysis of the state exam.

In §§295.311(d), 295.312(d), 295.313(d), 295.314(c), 295.315(d), 295.316(c), 295.317(d), and 295.318(d), the fee rates were revised to reflect the two-year license and the Texas Online subscription fee requirements.

In §§295.312(b)(9), 295.312(f)(11), 295.313(f)(9), 295.315(f)(12), 295.326(c)(2)(C), title of 295.327, 295.327(b), 295.338(a), and 295.338(b), every use of “certificate of mold remediation” was changed to “certificate of mold damage remediation” to clarify that the certificate referred to in the rules is the one provided by the Texas Department of Insurance (TDI).

In §295.315(e)(1)(C), the application submittal time after completing the initial training course was increased from six months to twelve months as six months was determined to be unnecessarily restrictive.

In §295.315(f), a new paragraph (1) was added to clarify that the “supervision of mold remediation workers” is a primary responsibility of the mold remediation contractor.

In §§295.315(f)(5) and 295.316(e)(3), the language “preparation work” after “mold remediation” was added to clarify that providing the information is required before any work has begins.

In §295.315(f)(9), the phrase “who conduct activities specified under paragraph (4) of this subsection” was deleted as incorrect and unnecessary.

In §295.318(b)(1), the language “Training provider’s courses for mold remediation workers may use only department-approved instructors” was added to clarify the rule’s intent.

In §§295.318(f)(6)(C), 295.318(f)(7)(B), 295.318(f)(7)(C), 295.320(d)(4)(B), and 295.320(d)(5)(B), the word “photo” was replaced with “photograph” for consistency and clarity.

In §§295.318(f)(7)(C), the word “color” was added to indicate what type of photograph is required.

In §295.319(c), the notification time for the department to acknowledge receipt of the application was changed from 30 to 10 working days. The words “After review of the application, the department will” were added to indicate when the applicant would be notified of the deficiencies. The words “within 60 days” were added to indicate when an application would be approved or denied after receipt of a complete application.

In §295.319(c)(8)(A), the term “school’s” was replaced with the more descriptive term “training facility’s.”

In §295.320(d), the words “work on a” and “project” were deleted to clarify that it is work on a “mold remediation” not a “project” that is regulated.

In §295.320(g), the words “initial” were added before the words “test” and “tests” and the sentence “The refresher tests shall consist of at least ten questions” was added to change the number of refresher test questions to a lower number.

In §295.321(e), language was added to clarify that the mold remediation protocol is specific to each project.

In §295.321(e)(4), language was added to clarify that the respirator is recommended during all mold-related activities when exposure to mold could or would be possible.

In §295.322(b), language was added to clarify that the work plan is specific to each project, fulfills the requirements of the mold remediation protocol, and contains the specific instructions or operating procedures.

In §295.322(e), language was added to clarify that signage is required for mold remediation projects at all accessible entrances.

In §295.323(c), language was added to clarify that registered workers shall follow all requirements regarding use of disinfectants.

In §295.324(a), language was changed to clarify that containment is used “during remediation.”

In §§295.325(a)-(d), language was added to clarify that notification is required only for mold remediation, and that the start time and stop time must be included on the notification form. The word “project” or “activity” was deleted after “mold remediation” to avoid confusion between the meaning of remediation and project, for consistency, and clarification of intent, and “as defined in §295.302(27)” was added after “mold remediation” one time to clarify intent. Language was added to clarify that information from “the most recent notice” must be used. The language “with the department by phone” after “confirm” was added to specify who and how they need to confirm the information. The language “for each week (seven calendar day period)” was deleted, as it does not allow the department adequate notification to investigate remediation work.

In §295.326(a), the language “a period of three years...” was deleted as it was confusing, and was replaced with “the time specified in subsection (b)(2) of this section for remediators and subsection (c)(2) of this section for assessors, subsection (d) of this section for mold analysis laboratories, and subsection (e)(1) of this section for training providers” that directs them to the correct information.

In §295.326(c)(1)(A), the word “certificate” was replaced with the correct word “credential” because it is a broader term.

In §295.327(d), the language was reworded to reflect that the seller of a property is required to provide the Certificate of Mold Damage Remediation to the new owner only if issued within the preceding five years.

In §295.328, the language “The complaint form is available on the department’s website” was added to indicate where the form is readily available.

In §295.329(c), the wording “in pursuance of” was replaced with the word “conducting” and the words “in advance” were added after the word “notify” for clarity.

In §295.330(a) and (c), the language relating to suspending credentials on an “emergency basis” was deleted because it is not supported by legislation.

In §295.331(d)(1), (d)(2) and (d)(3), the words “safety” were deleted as potentially confusing because of language in Occupations Code, §1958.058.

In §295.332(a), the word “conclusive” was deleted as unnecessary because it was too strict a standard.

In §295.333(d), the language “exercise the opportunity for” was replaced with “request” to clarify and simplify. The language “the penalty imposed” was added for clarity.

In §295.334(a), the language “Chapter 2001” was deleted as being repetitive.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five-year period that the sections will be in effect, there will be small fiscal implications to state government and no overall fiscal implications to local governments as a result of enforcing and administering the sections as proposed. The lowering of the passing grade of the state exam is expected to have a small reduction in collection of state exam fees, estimated at \$4,500 annually, because more people will pass on the first and second attempts. It is expected that the lower revenue will be offset by a small increase in revenue from more licenses issued due to more persons passing the exam, estimated at \$7,500 per year. The overall effect will be a revenue gain of \$3,000 per year for the five years.

SMALL AND MICRO-BUSINESS IMPACT

Ms. Tennyson has also determined that there will be an effect on small businesses or micro-businesses required to comply with the sections as proposed. HB 74 allows schools to be able to perform both mold assessments and mold remediations without the services of the private sector (typically small businesses or micro-businesses). It is estimated that about five to twenty jobs will not be performed by the private sector for schools at an estimated \$25,000 loss in revenue (\$1,000 to \$10,000 per job and five to twenty lost jobs per year; the more complicated and costly jobs are more likely to be done with the help of the private sector). The deleting of the requirement of the unnecessary refresher course that affects about 50% of the licensees and 10% of the registrants and the training providers. This will have a significant impact on both groups, but only in 2007. The training providers (typically small businesses or micro-businesses) will lose an estimated \$220,500 from licensees (45% of 1,300 students; \$300 per class) and registrants (10% of 4500 students; \$100 per class) not taking the course. However, the licensees and registrants (typically small businesses or micro-businesses) will save that amount plus an additional \$155,250 (1,035 students at \$150 for per diem and travel) or a total of \$375,750. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections would be potential lower costs to some of the licensees, and a better understanding of the rules as a result of clearer and more concise language used in the rules.

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.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do 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, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Quade R. Stahl, Environmental Health Group, Policy/Standards/Quality Assurance Unit, Environmental and Consumer Safety Section, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/834-6773, extension 2444, or by e-mail to quade.stahl@dshs.state.tx.us. Comments will be accepted if submitted within 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 amendments are authorized by Occupations Code, §1958.053, which allows the department to adopt rules; 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 1958; and implement Government Code, §2001.039.

Legend: (Proposed Amendments)

Single underline = Proposed new language

[Bold print and brackets] = Current language proposed for deletion

Regular print = Current language

(No change.) = No changes are being considered for this designated subdivision

§295.301. General Provisions.

(a) - (d) (No change.)

(e) Department information. For the most recent telephone and facsimile numbers for contacting or submitting information to mold notification and licensing personnel, visit the department's website: www.dshs.state.tx.us/mold. From this website you can also view and/or download the mold rules and applicable legislation; application, notification, and complaint forms; Consumer Information Sheet; Certificate of Mold Damage Remediation; listing of current licensees and accredited trainers; and Frequently Asked Questions. The telephone numbers for general questions are (800) 572-5548 (toll-free), or (512) 834-6770.

§295.302. Definitions. The following words and terms within this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (5) (No change.)

(6) Certificate of Mold Damage Remediation -- A certificate adopted by the Texas Department of Insurance as required by Article 21.21-11, Chapter 21 of the Insurance Code, commonly referred to as Certificate of Mold Remediation and Form MDR-1. The top section of this certificate is signed by a licensed Mold Assessment Consultant and a Mold Remediation Contractor for projects performed under the Texas Mold Assessment and Remediation Rules (TMARR). Alternatively, the bottom section of the certificate is signed by a licensed Mold Assessment Consultant on mold remediation projects that may be legally performed by unlicensed persons certifying the property does not contain evidence of mold damage.

(7) [(6)] Commissioner -- The [Texas] Commissioner of the Department of State Health Services [or his successor].

(8) [(7)] Consumer Mold Information Sheet -- A document prepared and made available by the department that describes the persons who are required to be licensed under this subchapter and provides information on mold assessment and mold remediation, including how to contact the department for more information or to file a complaint. A licensee under this subchapter who is overseeing mold-related activities, with the exception of activities performed by a mold analysis laboratory, must ensure that each client is provided a copy of the Consumer Mold Information Sheet prior to the initiation of any mold-related activity.

(9) [(8)] Containment -- A component or enclosure designed or intended to control the release of mold or mold-containing dust or materials into surrounding areas in the building. The broad category of containment includes such sub-categories as walk-in

§295.302

containment, surface containment (such as plastic sheeting), and containment devices (such as wall-mounted glove boxes).

(10) [(9)] Containment area -- An area that has been enclosed to control the release of mold or mold-containing dust or materials into surrounding areas.

(11) [(10)] Contiguous -- In close proximity; neighboring.

(12) [(11)] Contiguous square feet -- See “Total surface area of contiguous square feet”.

(13) [(12)] Credential -- A license, registration, or accreditation issued under this subchapter.

(14) [(13)] Department -- The [Texas] Department of State Health Services [or its successor].

(15) [(14)] Employee -- An individual who is paid a salary, wage, or remuneration by another person or entity for services performed and over whom the person or entity exerts supervision or control as to the place, time, and manner of the individual’s work.

(16) [(15)] Facility -- Any institutional, commercial, public, governmental, industrial or residential [structure or] building.

(17) [(16)] Indoor air -- Air within the envelope of a building, including air in spaces normally occupied by persons in the building but excluding air in attics and crawl spaces that are vented to the outside of the building.

(18) [(17)] Indoor mold -- Mold contamination that was not purposely grown or brought into a building and that has the potential to affect the indoor air quality of the building.

(19) [(18)] License -- Any license issued under this subchapter. The term “license” does not include a registration, accreditation, or approval issued under this subchapter.

(20) [(19)] Mold -- Any living or dead fungi or related products or parts, including spores, hyphae, and mycotoxins.

(21) Managing agent -- A company or individual that manages a residential or commercial building for an owner.

(22) [(20)] Mold analysis -- The examination of a sample collected during a mold assessment for the purpose of:

§295.302

(A) determining the amount or presence of or identifying the genus or species of any living or dead mold or related parts (including spores and hyphae) present in the sample;

(B) growing or attempting to grow fungi for the purposes of subparagraph (A) of this paragraph; or

(C) identifying or determining the amount or presence of any fungal products, including but not limited to mycotoxins and fungal volatile organic compounds, present in the sample.

(23) [(21)] Mold analysis laboratory -- A person, other than an individual, that performs mold or mold-related analysis on a sample collected to determine the presence, identity, or amount of indoor mold in the sample.

(24) [(22)] Mold assessment -- Activity that involves:

(A) an inspection, investigation, or survey of a dwelling or other structure to provide the owner or occupant with information regarding the presence, identification, or evaluation of mold;

(B) the development of a mold management plan or mold remediation protocol; or

(C) the collection or analysis of a mold sample.

(25) [(23)] Mold assessment report -- A document[,] prepared by a licensed mold assessment consultant or licensed mold assessment technician for a client[,] that describes any observations made, measurements taken, and locations and analytical results of samples taken by an assessment consultant or by an assessment technician during a mold assessment. An assessment report can be either a stand-alone document or a part of a mold management plan or mold remediation protocol prepared by a mold assessment consultant.

(26) [(24)] Mold management plan -- A document[,] prepared by a licensed mold assessment consultant for a client[,] that provides guidance on how to prevent and control indoor mold growth at a location.

(27) [(25)] Mold-related activities -- The performance of mold assessment, mold remediation or any other related activities.

(28) [(26)] Mold remediation -- The removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter that was not purposely grown at a location. Preventive activities include those intended to prevent future mold contamination of a remediated area, including applying biocides or anti-microbial compounds.

(29) [(27)] Mold remediation protocol (mold remediation work analysis) -- A document, prepared by a licensed mold assessment consultant for a client, that specifies the estimated quantities and locations of materials to be remediated and the proposed remediation methods and clearance criteria for each type of remediation in each type of area for a mold remediation project.

(30) [(28)] Mold remediation work plan -- A document, prepared by a licensed mold remediation contractor that provides specific instructions and/or standard operating procedures for how a mold remediation project will be performed.

(31) [(29)] Office -- A stationary physical location assigned a street address by the United States Postal Service, where a licensee or an employee of a licensee may be contacted to conduct business related to mold assessment and/or mold remediation.

(32) [(30)] Person -- An individual, corporation, company, contractor, subcontractor, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, governmental entity, or any other association of individuals.

[(31) Program administrator -- The administrator of the department's Mold Licensing Program.]

(33) [(32)] Project -- All activities that involve mold-related activities in a building or designated area of a building for which a specific start-date and a specific stop-date is provided that covers the mold remediation [connected with a mold remediation work plan, including activities necessary for the preparation of the work plan and any associated mold remediation protocol(s), site preparation, and post-remediation assessment and clearance].

(34) [(33)] Remediator - A person who conducts mold remediation as defined in this section and who is credentialed under this subchapter as a mold remediation worker, mold remediation contractor, or mold remediation company.

(35) [(34)] Residential dwelling unit - A detached single-family dwelling; an attached single-family dwelling in a building that contains two or more separate single-family dwellings; or a bedroom in group housing. Examples of residential dwelling units include single homes, mobile homes (house trailers), duplexes, apartments, and condominiums. In group housing, such as dormitories, fraternity or sorority houses, and boarding houses, each bedroom is a residential dwelling unit.

(36) [(35)] Residential property - A building containing one or more residential dwelling units intended to provide living quarters for more than a transitory period, including a residential property that is vacant or under construction. A residential property includes dormitories and employee housing in a non-residential setting (e.g., staff housing at an institutional or commercial facility). Residential properties do not include:

(A) lodgings (such as hotels and motels) that rent units on a transient basis;

(B) institutional facilities that provide care or oversight for residents or inmates (such as hospitals, nursing homes, homes for children with physical or mental disabilities, mental institutions, jails, prisons and detention centers); and

(C) former residential properties that do not currently provide living quarters (such as houses converted into shops or restaurants).

(37) [(36)] Responsible person - An employee or principal designated by a licensed mold assessment company, mold remediation company, or mold analysis laboratory or by an accredited mold training provider as responsible for its operations and compliance with rules concerning mold-related activities or mold-related training.

(38) [(37)] Routine cleaning - Cleaning that is ordinarily done on a regular basis and in a regular course of procedures.

(39) [(38)] Start-date [Start date] -- The date on which the mold [actual] remediation [of mold] begins. Preparation work is not considered mold remediation.

(40) [(39)] Stop-date [Stop date] (completion date) -- The date following the day [date] on which final clearance for the project is achieved [following a mold remediation project].

(41) [(40)] Supervise -- To direct and exercise control over the activities of a person by being physically present at the job site or, if not physically present, accessible by telephone within ten minutes and able to be at the site within one hour of being contacted.

(42) [(41)] Survey - An activity undertaken in a building to determine the presence, location, or quantity of indoor mold or to determine the underlying condition(s) contributing to indoor mold contamination, whether by visual or physical examination or by collecting samples of potential mold for further analysis.

(43) [(42)] Total surface area of contiguous square feet - The contiguous area of surface material that needs to be cleaned or removed to remediate visible mold contamination.

(44) [(43)] Training hours - Hours spent in classroom instruction, hands-on activities, and field trips, including time used for course tests and brief breaks but not including scheduled lunch periods.

(45) [(44)] Visible - Exposed to view; capable of being seen.

§§295.302 - 295.305

(46) [(45)] Work analysis - A mold remediation protocol.

(47) [(46)] Work plan - A mold remediation work plan.

(48) [(47)] Working days - Monday through Friday, including holidays that fall on those days.

§295.303. Exceptions and Exemptions.

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

(f) Supervised employee exemption. An employee of a license holder is not required to be licensed under this subchapter to perform mold assessment or mold remediation while supervised by the license holder. An [Such an] employee performing mold remediation must[, **however,**] be registered as provided under §295.314 of this title (relating to Mold Remediation Worker: Registration Requirements).

(g) - (i) (No change.)

§295.304. Code of Ethics.

(a) (No change.)

(b) All credentialed persons or approved instructors shall, as applicable to their area of credentialing or approval:

(1) undertake to perform only services for which they are qualified by credential [license], education, training or experience in the specific technical fields involved;

(2) - (14) (No change.)

(c) (No change.)

§295.305. Credentials: General Conditions.

(a) - (d) (No change.)

(e) Training requirement.

(1) An applicant for an initial license under §295.311 of this title (relating to Mold Assessment Technician: Licensing Requirements), §295.312 of this title (relating to Mold Assessment Consultant: Licensing Requirements), or §295.315 of this title (relating to Mold Remediation Contractor: Licensing Requirements) must successfully complete an initial training

§295.305

course offered by a department-accredited training provider in that area of licensure and receive a course-completion certificate before applying for the license. **[This paragraph does not apply to applicants who submit complete applications to the department before January 1, 2005, as evidenced by a postmark or shipping paperwork.]**

(2) An **[Except as described under subsection (g)(3) of this section, an]** applicant for renewal of a license listed under paragraph (1) of this subsection must successfully complete a refresher training course offered by a department-accredited training provider in the area of licensure for which renewal is sought and receive a course-completion certificate before applying for the renewal. The applicant must successfully complete the refresher course no later than 24 months after successful completion of the previous course **[and no earlier than 12 months prior to the expiration date of the license]**.

(3) An **[Except as described under subsection (g)(3) of this section, an]** applicant for an initial or renewal registration under §295.314 of this title (relating to Mold Remediation Worker: Registration Requirements) must successfully complete a training course as described under §295.320(d) and (f) of this title (relating to Training: Required Mold Training Courses) and receive a course-completion certificate before applying for the registration. If a refresher course is required, the applicant must successfully complete the refresher course no later than 24 months after successful completion of the previous course **[and no earlier than 12 months prior to the expiration date of the registration]**.

(f) Examination requirement. In accordance with §295.310 of this title (relating to Licensing: State Licensing Examination), an applicant for an initial license under §295.311, §295.312, or §295.315 of this title must pass the state licensing examination in that area of licensure with a score of at least 70% **[80%]** correct before applying for the license. All applicants must pass the state examination within six months of completing any training course required under subsection (e)(1) of this section in three or fewer attempts or must successfully complete a new initial training course before re-taking the state examination.

(g) Applications. Each application for a credential or approval must provide all required information. An applicant shall indicate that a question does not apply by answering "not applicable" or "N/A". Applicants must submit complete applications, including all supporting documents, for each credential or approval sought.

(1) - (2) (No change.)

(3) An applicant for a renewal of a license listed under paragraph (1) of this subsection must successfully complete a required refresher training course and receive a course-completion certificate before applying for renewal, except that this paragraph does not apply to a holder of an initial license that is valid for one year, as described under subsection (h)(1) and (2)(A) of this section. The applicant must complete the refresher course **[before the expiration date of the license but no earlier than 12 months prior to the expiration date of the license and]** no later than 24 months after completion of the previous course.

§§295.305 - 295.306

(h) Term and expiration.

[(1) All credentials issued before January 1, 2005 are valid for one year and expire on the anniversary of the effective date.]

[(2) A credential issued between January 1, 2005 and December 31, 2005 (including renewal of a credential issued before January 1, 2005, regardless of the issue date of the renewal) is valid for:]

[(A) one year and expires on the anniversary of the effective date, if the birth year of the applicant (or the birth year of the mold training manager or the first individual named as a responsible person, as described under subsection (j) of this section, if the applicant is not an individual) is an odd number; or]

[(B) two years and expires on the second anniversary of the effective date, if the birth year of the applicant (or the birth year of the mold training manager or the first individual named as a responsible person, as described under subsection (j) of this section, if the applicant is not an individual) is an even number.]

(1) [(3)] All credentials issued on or after January 1, 2006, [except as specified in paragraph (2) of this subsection,] are valid for two years and expire on the second anniversary of the effective date.

(2) [(4)] Fees commensurate with a two-year credential must be included with any application for a credential that will expire on the second anniversary of its effective date.

(3) [(5)] A credential holder is in violation of this subchapter if the holder practices with lapsed qualifications.

(i) - (j) (No change.)

§295.306. Credentials: General Responsibilities.

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

(c) The license holder overseeing mold-related activities, with the exception of activities performed by a mold analysis laboratory, must ensure that a client and the property owner, if not the same, are [is] provided a copy of the department Consumer Mold Information Sheet prior to the initiation of any mold-related activity.

(d) A credentialed person who becomes aware of violations of this subchapter must report these violations by the next business day [within 24 hours] to the department if, to that person's knowledge, the responsible party has not corrected the violations within that timeframe.

§§295.306 - 295.308

(e) - (f) (No change.)

§295.307. Conflict of Interest and Disclosure Requirement.

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

(c) This section does not apply to a license holder employed by a school district working on a project for that school district.

§295.308. Credentials: Applications and Renewals.

(a) General requirements. Applications for a license, registration or accreditation must be made on forms provided by the department and signed by the applicant. The department shall consider only complete applications. The application form must be accompanied by:

(1) (No change.)

(2) for individuals applying for a credential, a current one-inch [by one-inch] square passport-quality color photograph of the applicant's face [(or, if the application is for a company license, of the face of the individual designated as the responsible person for the company)] with a white background. [The photograph of the face is not required with applications for approvals. If the application is for an individual license and successful completion of a department-approved training course is being used to satisfy the training requirement, a] A copy of the wallet-size photo-identification card from the applicable training course as required under §295.318(f)(6)(B) of this title (relating to Mold Training Provider: Accreditation) must also be submitted; and

(3) (No change.)

(b) Inquiries. Applicants who wish to discuss or obtain information concerning qualification requirements may contact the Department of State Health Services, Environmental Sanitation Licensing Group [call the program administrator at (512) 834-4509 or (800) 293-0753 (toll-free)]. Applicants may visit the Mold Licensing Program's website at www.tdh.state.tx.us/beh/mold to obtain information and download forms.

(c) Denials. The department may deny a credential to a person who fails to meet the standards established by this subchapter. Failure of the applicant to submit the required information and/or documentation within 90 days of issuance of a written notice of deficiency from the department will result in the application being denied.

(d) (No change.)

§§295.308 - 295.309

(e) Renewal notices. At least 60 days before a person's license, registration, or accreditation is scheduled to expire, the department shall send a renewal notice by first-class mail to the person's last known address from the department's records. A person credentialed by the department retains full responsibility for supplying the department with a correct current address and phone number, and to take action to renew their certificate whether or not they have received the notification from the department. The renewal notice will state:

(1) - (4) (No change.)

(f) (No change.)

(g) Renewals [**and late fees**]. A person shall not perform any mold-related activity with an expired license, registration, or accreditation. If a person makes a timely and complete application for the renewal of a valid credential, the credential does not expire until the department has finally granted or denied the application. The department shall renew a credential that has been expired for 180 days or less if the person meets the requirements of subsection (f) of this section. A person whose credential has been expired for more than 180 days must obtain a new credential and must comply with current requirements and procedures, including any state examination requirements.

(h) (No change.)

§295.309. Licensing: Insurance Requirements.

(a) (No change.)

(b) The certificate of insurance must be complete, including all applicable coverages and endorsements, and must name the [**Texas**] Department of State Health Services, Environmental Sanitation Licensing Group [Toxic Substances Control Division], as a certificate holder. Each required policy shall be endorsed to provide the

department with at least a 10-day [**30-day**] notice of cancellation or material change for any reason.

(c) An applicant for an initial or renewal license must provide proof of insurance in one of the following forms:

(1) a copy of the required current certificate of insurance;

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

(d) The department may impose an administrative penalty or take other disciplinary action against any person who fails to have the current insurance required under this section.

(1) (No change.)

§§295.309 - 295.310

(2) If a policy expires or is canceled or materially changed, [**the policy shall promptly be renewed or replaced without any lapse in coverage. If no insurance is in effect,**] the licensee shall cease work. Prior to resuming work, the licensee must either:

(A) - (B) (No change.)

(3) (No change.)

§295.310. Licensing: State Licensing Examination.

(a) Examination requirements.

[(1)] An applicant for an initial individual license who has successfully completed the required training course from a department-accredited training provider must pass the state examination with a score of at least 70% [**80%**] correct prior to applying for the license. The applicant must pass the examination within six months of completing the training course.

[(2) An applicant is permitted to take the state examination before January 1, 2005, without completing a training course approved under §295.319 of this title (relating to Training: Approval of Training Courses and Instructors) if the applicant has successfully completed the applicable training allowed under §295.311(c)(2) of this title (relating to Mold Assessment Technician: Licensing Requirements), §295.312(c)(2) of this title (relating to Mold Assessment Consultant: Licensing Requirements), or §295.315(c)(2) of this title (relating to Mold Remediation Contractor: Licensing Requirements). The applicant must pass the examination with a score of at least 80% correct and submit a complete application to the department before January 1, 2005, (as evidenced by a postmark or shipping paperwork). An applicant who fails to pass the examination in three or fewer attempts or to submit a complete application before January 1, 2005, must successfully complete a training course approved under §295.319 of this title and then pass a state examination with a score of at least 80% correct before re-applying for a license.]

(b) (No change.)

(c) Scheduling and registration. Annually, the department shall publish a schedule of examination dates and locations. Training providers shall provide state examination schedules as a part of their instruction. Registrations

must be submitted by mailing, faxing, or e-mailing a registration form to the Department of State Health Services, Environmental Sanitation Licensing Group [administrator] and must be received by the department no later than five working days before the examination date. Information on the examination schedule and assistance with registration is available by contacting [calling] the Department of State Health Services, Environmental Sanitation Licensing Group [Mold Licensing Program at (512) 834-4509 or (800) 293-0753 (toll-free in Texas)]. Entrance into the examination site will

§§295.310 - 295.311

be allowed only upon presentation of a valid photo identification from an accredited training provider. Companies with 30 or more employees to be tested may call the department to arrange an additional examination date for a \$50 per person examination fee.

(d) (No change.)

(e) Grading and reporting of examination scores. A grade of at least 70% **[80%]** correct must be achieved in order to pass the examination. Scores will be reported only by mail no later than 30 working days after the date the examination is taken. Information regarding re-examination, if necessary, will be included.

(f) Request for information concerning examination. If requested in writing by an individual who fails a licensing examination, the department shall furnish the individual with an an [a written] analysis of the individual's performance on the examination.

§295.311. Mold Assessment Technician: Licensing Requirements.

(a) Licensing requirement. Unless exempted under §295.303 of this title (relating to Exceptions and Exemptions), **[as of January 1, 2005,]** an individual must be licensed as a mold assessment technician to perform activities listed under subsection (b) of this section, except that an individual licensed under §295.312 of this title (relating to Mold Assessment Consultant: Licensing Requirements) is not required to be separately licensed under this section.

(b) (No change.)

(c) Qualifications. In addition to the requirements for all applicants listed in §295.305 of this title (relating to Credentials: General Conditions) and §295.309 of this title (relating to Licensing: Insurance Requirements), an applicant must be a high school graduate or have obtained a General Educational Development (GED) certificate. **[If the application is for an initial license and a complete application is submitted to the department before January 1, 2005, as evidenced by a postmark or shipping paperwork, the applicant may satisfy the training requirement under §295.305(e)(1) of this title by either:]**

[(1) successfully completing an initial mold assessment technician course offered by a department-accredited training provider and receiving a course-completion certificate; or]

[(2) successfully completing, within four years prior to the application date, a minimum of 24 hours of instruction in mold assessment. The applicant is not required to receive all 24 hours of instruction from the same organization. Successful completion shall be shown by a certificate of course completion. Any instruction used to satisfy this requirement must be offered by one of the following:]

[(A) a college or university accredited by an organization recognized

§295.311

by the Council for Higher Education Accreditation;]

[(B) a training provider accredited by the federal government to provide instruction on hazardous materials;]

[(C) a national professional organization that is administered by an active board of directors and whose criteria for full membership include minimum education and experience requirements and adherence to a published code of ethics;]

[(D) an organization that is administered by an active board of directors, that offers certification to individuals who fulfill minimum education and experience requirements at least equivalent to the education and experience requirements under this section, and that requires passing a certification examination with a score of at least 80% correct in order to receive the certification; or]

[(E) a training provider that is approved by an organization meeting the requirements under subparagraph (D) of this paragraph to offer training required by the organization.]

(d) Fees. The fees for a mold assessment technician license are:

(1) **\$200 ~~[\$100]~~ for the ~~[a one-year]~~ license ~~[issued before January 1, 2006];~~ and**

(2) a required Texas Online subscription and convenience fee ~~[\$200 for a two-year license issued on or after January 1, 2005].~~

(e) Applications and renewals. Applications shall be submitted as required by §295.308(a) of this title (relating to Credentials: Applications and Renewals). An applicant shall include the following:

[(1) if the application is for an initial license and a complete application is submitted to the department before January 1, 2005, as evidenced by a postmark or shipping paperwork:]

[(A) a copy of a high school diploma or GED certificate;]

[(B) proof of compliance with the insurance requirement specified in §295.309 of this title;]

[(C) proof of successfully fulfilling the training requirement under subsection (c)(1)-(2) of this section; and]

[(D) proof of successfully passing the state licensing examination with §§295.311 - 295.312 a score of at least 80% correct;]

(1) ~~[(2)]~~ if the application is for an initial license ~~[and a complete application is submitted to the department on or after January 1, 2005]:~~

(A) a copy of a high school diploma or GED certificate;

(B) proof of compliance with the insurance requirement specified in §295.309 of this title;

(C) a copy of a certificate of training as described in §295.320(b) of this title (relating to Training: Required Mold Training Courses); and

(D) proof of successfully passing the state licensing examination with a score of at least 70% **[80%]** correct; or

(2) **[(3)]** if the application is for renewal of a license:

(A) a copy of a certificate of training as described in §295.320(g) of this title, unless the applicant is exempt under §295.305(g)(3) of this title; and

(B) proof of compliance with the insurance requirement specified in §295.309 of this title.

(f) (No change.)

§295.312. Mold Assessment Consultant: Licensing Requirements.

(a) Licensing requirements. Unless exempted under §295.303 of this title (relating to Exceptions and Exemptions), **[as of January 1, 2005,]** an individual must be licensed as a mold assessment consultant to perform activities listed under subsection (b) of this section. A licensed mold assessment consultant who employs two or more individuals required to be licensed under this section or §295.311 of this title (relating to Mold Assessment Technician: Licensing Requirements) must be separately licensed as a mold assessment company under §295.313 of this title (relating to Mold Assessment Company: Licensing Requirements), except that an individual licensed as a mold assessment consultant and doing business as a sole proprietorship is not required to be separately licensed under §295.313 of this title.

(b) Scope. An individual licensed under this section is also licensed to perform all activities of a mold assessment technician listed in §295.311(b) and (f) of this title. In addition, a licensed mold assessment consultant is licensed to:

(1) - (8) (No change.)

§295.312

(9) complete appropriate sections of a mold damage remediation certificate as specified under §295.327(b) of this title (relating to Photographs; Certificate of Mold Damage Remediation; Duty of Property Owner).

(c) Qualifications. In addition to the requirements for all applicants listed in §295.305 of this title (relating to Credentials: General Conditions) and §295.309 of this title (relating to Licensing: Insurance Requirements), an applicant must~~[:]~~

[(1)] meet at least one of the following education and/or experience requirements:

(1) **[(A)]** a bachelor's degree from an accredited college or university with a major in a natural or physical science, engineering, architecture, building construction, or building sciences, and at least one year of experience in an allied field;

(2) **[(B)]** at least 60 college credit hours with a grade of C or better in the natural sciences, physical

sciences, environmental sciences, building sciences, or a field related to any of those sciences, and at least three years of experience in an allied field;

(3) [(C)] a high school diploma or a General Educational Development (GED) certificate and at least five years of experience in an allied field; or

(4) [(D)] certification as an industrial hygienist, a professional engineer, a professional registered sanitarian, a certified safety professional, or a registered architect, with at least one year of experience in an allied field.]; **and]**

[(2) if a complete application for an initial license is submitted to the department before January 1, 2005, as evidenced by a postmark or shipping paperwork, satisfy the training requirement under §295.305(e)(1) of this title by either:]

[(A) successfully completing an initial mold assessment consultant course offered by a department-accredited training provider and receiving a course-completion certificate; or]

[(B) successfully completing, within four years prior to the application date, a minimum of 40 hours of instruction in mold assessment. The applicant is not required to receive all 40 hours of instruction from the same organization. Successful completion shall be shown by a certificate of course completion. Any instruction used to satisfy this requirement must include classroom and hands-on training and must be offered by an entity meeting one of the qualifications listed under §295.311(c)(2)(A)-(E) of this title.]

(d) Fees. The fees for a mold assessment consultant license are:

§295.312

(1) \$600 [**\$300**] for the [a one-year] license [issued before January 1, 2006]; and

(2) a required Texas Online subscription and convenience fee [**\$600 for a two-year license issued on or after January 1, 2005**].

(e) Applications and renewals. Applications shall be submitted as required by §295.308(a) of this title (relating to Credentials: Applications and Renewals). An applicant shall include the following in the application package:

(1) if the application is for an initial license [and a complete application is submitted to the department before January 1, 2005, as evidenced by a postmark or shipping paperwork]:

(A) verifiable evidence that the applicant meets at least one of the eligibility requirements under subsection (c)(1)-(4) [(A)-(D)] of this section;

(B) (No change.)

[(C) proof of successfully fulfilling the training requirement under subsection (c)(2) of this section; and]

(C) [(D)] proof of successfully passing the state licensing examination with a score of at least 70% [**80%**] correct; and

[(2) if the application is for an initial license and a complete application is submitted to the department on or after January 1, 2005:]

[(A) all documentation required under paragraphs (1)(A), (1)(B), and (1)(D) of this subsection; and]

(D) [(B)] a copy of a certificate of training as described in §295.320(c) of this title (relating to Training: Required Mold Training Courses); or

(2)[(3)] if the application is for renewal of a license:

(A) a copy of a certificate of training as described in §295.320(g) of this title, unless the applicant is exempt under §295.305(g)(3) of this title; and

(B) proof of compliance with the insurance requirement specified in §295.309 of this title.

(f) Responsibilities. In addition to the requirements listed in §295.306 of this title (relating to Credentials: General Responsibilities), a licensed mold assessment consultant shall:

§§295.312 - 295.313

(1) - (9) (No change.)

(10) if he/she performs post-remediation assessment on a project and ceases to be involved with the project before it achieves clearance, provide a final status report to the client and to the mold remediation contractor or company performing mold remediation work for the client as specified under §295.324(e) [(f)] of this title (relating to Post-Remediation Assessment and Clearance);

(11) provide a passed clearance report to the client as specified under §295.324(d) [(e)] of this title and complete applicable sections of a certificate of mold damage remediation as specified under §295.327(b) of this title (relating to Photographs; Certificate of Mold Damage Remediation; Duty of Property Owner);

(12) - (15) (No change.)

§295.313. Mold Assessment Company: Licensing Requirements.

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

(d) Fees. The fees for a mold assessment company license are:

(1) \$1,000 [**\$500**] for the [a one-year] license [issued before January 1, 2006];

and

(2) a required Texas Online subscription and convenience fee [**\$1,000 for a two-year license issued on or after January 1, 2005**].

(e) (No change.)

(f) Responsibilities. In addition to the requirements as listed in §295.306 of this title (relating to Credentials: General Responsibilities), a licensed mold assessment company shall:

(1) - (7) (No change.)

(8) if the company performs post-remediation assessment on a project and ceases to be involved with the project before it achieves clearance, provide a final status report to the client and to the mold remediation contractor or company performing mold remediation work for the client as specified under §295.324(e) [(f)] of this title (relating to Post-Remediation Assessment and Clearance); and

(9) provide a passed clearance report to the client as specified under §295.324(d) [(e)] of this title and provide a certificate of mold damage remediation, with applicable sections completed by a mold assessment consultant, to a mold remediation company or contractor, as specified under §295.327(b) of this title (relating to Photographs; Certificate of Mold Damage

§§295.313 - 295.315

Remediation; Duty of Property Owner).

§295.314. Mold Remediation Worker: Registration Requirements.

(a) Registration requirement. Unless exempted under §295.303 of this title (relating to Exceptions and Exemptions), **[as of January 1, 2005,]** an individual must be registered as a mold remediation worker to perform mold remediation, except that an individual licensed under §295.315 of this title (relating to Mold Remediation Contractor: Licensing Requirements) is not required to be separately registered under this section.

(b) (No change.)

(c) Fees. The fees for a mold remediation worker registration are:

(1) \$60 **[\$30]** for the [a one-year] license **[issued before January 1, 2006]**; and

(2) a required Texas Online subscription and convenience fee **[\$60 for a two-year registration issued on or after January 1, 2005].**

(d) - (g) (No change.)

§295.315. Mold Remediation Contractor: Licensing Requirements.

(a) Licensing requirements. Unless exempted under §295.303 of this title (relating to Exceptions and Exemptions), **[as of January 1, 2005,]** an individual must be licensed as a mold remediation contractor to perform activities listed under subsection (b) of this section. A licensed mold remediation contractor who employs one or more individuals required to be licensed under this section or §295.314 of this title (relating to Mold Remediation Worker: Registration Requirements) must be separately licensed as a mold remediation company under §295.316 of this title (relating to Mold Remediation Company: Licensing Requirements), except that an individual licensed as a mold remediation contractor and doing business as a sole proprietorship is not required to be separately licensed under §295.316 of this title.

(b) (No change.)

(c) Qualifications. In addition to the requirements for all applicants listed in §295.305 of this title (Credentials: General Conditions) and §295.309 of this title (relating to Licensing: Insurance Requirements), an applicant must[:]

[(1)] meet at least one of the following education and/or experience requirements:

(1) [(A)] a bachelor's degree from an accredited college or university with a major in a natural or physical science, engineering, architecture, building construction, or building sciences and at least one year of experience either in an allied field or as a general

§295.315

contractor in building construction;

(2) [(B)] at least 60 college credit hours with a grade of C or better in the natural sciences, physical sciences, environmental sciences, building sciences, or a field related to any of those sciences, and at least three years of experience in an allied field or as a general contractor in building construction;

(3) [(C)] a high school diploma or General Educational Development (GED) certificate, plus at least five years of experience in an allied field or as a general contractor in building construction; or

(4) [(D)] certification as an industrial hygienist, a professional engineer, a professional registered sanitarian, a certified safety professional, or a registered architect, with at least one year of experience either in an allied field or as a general contractor in building construction. [; and]

[(2) if the application is for an initial license and a complete application is submitted to the department before January 1, 2005, as evidenced by a postmark or shipping paperwork, satisfy the training requirement under §295.305(e)(1) of this title by either:]

[(A) successfully completing an initial mold remediation contractor course offered by a department-accredited training provider and receiving a course completion certificate; or]

[(B) successfully completing, within four years prior to the application date, a minimum of 40 hours of instruction in mold remediation. The applicant is not required to receive all 40 hours of instruction from the same organization. Successful completion shall be shown by a certificate of course completion. Any instruction used to satisfy this requirement must include classroom and hands-on training and must be offered by an entity meeting one of the qualifications listed under §295.311(c)(2)(A)-(E) of this title (relating to Mold Assessment Technician: Licensing Requirements).]

(d) Fees. The fees for a mold remediation contractor license are:

(1) \$500 [**\$250**] for the [**a one-year**] license [**issued before January 1, 2006**]; and

(2) a required Texas Online subscription and convenience fee [**\$500 for a two-year license issued on or after January 1, 2005**].

(e) Applications and renewals. Applications shall be submitted as required by §295.308(a) of this title (relating to Credentials: Applications and Renewals). An applicant shall include the following in the application package:

§295.315

[(1) if the application is for an initial license and a complete application is submitted to the department before January 1, 2005, as evidenced by a postmark or shipping paperwork:]

[(A) verifiable evidence that the applicant meets at least one of the eligibility requirements under subsection (c)(1) of this section;]

[(B) proof of compliance with the insurance requirement specified in §295.309 of this title;]

[(C) proof of successfully fulfilling the training requirement under subsection (c)(2) of this section; and]

[(D) proof of successfully passing the state licensing examination with a score of at least 80% correct;]

(1) [(2)] if the application is for an initial license [and a complete application is submitted to the department on or after January 1, 2005]:

(A) verifiable evidence that the applicant meets at least one of the qualifications under subsection (c)(1) of this section;

(B) proof of compliance with the insurance requirement specified in §295.309 of this title;

(C) a copy of a certificate of training indicating successful completion within the past ~~twelve~~ **[six]** months of an initial training course offered by a department-accredited training provider as described in §295.320(e) of this title (relating to Training: Required Mold Training Courses); and

(D) proof of successfully passing the state licensing examination with a score of at least 70% correct; or

(2) [(3)] if the application is for renewal of a license:

(A) a copy of a certificate of training as described in §295.320(g) of this title, unless the applicant is exempt under §295.305(g)(3) of this title; and

(B) proof of compliance with the insurance requirement specified in §295.309 of this title.

(f) Responsibilities. In addition to the requirements as listed in §295.306 of this title (relating to Credentials: General Responsibilities), the mold remediation contractor shall be responsible for:

§295.315

(1) supervising mold remediation workers as defined in §295.302(41) of this title (relating to Definitions);

(2) [(1)] accurately interpreting [accurate interpretation of] field notes, drawings, and reports relating to mold assessments;

(3) [(2)] advising clients about options for mold remediation;

(4) [(3)] complying with standards for preparing mold remediation work plans, as presented in training course materials or as required by the mold remediation company by whom the contractor is employed;

(5) [(4)] providing to a client a mold remediation work plan for the project before the mold remediation preparation work begins;

(6) [(5)] inquiring of the client whether any known or suspected hazardous materials, including lead-based paint and asbestos, are present in the project area;

(7) [(8)] signing and dating each mold remediation work plan that he/she prepares on the cover page. The cover page shall also include his/her license number and expiration date. He/she must also initial the work plan on every page that addresses the scope of work and on all drawings related to the remediation work;

(8) [(7)] submitting the required notification to the department, as described in §295.325 of this title (relating to Notifications), unless employed by a licensed mold remediation company;

(9) [(8)] ensuring that all individuals [**who conduct activities specified under paragraph (4) of this subsection**] are provided with, fit tested for, and trained in the correct use of personal protection equipment required under §295.322(c) of this title (relating to Minimum Work Practices and Procedures for Mold Remediation);

(10) [(9)] if the mold remediation contractor is doing business as a sole proprietorship and is not required to be separately licensed as a mold remediation company under §295.316 of this title (Mold Remediation Company: Licensing Requirements):

(A) ensuring that the training, as described in §295.320 of this title (relating to Training: Required Mold Training Courses), and license of each employee who is required to be licensed under this subchapter is current;

(B) ensuring that the training, as described in §295.320 of this title, and registration of each registered employee is current;

§§295.315 - 295.316

(C) ensuring that each unregistered employee who is required to be registered under this subchapter is provided the training required under §295.320(d) of this title before performing any mold remediation work;

(D) complying with all requirements under §295.320(d) of this title if the contractor provides the training; and

(E) ensuring that a previously unregistered employee who is provided training as specified in subparagraph (C) of this paragraph:

(i) has applied to the department for registration before allowing that employee to perform any mold remediation work, except as provided under §295.314(e) of this title; and

(ii) is registered before allowing that employee to perform any mold remediation work more than 30 days after the date of the training, in accordance with §295.314(e) of this title;

(11) [(10)] complying with recordkeeping responsibilities under §295.326 of this title (relating to Recordkeeping); and

(12) [(11)] providing to the property owner a completed mold remediation certificate as specified under §295.327 of this title (relating to Photographs; Certificate of Mold Remediation; Duty of Property Owner).

§295.316. Mold Remediation Company: Licensing Requirements.

(a) Licensing requirements. A person performing mold remediation work **[on or after January 1, 2005]** must be licensed as a mold remediation company if the person employs one or more individuals required to be registered under §295.314 of this title (relating to Mold Remediation Worker: Registration Requirements) or licensed under §295.315 of this title (relating to Mold Remediation Contractor: Licensing Requirements), except that an individual licensed as a mold remediation contractor and doing business as a sole proprietorship is not required to be separately licensed under this section. A mold remediation company shall designate one or more individuals licensed as mold remediation contractors as its responsible person(s).

(b) (No change.)

(c) Fees. The fees for a mold remediation company license are:

(1) \$1,000 [**\$500**] for the **[a one-year]** license **[issued before January 1, 2006]**; and

§§295.316 - 295.318

(2) a required Texas Online subscription and convenience fee **[\$1,000 for a two-year license issued on or after January 1, 2005]**.

(d) (No change.)

(e) Responsibilities. In addition to the requirements as listed in §295.306 of this title (relating to Credentials: General Responsibilities), the mold remediation company shall be responsible for:

(1) - (2) (No change.)

(3) providing to each client a mold remediation work plan for the project before the mold remediation preparation work begins;

(4) - (9) (No change.)

§295.317. Mold Analysis Laboratory: Licensing Requirements.

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

(d) Fees. The fees for a mold analysis laboratory license are:

(1) \$1,000 [**\$500**] for the **[a one-year]** license **[issued before January 1, 2006]**; and

(2) a required Texas Online subscription and convenience fee **[\$1,000 for a two-year license issued on or after January 1, 2005]**.

(e) - (f) (No change.)

§295.318. Mold Training Provider: Accreditation.

(a) (No change.)

(b) Authorizations and Conditions. The following shall apply to issuance of accreditations under this section.

(1) No person shall advertise or offer as initial or refresher training courses, for fulfillment of requirements for licensing under this subchapter, any courses that the department has not approved under §295.319 of this title (relating to Training: Approval Of Training Courses and Instructors). Accredited training providers may offer, without department approval, mold remediation worker training courses and other courses relevant to mold-related activities, including, but not limited to, courses on respirator training and compliance. Accredited training providers shall use only department-approved instructors for mold remediation workers training §295.318 courses.

(2) (No change.)

(3) Each accredited training provider shall submit schedules for approved training courses to the department at least 14 calendar days prior to the start of any course on the schedule. Requests for exceptions to the 14-day rule shall be submitted in writing to the Department of State Health Services, Environmental Sanitation Licensing Group [program administrator] along with a written justification describing why the notice could not be submitted earlier. Approval requests for shorter notice must be received by the department 72 hours prior to the start of the course and will be granted in writing if approved. A training provider that cancels a scheduled course must notify the department in writing at least 24 hours prior to the scheduled start time of the course. The department will accept facsimiles of cancellation notices. If the training provider cannot provide written notice of cancellation at least 24 hours in advance, the training provider shall notify the department by phone not later than two hours after the scheduled class start time and provide a written explanation of the short cancellation notice within 24 hours of the phone call.

(4) - (9) (No change.)

(10) An accredited training provider must verify and keep a written record of any student achieving a minimum score of 70% [**80%**] correct on each course test. The training provider shall have a written policy concerning the administration of tests, including allowing only one re-test per student for each course. The use of the same questions for both the original and re-test is not allowed. Oral tests are not allowed; however, a training provider may read the written test questions and possible answers to a student who must then mark his or her answer on an answer sheet. If a student fails the re-test, the student must repeat the course and pass a new test.

(11) - (12) (No change.)

(c) (No change.)

(d) Fees. The fees for mold training provider accreditation are:

(1) \$1,000 [**\$500**] for the [**a one-year**] accreditation [**issued before January 1, 2006**]; and

(2) a required Texas Online subscription and convenience fee [**\$1,000 for a two-year accreditation**

issued on or after January 1, 2005].

(e) (No change.)

§§295.318 - 295.319

(f) Responsibilities. In addition to the requirements listed in §295.306 of this title (relating to Credentials: General Responsibilities), an accredited mold training provider shall be responsible for:

(1) - (5) (No change.)

(6) at the conclusion of each training course, providing to each student who successfully completes the course and passes the required test:

(A) - (B) (No change.)

(C) a current one-inch square passport-quality color photograph [**photo**] of the student's face on a white background taken during the course to be attached by the student to an application for licensing or registration; and

(D) (No change.)

(7) submitting to the department, within 10 working days of the completion date of each course:

(A) (No change.)

(B) individual one-inch square passport-quality color photographs [**photos**] of the face of each student on a white background taken during the course; and

(C) a color group photograph [**photo**] taken at the end of the course that identifies which students did and did not pass the course. Digital or scanned images will be accepted. The group color photograph must be no smaller than a standard 3 1/2-inch by 4 1/4-inch print;

(8) - (9) (No change.)

(g) (No change.)

§295.319. Training: Approval Of Training Courses and Instructors.

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

(c) Application for course approval. An application must be submitted to the department in writing. Within 10 [**30**] working days after receiving an application, the department shall acknowledge receipt of the application. [**and**] After review of the application, the department will notify the applicant of any deficiency in the application. Failure of the applicant to submit the required information and/or documentation within 90 days of issuance of a written notice of deficiency from the department will result in the application being denied.

§§295.319 - 295.320

The department will approve or deny the application within 60 days after [upon] receipt of the complete application. A complete application for training course approval shall include:

(1) - (7) (No change.)

(8) a description and example of the photo identification cards and course certificates to be issued to students. Each certificate must have a unique certificate number and must include:

(A) the training facility's [school's] name, address, and telephone number;

(B) - (F) (No change.)

(d) - (g) (No change.)

§295.320. Training: Required Mold Training Courses.

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

(d) Remediation worker training. Remediation worker training shall consist of at least four training hours that includes lectures, demonstrations, audio-visuals, and hands-on training. The training shall include all course information and material required under this subsection. An individual must successfully complete worker training and submit an application for registration as a mold remediation worker prior to performing any **[work on a]** mold remediation **[project]**.

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

(4) The person providing the training shall submit to the department, within five working days of a training session:

(A) (No change.)

(B) a group color photograph [photo], taken at the end of the training, that identifies each individual who attended the training. Digital or scanned images will be accepted if persons are easily identifiable. The group color photograph must be no smaller than a standard 3 1/2-inch by 4 1/4-inch print; and

(C) (No change.)

(5) The person providing the training shall provide the following to each individual who successfully completes the training:

(A) (No change.)

§§295.320 - 295.321

(B) a current one-inch square passport-quality color photograph [photo] of the individual's face on a white background, taken during the course, to be attached by the individual to an application for registration; and

(C) (No change.)

(6) (No change.)

(e) - (f) (No change.)

(g) Course tests. Each training provider shall administer a closed-book written test to students who have completed an initial or refresher training course, except that no examination is required of students in remediation worker training. The initial test for assessment technician training shall consist of 50 multiple-choice questions, and the initial tests for assessment consultant training and remediation contractor training shall consist of 100 multiple-choice questions. Training providers may include demonstration testing as part of the initial test. The refresher tests shall consist of at least ten questions. A student must answer correctly at least 70% [80%] of the questions to receive a course-completion certificate. Training providers shall use tests provided or approved by the department.

§295.321. Minimum Work Practices and Procedures for Mold Assessment.

(a) - (d) (No change.)

(e) Mold remediation protocol. An assessment consultant shall prepare a mold remediation protocol that is specific to [for] each remediation project and provide the protocol to the client before the remediation begins. The mold remediation protocol must specify:

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

(4) the PPE to be used by remediators. A minimum of an N-95 respirator is recommended during mold-related activities when mold growth could or would be disturbed [for all mold remediation projects]. Using professional judgment, a consultant may specify additional or more protective PPE if he or she determines that it is warranted;

(5) - (6) (No change.)

(f) (No change.)

(g) Containment requirements. Containment must be specified in a mold remediation protocol when the mold contamination affects a total surface area of 25 contiguous square feet or more for the project. Containment is not required if only persons [no person] who are [is not] licensed or registered under this subchapter occupy [occupies] the building in which the remediation takes place at any time between the start-date [start date] and stop-date [stop date]

§§295.321 - 295.323

for the project as specified on the notification required under §295.325 of this title (relating to Notifications). The containment specified in the remediation protocol must prevent the spread of mold to areas of the building outside the containment under normal conditions of use. If walk-in containment is used, supply and return air vents must be blocked, and air pressure within the walk-in containment must be lower than the pressure in building areas adjacent to the containment.

(h) - (i) (No change.)

§295.322. Minimum Work Practices and Procedures for Mold Remediation.

(a) (No change.)

(b) Remediation work plan. A remediation contractor shall prepare a mold remediation work plan that is specific to each project, fulfills all the requirements of the mold remediation **[based on a mold remediation]** protocol and provides specific instructions and/or standard operating procedures for how a mold remediation project will be performed. The remediation contractor shall provide the mold remediation work plan to the client before site preparation work **[the mold remediation]** begins.

(c) (No change.)

(d) Containment requirements. The containment specified in the remediation protocol must be used on a mold remediation project when the mold affects a total surface area of 25 contiguous square feet or more for the project. Containment is not required if only persons **[no person]** who are **[is not]** licensed or registered under this subchapter occupy **[occupies]** the building in which the remediation takes place at any time between the start-date **[start date]** and stop-date **[stop date]** for the project as specified on the notification required under §295.325 of this title (relating to Notifications). The containment, when constructed as described in the remediation work plan and under normal conditions of use, must prevent the spread of mold to areas outside the containment. If walk-in containment is used, supply and return air vents must be blocked, and air pressure within the walk-in containment must be lower than the pressure in building areas adjacent to the containment.

(e) Notice signs. Signs advising that a mold remediation project is in progress shall be displayed at all accessible entrances to remediation areas **[adjacent to occupied areas of a building]**. The signs shall be at least eight (8) inches by ten (10) inches in size and shall bear the words “NOTICE: Mold remediation project in progress” in black on a yellow background. The text of the signs must be legible from a distance of ten (10) feet.

(f) - (g) (No change.)

§295.323. Mold Remediation of Heating, Ventilation and Air Conditioning (HVAC) Systems.

§§295.323 - 295.325

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

(c) Disinfectants, biocides and antimicrobial coatings. A licensee or registered worker under this subchapter may apply a disinfectant, biocide or antimicrobial coating in an HVAC system only if its use is specified in a mold remediation protocol, if it is registered by the EPA for the intended use and if the use is consistent with the manufacturer’s labeling instructions. The licensee or registered worker shall apply the product only after the building owner or manager has been provided a material safety data sheet for the product, has agreed to the application, and has notified building occupants in potentially affected areas prior to the application. The licensee or registered worker shall follow all manufacturer’s label directions when using the product.

(d) (No change.)

§295.324. Post-Remediation Assessment and Clearance.

(a) Clearance criteria. For a remediation project to achieve clearance, a licensed mold assessment consultant shall conduct a post-remediation assessment using visual, procedural, and analytical methods. If walk-in containment is used during remediation **[at a project site]**, the post-remediation assessment shall be conducted while the walk-in containment is in place. The post-remediation assessment shall determine whether:

(1) - (2) (No change.)

(b) - (e) (No change.)

§295.325. Notifications.

(a) General provision. A mold remediation contractor or company shall notify the department of a mold remediation, as defined in §295.302(27) of this title (relating to Definitions), **[project]** when mold contamination affects a total surface area of 25 contiguous square feet or more. Notification shall be received by the Department of State Health Services, Environmental Health Notifications Group **[department]** no less than five working days (not calendar days) prior to the anticipated start date of the mold remediation **[activity]** and shall be submitted by United States Postal Service, commercial delivery service, hand-delivery, electronic mail (e-mail) **[(E-mail)]**, or facsimile on a form specified by the department and available on its' website. The form must be filled out completely and properly. Blanks that do not apply shall be marked "N/A". The "N/A" designation **[of "N/A"]** will not be accepted for identification of the work site, building description, building owner, individuals required to be identified on the notification form, **[or]** start- and stop-dates **[start and stop dates]**, or scheduled hours of mold remediation. A signature of the responsible person is required on each notification form. The contractor or company shall retain a confirmation that the department received the notification **[was received by the department]**.

§§295.325 - 295.326

(b) Start-date change to later date. When mold remediation activity is rescheduled to start **[begins]** later than the date or hours contained in the most recent notice, the regional office of the department shall be notified by telephone as soon as possible but prior to the start-date **[original start date]** on the most recent notice. A written amended notification is required immediately following the telephone notification and shall be e-mailed, faxed or overnight mailed to the Environmental Health Notifications Group within the Inspection Unit, Environmental and Consumer Safety Section of the department.

(c) Start-date change to earlier date. When mold remediation activities begin on a date earlier than the date contained in the notice, the department shall be provided with written notice of the new start-date **[start date]** at least five working days before the start of work unless the provisions of subsection (e) of this section apply. The licensee shall confirm with the department by phone that the notice is received five working days before the start of work.

(d) Start-date/stop-date (completion date) requirement. In no event shall mold remediation begin or be completed on a date other than the date contained in the written notice except for operations covered under subsection (e) of this section. Amendments to start-date **[start date]** changes must be submitted as required in subsections (b) and (c) of this section. An amendment is required for any stop-dates **[stop dates]** that change by more than one workday **[for each week (seven calendar day period)]**. The contractor or company shall provide schedule changes to the department no less than 24 hours prior to the most recent stop-date or the new stop-date **[stop date]**, whichever comes first. Changes less than five days in advance shall be confirmed with the appropriate department regional office by telephone, facsimile, or e-mail and followed up in writing to the department's central office at 1100 West 49th Street, Austin, Texas, 78756.

(e) - (f) (No change.)

§295.326. Recordkeeping.

(a) Record retention. Records and documents required by this section shall be retained for the time specified in subsection (b)(2) of this section for remediators and subsection (c)(2) of this section for assessors, subsection (d) of this section for mold analysis laboratories, and subsection (e)(1) of this section for training providers **[a period of three years from the date of project completion unless otherwise stated]**. Such records and documents shall be made available for inspection by the department or any law enforcement agency

immediately upon request. Licensees and accredited training providers who cease to do business shall notify the department in writing 30 days prior to such event to advise how they will maintain all records during the minimum three-year retention period. The department, upon receipt of such notification and at its option, may provide instructions for how the records shall be maintained during the required retention period. A licensee or accredited person shall notify the department that it has complied with the department's instructions within 30 days of their receipt or make other arrangements approved by the department. Failure to comply may result in disciplinary action.

§§295.326 - 295.327

(b) Mold remediation companies and contractors. A licensed mold remediation company shall maintain the records listed in paragraphs (1) and (2) of this subsection for each mold remediation project performed by the company and the records listed in paragraph (4) [(3)] of this subsection for each remediation worker training session provided by the company. A licensed mold remediation contractor not employed by a company shall personally maintain the records listed in paragraphs (1) and (2) of this subsection for each mold remediation project performed by the contractor and the records listed in paragraph (4) [(3)] of this subsection for each remediation worker training session provided by the mold remediation contractor.

(1) - (4) (No change.)

(c) Mold assessment companies and consultants.

(1) A licensed mold assessment company shall maintain the following records and documents at a central location at its Texas office for the time period required under paragraph (2) of this subsection for each project that the company performs. A licensed mold assessment consultant not employed by a company shall maintain the following records and documents at a central location at his or her Texas office for the time period required under paragraph (2) of this subsection for each project that the contractor performs:

(A) the name and mold credential [**certificate**] number of each of its employees who worked on the project and a description of each employee's involvement with the project;

(B) - (G) (No change.)

(2) For each project, a licensed mold assessment company or consultant shall maintain all the records listed in paragraph (1) of this subsection until:

(A) - (B) (No change.)

(C) the company or consultant provides the signed certificate of mold damage remediation to a mold remediation contractor or company, if a certificate of mold damage remediation is provided.

(d) - (e) (No change.)

§295.327. Photographs; Certificate of Mold Damage Remediation; Duty of Property Owner.

(a) (No change.)

(b) Not later than the 10th day after the project stop date, the licensed mold remediation contractor or company shall provide a certificate of mold damage remediation to the property owner on a form adopted by the Texas Commissioner of Insurance. The certificate must include

§§295.327 - 295.330

the following:

(1) - (2) (No change.)

(c) (No change.)

(d) If a property owner sells the property, the property owner shall provide to the buyer a copy of each remediation certificate **[that has been]** issued for the property under this section during the five years preceding the date the property owner sells the property.

§295.328. Complaints. A person who believes that any provision of the Act or this subchapter has been violated may file a written complaint with the department. The complaint form is available on the department's website. The department shall conduct an investigation, including for an anonymous complaint if the complainant provides sufficient information.

§295.329. Compliance: Inspections and Investigations.

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

(c) A department representative conducting **[in pursuance of]** official duties is not required to notify in advance or seek permission to conduct inspections or investigations. It is a violation for any person to interfere with, deny, or delay an inspection or investigation conducted by a department representative. A department representative shall not be impeded or refused entry in the course of official duties by reason of any regulatory or contractual specification.

§295.330. Compliance: Reprimand, Suspension, Revocation, Probation.

(a) After notice of the opportunity for a hearing in accordance with subsection (d) of this section, the department may take any of the disciplinary actions outlined in subsection (c) of this section. **[If the department suspends a credential on an emergency basis, the department shall provide an opportunity for a hearing in accordance with subsection (d) of this section within 20 days.]**

(b) (No change.)

(c) The department may issue an administrative penalty as described in §295.331 of this title (relating to Compliance: Administrative Penalty), deny an application, suspend, **[suspend on an emergency basis,]** suspend with probationary terms, or revoke a credential of a person who:

(1) (No change.)

(2) has fraudulently or deceptively obtained or attempted to obtain a [the] credential, ID card or approval, including engaging in misconduct or dishonesty during the state

§§295.330 - 295.332

licensing examination, such as cheating or having another person take or attempt to take the examination for that person;

(3) - (6) (No change.)

(d) (No change.)

§295.331. Compliance: Administrative Penalty.

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

(d) Violations shall be placed in one of the following severity levels.

(1) Critical violation. Severity Level I violations have or may have a direct negative impact on public health[, **safety,**] or welfare. This category includes fraud and misrepresentation. The penalty for a Level I violation may be up to \$5,000 per violation. Violations listed in subparagraphs (A) and (B) of this paragraph may be assessed at up to \$5,000 per violation per day. Examples include but are not limited to:

(A) - (I) (No change.)

(2) Serious violation. Severity Level II violations could compromise public health[, **safety,**] or welfare. The maximum penalty for Level II violations is \$2,500 per violation. Violations listed in subparagraphs (A) and (B) of this paragraph may be assessed at up to \$2,500 per violation per day. Examples include but are not limited to:

(A) - (E) (No change.)

(3) Significant violation. Severity Level III violations, while not having a direct negative impact on health[, **safety,**] or welfare, could lead to more serious circumstances. The maximum penalty for Level III violations is \$1,000 per violation. Examples include but are not limited to:

(A) - (G) (No change.)

§295.332. Compliance: Exception to the Administrative Penalty.

(a) The commissioner may choose not to impose an administrative penalty under §295.331 of this title (relating to Compliance: Administrative Penalty) if, not later than the 10th day after the date on a written notice of a violation as provided under §295.333 of this title (relating to Compliance: Notice; Opportunity for Hearing; Order), the person charged with the violation provides [**conclusive**] evidence satisfactory to the department that the circumstances giving rise to the violation have been corrected and all actual damages are paid.

§§295.332 - 295.336

(b) (No change.)

§295.333. Compliance: Notice; Opportunity for Hearing; Order.

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

(d) If a person fails to request [**exercise the opportunity for**] a hearing, the commissioner, after determining that a violation occurred and the amount of penalty warranted, is authorized to impose a penalty and issue an order requiring the person to pay the penalty imposed.

(e) - (f) (No change.)

§295.334. Compliance: Options Following Administrative Order.

(a) Not later than the 30th day after the date the commissioner's decision or order concerning an administrative penalty assessed under §295.331 of this title (relating to Compliance: Administrative Penalty) becomes final as provided by the Texas Government Code, [**Chapter 2001,**] §2001.144, (relating to Decisions; When Final) to the person against whom the penalty is assessed either shall pay the administrative penalty or shall file a petition for judicial review.

(b) A person who files a petition for judicial review can stay enforcement of the penalty either by paying the penalty to the commissioner for placement in an escrow account or by giving the commissioner a bond, in a form approved by the commissioner, [**that is**] for the amount of the penalty [**and**] that is effective until judicial review of the commissioner's decision or order is final.

§295.335. Compliance: Collection of Administrative Penalty; Judicial Review.

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

(c) After [**If, after**] judicial review, if the administrative penalty is reduced or is not upheld by the court, not later than the 30th day after the date of the determination, the commissioner shall:

(1) - (2) (No change.)

§295.336. Compliance: Civil Penalty. A person who violates the Act or this subchapter is liable for a civil penalty in an amount not to exceed \$2,000 for the first violation or \$10,000 for a second or subsequent [**later**] violation. The commissioner may request the Texas Attorney General or the district, county, or city attorney having jurisdiction to bring an action to collect a civil penalty under this section.

§§295.337 - 295.338

§295.337. Compliance: Injunctive Relief. The commissioner may request the Texas Attorney General or the district, county, or city attorney having jurisdiction to bring an action for a restraining order, injunction, or other relief the court determines [**is**] appropriate if it appears to the department that a person is violating or has violated the Act or this subchapter.

§295.338. Civil Liability Exemption for Certain Property Owners or Governmental Entities.

(a) A property owner is not liable for damages related to mold remediation on a property if a certificate of mold damage remediation has been issued under §295.327 of this title (relating to Photographs; Certificate of Mold Damage Remediation; Duty of Property Owner) for that property and the damages accrued on or before the date of the issuance of the certificate.

(b) A person is not liable in a civil lawsuit for damages related to a decision to allow occupancy of a property after mold remediation has been performed on the property if a certificate of mold damage remediation has been issued under §295.327 of this title for the property, the property is owned or occupied by a governmental entity, including a school, and the decision was made by the owner, the occupier, or any person authorized by the owner or occupier to make the decision.