



# **Texas Mold Assessment and Remediation Rules**

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## Statutory Information Regarding These Rules

The Texas Mold Assessment and Remediation Rules (TMARR) were originally prepared and became effective on May 16, 2004, as a result of House Bill 329 passed by the 78th Texas Legislature, Regular Session, in 2003. This bill was codified in the Texas Occupations Code, Chapter 1958. In 2005, the 79<sup>th</sup> Texas Legislature, Regular Session, passed House Bills 74, 1328 and 2746 that amended the Texas Occupations Code, Chapter 1958. The TMARR were revised based on these three bills and these revised rules became effective May 20, 2007. The TMARR are part of the Texas Administrative Code (TAC), specifically 25 TAC §§295.301-295.338.

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For up-to-date contact information, all the forms, lists of current licensees and trainers, rules, statues, and frequently asked questions, please visit our website: [www.dshs.state.tx.us/mold](http://www.dshs.state.tx.us/mold).

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## §295.301. GENERAL PROVISIONS.

**(a) Purpose.** This subchapter implements the provisions of the Texas Occupations Code, Chapter 1958 (relating to Mold Assessors and Remediators), concerning the regulation of mold assessors and remediators conducting mold-related activities that affect indoor air quality.

**(b) Scope.** This subchapter contains requirements for the licensing and registration of persons performing mold assessments and mold remediation, requirements for the accreditation of mold training providers, minimum work standards for the conduct of mold assessments and remediation by licensed and registered persons, a code of ethics, and penalties.

**(c) Severability.** Should any section or subsection in this subchapter be found to be void for any reason, such finding shall not affect any other sections.

**(d) TexasOnline.** The department is authorized to collect subscription and convenience fees, in amounts determined by the TexasOnline Authority, to recover costs associated with processing applications, examinations, and notifications specified under this subchapter through TexasOnline, in accordance with the Texas Government Code, Chapter 2054, §2054.111 (relating to Use of TexasOnline Project).

**(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](http://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 Mold 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) Accredited training program - A training program that has been accredited by the department to provide training for persons seeking licensure or registration under this subchapter.

(2) Act - The Texas Occupations Code, Chapter 1958 (relating to Mold Assessors and Remediators).

(3) Allied field - Mold assessment, mold remediation, and any field whose principles and practices are applicable to mold assessment or mold remediation, including asbestos abatement, lead abatement, industrial hygiene, building sciences, public health, and environmental remediation.

(4) Assessor - A person who conducts mold assessment as defined in this section and who is licensed under this subchapter as a mold assessment technician, mold assessment consultant, or mold assessment company.

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(5) Building sciences - The field of study covering the design, construction, management, and performance of building systems, including structures, enclosures, electrical and mechanical systems, environmental systems (such as temperature and moisture control), safety systems (such as fire suppression and alarms), lighting, acoustics, and diagnosis and correction of problems with building systems.

(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) Commissioner - The Commissioner of the Department of State Health Services.

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

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

(11) Contiguous - In close proximity; neighboring.

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

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

(14) Department - The Department of State Health Services.

(15) 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.

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

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

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

(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) 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) 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) 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

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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) 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) Mold-related activities - The performance of mold assessment, mold remediation or any other related activities.

(28) 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) 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) 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) 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) 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.

(33) 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.

(34) 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) 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.

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

(39) Start-date - The date on which the mold remediation begins. Preparation work is not considered mold remediation.

(40) Stop-date (completion date) - The date following the day on which final clearance for the project is achieved.

(41) 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) 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) 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) 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) Visible - Exposed to view; capable of being seen.

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(46) Work analysis - A mold remediation protocol.

(47) Work plan - A mold remediation work plan.

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

### §295.303. EXCEPTIONS AND EXEMPTIONS.

**(a) Exceptions.** This subchapter does not apply to:

(1) the following activities when not conducted for the purpose of mold assessment or mold remediation:

(A) routine cleaning;

(B) the diagnosis, repair, cleaning, or replacement of plumbing, heating, ventilation, air conditioning, electrical, or air duct systems or appliances;

(C) commercial or residential real estate inspections; and

(D) the incidental discovery or emergency containment of potential mold contamination during the conduct or performance of services listed in this subsection. For purposes of this subsection, an emergency exists if a delay in mold remediation services in response to a water damage occurrence would increase mold contamination;

(2) the repair, replacement, or cleaning of construction materials during the building phase of the construction of a structure;

(3) the standard performance of custodial activities for, preventive maintenance of, and the routine assessment of property owned or operated by a governmental entity; or

(4) a pest control inspection conducted by a person regulated under the Texas Occupations Code, Chapter 1951 (relating to Structural Pest Control).

**(b) Minimum area exemption.** A person is not required to be licensed under this subchapter to perform mold remediation in an area in which the mold contamination for the project affects a total surface area of less than 25 contiguous square feet.

**(c) Residential property exemption.** An owner, or a managing agent or employee of an owner, is not required to be licensed under this subchapter to perform mold assessment or mold remediation on a residential property which is owned by that person, and which has fewer than 10 residential dwelling units. This exemption applies regardless of the total surface area within the residential property that is affected by mold growth. This exemption does not apply to a managing agent or employee who engages in the business of performing mold assessment or mold remediation for the public.

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**(d) Facility exemption.** An owner or tenant, or a managing agent or employee of an owner or tenant, is not required to be licensed under this subchapter to perform mold assessment or mold remediation on property owned or leased by the owner or tenant. This exemption does not apply:

(1) if the managing agent or employee engages in the business of performing mold assessment or mold remediation for the public;

(2) if the mold remediation is performed in an area in which the mold contamination affects a total surface area of 25 contiguous square feet or more; or

(3) to a person exempt under subsection (c) of this section.

**(e) Construction and improvement exemption.** A person is not required to be licensed under this subchapter to perform mold assessment or mold remediation in a one-family or two-family dwelling that the person constructed or improved if the person performs the mold assessment or mold remediation at the same time the person performs the construction or improvement or at the same time the person performs repair work on the construction or improvement. This exemption applies regardless of the total surface area that is affected by mold growth. This exemption does not apply if the person engages in the business of performing mold assessment or mold remediation for the public. For purposes of this subsection, "improve" means "to build, construct, or erect a new building or structure or a new portion of a building or structure that is attached to an existing building or structure" and "improvement" means "a building or structure, or a portion of a building or structure, that was built, constructed, or erected as an attachment to an existing building or structure after the construction or erection of the existing building or structure."

**(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 employee performing mold remediation must be registered as provided under §295.314 of this title (relating to Mold Remediation Worker: Registration Requirements).

**(g) Exceptions for licensed professionals.** All persons engaged in mold-related activities must be licensed, registered or accredited as outlined in this subchapter, except that those professionals currently licensed by the state in another field (including, but not limited to, medicine, architecture, or engineering) who provide to a mold licensee only consultation related to that other field are not required to be separately licensed under this subchapter. In such a case, the responsibility for the project or activity remains with the mold licensee. A person is not required to be licensed under this subchapter if engaging only in the performance of regulated activities of a licensed insurance adjuster pursuant to Article 21.07-4 of the Texas Insurance Code or in the performance of regulated activities of a licensed public insurance adjuster pursuant to Article 21.07-5 of the Texas Insurance Code, including the investigation and review of losses to insured property, assignment of coverage, and estimation of the usual and customary expenses due under the applicable insurance policy, including expenses for reasonable and customary mold assessment and remediation.

**(h) Loss of exemption.** A person who is performing mold remediation under the licensing exemptions of subsection (b) or (d) of this section and identifies additional mold such that the total mold contamination affects a total surface area of 25 contiguous square feet or more shall:

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(1) immediately cease all remediation work and implement emergency containment if necessary; and

(2) advise the person requesting the remediation that the exemption under subsection (b) or (d) of this section has been lost and that any additional mold remediation and post-remediation assessment in the area must be done by a person licensed or registered under this subchapter.

**(i) Fee exemption for department employees.** Employees of the department who engage in mold-related activity as a condition of their employment shall be exempt from examination fees and credentialing fees under this subchapter. Fee-exempted credentials shall be restricted for use only in required departmental duties, and the credentials will indicate the restriction. An employee who is no longer required to possess a credential as a condition of employment shall immediately return that credential to the Mold Licensing Program for closure. An individual who terminates employment with the department shall immediately return all unexpired credentials to the Mold Licensing Program for closure. The department may impose an administrative penalty or take other disciplinary action against any employee or former employee who uses a fee-exempt credential to engage in a mold-related activity that is not a required departmental duty.

### **§295.304. CODE OF ETHICS.**

**(a)** The purpose of this section is to establish the standards of professional and ethical conduct required of all persons holding credentials or approvals issued under this subchapter.

**(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, education, training or experience in the specific technical fields involved;

(2) meet or exceed the minimum standards for mold assessment and remediation as set forth in this subchapter;

(3) not participate in activities where a conflict of interest might arise, pursuant to §295.307 of this title (relating to Conflict of Interest and Disclosure Requirement) and disclose any known or potential conflicts of interest to any party affected or potentially affected by such conflicts;

(4) provide only necessary and desired services to a client and not sell unnecessary or unwanted products or services;

(5) to the extent required by law, keep confidential any personal information regarding a client (including medical conditions) obtained during the course of a mold-related activity;

(6) not misrepresent any professional qualifications or credentials;

(7) not provide to the department any information that is false, deceptive, or misleading;

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(8) cooperate with the department by promptly furnishing required documents or information and by promptly responding to requests for information;

(9) not work if impaired as a result of drugs, alcohol, sleep deprivation or other conditions and not allow those under their supervision to work if known to be impaired;

(10) maintain knowledge and skills for continuing professional competence and participate in continuing education programs and activities;

(11) not make any false, misleading, or deceptive claims, or claims that are not readily subject to verification, in any advertising, announcement, presentation, or competitive bidding;

(12) not make a representation that is designed to take advantage of the fears or emotions of the public or a customer;

(13) provide mold-related services at costs in keeping with industry standards; and

(14) if the credentialed person is an accredited mold training provider or a licensed mold analysis laboratory, notify each client of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department:

(A) on each written contract for services; or

(B) in each bill for services provided to the client.

**(c) Duty to report ethical violations.** All credentialed persons:

(1) have the responsibility of promptly reporting alleged misrepresentations or violations of the Act or this subchapter to the department;

(2) are responsible for competent and efficient performance of their duties and shall report to the department incompetent, illegal or unethical conduct of any practitioner of mold assessment and/or remediation; and

(3) shall not retaliate against any person who reported in good faith to the department alleged incompetent, illegal or unethical conduct.

### **§295.305. CREDENTIALS: GENERAL CONDITIONS.**

**(a) Licensing or registration requirement.** A person must be licensed or registered in compliance with this subchapter to engage in mold assessment or mold remediation unless specifically exempted under §295.303 of this title (relating to Exceptions and Exemptions).

**(b) Accreditation requirement.** A person must be accredited as a mold training provider in compliance with this subchapter to offer mold training for fulfillment of specific training requirements for licensing under this subchapter.

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**(c) Age requirement.** Each individual applying to be licensed or registered under this subchapter must be at least 18 years old at the time of application.

**(d) Office requirement.** A person licensed under this subchapter must maintain an office in Texas. An individual employed by a person licensed under this subchapter is considered to maintain an office in Texas through that employer.

**(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 course offered by a department-accredited training provider in that area of licensure and receive a course-completion certificate before applying for the license.

(2) 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.

(3) 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.

**(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% 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) An applicant for an initial license under §295.311, §295.312, or §295.315 of this title must submit the complete application to the department within six months of passing the required state licensing examination, as evidenced by a postmark or shipping documents, or must successfully

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complete a new initial training course, receive a new training certificate, and pass a new state examination before submitting a new initial license application.

(2) An applicant for an initial or renewal registration under §295.314 of this title must submit the complete application to the department within ten calendar days (not working days) of successfully completing the required training course, as evidenced by a postmark or shipping paperwork.

(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. The applicant must complete the refresher course no later than 24 months after completion of the previous course.

### **(h) Term and expiration.**

(1) All credentials issued on or after January 1, 2006, are valid for two years and expire on the second anniversary of the effective date.

(2) 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) A credential holder is in violation of this subchapter if the holder practices with lapsed qualifications.

**(i) Condition of issuance.** No credential, identification (ID) card, or approval issued under this subchapter shall be sold, assigned, or transferred. ID cards issued by the department must be present at the worksite any time an individual is engaged in mold-related activities. The department retains the right to confiscate and revoke any credential, ID card, or approval that has been altered.

**(j) Credentialed persons other than individuals.** A mold assessment company, mold remediation company, mold analysis laboratory, or mold training provider that has been issued a credential under this subchapter:

(1) shall designate one or more individuals as responsible persons. The credentialed person must notify the department in writing of any additions or deletions of responsible persons within 10 days of such occurrences;

(2) shall not transfer that credential to any other person, including to any company that has bought the credentialed entity. The credentialed entity must apply for a new credential within 60 days of being bought; and

(3) must submit to the department a name-change application and a processing fee of \$20 within 60 days of any change.

### **§295.306. CREDENTIALS: GENERAL RESPONSIBILITIES.**

**(a)** Persons who are licensed, registered, or accredited under this subchapter shall:

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- (1) adhere to the code of ethics prescribed by §295.304 of this title (relating to Code of Ethics);
- (2) comply with work practices and procedures of this subchapter;
- (3) refrain from engaging in activity prohibited under §295.307(a) of this title (relating to Conflict of Interest and Disclosure Requirement);
- (4) maintain any insurance required under §295.309 of this title (relating to Licensing: Insurance Requirements) while engaging in mold-related activities regulated under this subchapter;
- (5) cooperate with department personnel in the discharge of their official duties, as described in §295.329 of this title (relating to Compliance: Inspections and Investigations); and
- (6) notify the department of changes in mailing address and telephone number.

**(b)** All individuals who are required to be licensed or registered under this subchapter must have a valid department-issued identification card present at the worksite when engaged in mold-related activities, except as provided under §295.314(e) of this title (relating to Mold Remediation Worker: Registration Requirements) for applicants for registration as mold remediation workers.

**(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 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 to the department if, to that person's knowledge, the responsible party has not corrected the violations within that timeframe.

**(e)** The individual that is designated by a licensed mold assessment company or mold remediation company as its responsible person shall not be the responsible person for another licensee with the same category of license.

**(f)** Credentialed persons are responsible for determining whether the mold-related activities in which they will engage require additional credentials beyond those required under this subchapter.

### **§295.307. CONFLICT OF INTEREST AND DISCLOSURE REQUIREMENT.**

#### **(a) Conflict of interest.**

- (1) A licensee shall not perform both mold assessment and mold remediation on the same project.
- (2) A person shall not own an interest in an entity that performs mold assessment services and an entity that performs mold remediation services on the same project.

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**(b) Disclosure requirement.** At the time of application for licensing, an applicant that is not an individual shall disclose to the department the name, address, and occupation of each person that has an ownership interest of 10% or more in the applicant. A licensee shall report to the department within 10 days any change related to a person who has an ownership interest of 10% or more including additions to or deletions from any list of such persons previously supplied to the department and any changes in the names, addresses, or occupations of any persons on such a list.

**(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) a check or money order for the amount of the required fee made payable to the department, unless the application fee is paid through TexasOnline, as provided under the Texas Government Code, Chapter 2054, §2054.252 (relating to TexasOnline Project);

(2) for individuals applying for a credential, a current one-inch square passport-quality color photograph of the applicant's face with a white background. 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) proof that the applicant meets all other requirements for obtaining the credential being sought.

**(b) Inquiries.** Applicants who wish to discuss or obtain information concerning qualification requirements may contact the Department of State Health Services, Environmental and Sanitation Licensing Group. Applicants may visit the Mold Licensing Program's website at [www.dshs.state.tx.us/mold](http://www.dshs.state.tx.us/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) Processing applications and renewals.**

(1) Reimbursement of fees. The department shall refund application fees, less an administrative fee of \$50 (\$20 for remediation worker applications), if an applicant does not meet the requirements for the credential. The department shall refund fees paid in excess of the amounts required under this subchapter, less a \$10 administrative fee. The department will not refund fees if the application was abandoned due to the applicant's failure to respond to a written request from the department for a period of 90 days.

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(2) Contested case hearing. The applicant has the right to request a hearing in writing within 30 days of the date on the department's letter denying the credential. The hearing will be conducted in accordance with the Administrative Procedure Act (Texas Government Code, Chapter 2001) and the department's formal hearing rules in Chapter 1 of this title.

**(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 credential whether or not they have received the notification from the department. The renewal notice will state:

- (1) the type of credential requiring renewal;
- (2) the time period allowed for renewal;
- (3) the amount of the renewal fee; and
- (4) how to obtain and submit a renewal application.

**(f) Renewal requirements.** A person seeking to renew a license, registration, or accreditation shall submit a renewal application no sooner than 60 days before the credential expires. The department shall renew the license, registration, or accreditation for a term as provided under §295.305(h) of this title (relating to Credentials: General Conditions) if the person:

- (1) is qualified to be credentialed;
- (2) pays to the department the nonrefundable renewal fee;
- (3) submits to the department a renewal application on the prescribed form along with all required documentation; and
- (4) has complied with all final orders resulting from any violations of this subchapter, unless an exception is granted in writing by the department and submitted with the application.

**(g) Renewals.** 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) Replacements.** A person desiring a replacement credential or ID card shall submit a request in writing on a department-issued form with a \$20 fee.

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### §295.309. LICENSING: INSURANCE REQUIREMENTS.

(a) Persons required to have insurance must, at a minimum, obtain policies for commercial general liability insurance in the amount of not less than \$1 million per occurrence. Governmental entities that are self-insured are not required to purchase insurance under this subchapter. A non-governmental entity (business entity or individual) may be self-insured if it submits to the department for approval an affidavit signed by an authorized official of the entity or by the individual stating that it has a net worth of at least \$1 million. A current financial statement indicating a net worth of at least \$1 million must accompany the affidavit. A new affidavit and current financial statement must be submitted with each renewal application. An individual required to have insurance must obtain individual coverage unless covered under the policy of the individual's employer or employed by a governmental entity or a person approved by the department to be self-insured. Insurance policies required under this section must be currently in force and must be written by:

- (1) an insurance company authorized to do business in Texas;
- (2) an eligible Texas surplus lines insurer as defined in the Texas Insurance Code, Article 1.14-2 (relating to Surplus Lines Insurance);
- (3) a Texas registered risk retention group; or
- (4) a Texas registered purchasing group.

(b) The certificate of insurance must be complete, including all applicable coverages and endorsements, and must name the Department of State Health Services, Environmental and Sanitation Licensing Group, as a certificate holder. Each required policy shall be endorsed to provide the department with at least a 10-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) if claiming to be self-insured, a statement that it is a governmental entity, or, if a non-governmental entity, the affidavit and current financial statement described under subsection (a) of this section; or
- (3) proof that the applicant is employed by a licensed mold assessment or remediation company that has the required insurance.

(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) If a policy is canceled or materially changed, the licensee shall notify the department in writing not later than 20 calendar days prior to the change or cancellation effective date. A licensed company may file a single notification for the company and its licensed employees.

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(2) If a policy expires or is canceled or materially changed, the licensee shall cease work. Prior to resuming work, the licensee must either:

(A) provide to the department a certificate of the renewal or replacement policy; or

(B) submit to the department the affidavit and current financial statement described under subsection (a) of this section and receive departmental approval to be self-insured.

(3) If an individual licensee ceases to be covered under an employer's insurance, the individual must obtain replacement coverage either individually or through a new employer. The individual must submit the documentation required under subsection (c) of this section to the department before engaging in any mold-related activities.

### §295.310. LICENSING: STATE LICENSING EXAMINATION.

**(a) Examination requirements.** 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% correct prior to applying for the license. The applicant must pass the examination within six months of completing the training course.

**(b) Re-examination.** An individual is permitted to take two re-examinations after failing an initial examination. An individual who fails both re-examinations must repeat the initial training course, submit a new application for the state examination, and provide a copy of the new training certificate.

**(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 and Sanitation Licensing Group 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 the Department of State Health Services, Environmental and Sanitation Licensing Group. Entrance into the examination site will 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) Fees.** A fee of \$25 is required for any examination or re-examination. A fee of \$50 per person shall be paid for examinations administered at locations and times other than those published. The department must receive the required fees no later than five working days before the examination.

**(e) Grading and reporting of examination scores.** A grade of at least 70% 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.

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**(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 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), 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) Scope.** An individual licensed under this section is authorized to determine the location and extent of mold or suspected mold present in a facility. A mold assessment technician is licensed to:

(1) record visual observations and take on-site measurements, including temperature, humidity, and moisture levels, during an initial or post-remediation mold assessment;

(2) collect samples for mold analysis during an initial mold assessment;

(3) prepare a mold assessment report; and

(4) as directed by an on-site assessment consultant, collect samples during a post-remediation mold assessment.

**(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.

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

(1) \$200 for the license; and

(2) a required Texas Online subscription and convenience fee.

**(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:

(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;

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(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% correct; or

(2) 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 technician shall:

(1) perform only activities allowed under subsection (b) of this section;

(2) comply with mold sampling protocols accepted as industry standards, as presented in training course materials or as required by his/her employer;

(3) utilize the services of a laboratory that is licensed by the department to provide analysis of mold samples; and

(4) provide to the client a mold assessment report following an initial (pre-remediation) mold assessment, if the technician is not acting as an employee of a licensed mold assessment consultant or company.

### **§295.312. MOLD ASSESSMENT CONSULTANT: LICENSING REQUIREMENTS.**

**(a) Licensing requirements.** Unless exempted under §295.303 of this title (relating to Exceptions and Exemptions), 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) plan surveys to identify conditions favorable for indoor mold growth or to determine the presence, extent, amount, or identity of mold or suspected mold in a building;

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(2) conduct activities recommended in a plan developed under paragraph (1) of this subsection and describe and interpret the results of those activities;

(3) determine locations at which a licensed mold assessment technician will record observations, take measurements, or collect samples;

(4) prepare a mold assessment report, including the observations made, measurements taken, and locations and analysis results of samples taken by the consultant or by a licensed mold assessment technician during the mold assessment;

(5) develop a mold management plan for a building, including recommendations for periodic surveillance, response actions, and prevention and control of mold growth;

(6) prepare a mold remediation protocol, including the evaluation and selection of appropriate methods, personal protective equipment (PPE), engineering controls, project layout, post-remediation clearance evaluation methods and criteria, and preparation of plans and specifications;

(7) evaluate a mold remediation project for the purpose of certifying that mold contamination identified for the remediation project has been remediated as outlined in a mold remediation protocol;

(8) evaluate a mold remediation project for the purpose of certifying that the underlying cause of the mold has been remediated so that it is reasonably certain that the mold will not return from that remediated cause; and

(9) complete appropriate 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).

**(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 meet at least one of the following education and/or experience requirements:

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

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(4) 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.

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

- (1) \$600 for the license; and
- (2) a required Texas Online subscription and convenience fee.

**(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:

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

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

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

(D) 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) 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:

(1) provide adequate consultation to the client to diminish or eliminate hazards or potential hazards to building occupants caused by the presence of mold growth in buildings;

(2) provide, in accordance with a client's instructions, professional services concerning surveys, building conditions that have or might have contributed to mold growth, proper building operations and maintenance to prevent mold growth, and compliance with work practices and standards;

(3) comply with mold sampling protocols as presented in training course materials or as required by his/her employer;

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(4) inquire of the client whether any hazardous materials, including lead-based paint and asbestos, are present in the project area;

(5) ensure that all employees who will conduct mold assessment activities are provided with, fit tested for, and trained in the correct use of personal protection equipment appropriate for the activities to be performed;

(6) ensure that the training and license of each licensed employee are current, as described in §295.320 of this title and §295.311 or §295.312 of this title, respectively;

(7) provide to the client a mold assessment report following an initial (pre-remediation) mold assessment. If the consultant includes the results of the initial assessment in a mold remediation protocol or a mold management plan, a separate assessment report is not required;

(8) provide to the client a mold remediation protocol before a remediation project begins;

(9) utilize the services of a laboratory that is licensed by the department to provide analysis of mold samples;

(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) 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) 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) comply with recordkeeping responsibilities under §295.326(c) of this title (relating to Recordkeeping);

(13) sign and date each mold assessment report and each mold management plan that he/she prepares and include his/her license number and expiration date on each report and each plan;

(14) sign and date each mold remediation protocol on the cover page, including his/her license number and expiration date. The consultant must also initial the protocol on every page that addresses the scope of work and on all drawings related to the remediation work; and

(15) review and approve changes to any protocol by signing or initialing according to paragraph (14) of this subsection.

### **§295.313. MOLD ASSESSMENT COMPANY: LICENSING REQUIREMENTS.**

**(a) Licensing requirements.** A person performing mold assessment work on or after January 1, 2005 must be licensed as a mold assessment company if the person employs two or more individuals

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required to be licensed under §295.311 of this title (relating to Mold Assessment Technician: Licensing Requirements) or §295.312 of this title (relating to Mold Assessment Consultant: 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 this section. A mold assessment company shall designate one or more individuals licensed as mold assessment consultants as its responsible person(s).

**(b) Authorization and conditions.** As a condition of licensure, a mold assessment company must:

(1) notify the department in writing of any changes in individual licensed mold assessment consultants as responsible persons within 10 days of such occurrences;

(2) maintain commercial general liability insurance, as described in §295.309 of this title (relating to Licensing: Insurance Requirements);

(3) refrain from mold assessment activity during any period without the active employment of at least one individual licensed mold assessment consultant designated as the responsible person for the company;

(4) notify the department in writing of any change related to a person who has an ownership interest of 10% or more (including additions to or deletions from any list of such persons previously supplied to the department and any changes in the names, addresses, or occupations of any persons on such a list) within 10 days of the change; and

(5) refrain from engaging in activity prohibited under §295.307(a) of this title (relating to Conflict of Interest and Disclosure Requirement).

**(c) Eligibility for licensing.** To be eligible for licensing, an applicant must:

(1) employ at least one licensed mold assessment consultant; and

(2) maintain an office in Texas.

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

(1) \$1,000 for the license; and

(2) a required Texas Online subscription and convenience fee.

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

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(2) the name, address, and occupation of each person that has an ownership interest of 10% or more in the company; and

(3) the name and license number of each licensed mold assessment consultant designated by the applicant as a responsible person.

**(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) follow the recordkeeping requirements, at both the Texas office and work site locations, as described in §295.326(c) of this title (relating to Recordkeeping);

(2) provide each client with a mold assessment report following an initial (pre-remediation) mold assessment. If the company includes the results of the initial assessment in a mold remediation protocol or a mold management plan, a separate assessment report is not required;

(3) provide each client a mold remediation protocol before remediation begins;

(4) ensure that all employees who will conduct mold assessment activities are provided with, fit tested for, and trained in the correct use of personal protection equipment appropriate for the activities to be performed;

(5) ensure that the training and license of each licensed employee are current, as described in §295.320 of this title (relating to Training: Required Mold Training Courses) and §295.311 or §295.312 of this title, respectively;

(6) utilize the services of a laboratory that is licensed by the department to provide analysis of mold samples;

(7) maintain commercial general liability insurance, as described in §295.309 of this title;

(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) 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) 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 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), 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

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Remediation Contractor: Licensing Requirements) is not required to be separately registered under this section.

**(b) Qualifications.** In addition to the requirements for all applicants listed in §295.305 of this title (relating to Credentials: General Conditions), an applicant must:

(1) be employed by a licensed mold remediation contractor or company; and

(2) complete a mold remediation worker training course provided by either the applicant's employer or an accredited mold training provider, as described under §295.320(d) of this title (relating to Training: Required Mold Training Courses).

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

(1) \$60 for the license; and

(2) a required Texas Online subscription and convenience fee.

**(d) Applications and renewals.** Applications shall be submitted as required by §295.308(a) of this title (relating to Credentials: Applications and Renewals) and shall include a copy of the training certificate required under §295.320(d)(5)(A) of this title, unless the applicant is exempt under §295.305(g)(3) of this title. An applicant must submit an application to the department within ten calendar days of completing a worker training course, as evidenced by a postmark or shipping paperwork.

**(e) Interim registration.** An individual who has successfully completed remediation worker training and received a training certificate may perform mold remediation work allowed under this section for a period of not more than 30 days from the training date if:

(1) the individual has submitted an application for registration to the department as required under subsection (d) of this section;

(2) a copy of the training certificate is present at the work site at all times while the individual engages in mold remediation; and

(3) the individual is in possession of a valid government-issued photo identification at all times while performing mold remediation work.

**(f) Responsibilities.** In addition to the requirements as listed in §295.306 of this title (relating to Credentials: General Responsibilities), a registered mold remediation worker shall use remediation techniques specified in the project mold remediation work plan.

**(g) Prohibitions.** Registered mold remediation workers are prohibited from:

(1) performing mold remediation except under the supervision, as defined in §295.303(f) of this title, of a licensed remediation contractor; and

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(2) engaging in any mold-related activity requiring licensing as a remediation contractor under this subchapter.

### **§295.315. MOLD REMEDIATION CONTRACTOR: LICENSING REQUIREMENTS.**

**(a) Licensing requirements.** Unless exempted under §295.303 of this title (relating to Exceptions and Exemptions), 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) Scope.** An individual licensed under this section may perform mold remediation and supervise registered mold remediation workers performing mold remediation. In addition, a licensed mold remediation contractor is licensed to provide mold remediation services including:

(1) preparing a mold remediation work plan providing instructions for the remediation efforts to be performed for a mold remediation project; and

(2) conducting and interpreting the results of activities recommended in a work plan developed under paragraph (1) of this subsection, including any of the activities of a registered mold remediation worker under §295.314 of this title.

**(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 meet at least one of the following education and/or experience requirements:

(1) 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 contractor in building construction;

(2) 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) 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) 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.

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

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- (1) \$500 for the license; and
- (2) a required Texas Online subscription and convenience fee.

**(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:

(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 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) 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:

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

(2) accurately interpreting field notes, drawings, and reports relating to mold assessments;

(3) advising clients about options for mold remediation;

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

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

(7) 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) 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) ensuring that all individuals provided with, fit tested for, and trained in the correct use of personal protection equipment required under §295.322(c) of this title;

(10) 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;

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

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

### §295.316. MOLD REMEDIATION COMPANY: LICENSING REQUIREMENTS.

**(a) Licensing requirements.** A person performing mold remediation work 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) Authorization and conditions.** A licensed mold remediation company is specifically authorized to employ mold remediation contractors and mold remediation workers who are currently licensed or registered under this subchapter to assist in the company's mold remediation activity. As a condition of licensure, a mold remediation company must:

(1) employ at least one licensed mold remediation contractor and refrain from mold remediation activity during any period without the active employment of at least one individual licensed mold remediation contractor designated as the responsible person for the company;

(2) notify the department in writing of any additions or deletions of responsible persons within 10 days of such occurrences;

(3) maintain commercial general liability insurance, as described under §295.309 of this title (relating to Licensing: Insurance Requirements);

(4) notify the department in writing of any change related to a person who has an ownership interest of 10% or more (including additions to or deletions from any list of such persons previously supplied to the department and any changes in the names, addresses, or occupations of any persons on such a list) within 10 days of the change; and

(5) refrain from engaging in activity prohibited under §295.307(a) of this title (relating to Conflict of Interest and Disclosure Requirement).

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

(1) \$1,000 for the license; and

(2) a required Texas Online subscription and convenience fee.

**(d) 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:

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

(2) the name, address, and occupation of each person that has an ownership interest of 10% or more in the company; and

(3) the name and license number of each licensed mold remediation contractor designated by the applicant as a responsible person.

**(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) complying with recordkeeping requirements, at both central office and work site locations, as described in §295.326 of this title (relating to Recordkeeping);

(2) submitting the required notification to the department, as required under §295.325 of this title (relating to Notifications);

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

(4) ensuring that all employees who will conduct mold remediation activities are provided with, fit tested for, and trained in the correct use of personal protection equipment required under §295.322 of this title (relating to Minimum Work Practices and Procedures for Mold Remediation);

(5) 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;

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

(7) 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;

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

(9) ensuring that a previously unregistered employee who is provided training as specified in paragraph (7) of this paragraph:

(A) 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

(B) 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.

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### §295.317. MOLD ANALYSIS LABORATORY: LICENSING REQUIREMENTS.

**(a) Licensing requirement.** A person must be licensed in compliance with the provisions of this section to engage in activities listed under subsection (b) of this section on or after January 1, 2005. Branch offices that perform mold analysis must fulfill the same equipment and operational standards as the main office that has been licensed and must be accredited in accordance with subsection (c) of this section for the types of analysis they will be performing.

**(b) Scope.** A person licensed under this section is authorized to analyze samples collected during mold-related activities to:

- (1) determine the presence, identity, or amount of mold present;
- (2) provide any other information regarding the sample that the submitter requests; or
- (3) obtain any other information that the laboratory deems useful.

**(c) Qualifications.** Applicants must submit documentation showing that:

(1) either:

(A) the laboratory is accredited by the American Industrial Hygiene Association under the Environmental Microbiology Laboratory Accreditation Program (EMLAP);

(B) the laboratory is accredited or certified by a program deemed equivalent by the department for the preparation and analysis of mold;

(C) all individuals who will analyze mold samples are accredited by the Pan-American Aerobiology Certification Board or a program deemed equivalent by the department, if the laboratory will analyze only non-culturable samples; or

(D) all individuals who will analyze the mold samples:

(i) have at least a bachelor's degree in microbiology or biology;

(ii) have successfully completed training in mold analysis offered by the McCrone Research Institute or by a program deemed equivalent by the department, including receiving a training certificate; and

(iii) have at least three years of experience as a mold microscopist; and

(2) mold analysis activity at the laboratory is overseen by a full-time mycologist or microbiologist with either:

(A) an advanced academic degree; or

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(B) at least two years of experience in mold analysis.

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

- (1) \$1,000 for the license; and
- (2) a required Texas Online subscription and convenience fee.

**(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) the name, address, and occupation of each person that has an ownership interest of 10% or more in the laboratory;
- (2) evidence that the laboratory meets one of the qualification requirements under subsection (c)(1) of this section;
- (3) proof of compliance with the insurance requirements specified in §295.309 of this title (relating to Licensing: Insurance Requirements); and
- (4) the name of each individual designated by the applicant as a responsible person.

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

- (1) following recordkeeping requirements as described in §295.326(d) of this title (relating to Recordkeeping);
- (2) providing to a client, as applicable, details of analysis methods used, amounts (percentages) analyzed, raw counts for each genus of mold that is identified, magnification used for counting and identifying mold, and culture media and conditions used;
- (3) ensuring that all employees who will conduct mold analysis are properly trained in analysis techniques;
- (4) maintaining accreditation required under subsection (c) of this section. A licensed mold assessment laboratory that loses the required accreditation must:
  - (A) provide to the department written notification of a change in accreditation status within 10 working days of the change; and
  - (B) cease providing services related to the licensure until the accreditation is reinstated;
- (5) notifying the department in writing of any additions or deletions of responsible persons within 10 days of such occurrences; and

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(6) maintaining commercial general liability insurance, as described in §295.309 of this title.

### §295.318. MOLD TRAINING PROVIDER: ACCREDITATION.

(a) **Accreditation requirement.** A person must be accredited as a mold training provider to offer mold training courses that are prerequisites for licensing.

(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 courses.

(2) Accredited training providers must offer approved courses as described below.

(A) Each initial and refresher course shall address only one licensee and shall not be combined with other areas of licensure. Initial training courses shall not be combined with refresher courses. This prohibition against combined training applies to hands-on training sessions as well as other aspects of the course.

(B) Each course shall be conducted in one language throughout and not combined with the same course taught in another language. A training provider may offer a course in a language other than English if all instructors and guest speakers are fluent in that language and all books, training materials, and course tests are in that language.

(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 and Sanitation Licensing Group 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) Training courses must be conducted during scheduled hours as notified in accordance with paragraph (3) of this subsection. Training providers shall not conduct any approved course for more than eight training hours (including hands-on portions) in a calendar day.

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(5) A training provider must require instructors and guest speakers to present in person at least 50% of the classroom instruction and all of the hands-on instruction. The training provider may allow an instructor or guest speaker to use training films and videotapes, but audiovisual materials shall not be used as substitutes for the required in-person presentations or the hands-on instruction.

(6) Courses requiring hands-on practical training must be presented in an environment that permits each student to have actual experience performing tasks associated with the mold-related activity.

(7) The maximum number of students in a lecture session shall be 40. Hands-on training sessions shall maintain a student-to-instructor ratio of not more than 15 to one and must be conducted so that the instructor is able to assist and evaluate each student individually. Field trips shall maintain a student-to-instructor ratio of not more than 40 to one.

(8) Approved training courses shall be conducted in facilities acceptable as classrooms and conducive to learning. The facilities must have restrooms available for the students.

(9) Course instructors shall maintain a master attendance record for each course and take attendance at the beginning of each four-hour instruction segment. A student who is absent from more than 10% of the course instruction, including hands-on sessions and field trips, is ineligible to complete the course.

(10) An accredited training provider must verify and keep a written record of any student achieving a minimum score of 70% 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) Each training provider shall send at least one course instructor to any meeting held by the department for the purpose of ensuring quality training. The department shall hold no more than two such meetings per year.

(12) An individual instructor shall not train himself/herself to qualify for a license or a registration.

**(c) Qualification.** To qualify for an accreditation, each applicant:

(1) must have a written policy concerning refunds and cancellations in all languages in which training is offered. The refund and cancellation policy must be made available to students prior to payment of fees and shall include the cancellation procedures;

(2) shall employ a mold training manager who:

(A) meets at least one of the following requirements:

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(i) at least two years of experience, education, or training in teaching workers or adults;

(ii) a bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, or business administration or program management; or

(iii) at least two years of experience in managing an occupational health and safety training program specializing in environmental hazards; and

(B) has demonstrated experience, education, or training in mold assessment or remediation, lead or asbestos abatement, occupational safety and health, or industrial hygiene;

(3) shall provide for each course a qualified principal instructor who meets the requirements under §295.319 of this title; and

(4) must develop and implement a plan to maintain and improve the quality of the training program. This plan shall contain at least the following elements:

(A) procedures for periodic revision of training materials and the course test to reflect innovations in the field; and

(B) procedures for the training manager's annual review of instructor competency.

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

(1) \$1,000 for the accreditation, and

(2) a required Texas Online subscription and convenience fee.

**(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:

(1) for an initial accreditation, at least one complete application for approval of a training course and at least one complete application for approval of an instructor, as described under §295.319 of this title;

(2) for a renewal accreditation, a list of all of the training provider's courses and instructors currently approved by the department; and

(3) a description of the training provider's organization, including the address of its central office, the names and business addresses of its principals, a statement of any affiliation with another mold-related company doing business in Texas, and a listing of the courses to be offered. The organization shall designate a staff member as the mold training manager who meets the qualifications of subsection (c)(2) of this section.

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**(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) confirming, before enrolling a student in a refresher training course, that the student has successfully completed a previous training course in the same area of licensure within 24 months;

(2) maintaining the hands-on skills assessment to ensure that it accurately evaluates student performance of the work practices and procedures associated with the course topics contained in §295.320 of this title (relating to Training: Required Mold Training Courses);

(3) maintaining the validity and integrity of the course test to ensure that it accurately evaluates the student's knowledge and retention of the course topics;

(4) furnishing appropriate equipment in good working order and in sufficient quantities for each training session in which equipment is required;

(5) presenting to students all course information and material approved by the department;

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

(A) a course-completion certificate as described in §295.319(c)(8) of this title;

(B) a wallet-size photo-identification card, indicating the course completed, the effective date, and a number identifier for the student;

(C) a current one-inch square passport-quality color photograph 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) a copy of the application and schedule for the state licensing examination;

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

(A) the names and number identifiers of each student who attended the course, on a form provided by the department;

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

(C) a color group photograph 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;

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(8) documenting that each person who receives a certificate has successfully completed an initial course in accordance with §295.320 of this title and has achieved a passing score on the written test. The training provider must maintain a file for each course that includes the training course name, dates and area of licensure, the names of all instructors and guest speakers who taught the course, a roster of all students in the course, a copy of the course test and each student's name and graded answer sheet, the date and location where the test was administered, the name of the test proctor, the names of students receiving certificates, the certificate numbers, and the expiration date of the training. All information from the training course and test must correspond to the information on each person's course-completion certificate. All records under this section shall be available for inspection by the department immediately upon conclusion of the course and the test; and

(9) complying with all requirements under §295.320(d) of this title if the company provides training to individuals seeking registration as mold remediation workers and maintaining copies of the required training documents at a central location at its Texas office.

**(g) Inspections and audits.** Training providers shall permit department representatives to attend, evaluate, and monitor any training course, without charge or advance notice, to ensure compliance with this subchapter. The following criteria are grounds for suspending or withdrawing training provider accreditations or instructor approvals under §295.330 of this title (relating to Compliance: Reprimand, Suspension, Revocation, Probation) or for assessing administrative penalties under §295.331 of this title (relating to Compliance: Administrative Penalty):

- (1) failure to adhere to the training standards and requirements of this subchapter;
- (2) misrepresentation of the extent of approval of a training course or instructor;
- (3) falsification of records or submitting false information to the department;
- (4) failure to submit required information in a timely manner; or

(5) failure to comply with these regulations in a manner that demonstrates a lack of ability, capacity or fitness to perform training duties and responsibilities.

### **§295.319. TRAINING: APPROVAL OF TRAINING COURSES AND INSTRUCTORS.**

**(a) General provisions.** The department must approve all training courses and instructors in advance of the course being offered except as provided under §295.318(b)(1) of this title (relating to Mold Training Provider: Accreditation). Applications for approval of courses or instructors submitted with an application for initial accreditation under §295.318 of this title will be reviewed at the same time for no additional approval fee. Each application for course or instructor approval must be made on a separate application form.

**(b) Fees.** The application fee for approval of each initial or refresher training course is \$100 per mold training course, except as provided in subsection (a) of this section. There is no separate application fee for approval of an instructor.

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**(c) Application for course approval.** An application must be submitted to the department in writing. Within 10 working days after receiving an application, the department shall acknowledge receipt of the application. 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. The department will approve or deny the application within 60 days after receipt of the complete application. A complete application for training course approval shall include:

- (1) the training program provider's name, business address and telephone number;
- (2) the area of licensure and type of course (initial or refresher) for which approval is being sought, including the course length in training hours;
- (3) a detailed outline of each course curriculum including the specific topics taught, the amount of time allotted to each topic, and the amount and type of hands-on training for each topic;
- (4) a description of the facilities and equipment available for lecture and hands-on training;
- (5) a copy of the course test blueprint (written documentation of the proportion of test questions devoted to each major topic in the course);
- (6) a copy of all course materials (student manuals, instructor notebooks, handouts, and other course-related materials) in all languages taught;
- (7) the names and qualifications of all course instructors. Instructors must meet the requirements under subsection (e) of this section; and
- (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 name, address, and telephone number;
  - (B) the student's name;
  - (C) a statement that the student successfully completed the course and the name and dates of the training course completed;
  - (D) an expiration date two years after the date of course completion;
  - (E) the signature of the course instructor; and
  - (F) the signature of the course director or the principal officer, owner, or chief executive officer of the training provider.

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**(d) Changes to training courses.** An accredited training provider must receive department approval for changes to any of the items in subsections (c)(1)-(8) of this section. Accredited training providers must submit requests in writing and shall not offer training courses incorporating any changes until the department has granted approval.

**(e) Application for instructor approval.** Only state-approved instructors are permitted to provide instruction in courses required under this subchapter, except that guest speakers are permitted to provide limited instruction as provided under subsection (f) of this section. A training provider shall submit for approval a resume or other documentation to show the qualifications of each instructor conducting mold training courses. The department must approve all instructors before they are permitted to provide instruction. The training provider will notify the department of additions and deletions to its instructor roster within 15 working days of actual occurrence. Department approval of an instructor or a guest speaker for an area of licensure applies to that area of licensure only and does not convey approval for any other area of licensure

(1) Instructor qualifications. Instructors shall be qualified in at least one of the categories in subparagraphs (A)-(D) of this paragraph. Instructor qualifications must be fully documented and verifiable by the department. The categories include:

(A) at least two years of actual hands-on experience in mold-related activities for the subject that the instructor will teach, and a high school diploma and completion of at least one teacher education course in vocational or industrial teaching;

(B) graduation from an accredited college or university with a bachelor's degree or advanced degree in natural or physical sciences or a related field, with one year of hands-on experience in mold-related activities;

(C) at least three years teaching experience and completion of one or more teacher education courses in vocational or industrial teaching from an accredited two or four year college, with one year of hands-on experience in mold-related activities; or

(D) a vocational teacher with certification from the Texas Education Agency with one year of hands-on experience in mold-related activities.

(2) Instructor training. Each instructor shall meet the training requirements under §295.305(e)(1)-(2) of this title (relating to Credentials: General Conditions) for each area of licensure in which the instructor seeks department approval to teach. Instructors are not required to be separately licensed or registered.

(3) Professional references. Each instructor application shall include three professional references attesting to teaching experience and mold-related qualifications of the applicant. No more than two references will be accepted from an applicant's current company. References must be submitted on a form provided by the department and must be mailed directly to the department by the author.

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(4) Complete applications. The department shall consider only complete applications for instructor approval including sufficient, verifiable references.

**(f) Guest speakers.** Training providers may utilize guest speakers to present training who have documentable and verifiable professional expertise on the subject about which they are speaking. Training providers are not required to obtain department approval for guest speakers but must maintain proof of each guest speaker's qualifications as described under §295.326 of this title (relating to Recordkeeping).

**(g) Suspension and revocation of approval.** The following criteria are grounds for suspending or withdrawing approval from a training course or instructor under §295.330 of this title (relating to Compliance: Reprimand, Suspension, Revocation, Probation):

(1) failure of an instructor or guest speaker to adhere to the standards and requirements of this subchapter;

(2) failure of a training course, instructor, or guest speaker to provide training that meets the requirements of the department or this subchapter;

(3) falsification or misrepresentation by an instructor of his/her qualifications;

(4) submittal by an accredited training provider to the department of false information for training course or instructor approval;

(5) misrepresentation by an accredited training provider of the extent of a department-approved training course or instructor; and

(6) violation by an approved training course instructor or a guest speaker of other mold-related activity regulations in a manner that indicates a lack of ability, capacity or fitness to perform training duties and responsibilities.

### **§295.320. TRAINING: REQUIRED MOLD TRAINING COURSES.**

**(a) General provisions.** Individual applicants for licensing or renewal must submit evidence acceptable to the department of fulfillment of specific training requirements.

**(b) Assessment technician training.** The assessment technician course shall consist of at least 24 training hours that includes lectures, demonstrations, audio-visually and hands-on training, course review, and a written test of 50 multiple-choice questions. The course requirements in paragraphs (3), (5)-(8), and (10) of this subsection require hands-on training as an integral part of the course. The assessment technician course shall include:

(1) sources of, conditions necessary for, and prevention of indoor mold growth;

(2) potential health effects, in accordance with a training protocol developed in consultation with state professional associations, including at least one representing physicians;

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(3) workplace hazards and safety, including personal protective equipment, and respirators;

(4) technical and legal considerations for mold assessment, including applicable regulatory requirements, the role of the mold assessment technician, and the roles of other professionals (including an assessment consultant);

(5) performance of visual inspections where mold might be present and determining sources of moisture problems, including exterior spaces (including crawlspaces and attics), interior components (including windows, plumbing, walls, and ceilings) and heating, ventilation, and air-conditioning (HVAC) systems (including return air and supply ducts);

(6) utilization of physical measurement equipment and tools, including moisture meters, humidity meters, particle counters, data-logging equipment, and visual and robotic inspection equipment;

(7) biological sampling strategies and methodologies, including sampling locations and techniques, and minimizing cross-contamination;

(8) sampling methodologies, including bulk, surface (including tape, swab, and vacuum sampling), and air sampling (including the differences between culturable and particulate sampling, sampling times, calibrating pumps, selecting media for culturable samples, and sampling for fungal volatile organic compounds);

(9) state-of-the-art work practices and new technologies;

(10) proper documentation for reports, including field notes, measurement data, photographs, structural diagrams, and chain-of-custody forms;

(11) an overview of mold remediation projects and requirements, including containment and air filtration; and

(12) clearance testing and procedures, including review of mold remediation protocols, work plans, visual inspections, and sampling strategies.

**(c) Assessment consultant training.** The assessment consultant course shall consist of at least 40 training hours that includes lectures, demonstrations, audio-visually and hands-on training, course review, and a written test of 100 multiple-choice questions. The assessment consultant course shall include:

(1) all topics listed under subsection (b) of this section, including appropriate hands-on activities;

(2) requirements concerning workplace safety, including components of and development of respiratory protection plans and programs, workplace safety plans, and medical surveillance programs;

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(3) technical and legal considerations for mold assessment, including applicable regulatory requirements, the role of the assessment consultant, the roles of other professionals, recordkeeping and notification requirements, insurance, and legal liabilities;

(4) an overview of building construction, building sciences, moisture control, and water intrusion events;

(5) prevention of indoor air quality problems, including avoiding design and construction defects and improving maintenance and housekeeping;

(6) basics of HVAC systems and their relationship to indoor air quality (including psychrometrics, filtration, ventilation and humidity control), HVAC inspection and assessment, and remediation of HVAC systems;

(7) survey protocols for effective assessment, covering the areas described under subsection (b)(5)-(8) of this section;

(8) interpretation of data and sampling results;

(9) interviewing building occupants, minimum requirements for questionnaires, and interpreting results;

(10) writing mold management plans and mold remediation protocols, including format and contents (including structural components, HVAC systems, and building contents), defining affected areas (including floor plans), identifying and repairing moisture sources and their causes, developing a scope of work analysis, specifying containment and air filtration strategies, determining post-remediation assessment criteria, and clearance criteria;

(11) post-remediation clearance testing and procedures, including review of mold remediation plans, visual inspections, sampling strategies, and quality assurance; and

(12) case studies.

**(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 mold remediation.

(1) The training must be provided by either:

(A) the licensed mold remediation contractor or company employing the individual receiving the training; or

(B) a mold training provider accredited by the department.

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(2) The principal instructor for the training must be either:

(A) a licensed mold remediation contractor; or

(B) an individual who is approved by the department under §295.319 of this title to teach mold-related courses.

(3) The training shall adequately address the following areas and shall include hands-on training in the areas described in subparagraphs (C) and (E)-(F) of this paragraph:

(A) sources of indoor mold and conditions necessary for indoor mold growth;

(B) potential health effects and symptoms from mold exposure, in accordance with a training protocol developed in consultation with state professional associations, including at least one representing physicians;

(C) workplace hazards and safety, personal protective equipment including respirators, personal hygiene, personal decontamination, confined spaces, and water, structural, and electrical hazards;

(D) technical and legal considerations for mold remediation, including applicable regulatory requirements, the role of the worker, and the roles of other professionals;

(E) an overview of how mold remediation projects are conducted, including containment and air filtration; and

(F) work practices for removing, cleaning, and treating mold.

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

(A) the following items, on a form provided by the department:

(i) the name, address, telephone number, and license number of the person listed under paragraph (1) of this subsection who provided the training;

(ii) the date of the training;

(iii) the printed name, address, telephone number, number identifier, and signature of each individual who attended the training; and

(iv) the printed name and signature of the principal instructor;

(B) a group color photograph, 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

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identifiable. The group color photograph must be no smaller than a standard 3 1/2-inch by 4 1/4-inch print; and

(C) a statement indicating which individuals successfully completed the training and which individuals did not.

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

(A) a training certificate. Each certificate must include:

(i) the name, address, telephone number, and license number of the person listed under paragraph (1) of this subsection who provided the training;

(ii) the date of the training;

(iii) the name, address, telephone number and number identifier of the individual;

(iv) the printed name and signature of the principal instructor; and

(v) a statement that the individual successfully completed the training;

(B) a current one-inch square passport-quality color photograph 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) a copy of the registration application.

(6) The person providing the training must maintain a file for each training session that includes the date, the certificate numbers, and the names, addresses, and telephone numbers of students receiving training certificates. All information from the training must correspond to the information on each certificate.

**(e) Remediation contractor training.** The remediation contractor course shall consist of at least 40 training hours that includes lectures, demonstrations, audio-visuals and hands-on training, course review, and a written test of 100 multiple-choice questions. The course requirements in paragraphs (3) and (7)-(8) of this subsection require hands-on training as an integral part of the training. The course shall adequately address:

(1) sources of indoor mold and conditions necessary for indoor mold growth;

(2) potential health effects, in accordance with a training protocol developed in consultation with state professional associations, including at least one representing physicians;

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(3) requirements concerning workplace hazards and safety, personal protective equipment including respirators, personal hygiene, personal decontamination, confined spaces, and water, structural, and electrical hazards;

(4) requirements concerning worker protection, including components of and development of respiratory protection plans and programs, workplace safety plans, and medical surveillance programs;

(5) technical and legal considerations for mold remediation, including applicable regulatory requirements, the role of the mold remediation contractor, the role of the mold remediation worker, the roles of other professionals, insurance, legal liabilities, and recordkeeping and notification requirements;

(6) building sciences, moisture control, and water intrusion events;

(7) an overview of how mold remediation projects are conducted and requirements thereof, including containment, and air filtration;

(8) work practices for removing, cleaning, and treating mold, including state-of-the-art work practices and new technologies;

(9) development of a mold remediation work plan from a protocol, including writing the work plan, detailing remediation techniques for the building structure, HVAC system, and contents, delineating affected areas from floor plans, developing appropriate containment designs, determining HEPA air filtration requirements, and determining dehumidification requirements;

(10) clearance testing and procedures, including a review of typical clearance criteria, visual inspection of the work area prior to clearance, and achieving clearance;

(11) contract specifications, including estimating job costs from a protocol and determining insurance and liability issues; and

(12) protecting the public and building occupants from mold exposures.

**(f) Refresher training.** The refresher courses for mold assessment technicians, mold assessment consultants, and mold remediation contractors shall be at least eight training hours in length. Refresher training for mold remediation workers shall be at least four training hours in length and shall be provided by a person specified under subsection (d)(1) of this section. Refresher training shall include a review of state regulations, state-of-the-art developments, and key aspects of the initial training course. All individual licensees and registrants shall receive refresher training every two years.

**(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.

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A student must answer correctly at least 70% 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) Scope.** These general work practices are minimum requirements and do not constitute complete or sufficient specifications for mold assessment. More detailed requirements developed by an assessment consultant for a particular mold remediation project shall take precedence over the provisions of this section.

**(b) Purpose.** The purpose of a mold assessment is to determine the sources, locations and extent of mold growth in a building, to determine the condition(s) that caused the mold growth, and to enable the assessment consultant to prepare a mold remediation protocol.

**(c) Personal protective equipment for assessors.** If an assessment consultant or company determines that personal protective equipment (PPE) should be used during a mold assessment project, the assessment consultant or company shall ensure that all employees who engage in assessment activities and who will be, or are anticipated to be, exposed to mold are provided with, fit tested for, and trained on the appropriate use and care of the specified PPE. The assessment consultant or company must document successful completion of the training before the employees perform regulated activities.

**(d) Sampling and data collection.** If samples for laboratory analysis are collected during the assessment:

- (1) sampling must be performed according to nationally accepted methods;
- (2) preservation methods shall be implemented for all samples where necessary;
- (3) proper sample documentation, including the sampling method, the sample identification code, each location and material sampled, the date collected, the name of the person who collected the samples, and the project name or number must be recorded for each sample;
- (4) proper chain of custody procedures must be used; and
- (5) samples must be analyzed by a laboratory licensed under §295.317 of this title (relating to Mold Analysis Laboratory: Licensing Requirements).

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

- (1) the rooms or areas where the work will be performed;
- (2) the estimated quantities of materials to be cleaned or removed;

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(3) the methods to be used for each type of remediation in each type of area;

(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. Using professional judgment, a consultant may specify additional or more protective PPE if he or she determines that it is warranted;

(5) the proposed types of containment, as that term is defined in §295.302(9) of this subchapter (relating to Definitions) and as described in subsection (g) of this section, to be used during the project in each type of area; and

(6) the proposed clearance procedures and criteria, as described in subsection (i) of this section, for each type of remediation in each type of area.

**(f) Building occupants.** A mold assessment consultant shall consider whether to recommend to a client that, before remediation begins, the client should inform building occupants of mold-related activities that will disturb or will have the potential to disturb areas of mold contamination.

**(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 who are licensed or registered under this subchapter occupy the building in which the remediation takes place at any time between the start-date and stop-date 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) Disinfectants, biocides and antimicrobial coatings.** An assessment consultant who indicates in a remediation protocol that a disinfectant, biocide, or antimicrobial coating will be used on a mold remediation project shall indicate a specific product or brand only if it is registered by the United States Environmental Protection Agency (EPA) for the intended use and if the use is consistent with the manufacturer's labeling instructions. A decision by an assessment consultant to use such products must take into account the potential for occupant sensitivities and possible adverse reactions to chemicals that have the potential to be off-gassed from surfaces coated with such products.

**(i) Clearance procedures and criteria.** In the remediation protocol for the project, the assessment consultant shall specify:

(1) at least one nationally recognized analytical method for use within each remediated area in order to determine whether the mold contamination identified for the project has been remediated as outlined in the remediation protocol;

(2) the criteria to be used for evaluating analytical results to determine whether the remediation project passes clearance;

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(3) that post-remediation assessment shall be conducted while walk-in containment is in place, if walk-in containment is specified for the project; and

(4) the procedures to be used in determining whether the underlying cause of the mold identified for the project has been remediated so that it is reasonably certain that the mold will not return from that same cause.

### **§295.322. MINIMUM WORK PRACTICES AND PROCEDURES FOR MOLD REMEDIATION.**

**(a) Scope.** These general work practices are minimum requirements and do not constitute complete or sufficient specifications for a mold remediation project. More detailed requirements developed by an assessment consultant for a particular project shall take precedence over the provisions of this section.

**(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 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 begins.

**(c) Personal protective equipment (PPE) requirements.** If an assessment consultant specifies in the mold remediation protocol that PPE is required for the project, the remediation contractor or company shall provide the specified PPE to all employees who engage in remediation activities and who will, or are anticipated to, disturb or remove mold contamination, when the mold affects a total surface area for the project of 25 contiguous feet or more. The recommended minimum PPE is an N-95 respirator. Each employee who is provided PPE must receive training on the appropriate use and care of the provided PPE. The remediation contractor or company must document successful completion of the training before the employee performs regulated activities.

**(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 who are licensed or registered under this subchapter occupy the building in which the remediation takes place at any time between the start-date and 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. 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) Removal of containment.** No person shall remove or dismantle any walk-in containment structures or materials from a project site prior to receipt by the licensed mold remediation contractor

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or remediation company overseeing the project of a written notice from a licensed mold assessment consultant that the project has achieved clearance as described under §295.324 of this title (relating to Post-Remediation Assessment and Clearance).

**(g) Disinfectants, biocides and antimicrobial coatings.** Disinfectants, biocides and antimicrobial coatings may be used only if their use is specified in a mold remediation protocol, if they are registered by the United States Environmental Protection Agency (EPA) for the intended use and if the use is consistent with the manufacturer's labeling instructions. If a protocol specifies the use of such a product but does not specify the brand or type of product, a remediation contractor may select the brand or type of product to be used, subject to the other provisions of this subsection. A decision by an assessment consultant or remediation contractor to use such a product must take into account the potential for occupant sensitivities and possible adverse reactions to chemicals that have the potential to be off-gassed from surfaces coated with the product. A person who applies a biocide to wood to control a wood-infesting organism must be licensed by the Texas Structural Pest Control Board as provided under the Texas Occupations Code, Chapter 1951 (relating to Structural Pest Control) unless exempt under the Texas Occupations Code, Chapter 1951, Subchapter B (relating to Exemptions).

### **§295.323. MOLD REMEDIATION OF HEATING, VENTILATION AND AIR CONDITIONING (HVAC) SYSTEMS.**

**(a)** All provisions of §295.321 of this title (relating to Minimum Work Practices and Procedures for Mold Assessment) shall apply to the assessment of mold in HVAC systems.

**(b)** All provisions of §295.322 of this title (relating to Minimum Work Practices and Procedures for Mold Remediation) shall apply to the remediation of mold in HVAC systems.

**(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) Other license requirements.** Persons who perform air conditioning and refrigeration contracting (including the repair, maintenance, service, or modification of equipment or a product in an environmental air conditioning system, a commercial refrigeration system, or a process cooling or heating system) must be licensed by the Texas Department of Licensing and Registration, as provided under the Texas Occupations Code, Chapter 1302 (relating to Air Conditioning and Refrigeration Contractors). A person who performs biomedical remediation as defined under 16 TAC, §75.10(5) (relating to Definitions) must be licensed by the Texas Department of Licensing and Regulation in accordance with 16 TAC, Chapter 75 (relating to Air Conditioning and Refrigeration Contractor License Law) unless exempt under 16 TAC, §75.30 (relating to Exemptions) or 16 TAC, §75.100 (relating to Technical Requirements).

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### §295.324. POST-REMEDATION 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, the post-remediation assessment shall be conducted while the walk-in containment is in place. The post-remediation assessment shall determine whether:

(1) the work area is free from all visible mold and wood rot; and

(2) all work has been completed in compliance with the remediation protocol and remediation work plan and meets clearance criteria specified in the protocol.

**(b) Underlying cause of mold.** Post-remediation assessment shall, to the extent feasible, determine that the underlying cause of the mold has been remediated so that it is reasonably certain that the mold will not return from that remediated cause.

**(c) Analytical methods.**

(1) The assessment consultant shall perform a visual, procedural, and analytical evaluation in each remediated area in order to determine whether the mold contamination identified for the project has been remediated as outlined in the remediation protocol.

(2) The consultant shall use only the analytical methods and the criteria for evaluating analytical results that were specified in the remediation protocol, unless circumstances beyond the control of the consultant and the remediation contractor or company necessitate alternative analytical methods or criteria. The consultant shall provide to the client written documentation of the need for any deviation from the remediation protocol and the alternative analytical methods and criteria selected, and shall obtain approval from the client for their use, before proceeding with the post-remediation assessment.

(3) Where visual inspection reveals deficiencies sufficient to fail clearance, analytical methods need not be used.

**(d) Passed clearance report.** An assessment consultant who determines that remediation has been successful shall issue a written passed clearance report to the client at the conclusion of each mold remediation project. The report must include the following:

(1) a description of relevant worksite observations;

(2) the type and location of all measurements made and samples collected at the worksite;

(3) all data obtained at the worksite, including temperature, humidity, and material moisture readings;

(4) the results of analytical evaluation of the samples collected at the worksite;

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- (5) copies of all photographs the consultant took; and
- (6) a clear statement that the project has passed clearance .

**(e) Final status report.** If the mold assessment consultant determines that remediation has not been successful and ceases to be involved with the project before the project passes clearance, the consultant shall issue a written final status report to the client and to the remediation contractor or company performing the project. The status report must include the items listed in subsections (d)(1)-(5) of this section and any conclusions that the consultant has drawn.

### §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(28) of this title (relating to Definitions), 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 no less than five working days (not calendar days) prior to the anticipated start date of the mold remediation and shall be submitted by United States Postal Service, commercial delivery service, hand-delivery, electronic 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 will not be accepted for identification of the work site, building description, building owner, individuals required to be identified on the notification form, 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.

**(b) Start-date change to later date.** When mold remediation activity is rescheduled to start 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 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 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 changes must be submitted as required in subsections (b) and (c) of this section. An amendment is required for any stop-dates that change by more than one workday. 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, whichever comes first. Changes less than five days in advance shall be confirmed with the appropriate department regional

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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) Provision for emergency.** In an emergency, notification to the department shall be made as soon as practicable but not later than the following business day after the license holder identifies the emergency. Initial notification shall be made to the department's central office either immediately by telephone, followed by formal notification on the department's notification form, or immediately by facsimile on the department's notification form. The contractor or company shall retain a confirmation that the notification was received by the department. Emergencies shall be documented. An emergency exists if a delay in mold remediation services in response to a water damage occurrence would increase mold contamination.

### **(f) Notification fees.**

(1) For each initial notification of a mold remediation project, the mold remediation contractor or company shall remit to the department a fee of \$100, except that the fee shall be \$25 for a remediation project in an owner-occupied residential dwelling unit. Amendments to a notification shall not require a separate fee.

(2) The department shall send an invoice for the required fee to the contractor or company after the department has received the notification. Payment must be remitted in the manner instructed on the invoice no later than 60 working days following the date on the notification invoice. Failure to pay the required fee after an invoice has been sent is a violation, and the department may seek administrative penalties as listed in §295.331 of this title (relating to Compliance: Administrative Penalty).

### **§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. 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.

**(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) 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

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subsection for each mold remediation project performed by the contractor and the records listed in paragraph (4) of this subsection for each remediation worker training session provided by the mold remediation contractor.

(1) A licensed mold remediation contractor shall maintain the following records and documents on-site at a project for its duration:

(A) a current copy of the mold remediation work plan and all mold remediation protocols used in the preparation of the work plan; and

(B) a listing of the names and license/registration numbers of all individuals working on the remediation project.

(2) A licensed mold remediation company shall maintain the following records and documents at a central location at its Texas office for three years following the stop date of each project that the company performs. A licensed mold remediation contractor not employed by a company shall maintain the following records and documents at a central location at his or her Texas office for three years following the stop date of each project that the contractor performs:

(A) a copy of the mold remediation work plan specified under subparagraph (1)(A) of this subsection;

(B) photographs of the scene of the mold remediation taken before and after the remediation;

(C) the written contract between the mold remediation company or remediation contractor and the client, and any written contracts related to the mold remediation project between the company or contractor and any other party;

(D) all invoices issued regarding the mold remediation; and

(E) copies of all certificates of mold remediation issued by the company or contractor.

(3) A remediation contractor or company may maintain the records required under paragraphs (1) and (2) of this subsection in an electronic format rather than as paper documents. A remediation contractor or company who maintains the required records in an electronic format must provide paper copies of records to a department inspector during an inspection if requested to do so by the inspector.

(4) A licensed mold remediation contractor or remediation company who trains employees to meet the requirements under §295.320(d) of this title (relating to Training: Required Mold Training Courses) shall maintain copies of the required training documents at a central location at its Texas office.

### **(c) Mold assessment companies and consultants.**

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(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 number of each of its employees who worked on the project and a description of each employee's involvement with the project;

(B) the written contract between the mold assessment company or consultant and the client;

(C) all invoices issued regarding the mold assessment;

(D) copies of all laboratory reports and sample analyses;

(E) copies of all photographs required under §295.324 of this title (relating to Post-Remediation Assessment and Clearance);

(F) copies of all mold remediation protocols and changes prepared as a result of mold assessment activities; and

(G) copies of all passed clearance reports issued by the company or consultant.

(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) the company or consultant issues a mold assessment report, management plan, or remediation protocol to a client, if the company or consultant performs only the initial assessment for the project;

(B) the company or consultant issues the final status report to the client, if a final status report is issued; or

(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) Mold analysis laboratories.** A licensed mold analysis laboratory shall maintain copies of the results, including the sample identification number, of all analyses performed as part of a mold assessment or mold remediation for three years from the date of the sample analysis.

**(e) Training providers.** Accredited training providers shall comply with the following record-keeping requirements. The training provider shall maintain the records in a manner that allows verification of the required information by the department.

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(1) Training records. The training provider shall maintain records for at least three years from the date of the class in accordance with §295.318(f)(8) and (9) of this title (relating to Mold Training Provider: Accreditation).

(2) A training provider may maintain the records required under paragraph (1) of this subsection in an electronic format rather than as paper documents. A training provider who maintains the required records in an electronic format must provide paper copies of records to a department inspector during an inspection if requested to do so by the inspector.

### **§295.327. PHOTOGRAPHS; CERTIFICATE OF MOLD DAMAGE REMEDIATION; DUTY OF PROPERTY OWNER.**

(a) Not later than one week after completion of a mold remediation project, the licensed mold remediation contractor or company shall provide the property owner with copies of required photographs of the scene of the mold remediation taken before and after the remediation.

(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 of Mold Damage Remediation must include the following:

(1) a statement by a licensed mold assessment consultant (not the licensed mold remediator) that based on visual, procedural, and analytical evaluation, the mold contamination identified for the project has been remediated as outlined in the mold remediation protocol; and

(2) a statement on the certificate that the underlying cause of the mold has been remediated, if the licensed mold assessment consultant determines that the underlying cause of the mold has been remediated so that it is reasonably certain that the mold will not return from that same cause.

(c) Copies of the completed certificate shall be retained in the business files of the assessment consultant/company and the remediation contractor/company.

(d) If a property owner sells the property, the property owner shall provide to the buyer a copy of each Certificate of Mold Damage Remediation 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) The department may inspect or investigate the business practices of any persons involved with mold-related activity for compliance with this subchapter.

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(b) A department representative, upon presenting a department identification card, shall have the right to enter at all reasonable times any area or environment, including but not limited to any containment area, building, construction site, storage or office area, or vehicle to review records, to question any person, or to locate, identify, or assess areas of mold growth for the purpose of inspection and investigation for compliance with this subchapter.

(c) A department representative conducting 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.

(b) A person who is denied a credential for failure to meet the qualifications under this subchapter is ineligible to reapply until all qualifications are met. A suspension shall be for a period of not more than two years. A person whose application or credential has been revoked shall be ineligible to reapply for any mold-related credential for up to three years.

(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 with probationary terms, or revoke a credential of a person who:

(1) fails to comply with this subchapter;

(2) has fraudulently or deceptively obtained or attempted to obtain a credential, ID card or approval, including engaging in misconduct or dishonesty during the state licensing examination, such as cheating or having another person take or attempt to take the examination for that person;

(3) duplicates or allows another person to duplicate a credential, ID card or approval;

(4) uses a credential issued to another person or allows any other person to use a credential, ID card or approval not issued to that other person;

(5) falsifies records for mold-related activities that the department requires the person to create, submit, or maintain; or

(6) is convicted of a felony or misdemeanor arising from mold-related activity.

(d) The contested-case hearing provisions of the Administrative Procedure Act (Texas Government Code, Chapter 2001) and the formal hearing procedures of the department in Chapter 1 of this title shall apply to any enforcement action under this section. A person charged with a violation shall be notified

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of the alleged violation, the grounds upon which any disciplinary action is based, the proposed penalty, and the opportunity to request a hearing.

### **§295.331. COMPLIANCE: ADMINISTRATIVE PENALTY.**

(a) If a person violates the Act, this subchapter or an order, the department may assess an administrative penalty.

(b) The penalty shall not exceed \$5,000 per violation except as indicated. Each day a violation continues will be considered a separate violation for violations listed in subsections (d)(1)(A)-(B) and (d)(2)(A)-(B) of this section. The department may reduce or enhance penalties as warranted.

(c) In assessing administrative penalties, including reductions or enhancements, the department shall consider:

- (1) whether the violation was committed knowingly, intentionally, or fraudulently;
- (2) the seriousness of the violation;
- (3) any hazard created to the public health and safety;
- (4) the person's history of previous violations; and
- (5) any other matter that justice may require, including demonstrated good faith.

(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 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) working without a valid credential, ID card or approval or with a credential or ID card that has been expired for more than one month;

(B) engaging in a conflict of interest as described in §295.307(a)(1)-(2) of this title (relating to Conflict of Interest);

(C) engaging in misconduct or dishonesty during the state licensing examination;

(D) submitting a forged or altered training certificate;

(E) offering training required under this subchapter without valid department approval of the course, instructor(s) or guest speaker(s), except as provided under §295.320(d)(1)(A) of this subchapter (relating to Training: Required Mold Training Courses);

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(F) providing training certificates for a course required by the department to persons who have not successfully completed the course;

(G) failing to meet the insurance requirements of §295.309 of this title (relating to Licensing: Insurance Requirements);

(H) failure of an assessment consultant to specify containment in a mold remediation protocol; and

(I) failure of a remediator to use the containment specified in the mold remediation protocol for the project.

(2) Serious violation. Severity Level II violations could compromise public health 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) working with a credential or ID card that has been expired for one month or less;

(B) failing to disclose an ownership interest as required in §295.307(b) of this title;

(C) failing to submit a timely notification;

(D) failure to conduct a training course as specified under §295.320 of this title (relating to Training: Required Mold Training Courses); and

(E) failure of a credentialed person to maintain current required training.

(3) Significant violation. Severity Level III violations, while not having a direct negative impact on health 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) failure to provide the department Consumer Mold Information Sheet as required under §295.306 of this title (relating to Credentials: General Responsibilities);

(B) failure to have a department-issued identification card at a job site;

(C) submitting an incorrect or improper notification;

(D) failure of a training provider to submit information to the department regarding training course schedules or to notify the department of cancellations within the specified time periods;

(E) failure of a training provider to submit course completion information within the time period specified in §295.319(f)(7) of this title (relating to Mold Training Provider: Accreditation);

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(F) failure of a remediation company, remediation contractor, or training provider to submit worker training information within the time period specified in §295.320(d) of this title (relating to Mold Training Provider: Accreditation); and

(G) failure of a training provider to maintain the required trainee-instructor ratio in a training course.

### **§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 evidence satisfactory to the department that the circumstances giving rise to the violation have been corrected and all actual damages are paid.

(b) This section does not apply to a violation alleged under:

(1) the Texas Occupations Code, Chapter 1958, §1958.101 (relating to License Required; Rules);

(2) §295.305(a)-(b) of this title (relating to Credentials: General Conditions);

(3) the Texas Occupations Code, Chapter 1958, §1958.155 (relating to Conflict of Interest; Disclosure Required); or

(4) §295.307 of this title (relating to Conflict of Interest and Disclosure Requirement).

### **§295.333. COMPLIANCE: NOTICE; OPPORTUNITY FOR HEARING; ORDER.**

(a) The commissioner shall impose an administrative penalty under this subchapter only after a person is given written notice of the opportunity for a hearing conducted in accordance with the Administrative Procedure Act (Texas Government Code, Chapter 2001) and the department's formal hearing procedures in Chapter 1 of this title.

(b) The written notice of violation must state the facts that constitute the alleged violation, the law or rule that has been violated, the proposed penalty, and the opportunity for a hearing.

(c) If a hearing is held, the commissioner shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of any penalty that is warranted.

(d) If a person fails to request 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.

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(e) Not later than the 30th day after the date the commissioner issues an order, the commissioner shall inform the person of the amount of any penalty imposed.

(f) The commissioner is authorized to consolidate a hearing under this section with another proceeding.

### **§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, §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, for the amount of the penalty 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) At the request of the commissioner, the Texas Attorney General is authorized to bring a civil action to recover an administrative penalty imposed under §295.331 of this title (relating to Compliance: Administrative Penalty).

(b) Judicial review of a decision or order of the commissioner imposing a penalty is instituted by filing a petition with a district court in Travis County and is under the substantial evidence rule as provided by the Texas Government Code, Chapter 2001, Subchapter G (relating to Contested Cases: Judicial Review).

(c) 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) remit the appropriate amount, plus accrued interest, to a person who paid the penalty as provided under §295.334 of this title (relating to Compliance: Options Following Administrative Order); or

(2) execute a release of a bond provided under §295.334(b) of this title to the person who gave the bond.

**§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 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.

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**§295.337. COMPLIANCE: INJUNCTIVE RELIEF.** §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 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 of Mold Damage Remediation.

(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.