

OCCUPATIONS CODE

TITLE 12. PRACTICES AND TRADES RELATED TO WATER, HEALTH, AND SAFETY

SUBTITLE B. PRACTICES RELATED TO HEALTH AND SAFETY

CHAPTER 1955. LEAD-BASED PAINT ABATEMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1955.001. DEFINITIONS. In this chapter:

(1) "Child-occupied facility" means a building or part of a building constructed before 1978, including a day-care center, preschool, or kindergarten classroom, that is visited regularly by the same child, six years of age or younger, at least two days in any calendar week if the visits are for at least:

(A) three hours each day; and

(B) 60 hours each year.

(2) "Department" means the Department of State Health Services.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Federal law and rules" means:

(A) Title IV, Toxic Substances Control Act (15 U.S.C. Section 2681 et seq.), and the rules adopted by the United States Environmental Protection Agency under that law for authorization of state programs;

(B) any regulations or requirements adopted by the United States Department of Housing and Urban Development regarding eligibility for grants to states and local governments; and

(C) any other requirements adopted by a federal agency with jurisdiction over lead hazards.

(5) "Lead-based paint activity" means inspection, testing, risk assessment, risk reduction, lead abatement project design or planning, abatement or removal, or creation of lead-based paint hazards.

(6) "Person" means an individual, corporation, company, contractor, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any

other association of individuals.

(7) "Target housing" means any housing constructed before 1978, other than:

(A) housing for the elderly or persons with disabilities, unless a child six years of age or younger resides or is expected to reside in the housing; or

(B) a dwelling without bedrooms.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.283, eff. April 2, 2015.

Sec. 1955.002. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The executive commissioner may not adopt rules restricting advertising or competitive bidding by a certified or accredited person except to prohibit false, misleading, or deceptive practices.

(b) The executive commissioner may not include in the rules to prohibit false, misleading, or deceptive practices a rule that:

(1) restricts the use of any advertising medium;

(2) restricts the use of a certified or accredited person's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the certified or accredited person; or

(4) restricts the certified or accredited person's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.284, eff. April 2, 2015.

SUBCHAPTER B. CERTIFICATION AND ACCREDITATION

Sec. 1955.051. CERTIFICATION AND ACCREDITATION PROGRAM.

(a) The department shall establish a program in compliance with federal law and rules for:

(1) certification of a person involved in a lead-based

paint activity in target housing or in a child-occupied facility;
and

(2) accreditation of a training provider.

(b) The program may not exceed the minimum requirements of federal law and rules for authorization of a state program and receipt of federal funding by a state or local government.

(c) The department shall make any changes to the program that are:

(1) consistent with this chapter; and

(2) necessary to comply with federal law and rules.

(d) Rules adopted by the executive commissioner under this section must:

(1) set minimum training requirements for use by accredited training providers;

(2) set standards for the reliability, effectiveness, and safety of lead-based paint activities in target housing;

(3) set standards for accrediting training providers;

(4) require the use of certified and accredited personnel in a lead-based paint activity in target housing or in a child-occupied facility;

(5) be revised as necessary to:

(A) comply with federal law and rules; and

(B) maintain eligibility for federal funding;

(6) facilitate reciprocity and communication with other states having a certification and accreditation program;

(7) provide for the revocation of the certification or accreditation of a person certified or accredited by the department; and

(8) provide for financial assurance for a person certified or accredited by the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 5.285, eff. April 2, 2015.

Sec. 1955.052. CERTIFICATION REQUIREMENT. (a) The executive commissioner by rule may require a person involved in a

lead-based paint activity in target housing or a public area that the department determines creates a public health hazard to be certified. The department shall delay implementation of the certification requirement for six months after the date the rule is adopted.

(b) A rule adopted under this section must be consistent with federal law and rules.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.286, eff. April 2, 2015.

Sec. 1955.053. FEES. The executive commissioner by rule may impose a fee to cover the cost of administering the program. The executive commissioner shall set fees for issuing or renewing a certification or accreditation in amounts designed to allow the department to recover from the certification and accreditation holders all of the department's direct and indirect costs in administering and enforcing this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.287, eff. April 2, 2015.

Sec. 1955.054. EXAMINATION RESULTS. (a) Not later than the 30th day after the date a person takes any certification or accreditation examination under this chapter, the department shall notify the person of the examination results. If an examination is graded or reviewed by a testing service, the department shall notify the person of the examination results not later than the 14th day after the date the department receives the results from the testing service.

(b) If notice of the results of an examination graded or reviewed by a testing service will be delayed for more than 90 days after the examination date, the department shall notify the person of the reason for the delay before the 90th day.

(c) The department may require a testing service to notify a

person of the person's examination results.

(d) If requested in writing by a person who fails an examination, the department shall provide to the person an analysis of the person's performance on the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1955.055. TERM OF CERTIFICATION OR ACCREDITATION; EXPIRATION. (a) A certification or accreditation is valid for two years.

(b) The executive commissioner by rule may adopt a system under which certifications or accreditations expire on various dates during the year. For the year in which the expiration date is changed, the department shall prorate certification or accreditation fees on a monthly basis so that each certified or accredited person pays only that portion of the certification or accreditation fee that is allocable to the number of months during which the certification or accreditation is valid. On renewal of the certification or accreditation on the new expiration date, the total certification or accreditation renewal fee is payable.

(c) A person whose certification or accreditation has expired may not engage in activities that require certification or accreditation until the certification or accreditation has been renewed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 5.288, eff. April 2, 2015.

Sec. 1955.056. NOTICE OF EXPIRATION. Not later than the 30th day before the expiration date of a person's certification or accreditation, the department shall send written notice of the impending expiration to the person at the person's last known address according to department records.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1955.057. CERTIFICATION OR ACCREDITATION RENEWAL. (a) A person who is otherwise eligible to renew a certification or

accreditation may renew an unexpired certification or accreditation by paying the required renewal fee to the department before the expiration date of the certification or accreditation.

(b) A person whose certification or accreditation has been expired for 90 days or less may renew the certification or accreditation by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose certification or accreditation has been expired for more than 90 days but less than one year may renew the certification or accreditation by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose certification or accreditation has been expired for one year or more may not renew the certification or accreditation. The person may be recertified or reaccredited by complying with the requirements and procedures, including any examination requirements, for obtaining an original certification or accreditation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1955.058. RENEWAL BY OUT-OF-STATE PRACTITIONER. (a) The department may renew without reexamination an expired certification or accreditation of a person who was certified or accredited in this state, moved to another state, and is currently certified or accredited and has been in practice in the other state for the two years preceding the date the person applies for renewal.

(b) The person must pay to the department a fee that is equal to two times the normally required renewal fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

SUBCHAPTER C. PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1955.101. DISCIPLINARY ACTION BY DEPARTMENT. The department shall revoke, suspend, or refuse to renew a certification or accreditation or shall reprimand a certified or accredited person for a violation of this chapter or a department rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.289, eff. April 2, 2015.

Sec. 1955.102. PROBATION. (a) The department may place on probation a person whose certification or accreditation is suspended.

(b) The department may require a person whose certification or accreditation suspension is probated to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.290, eff. April 2, 2015.

Sec. 1955.103. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty on a person who violates this chapter or a rule adopted under this chapter. The amount of the penalty may not exceed \$5,000 for each day of the violation.

(b) The executive commissioner shall adopt rules relating to the imposition and collection of an administrative penalty.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.291, eff. April 2, 2015.

Sec. 1955.104. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted or certification issued under this chapter, the state may bring an

action in the manner prescribed by Section 7.105(a), Water Code, for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty.

(b) Venue for an action brought under this section is in the county prescribed by Section 7.105(c), Water Code.

(c) The amount of a civil penalty imposed under this section may not exceed:

(1) \$2,000 for the first violation; or

(2) \$10,000 for a subsequent violation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1955.105. CRIMINAL PENALTY. (a) A person commits an offense if:

(1) the person knowingly violates this chapter or a rule adopted or certification issued under this chapter; and

(2) the violation endangers the public health and safety.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine not to exceed \$10,000;

(2) confinement for a term not to exceed six months;

or

(3) both the fine and the confinement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.