

Department of State Health Services
Agenda Item for State Health Services Council
April 12, 2007

Agenda Item Title: Repeal of 25 TAC, §§130.1-130.18 and 130.20, and New Rules §§140.150-140.168 Concerning the Registration of Code Enforcement Officers

Agenda Number: 5f

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The proposed repeal of §§130.1-130.18 and 130.20, and new §§140.150-140.168 are necessary to consolidate existing Professional Licensing and Certification Unit program rules in 25 TAC, Chapter 140, Health Professions Regulation. The rules also constitute the Code Enforcement Officers' Advisory Committee review required by 25 TAC, §130.3(e).

Sections 130.1-130.18 and 130.20 constitute the agency review of rules required by Government Code, §2001.039. The rule review is due to be completed in August 2007.

Summary:

Existing rule text is being transferred and updated in the new rules. No significant changes are proposed, and no new requirements are being imposed on applicants or registrants. Four additional national code enforcement certifications previously omitted from the rules are being added to the list of certifications acceptable for continuing education credit.

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

The rules were individually reviewed by stakeholders and members of the Code Enforcement Officers' Advisory Committee (Committee), and posted on the department's website for public comments. There were no comments in opposition to the rules as proposed.

Proposed Motion:

Motion to recommend HHSC approval for publication of rules contained in agenda item #6f.

Agenda Item Approved by: _____

Presented by: Debbie Peterson

Title: Unit Manager

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

Date Submitted

2/28/07

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 130. Code Enforcement Registry
Repeal §§130.1-130.18, 130.20
Chapter 140. Health Professions Regulation
New Subchapter D. Code Enforcement Officers.
New §§140.150 - 140.168

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§130.1-130.18 and 130.20 and new §§140.150-140.168, concerning the registration of code enforcement officers.

BACKGROUND AND PURPOSE

The proposed repeal and new rules are necessary to consolidate existing Professional Licensing and Certification Unit program rules in 25 Texas Administrative Code (TAC), Chapter 140, Health Professions Regulation. The rules also constitute the advisory committee review required by 25 TAC, §130.3(e), which will be located in §140.152. The new rules transfer and update existing language, and do not impose any new requirements or fees on applicants or licensees. The new rules also add four additional national code enforcement certifications previously omitted from the rules to the list of certifications acceptable for continuing education credit.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 130.1-130.18 and 130.20 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed; however, the department is proposing to repeal the existing sections and adopt the rules in 25 TAC, Chapter 140, Health Professions Regulation.

SECTION-BY-SECTION SUMMARY

The repeal of §§130.1 - 130.18 and 130.20 is necessary in order to combine the Professional Licensing and Certification Unit rules in one chapter, 25 TAC, Chapter 140, Health Professions Regulation.

New §140.150 sets forth purpose and scope of the rules. New §140.151 includes definitions for terms used within the rules. New §140.152 covers the membership and operations of the advisory committee, and establishes the next review date as September 1, 2011. New §140.153 lists the fees required for application, registration, upgrade, renewal, and issuance of a duplicate certificate. New §140.154 describes application procedures. New §140.155 lists qualification for registration as a code enforcement officer or a code enforcement officer in training, including types of acceptable experience. New §140.156 lists the educational requirements for initial registration. New §140.157 sets forth information concerning the administration, content, grading, and other procedures for examination for registration. New §140.158 describes the

procedures and criteria for approval or disapproval of an application by the department. New §140.159 sets forth the procedures and requirements for supervision for code enforcement officers in training. New §140.160 covers procedures for the issuance of a certificate of registration, including duplicates and name changes. New §140.161 sets forth information concerning registration renewal and late renewal, including renewal procedures for a registration on active military duty. New §140.162 lists the grounds for denial, suspension or revocation of a registration. New §140.163 sets out the guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain registration. New §140.164 sets out violations, procedures concerning complaints and investigations, and actions the department may take against a person when violations have occurred. New §140.165 provides timelines for the processing of initial and renewal applications, and for refunds to be issued if the timelines are exceeded without sufficient cause. New §140.166 covers exemptions from the requirement for registration. New §140.167 details standards related to advertising by a registrant. New §140.168 sets forth continuing education requirements and includes four national code enforcement certifications previously omitted from the rules.

FISCAL NOTE

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

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

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

PUBLIC BENEFIT

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

REGULATORY ANALYSIS

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

of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The proposed repeal and new rules are authorized by Occupations Code, §1952.051, which authorizes the adoption of rules regarding code enforcement officers; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed rules affect the Occupations Code, Chapter 1952; Government Code, 531; and Health and Safety Code, Chapter 1001.

Sections for Repeal.

- §130.1 Purpose and Scope
- §130.2 Definitions
- §130.3 Code Enforcement Officers' Advisory Committee
- §130.4 Fees
- §130.5 Application Procedures
- §130.6 Registration Qualification Requirements
- §130.7 Educational Requirements
- §130.8 Examinations
- §130.9 Determination of Eligibility
- §130.10 Code Enforcement Officer in Training
- §130.11 Code Enforcement Officer Registration
- §130.12 Code Enforcement Registration Renewal
- §130.13 Grounds for Suspension or Revocation
- §130.14 Registration of Persons with Criminal Backgrounds
- §130.15 Violations, Complaints, Investigations, and Disciplinary Actions
- §130.16 Processing Applications
- §130.17 Exemptions
- §130.18 Advertising
- §130.20 Continuing Education

Legend: Proposed New Rules
Regular Print = Proposed new language

§140.150. Purpose and Scope.

(a) Purpose. These sections are intended to implement a program for the registration of code enforcement officers under the authority of the Department of State Health Services.

(b) Scope. These sections cover definitions; the advisory committee; fees; application procedures; registration qualification requirements; educational requirements; examinations; determination of eligibility; registration and registration renewal; grounds for suspension or revocation; registration of persons with criminal backgrounds; violations, complaints, investigations, and disciplinary actions; processing applications; exemptions; advertising; and continuing education.

§140.151. Definitions.

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

(1) Act--Occupations Code, Chapter 1952, concerning the registration of code enforcement officers.

(2) Applicant--A person who applies for registration under the Act.

(3) Code enforcement--The inspection, improvement, and rehabilitation of environmental hazards in public and private premises by determining the presence of fire or health hazards, nuisance violations, unsafe building conditions, and violations of any fire, health, or building regulation, statute, or ordinance.

(4) Code enforcement officer--An agent of this state or a political subdivision of this state who engages in code enforcement. This term does not include an agent of an agency of the federal government.

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

(6) Executive Commissioner--The Executive Commissioner of the Health and Human Services Commission.

(7) Full-time experience--Employment, self-employment, or independent contracting in the field of code enforcement where the regularly assigned duties included code enforcement and the experience was for not less than 32 hours per week.

(8) Registrant--A person registered under the Act.

(9) Registration--The procedure by which the department accepts, processes, and approves applications for registration of a person, and as a part thereof, includes the furnishing and replacement or duplication of certificates and identification cards.

§140.152. Code Enforcement Officers' Advisory Committee.

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

(1) The name of the advisory committee shall be the Code Enforcement Officers' Advisory Committee (committee).

(2) The committee is established under the Health and Safety Code, §11.016, which allows the Executive Commissioner of the Health and Human Services Commission to appoint advisory committees as needed.

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

(c) Purpose. The purpose of the committee is to recommend rules and examinations for the approval of the Executive Commissioner of the Health and Human Services Commission in the area of rules regarding code enforcement officers.

(d) Tasks.

(1) The committee shall advise the Executive Commissioner of the Health and Human Services Commission concerning rules relating to registered code enforcement officers.

(2) The committee shall advise the Executive Commissioner of the Health and Human Services Commission concerning the registration of code enforcement officers.

(3) The committee shall carry out any other tasks given to the committee by the Executive Commissioner of the Health and Human Services Commission.

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

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

(1) three registered code enforcement officers;

(2) one structural engineer or licensed architect;

(3) two consumers, one of which must be a certified building official; and

(4) one person involved in the education and training of code enforcement officers.

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

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

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

(h) Officers. The committee shall select from the committee members the presiding officer and an assistant presiding officer to begin serving on September 1 of each odd-numbered year.

(1) Each officer shall serve until August 31 of each odd-numbered year. Each officer may hold over until a replacement is selected.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Each member shall have one vote.

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

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

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

(A) A summary of the minutes approved by the presiding officer shall be provided to the Executive Commissioner of the Health and Human Services Commission and each member of the committee within 30 days of each meeting.

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

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

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

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

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

(n) Statement by members.

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

(2) The committee and committee members may not participate in legislative activity in the name of the Executive Commissioner of the Health and Human Services Commission, the department or the committee except with approval through the department's

legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

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

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

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

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

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

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

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

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

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

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

§140.153. Fees.

(a) The schedule of fees is as follows:

(1) application fee (includes initial registration):

(A) for a registration issued for a one year term--\$50; and

(B) for a registration issued for a two year term--\$100;

(2) renewal fee:

(A) for a registration issued for a one year term--\$50; and

(B) for a registration issued for a two year term--\$100;

(3) reinstatement fee--\$50;

(4) registration fee for an upgrade (for code enforcement officers in training)--\$20;

(5) certificate or identification card replacement fee--\$20 each;

(6) examination fees:

(A) department administered--\$50; or

(B) administered by department's designee--the amount specified in the contract between the department and the designee, not to exceed \$50; and

(7) reexamination fee--\$50.

(b) All fees are nonrefundable.

(c) All fees shall be submitted in the form of certified checks for guaranteed funds; money orders; checks from state agencies, municipalities, counties; or other political subdivisions of the state made payable to the department.

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

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

§140.154. Application Procedures.

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

(b) General.

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

(2) The department must receive all required application materials at least 90 days prior to the date the applicant wishes to take the examination.

(3) The department will not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the application form.

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

(5) An application is not considered complete until the required examination has been successfully completed by the applicant.

(c) General application materials. The application contains the following items:

(1) specific information regarding personal data, social security number, birth date, place of employment, other state registrations and certifications held, and misdemeanor or felony convictions;

(2) the date of the application;

(3) the education and experience qualifications of each applicant;

(4) a statement that the applicant has read Occupations Code, Chapter 1952 and this chapter and agrees to abide by them;

(5) a statement that the applicant shall return to the department any registration certificate and identification card upon the expiration, revocation, or suspension of the registration;

(6) a statement that the applicant understands that fees submitted in the registration process are nonrefundable unless the processing time is exceeded without good cause as set out in §140.165 of this title (relating to Processing Applications);

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

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

(9) the signature of the applicant which has been dated and notarized.

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

(1) a copy of the code enforcement certificate or certificates of course completion (notarized as a true and exact copy of an unaltered original);

(2) a copy of a high school diploma, general equivalence diploma, or diploma (associate degree or bachelor degree) from an accredited college or university (notarized as a true and exact copy of an unaltered original); and

(3) proof of the successful completion of the examination.

§140.155. Registration Qualification Requirements.

(a) The purpose of this section is to set out the qualifications of applicants for examination and registration as a code enforcement officer and code enforcement officer in training.

(b) An applicant who qualifies under Occupations Code, §1952.102, must have:

(1) successfully completed the training program described in §140.156 of this title (relating to Educational Requirements);

(2) at least one year of full-time experience in the field of code enforcement meeting the following requirements:

(A) experience which may include self-employment or independent contractor status;

(B) regularly assigned duties which must have included code enforcement. The applicant need not have had the titles "code enforcement officer" or "code enforcement officer in training";

(3) passed the examination as set forth in §140.157 of this title (relating to Examinations); and

(4) filed the documents and application required by §140.154 of this title (relating to Application Procedures).

(c) An applicant who qualifies under the Occupations Code, §1952.103, must have:

(1) successfully completed the training program described in §140.156 of this title;

(2) passed the examination as set forth in §140.157 of this title;

(3) completed a supervision contract on department forms, and the contract shall include:

(A) the name and signature of each supervisor and the name and signature of the supervisee;

(B) the registration number of each supervisor;

(C) the primary location and address where code enforcement services are provided;

(D) a description of code enforcement duties to be rendered by the supervisee;

(E) a statement that each supervisor and the supervisee have read and agree to adhere to this chapter; and

(F) the date the supervisor and supervisee signed the department's supervisor contract; and

(4) filed the documents and application required by §140.154 of this title.

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

§140.156. Educational Requirements.

(a) Purpose. This section sets out the educational requirements for examination and registration as a code enforcement officer or code enforcement officer in training.

(b) Training program required. An applicant must complete a training program in code enforcement from an educational institution accredited or licensed by the Central Education Agency or Texas Higher Education Coordinating Board.

(c) Basic training program.

(1) The program shall include, but shall not be limited to, training in the following subjects:

(A) zoning and zoning ordinance enforcements;

(B) sign regulations;

- (C) home occupations;
- (D) housing codes and ordinances;
- (E) building abatement;
- (F) nuisance violations;
- (G) abandoned vehicles;
- (H) junk vehicles;
- (I) health ordinances; and
- (J) basic processes of law related to code enforcement.

(2) The program shall consist of 36 classroom or laboratory hours. A classroom or laboratory hour shall constitute 50 clock minutes of actual classroom or laboratory time.

§140.157. Examinations.

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

(b) Examination. The examination shall consist of a written section.

(c) Application for examination.

(1) An applicant must file an application in accordance with §140.154 of this title (relating to Application Procedures).

(2) An applicant meeting the requirements of §140.155 of this title (relating to Registration Qualification Requirements) and §140.156 of this title (relating to Educational Requirements) shall be approved to take the exam. The department will notify the applicant of his or her eligibility for examination. Applications which are received incomplete or late may cause the applicant to miss the examination deadline. The notice shall include the examination registration form.

(3) An examination registration form must be completed and returned to the department by the applicant with the required examination fee on or before the deadline date set by the department.

(4) The examination will be conducted in the English language. Exceptions will be made when English is not the native or first language of the applicant. The exam may be

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

(5) An applicant with a disability must inform the department of special accommodations requested for examination. The documentation of disability shall be completed and signed by a professional familiar with the applicant's disability and, if possible, state the appropriate accommodations. The professional should be a physician, psychologist, rehabilitation counselor, or educator. Reasonable accommodations will be made for disabled applicants.

(d) Date and location. Examinations will be held on dates and in locations to be announced by the department.

(e) Grading. Examinations will be graded by the department.

(f) Notice. The department shall notify each examinee of the results of the examination within 30 days of the date of the examination.

(g) Failures.

(1) A person who fails the examination may retest twice after paying another examination fee. All retests must be completed no later than two years after the initial date of examination eligibility or the person's application will be voided.

(2) An applicant who fails the examination three times shall have his or her application denied unless the applicant furnishes the department proof that he or she has retaken the training course described in §140.156 of this title.

(3) An applicant who completes course work as described in paragraph (2) of this subsection must file a new application for registration with the application fee.

(h) Failure to apply. Any applicant who fails to apply for and take the examination at least once within a period of one year after an examination approval notice is mailed to him or her by the department may have such approval voided by the department.

(i) Refunds. No refunds will be made to examination candidates who fail to appear for an examination.

(j) Examination review. Each applicant who fails the examination may request, in writing, within 21 days from the date of the notification of failure, a written breakdown of the examination scores for each section of the examination.

§140.158. Determination of Eligibility.

(a) The department shall receive and approve or disapprove all applications for registration as a code enforcement officer and code enforcement officer in training.

(b) Notices of application approval, disapproval, or deficiency shall be in accordance with §140.165 of this title (relating to Processing Applications).

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

(1) not met the requirements in §140.155 of this title (relating to Registration Qualification Requirements);

(2) failed to pass the examination prescribed by the department as set out in §140.156 of this title (relating to Examination);

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

(4) violated any provisions of Occupations Code, Chapter 1952 or this chapter;

(5) been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a registered code enforcement officer or code enforcement officer in training as set out in §140.163 of this title (relating to Registration of Persons with Criminal Backgrounds); or

(6) certification or registration to engage in code enforcement or a related profession that revoked by another licensing entity in this state or another state, commonwealth, or territory of the United States for any of the following reasons:

(A) unprofessional conduct;

(B) fraud, deceit, or negligence; or

(C) misconduct in the practice of code enforcement or a related profession.

(d) If after review, the department determines that the application should not be approved, the department shall give the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing. The notice shall be in accordance with §140.164 of this title (relating to Violations, Complaints, Investigations and Disciplinary Actions).

§140.159. Code Enforcement Officer in Training.

(a) Supervision. The purpose of this section is to set out the nature and the scope of the supervision provided for code enforcement officers in training.

(1) Supervision contract. A code enforcement officer in training must have a contract on department forms on file with the department.

(2) Termination. The supervising code enforcement officer must submit a written notification of termination of supervision to the department and the supervisee within 14 days of when supervision has ceased. The department notification of termination of supervision shall include:

(A) the name, registration number, and signature of the supervisor and the name and registration number of the supervisee;

(B) a statement that supervision has terminated;

(C) the reason for termination;

(D) the date of termination of supervision; and

(E) a statement indicating whether the supervisor and the supervisee have complied with the requirements of this chapter.

(3) Changes. Any change in the department supervision contract including adding or deleting supervisors shall require submission of a new supervision contract.

(4) Requirements of supervision.

(A) The supervisor must have adequate training, knowledge, and skill to consult competently concerning any code enforcement services which the supervisee undertakes.

(B) The supervisor must be a registered code enforcement officer.

(C) The supervisor may not supervise more than three supervisees.

(D) The supervisee must clearly state the supervised status to his or her employer and must provide the name, address, and telephone number of the supervisor.

(E) The supervisor may not be employed by the supervisee, may not lease or rent space from the supervisee, and must avoid any dual relationship with the supervisee which could impair the supervisor's professional judgment.

(F) The supervisor need not be the same as the officer in training's work supervisor.

(G) The supervisor must be available for discussion of any problems encountered by the supervisee and have quarterly reports available at reasonable times.

(H) The supervisor will provide an alternate registered code enforcement officer to provide supervision for the supervisee in circumstances when the supervisor is not available for more than four continuous weeks.

(5) Payment. A supervisee may not pay for supervision.

(b) Required supervisor. A registered code enforcement officer in training must have a supervising registered code enforcement officer during the times the officer in training is engaged in code enforcement. Time shall not be counted toward the one year of full-time experience required for registration as a code enforcement officer unless the registered code enforcement officer had a qualified supervisor.

(c) Upgrading a code enforcement officer in training. The purpose of this subsection is to set out the procedure to upgrade a registration from a code enforcement officer in training to a code enforcement officer.

(1) The code enforcement officer in training shall submit to the department proof of the required experience as set out in §140.155(b)(2) of this title (relating to Registration Qualification Requirements) with a written request to upgrade the registration.

(2) After review of all application materials, the department shall notify the code enforcement officer in training of eligibility for registration as a code enforcement officer.

(3) The code enforcement officer in training shall surrender to the department the registration certificate and registration identification card and submit the registration fee and registration form for upgrade of a registration for a code enforcement officer in training to a code enforcement officer.

(4) If the code enforcement officer in training is not eligible for upgrade, the department shall notify the code enforcement officer in training in writing of the reasons for deficiency and the additional experience or documentation needed to meet the minimum requirements for registration as a code enforcement officer.

(d) Time limits. A code enforcement officer in training registration is valid for one year from the date the registration is issued and may be renewed not more than once by the procedures set out in §140.161 of this title (relating to Code Enforcement Registration Renewal).

§140.160. Code Enforcement Officer Registration.

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

(b) Issuance of registrations.

(1) The department will send each applicant whose application has been approved and who has passed the examination a code enforcement officer certificate and a registration

identification card or a code enforcement officer in training certificate containing a registration number.

(2) A certificate of registration issued under this Act is valid for one year or for two years, as determined by the department, and may be renewed as provided in §140.161 of this title (relating to Code Enforcement Registration Renewal).

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

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

(d) Name change. Before another registration certificate and identification card will be issued by the board, notification of name changes must be mailed to the department and shall include a duly executed affidavit and a notarized copy of a marriage certificate, court decree evidencing such change, or a copy of a social security card reflecting the new name. The registrant shall return any previously issued registration certificate and identification card and remit the certificate and/or identification card replacement fee as set out in §140.153 of this title (relating to Fees).

§140.161. Code Enforcement Registration Renewal.

(a) Purpose. The purpose of this section is to set forth the rules governing registration renewal of code enforcement officers.

(b) General.

(1) A registrant must renew the registration annually or every two years.

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

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

(4) Notices of renewal approval, disapproval, or deficiency shall be in accordance with §140.165 of this title (relating to Processing Applications).

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

(c) Registration renewal.

(1) At least 30 days prior to the expiration date of a person's registration, the department will send notice to the registrant at the address in the department's records of the expiration date of the registration, the amount of the renewal fee due, the number of continuing education hours required for renewal, and a renewal form which the registrant must complete and return to the department with the required renewal fee.

(2) The renewal form for all registrants shall require the provision of the preferred mailing address, primary employment address and telephone number, category of employment, and a statement of any misdemeanor and felony offenses for which the registrant has been convicted and a statement attesting to completion of the required continuing education hours. The registration renewal form for code enforcement officers in training shall be accompanied by a current supervision contract on department forms complying with §140.155(c)(3) of this title (relating to Registration Qualification Requirements).

(3) A registrant has renewed the registration when the registrant has mailed the renewal form and the required renewal fee to the department prior to the expiration date of the registration, unless selected for random audit of continuing education. The postmark date shall be considered as the date of mailing.

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

(d) Late renewal.

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

(2) Persons renewing late are automatically subject to audit and must submit copies of continuing education certificates.

(3) A person whose registration has expired for not more than one year may renew the registration by submitting to the department the registration renewal form, copies of continuing education certificates, the renewal fee, and the reinstatement fee. The renewal must be mailed to the department not more than one year after the expiration date of registration. The postmark date shall be considered as the date of mailing.

(4) A person whose registration has been expired for more than one year may not renew. The person may obtain a new registration by complying with the then current requirements and procedures for obtaining a registration.

(e) Expiration of registration.

(1) A person whose registration has expired may not claim to be a code enforcement officer or code enforcement officer in training or use the titles "code enforcement officer" or "code enforcement officer in training."

(2) A person who fails to renew a registration is required to surrender the registration certificate and identification card to the department after 90 days from expiration of the registration or upon demand.

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

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

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

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

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

(5) A registrant renewing under this subsection shall pay the applicable renewal fee, but not the reinstatement fee.

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

§140.162. Grounds for Suspension or Revocation.

A certificate of registration may be suspended or revoked for the following reasons:

(1) fraud or deceit in obtaining a certificate including:

(A) presenting false information to the department on any initial application or document; or

(B) presenting false information to the department on any renewal document;

(2) gross negligence in the practice of code enforcement:

(A) as determined in the final judgment of a civil lawsuit; or

(B) as defined by case law;

(3) incompetency including:

(A) a determination of mental incompetency by a court;

(B) commitment, emergency detention, or admission to a mental health facility under the Texas Mental Health Code; or

(C) any mental or physical condition which does not allow code enforcement to be performed with reasonable skill or safety; or

(4) misconduct in the practice of code enforcement including:

(A) presenting false information to the department in any investigation or disciplinary proceeding of the department;

(B) making deceptive, false, or misleading statements concerning:

(i) professional qualifications or credentials;

(ii) advertising for the registrant's services; or

(iii) the registrant's practice;

(C) failing to comply with an order issued by the department;

(D) consuming alcohol or taking controlled substances not prescribed by a licensed physician while on duty as a code enforcement officer;

(E) aiding or abetting the practice of an unregistered person when that person is required to be registered under Occupations Code, Chapter 1952;

(F) verbally, physically, or sexually abusing or attempting to abuse an individual while on duty as a code enforcement officer;

(G) falsifying reports made as a code enforcement officer;

(H) accepting or offering to accept any form of compensation for:

(i) not reporting a hazard as required; or

(ii) correcting a hazard which was found while on duty as a code enforcement officer;

(I) failing to report a crime when the report is required by law; or

(J) failing to report another code enforcement officer or code enforcement officer in training who has violated the Act or this chapter.

§140.163. Registration of Persons with Criminal Backgrounds.

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

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

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

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

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a registration as a code enforcement officer;

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

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

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

(1) the misdemeanor of violating Occupations Code, Chapter 1952;

(2) a conviction relating to deceptive business practices;

(3) a misdemeanor or felony offense involving:

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

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

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

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

(6) a conviction involving moral turpitude;

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

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

or

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

(8) other misdemeanors and felonies which indicate an inability or tendency for the person to be unable to perform as a registrant or to be unfit for registration if action by the department will promote the intent of the Act, this chapter, and Occupations Code, Chapter 53.

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

(1) The department shall give a written notice to the person that the department proposes to deny the application or suspend or revoke the registration in accordance with the provisions of §140.162 of this title (relating to Grounds for Suspension or Revocation).

(2) If the department denies, suspends, or revokes an application or registration under this section, the department shall give the person written notice:

(A) of the reasons for the decision;

(B) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County for review of the evidence presented to the department and its decision;

(C) that the person must begin the judicial review by filing a petition with the court within 30 days after the department's action is final and appealable; and

(D) of the earliest date that the person may appeal.

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

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

(1) violations and prohibited actions under Occupations Code, Chapter 1952, and this chapter;

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

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

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

(c) Filing complaints.

(1) Any person may complain to the department alleging that a code enforcement officer, code enforcement officer in training, or another person has violated the Act or this chapter.

(2) A person wishing to file a complaint against a code enforcement officer or another person shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the department office.

(3) Upon receipt of a complaint, the department shall send to the complainant an acknowledgment letter and the department's complaint form, which the complainant must complete and return to the department before further action can be taken. If the complaint is

made by visit to the department office, the form may be given to the complainant at that time; however, it must be completed and returned to the department before further action can be taken.

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

(d) Investigation of complaints.

(1) The department may investigate any complaint.

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

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

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

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

(e) Disciplinary actions.

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

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

(3) If denial, revocation, or suspension of a registration is proposed, the department shall give written notice to the applicant or registrant that the application or registration must request, in writing, a formal hearing within 10 days of receipt of the notice. The notice shall state the basis for the proposed action. Receipt of the notice is presumed to occur on the 10th day after the notice is mailed to the last address known to the department unless another date is reflected on a United States Postal Service return receipt.

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

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

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

(7) The formal hearing shall be conducted according to the hearing procedures in §140.163 of this title (relating to Registration of Persons with Criminal Backgrounds), if applicable and the formal hearing procedures of the State Office of Administrative Hearings.

(f) Denial, suspension, or revocation.

(1) The department shall suspend or revoke a certificate of registration issued under this Act if the department determines that the certificate holder engaged in fraud or deceit in obtaining a certificate or is grossly negligent, incompetent, or guilty of misconduct in the practice of code enforcement.

(2) If the department suspends a registration, the suspension shall remain in effect until the department determines that the reason for suspension no longer exists. The department shall investigate prior to making a determination.

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

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

(5) If the department revokes or does not renew a registration, a person may apply for a registration by complying with the requirements and procedures in this chapter at the time of reapplication. The department may refuse to issue a registration if the reason for revocation or nonrenewal continues to exist.

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

(g) The department may assess administrative penalties for a violation of the Act or this chapter in accordance with the procedures established in Occupations Code, Chapter 1952, Subchapter F.

§140.165. Processing Applications.

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

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

(A) letter of acceptance of application for certificate of registration or code enforcement officer in training certificate-30 working days;

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

(C) issuance of registration renewal or letter of renewal deficiency-20 working days.

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

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

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

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

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

(b) Reimbursement of fees.

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

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

(c) Appeal. If a request for reimbursement under subsection (b) of this section is denied by the department, the applicant may appeal to the commissioner of the department for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give

written notice to the commissioner at the address of the department that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The commissioner shall provide written notice of the commissioner's decision to the applicant and the department. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(d) Contested cases. The time periods for contested cases related to the denial of registration or registration renewals are not included within the time periods stated in subsection (a) of this section. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the department is final and appealable. A hearing may be completed within one to four months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

§140.166. Exemptions.

(a) A person who is licensed or registered under another law of this state and who under the license or registration engages in code enforcement is not required to be registered under Occupations Code, Chapter 1952.

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

§140.167. Advertising.

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

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

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

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

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

(4) contains a testimonial;

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

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

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

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

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

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

(d) A registrant shall be subject to disciplinary action by the department if under the Crime Victims Compensation Act, Code of Criminal Procedure, Art. 56.31, the registrant is issued a public letter of reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office.

§140.168. Continuing Education.

(a) Each registered code enforcement officer and code enforcement officer in training must meet the renewal requirements set out in this section.

(b) Code enforcement officers in training who apply to upgrade prior to the department's issuance of notice regarding the expiration of their registration as required by §140.161(c)(1) of this title (relating to Code Enforcement Registration Renewal) are not required to submit continuing education hours in order to upgrade.

(c) Each registered code enforcement officer and code enforcement officer in training must obtain and show proof of not less than six continuing education hours as set forth in this section within the twelve months preceding renewal of a registration issued for one year, or not less than 12 continuing education hours as set forth in this section within the 24 months preceding renewal of a registration issued for two years, at least one hour of which must be in legal/legislative issues as provided in subsection (j)(12) of this section.

(d) Only continuing education activities conducted in accordance with this section shall be considered approved by the department and may be represented to the public as acceptable for registration renewal for registered code enforcement officers in Texas.

(e) Department approved continuing education activities for license renewal include the following:

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

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

- (1) approved by the department or its designee in accordance with this section; or
- (2) approved by another professional regulatory agency in the State of Texas as acceptable continuing education for license renewal; and
- (3) covering one or more of the curriculum areas listed in subsection (j) of this section.

(g) Continuing education activities must meet the following criteria if they are to be acceptable for continuing education credit:

- (1) the activity must cover one or more of the curriculum areas listed in subsection (j) of this section;
- (2) the activity must be conducted by an organization which is:
 - (A) an accredited college or university;
 - (B) a governmental agency, including local, state or federal agencies;

(C) an association with a membership of 25 or more persons, or its affiliate; or

(D) a commercial education business;

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

(4) the organization must implement procedures for verifying participant's attendance;

(5) the activity must be at least 50 minutes in length of actual instruction time. Round table discussions and more than one speaker for the total of 50 minutes per activity is permissible. No credit will be given for time used for other non-relevant activities; and

(6) the activity must be conducted in compliance with all applicable federal and state laws, including the Americans with Disabilities Act (ADA) requirements for access to activities.

(h) Organizations shall send, e-mail, or fax notification of upcoming continuing education to the department at least 15 days prior to the event which includes the:

(1) date(s) of the continuing education activity;

(2) time of the continuing education activity;

(3) location of the continuing education activity;

(4) title of the activity; and

(5) name of the instructor(s).

(i) Commercial education businesses, in addition to the items listed in subsection (h) of this section, shall submit a request for approval on department forms; and shall not represent any course as approved until such approval is granted by the department in writing.

(j) The curriculum of an approved activity must include one or more of the following subjects:

(1) zoning and zoning ordinance enforcements;

(2) sign regulations;

(3) home occupations;

(4) housing codes and ordinances;

(5) building abatement;

(6) nuisance violations;

(7) abandoned vehicles;

(8) junk vehicles;

(9) health ordinances;

(10) basic processes of law related to code enforcement;

(11) professional, supervisory or management training related to the profession of code enforcement; or

(12) legislative or legal updates related to the profession of code enforcement.

(k) Documentation of continuing education activity shall be maintained by the organization for three years, including:

(1) a roster which shall include the following:

(A) name, address, phone number, code enforcement officer or code enforcement officer in training registration number, social security number (used to coordinate continuing education activity information with the department's records), and signature of the registrant; and

(B) number of continuing education hours earned by each individual;

(2) copy of notification and description of method transmitted to the department as required by subsection (h) of this section; and

(3) copies of all program materials sufficient to demonstrate compliance with this section.

(l) At the conclusion of the activity the organization shall distribute to those registered code enforcement officers and code enforcement officers in training who have successfully completed the activity a certificate of completion which shall include the name of the registrant; the name of the organization providing the training, the title of the activity; the date and location of the activity, and the continuing education hours earned. The certificate shall state "Approved in accordance with 25 Texas Administrative Code, §140.168 for code enforcement officer/code enforcement officer in training registration renewal in Texas." It shall include a breakdown of the hours earned on each topic listed under subsection (j) of this section.

(m) Each registered code enforcement officer and code enforcement officer in training shall collect and keep certificates of completion of approved courses. These certificates of completion will be used to document the attendance of a registered code enforcement officer or code enforcement officer in training at approved courses. The department will conduct random audits for compliance with this requirement.

(n) Failure to comply with the annual continuing education hour requirements for the registered code enforcement officer or code enforcement officer in training registration issued by the department will:

(1) result in suspension of a code enforcement officer or code enforcement officer in training registration until the necessary credits for continuing education are successfully completed; and

(2) require the registered code enforcement officer or code enforcement officer in training to make new application for registration as a code enforcement officer or code enforcement officer in training, if the registered code enforcement officer or code enforcement officer in training does not renew within one year after the original registration expired.

(o) The department may fail to accept any or all courses for registration renewal if an organization fails to file a timely notice of upcoming continuing education, fails to retain documentation related to the activity as required by this section, or fails to comply with any other requirements that are a basis for approval or that are a part of this subchapter.

(p) A registered code enforcement officer or code enforcement officer in training registration may file a written request for an extension of time for compliance with any deadline in this subsection. Such request for extension, not to exceed 30 days, shall be granted by the department if the registered code enforcement officer or code enforcement officer in training files appropriate documentation to show good cause for failure to comply timely with the requirements of this subsection. Good cause includes, but is not limited to, extended illness, extended medical disability, or other extraordinary hardship which is beyond the control of the person seeking the extension.

(q) Initial certification in the 12 months preceding renewal will be accepted as proof of the continuing education required by subsection (c) of this section if the certification is listed as follows.

(1) International Code Council (ICC):

(A) residential building inspector;

(B) residential electrical inspector;

(C) residential mechanical inspector;

(D) residential plumbing inspector;

- (E) commercial building inspector;
- (F) commercial electrical inspector;
- (G) commercial mechanical inspector;
- (H) commercial plumbing inspector;
- (I) fire inspector I;
- (J) fire inspector II;
- (K) residential combination inspector;
- (L) commercial combination inspector;
- (M) certified building official;
- (N) accessibility inspector;
- (O) zoning inspector;
- (P) property maintenance and housing inspector; or
- (Q) housing code official; or

(2) International Association of Plumbing and Mechanical Officials (IAPMO):

- (A) voluntary plumbing inspector; or
- (B) voluntary mechanical inspector; or

(3) National Fire Protection Association (NFPA):

- (A) certified fire protection specialist;
- (B) fire inspector I;
- (C) fire inspector II;
- (D) certified building inspector;
- (E) certified residential electrical inspector; or
- (F) certified master electrical inspector; or

(4) International Association of Electrical Inspectors (IAEI):

- (A) building 1 and 2 family dwelling;
- (B) building general;
- (C) electrical 1 and 2 family dwelling;
- (D) electrical general;
- (E) fire protection general;
- (F) fire protection plan review;
- (G) mechanical 1 and 2 family dwelling;
- (H) mechanical general;
- (I) plumbing 1 and 2 family dwelling; or
- (J) plumbing general or;

(5) National Swimming Pool Foundation (NSPF) certified pool-spa operator; or

(6) American Association of Code Enforcement (AACE):

- (A) certified property maintenance and housing inspector;
- (B) certified zoning enforcement officer;
- (C) certified code enforcement officer; or
- (D) code enforcement administrator.

~~§130.1. Purpose and Scope.~~

~~(a) Purpose. These sections are intended to implement a program for the registration of code enforcement officers under the authority of the Texas Department of Health.~~

~~(b) Scope. These sections cover definitions; the advisory committee; fees; application procedures; registration qualification requirements; educational requirements; examinations; determination of eligibility; registration and registration renewal; grounds for suspension or revocation; registration of persons with criminal backgrounds; violations, complaints, investigations, and disciplinary actions; processing applications; exemptions; advertising; and continuing education.~~

~~§130.2. Definitions.~~

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

~~—— (1) Act. Occupations Code, Chapter 1952, concerning the registration of code enforcement officers.~~

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

~~—— (3) Applicant. A person who applies for registration under the Act.~~

~~—— (4) Board. The Texas Board of Health.~~

~~—— (5) Code enforcement. The inspection, improvement, and rehabilitation of environmental hazards in public and private premises by determining the presence of fire or health hazards, nuisance violations, unsafe building conditions, and violations of any fire, health, or building regulation, statute, or ordinance.~~

~~—— (6) Code enforcement officer. An agent of this state or a political subdivision of this state who engages in code enforcement. This term does not include an agent of an agency of the federal government.~~

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

~~—— (8) Full-time experience. Employment, self-employment, or independent contracting in the field of code enforcement where the regularly assigned duties included code enforcement and the experience was for not less than 32 hours per week.~~

~~—— (9) Registrant. A person registered under the Act.~~

~~———— (10) Registration. The procedure by which the department accepts, processes, and approves applications for registration of a person, and as a part thereof, includes the furnishing and replacement or duplication of certificates and identification cards.~~

~~§130.3. Code Enforcement Officers' Advisory Committee.~~

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

~~———— (1) The name of the advisory committee shall be the Code Enforcement Officers' Advisory Committee (committee).~~

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

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

~~(c) Purpose. The purpose of the committee is to provide advice to the board in the area of rules regarding code enforcement officers.~~

~~(d) Tasks.~~

~~———— (1) The committee shall advise the board concerning rules relating to registered code enforcement officers.~~

~~———— (2) The committee shall advise the department concerning the registration of code enforcement officers.~~

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

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

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

~~———— (1) three registered code enforcement officers;~~

~~———— (2) one structural engineer or licensed architect;~~

~~———— (3) two consumers, one of which must be a certified building official; and~~

~~———— (4) one person involved in the education and training of code enforcement officers.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

~~_____ (3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the committee shall be~~

~~announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(n) Statement by members.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§130.4. Fees.

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

~~_____ (1) application fee (includes initial registration):~~
~~_____~~

~~(A) for a registration issued for a one year term \$50; and~~

~~_____ (B) for a registration issued for a two year term \$100;~~

~~_____ (2) renewal fee:~~

~~_____ (A) for a registration issued for a one year term \$50; and~~

~~_____ (B) for a registration issued for a two year term \$100;~~

~~_____ (3) reinstatement fee \$50;~~

~~_____ (4) registration fee for an upgrade (for code enforcement officers in training) \$20;~~

~~_____ (5) certificate or identification card replacement fee \$20 each;~~

~~_____ (6) examination fees:~~

~~_____ (A) department administered \$50; or~~

~~_____ (B) administered by department's designee the amount specified in the contract between the department and the designee, not to exceed \$50; and~~

~~_____ (7) reexamination fee \$50.~~

~~(b) All fees are nonrefundable.~~

~~(c) All fees shall be submitted in the form of certified checks for guaranteed funds; money orders; checks from state agencies, municipalities, counties; or other political subdivisions of the state made payable to the department.~~

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

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

~~§130.5. Application Procedures.~~

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

~~(b) Purpose. General.~~

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

~~—————(2) The department must receive all required application materials at least 90 days prior to the date the applicant wishes to take the examination.~~

~~—————(3) The department will not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the application form.~~

~~—————(4) An application not completed within 30 days after the date of the department's notice of deficiency may be voided.~~

~~—————(5) An application is not considered complete until the required examination has been successfully completed by the applicant.~~

~~(c) General application materials. The application contains the following items:~~

~~—————(1) specific information regarding personal data, social security number, birth date, place of employment, other state registrations and certifications held, and misdemeanor or felony convictions;~~

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

~~—————(3) the education and experience qualifications of each applicant;~~

~~—————(4) a statement that the applicant has read Occupations Code, Chapter 1952 and this chapter and agrees to abide by them;~~

~~—————(5) a statement that the applicant shall return to the department any registration certificate and identification card upon the expiration, revocation, or suspension of the registration;~~

~~—————(6) a statement that the applicant understands that fees submitted in the registration process are nonrefundable unless the processing time is exceeded without good cause as set out in §130.14 of this title (relating to Processing Applications);~~

~~—————(7) a statement that the applicant understands that materials submitted in the registration process become the property of the department and are not returnable;~~

~~_____ (8) a statement that the information in the application is truthful and that the applicant understands that providing false and misleading information on items which are material in determining the applicant's qualifications may result in the voiding of the application, the failure to be granted any registration, or the revocation of any registration issued; and~~

~~_____ (9) the signature of the applicant which has been dated and notarized.~~

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

~~_____ (1) a copy of the code enforcement certificate or certificates of course completion (notarized as a true and exact copy of an unaltered original);~~

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

~~_____ (3) a copy of a high school diploma, general equivalence diploma, or diploma (associate degree or bachelor degree) from an accredited college or university (notarized as a true and exact copy of an unaltered original); and~~

~~_____ (4) proof of the successful completion of the examination.~~

~~§130.6. Registration Qualification Requirements.~~

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

~~(b) An applicant who qualifies under Occupations Code, §1952.102 must have:~~

~~_____ (1) successfully completed the training program described in §130.7 of this title (relating to Educational Requirements);~~

~~_____ (2) at least one year of full-time experience in the field of code enforcement meeting the following requirements:~~

~~_____ (A) experience which may include self employment or independent contractor status;~~

~~_____ (B) regularly assigned duties which must have included code enforcement. The applicant need not have had the titles "code enforcement officer" or "code enforcement officer in training";~~

~~_____ (3) passed the examination as set forth in §130.8 of this title (relating to Examination); and~~

~~_____ (4) filed the documents and application required by §130.5 of this title (relating to Application Procedures).~~

~~(e) An applicant who qualifies under the Occupations Code, §1952.103, must have:~~

~~_____ (1) successfully completed the training program described in §130.7 of this title (relating to Educational Requirements);~~

~~_____ (2) passed the examination as set forth in §130.8 of this title (relating to Examination);~~

~~_____ (3) completed a supervision contract on department forms, and the contract shall include:~~

~~_____ (A) the name and signature of each supervisor and the name and signature of the supervisee;~~

~~_____ (B) the registration number of each supervisor;~~

~~_____ (C) the primary location and address where code enforcement services are provided;~~

~~_____ (D) a description of code enforcement duties to be rendered by the supervisee;~~

~~_____ (E) a statement that each supervisor and the supervisee have read and agree to adhere to this chapter; and~~

~~_____ (F) the date the supervisor and supervisee signed the department's supervisor contract; and~~

~~_____ (4) filed the documents and application required by §130.5 of this title (relating to Application Procedures).~~

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

~~§130.7. Educational Requirements.~~

~~(a) Purpose. This section sets out the educational requirements for examination and registration as a code enforcement officer or code enforcement officer in training.~~

~~(b) Training program required. An applicant must complete a training program in code enforcement from an educational institution accredited or licensed by the Central Education Agency or Texas Higher Education Coordinating Board.~~

~~(c) Basic training program.~~

~~_____ (1) The program shall include, but shall not be limited to, training in the following subjects:~~

~~_____ (A) zoning and zoning ordinance enforcements;~~

~~_____ (B) sign regulations;~~

~~_____ (C) home occupations;~~

~~_____ (D) housing codes and ordinances;~~

~~_____ (E) building abatement;~~

~~_____ (F) nuisance violations;~~

~~_____ (G) abandoned vehicles;~~

~~_____ (H) junk vehicles;~~

~~_____ (I) health ordinances; and~~

~~_____ (J) basic processes of law related to code enforcement.~~

~~_____ (2) The program shall consist of 36 classroom or laboratory hours. A classroom or laboratory hour shall constitute 50 clock minutes of actual classroom or laboratory time.~~

~~§130.8. Examinations.~~

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

~~(b) Examination. The examination shall consist of a written section.~~

~~(c) Application for examination.~~

~~_____ (1) An applicant must file an application in accordance with §130.5 of this title (relating to Application Procedures).~~

~~_____ (2) An applicant meeting the requirements of §130.6 of this title (relating to Registration Qualification Requirements) and §130.7 of this title (relating to Educational Requirements) shall be approved to take the exam. The department will notify the applicant of his or her eligibility for examination. Applications which are received incomplete or late may cause the applicant to miss the examination deadline. The notice shall include the examination registration form.~~

~~_____ (3) An examination registration form must be completed and returned to the department by the applicant with the required examination fee on or before the deadline date set by the department.~~

~~_____ (4) The examination will be conducted in the English language. Exceptions will be made when English is not the native or first language of the applicant. The exam may be taken in an individual's native language if the individual notifies the department at least 60 days in advance. The applicant will be responsible for any fee or consideration to be paid to an acceptable interpreter and/or translator whose services are necessary for the examination.~~

~~_____ (5) An applicant with a disability must inform the department of special accommodations requested for examination. The documentation of disability shall be completed and signed by a professional familiar with the applicant's disability and, if possible, state the appropriate accommodations. The professional should be a physician, psychologist, rehabilitation counselor, or educator. Reasonable accommodations will be made for disabled applicants.~~

~~(d) Date and location. Examinations will be held on dates and in locations to be announced by the department.~~

~~(e) Grading. Examinations will be graded by the department.~~

~~(f) Notice. The department shall notify each examinee of the results of the examination within 30 days of the date of the examination.~~

~~(g) Failures.~~

~~_____ (1) A person who fails the examination may retest twice after paying another examination fee. All retests must be completed no later than two years after the initial date of examination eligibility or the person's application will be voided.~~

~~_____ (2) An applicant who fails the examination three times shall have his or her application denied unless the applicant furnishes the department proof that he or she has retaken the training course described in §130.7 of this title.~~

~~_____ (3) An applicant who completes course work as described in paragraph (2) of this subsection must file a new application for registration with the application fee.~~

~~(h) Failure to apply. Any applicant who fails to apply for and take the examination at least once within a period of one year after an examination approval notice is mailed to him or her by the department may have such approval voided by the department.~~

~~(i) Refunds. No refunds will be made to examination candidates who fail to appear for an examination.~~

~~(j) Examination review. Each applicant who fails the examination may request, in writing, within 21 days from the date of the notification of failure, a written breakdown of the examination scores for each section of the examination.~~

~~§130.9. Determination of Eligibility.~~

~~(a) The department shall receive and approve or disapprove all applications for registration as a code enforcement officer and code enforcement officer in training.~~

~~(b) Notices of application approval, disapproval, or deficiency shall be in accordance with §130.16 of this title (relating to Processing Applications).~~

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

~~_____ (1) not met the requirements in §130.6 of this title (relating to Registration Qualification Requirements);~~

~~_____ (2) failed to pass the examination prescribed by the department as set out in §130.7 of this title (relating to Examination);~~

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

~~_____ (4) violated any provisions of Occupations Code, Chapter 1952 or this chapter;~~

~~_____ (5) been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a registered code enforcement officer or code enforcement officer in training as set out in §130.12 of this title (relating to Registration of Persons with Criminal Backgrounds); or~~

~~_____ (6) certification or registration to engage in code enforcement or a related profession that revoked by another licensing entity in this state or another state, commonwealth, or territory of the United States for any of the following reasons:~~

~~_____ (A) unprofessional conduct;~~

~~_____ (B) fraud, deceit, or negligence; or~~

~~_____ (C) misconduct in the practice of code enforcement or a related profession.~~

~~(d) If after review, the department determines that the application should not be approved, the administrator shall give the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing. The notice shall be in accordance with §130.15 of this title (relating to Violations, Complaints, and Disciplinary Actions).~~

~~§130.10. Code Enforcement Officer in Training.~~

~~(a) Supervision. The purpose of this section is to set out the nature and the scope of the supervision provided for code enforcement officers in training.~~

~~_____ (1) Supervision contract. A code enforcement officer in training must have a contract on department forms on file with the department.~~

~~_____ (2) Termination. The supervising code enforcement officer must submit a written notification of termination of supervision to the department and the supervisee within 14 days of when supervision has ceased. The department notification of termination of supervision shall include:~~

~~_____ (A) the name, registration number, and signature of the supervisor and the name and registration number of the supervisee;~~

~~_____ (B) a statement that supervision has terminated;~~

~~_____ (C) the reason for termination;~~

~~_____ (D) the date of termination of supervision; and~~

~~_____ (E) a statement indicating whether the supervisor and the supervisee have complied with the requirements of this chapter.~~

~~_____ (3) Changes. Any change in the department supervision contract including adding or deleting supervisors shall require submission of a new supervision contract.~~

~~_____ (4) Requirements of supervision.~~

~~_____ (A) The supervisor must have adequate training, knowledge, and skill to consult competently concerning any code enforcement services which the supervisee undertakes.~~

~~_____ (B) The supervisor must be a registered code enforcement officer.~~

~~_____ (C) The supervisor may not supervise more than three supervisees.~~

~~_____ (D) The supervisee must clearly state the supervised status to his or her employer and must provide the name, address, and telephone number of the supervisor.~~

~~_____ (E) The supervisor may not be employed by the supervisee, may not lease or rent space from the supervisee, and must avoid any dual relationship with the supervisee which could impair the supervisor's professional judgment.~~

~~_____ (F) The supervisor need not be the same as the officer in training's work supervisor.~~

~~_____ (G) The supervisor must be available for discussion of any problems encountered by the supervisee and have quarterly reports available at reasonable times.~~

~~_____ (H) The supervisor will provide an alternate registered code enforcement officer to provide supervision for the supervisee in circumstances when the supervisor is not available for more than four continuous weeks.~~

~~_____ (5) Payment. A supervisee may not pay for supervision.~~

~~(b) Required supervisor. A registered code enforcement officer in training must have a supervising registered code enforcement officer during the times the officer in training is engaged in code enforcement. Time shall not be counted toward the one year of full-time experience required for registration as a code enforcement officer unless the registered code enforcement officer had a qualified supervisor.~~

~~(c) Upgrading a code enforcement officer in training. The purpose of this subsection is to set out the procedure to upgrade a registration from a code enforcement officer in training to a code enforcement officer.~~

~~_____ (1) The code enforcement officer in training shall submit to the department a properly completed experience documentation form as set out in §130.5(d)(6) of this title (relating to Application Procedures) with a written request to upgrade the registration.~~

~~_____ (2) After review of all application materials, the program administrator shall notify the code enforcement officer in training of eligibility for registration as a code enforcement officer.~~

~~_____ (3) The code enforcement officer in training shall surrender to the department the registration certificate and registration identification card and submit the registration fee and registration form for upgrade of a registration for a code enforcement officer in training to a code enforcement officer.~~

~~_____ (4) If the code enforcement officer in training is not eligible for upgrade, the program administrator shall notify the code enforcement officer in training in writing of the reasons for deficiency and the additional experience or documentation needed to meet the minimum requirements for registration as a code enforcement officer.~~

~~(d) Time limits. A code enforcement officer in training registration is valid for one year from the date the registration is issued and may be renewed not more than once by the procedures set out in §130.12 of this title (relating to Code Enforcement Registration Renewal).~~

~~§130.11. Code Enforcement Officer Registration.~~

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

~~(b) Issuance of registrations.~~

~~————— (1) The department will send each applicant whose application has been approved and who has passed the examination a code enforcement officer certificate and a registration identification card or a code enforcement officer in training certificate containing a registration number.~~

~~————— (2) A certificate of registration issued under this Act is valid for one year or for two years, as determined by the department, and may be renewed as provided in §130.12 of this title (relating to Code Enforcement Registration Renewal).~~

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

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

~~(d) Name change. Before another registration certificate and identification card will be issued by the board, notification of name changes must be mailed to the department and shall include a duly executed affidavit and a notarized copy of a marriage certificate, court decree evidencing such change, or a copy of a social security card reflecting the new name. The registrant shall return any previously issued registration certificate and identification card and remit the certificate and/or identification card replacement fee as set out in §130.4 of this title (relating to Fees).~~

~~§130.12. Code Enforcement Registration Renewal.~~

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

~~(b) General.~~

~~————— (1) A registrant must renew the registration annually or every two years.~~

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

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

~~————— (4) Notices of renewal approval, disapproval, or deficiency shall be in accordance with §130.16 of this title (relating to Processing Applications).~~

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

~~(c) Registration renewal:~~

~~————— (1) At least 30 days prior to the expiration date of a person's registration, the department will send notice to the registrant at the address in the department's records of the expiration date of the registration, the amount of the renewal fee due, the number of continuing education hours required for renewal, and a renewal form which the registrant must complete and return to the department with the required renewal fee.~~

~~————— (2) The renewal form for all registrants shall require the provision of the preferred mailing address, primary employment address and telephone number, category of employment, and a statement of any misdemeanor and felony offenses for which the registrant has been convicted and a statement attesting to completion of the required continuing education hours. The registration renewal form for code enforcement officers in training shall be accompanied by a current supervision contract on department forms complying with §130.6(c)(3) of this title (relating to Registration Qualification Requirements).~~

~~————— (3) A registrant has renewed the registration when the registrant has mailed the renewal form and the required renewal fee to the department prior to the expiration date of the registration, unless selected for random audit of continuing education. The postmark date shall be considered as the date of mailing.~~

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

~~(d) Late renewal:~~

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

~~————— (2) Persons renewing late are automatically subject to audit and must submit copies of continuing education certificates.~~

~~_____ (3) A person whose registration has expired for not more than one year may renew the registration by submitting to the department the registration renewal form, copies of continuing education certificates, the renewal fee, and the reinstatement fee. The renewal must be mailed to the department not more than one year after the expiration date of registration. The postmark date shall be considered as the date of mailing.~~

~~_____ (4) A person whose registration has been expired for more than one year may not renew. The person may obtain a new registration by complying with the then current requirements and procedures for obtaining a registration.~~

~~(e) Expiration of registration.~~

~~_____ (1) A person whose registration has expired may not claim to be a code enforcement officer or code enforcement officer in training or use the titles "code enforcement officer" or "code enforcement officer in training."~~

~~_____ (2) A person who fails to renew a registration is required to surrender the registration certificate and identification card to the department after 90 days from expiration of the registration or upon demand.~~

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

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

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

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

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

~~_____ (5) A registrant renewing under this subsection shall pay the applicable renewal fee, but not the reinstatement fee.~~

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

~~§130.13. Grounds for Suspension or Revocation.~~

~~A certificate of registration may be suspended or revoked for the following reasons:~~

~~————— (1) fraud or deceit in obtaining a certificate including:~~

~~————— (A) presenting false information to the department on any initial application or document; or~~

~~————— (B) presenting false information to the department on any renewal document;~~

~~————— (2) gross negligence in the practice of code enforcement:~~

~~————— (A) as determined in the final judgment of a civil lawsuit; or~~

~~————— (B) as defined by case law;~~

~~————— (3) incompetency including:~~

~~————— (A) a determination of mental incompetency by a court;~~

~~————— (B) commitment, emergency detention, or admission to a mental health facility under the Texas Mental Health Code; or~~

~~————— (C) any mental or physical condition which does not allow code enforcement to be performed with reasonable skill or safety; or~~

~~————— (4) misconduct in the practice of code enforcement including:~~

~~————— (A) presenting false information to the department in any investigation or disciplinary proceeding of the department;~~

~~————— (B) making deceptive, false, or misleading statements concerning:~~

~~————— (i) professional qualifications or credentials;~~

~~————— (ii) advertising for the registrant's services; or~~

~~————— (iii) the registrant's practice;~~

~~————— (C) failing to comply with an order issued by the department;~~

~~————— (D) consuming alcohol or taking controlled substances not prescribed by a licensed physician while on duty as a code enforcement officer;~~

~~_____ (E) aiding or abetting the practice of an unregistered person when that person is required to be registered under Occupations Code, Chapter 1952;~~

~~_____ (F) verbally, physically, or sexually abusing or attempting to abuse an individual while on duty as a code enforcement officer;~~

~~_____ (G) falsifying reports made as a code enforcement officer;~~

~~_____ (H) accepting or offering to accept any form of compensation for:~~

~~_____ (i) not reporting a hazard as required; or~~

~~_____ (ii) correcting a hazard which was found while on duty as a code enforcement officer;~~

~~_____ (I) failing to report a crime when the report is required by law; or~~

~~_____ (J) failing to report another code enforcement officer or code enforcement officer in training who has violated the Act or this chapter.~~

~~§130.14. Registration of Persons with Criminal Backgrounds.~~

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

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

~~_____ (1) The department may suspend or revoke an existing registration, disqualifying a person from receiving a registration, or deny a person the opportunity to be examined for a registration because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities under that registration.~~

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

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

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

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

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

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

~~_____ (1) the misdemeanor of violating Occupations Code, Chapter 1952;~~

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

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

~~_____ (A) bribery;~~

~~_____ (B) forgery;~~

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

~~_____ (D) perjury;~~

~~_____ (E) burglary; or~~

~~_____ (F) arson;~~

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

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

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

~~_____ (B) dangerous drugs;~~

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

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

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

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

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

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

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

~~_____ (8) other misdemeanors and felonies which indicate an inability or tendency for
the person to be unable to perform as a registrant or to be unfit for registration if action by the
department will promote the intent of the Act, this chapter, and Occupations Code, Chapter 53.~~

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

~~_____ (1) The administrator shall give a written notice to the person that the department
proposes to deny the application or suspend or revoke the registration in accordance with the
provisions of §130.13 of this title (relating to Grounds for Suspension or Revocation).~~

~~_____ (2) If the department denies, suspends, or revokes an application or registration
under this section, the administrator shall give the person written notice:~~

~~_____ (A) of the reasons for the decision;~~

~~_____ (B) that the person, after exhausting administrative appeals, may file an
action in a district court of Travis County for review of the evidence presented to the department
and its decision;~~

~~_____ (C) that the person must begin the judicial review by filing a petition with
the court within 30 days after the department's action is final and appealable; and~~

~~_____ (D) of the earliest date that the person may appeal.~~

~~§130.15. Violations, Complaints, Investigations and Disciplinary Actions.~~

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

~~_____ (1) violations and prohibited actions under Occupations Code, Chapter 1952, and
this chapter;~~

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

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

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

~~(c) Filing complaints.~~

~~(1) Any person may complain to the department alleging that a code enforcement officer, code enforcement officer in training, or another person has violated the Act or this chapter.~~

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

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

~~(4) Anonymous complaints may be investigated by the department if the complainant provides sufficient information.~~

~~(d) Investigation of complaints.~~

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

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

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

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

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

~~(e) Disciplinary actions.~~

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

~~(2) Prior to institution of formal proceedings to revoke or suspend a registration, the department shall give written notice to the registrant of the facts or conduct alleged to~~

~~warrant revocation or suspension, and registrant shall be given an opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.~~

~~—————(3) If denial, revocation, or suspension of a registration is proposed, the department shall give written notice to the applicant or registrant that the application or registration must request, in writing, a formal hearing within 10 days of receipt of the notice. The notice shall state the basis for the proposed action. Receipt of the notice is presumed to occur on the 10th day after the notice is mailed to the last address known to the department unless another date is reflected on a United States Postal Service return receipt.~~

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

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

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

~~—————(7) The formal hearing shall be conducted according to the hearing procedures in §130.14 of this title (relating to Registration of Persons with Criminal Backgrounds), if applicable and the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health).~~

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

~~—————(1) The department shall suspend or revoke a certificate of registration issued under this Act if the department determines that the certificate holder engaged in fraud or deceit in obtaining a certificate or is grossly negligent, incompetent, or guilty of misconduct in the practice of code enforcement.~~

~~—————(2) If the department suspends a registration, the suspension shall remain in effect until the administrator or the department determines that the reason for suspension no longer exists. The administrator or the department shall investigate prior to making a determination.~~

~~—————(3) During the time of suspension, the suspended registration holder shall return his or her registration certificate and identification card to the department.~~

~~—————(4) If the suspension overlaps a registration renewal date, the suspended registration holder may comply with the renewal procedures in this chapter; however, the department may not renew the registration until the administrator determines that the reason for suspension no longer exists or the period of suspension is completed.~~

~~_____ (5) If the department revokes or does not renew a registration, a person may apply for a registration by complying with the requirements and procedures in this chapter at the time of reapplication. The department may refuse to issue a registration if the reason for revocation or nonrenewal continues to exist.~~

~~_____ (6) Upon revocation, a registration holder shall return the registration certificate and identification card to the department.~~

~~(g) The department may assess administrative penalties for a violation of the Act or this chapter in accordance with the procedures established in Occupations Code, Chapter 1952, Subchapter F.~~

~~§130.16. Processing Applications.~~

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

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

~~_____ (A) letter of acceptance of application for certificate of registration or code enforcement officer in training certificate 30 working days;~~

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

~~_____ (C) issuance of registration renewal or letter of renewal deficiency 20 working days.~~

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

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

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

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

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

~~(b) Reimbursement of fees.~~

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

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

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

~~(d) Contested cases. The time periods for contested cases related to the denial of registration or registration renewals are not included within the time periods stated in subsection (a) of this section. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the department is final and appealable. A hearing may be completed within one to four months, but may extend for a longer period of time depending on the particular circumstances of the hearing.~~

~~§130.17. Exemptions.~~

~~(a) A person who is licensed or registered under another law of this state and who under the license or registration engages in code enforcement is not required to be registered under Occupations Code, Chapter 1952.~~

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

~~§130.18. Advertising.~~

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

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

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

~~_____ (2) makes a representation likely to create an unjustified expectation about the results of a service or procedure;~~

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

~~_____ (4) contains a testimonial;~~

~~_____ (5) causes confusion or misunderstanding as to the credentials, education, or registration of a professional; or~~

~~_____ (6) advertises or represents in the use of professional name, a title, or professional identification that is expressly or commonly reserved to or used by another profession or professional.~~

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

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

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

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

~~(d) A registrant shall be subject to disciplinary action by the department if under the Crime Victims Compensation Act, Code of Criminal Procedure, Art. 56.31, the registrant is issued a public letter of reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office.~~

~~§130.20. Continuing Education.~~

~~(a) Each registered code enforcement officer and code enforcement officer in training must meet the renewal requirements set out in this section.~~

~~(b) Code enforcement officers in training who apply to upgrade prior to the department's issuance of notice regarding the expiration of their registration as required by §130.12(c)(1) of~~

~~this title (relating to Code Enforcement Registration Renewal) are not required to submit continuing education hours in order to upgrade.~~

~~(c) Each registered code enforcement officer and code enforcement officer in training must obtain and show proof of not less than six continuing education hours as set forth in this section within the twelve months preceding renewal of a registration issued for one year, or not less than 12 continuing education hours as set forth in this section within the 24 months preceding renewal of a registration issued for two years, at least one hour of which must be in legal/legislative issues as provided in subsection (j)(12) of this section.~~

~~(d) Only continuing education activities conducted in accordance with this section shall be considered approved by the department and may be represented to the public as acceptable for registration renewal for registered code enforcement officers in Texas.~~

~~(e) Department approved continuing education activities for license renewal include the following:~~

~~—————(1) conferences;~~

~~—————(2) home study training modules (including professional journals requiring successful completion of a test document);~~

~~—————(3) lectures;~~

~~—————(4) panel discussions;~~

~~—————(5) seminars;~~

~~—————(6) accredited college or university courses;~~

~~—————(7) video or film presentations with live instruction;~~

~~—————(8) field demonstrations;~~

~~—————(9) teleconferences; or~~

~~—————(10) other activities approved by the department.~~

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

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

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

~~_____ (3) covering one or more of the curriculum areas listed in subsection (j) of this section.~~

~~(g) Continuing education activities must meet the following criteria if they are to be acceptable for continuing education credit:~~

~~_____ (1) the activity must cover one or more of the curriculum areas listed in subsection (j) of this section;~~

~~_____ (2) the activity must be conducted by an organization which is:~~

~~_____ (A) an accredited college or university;~~

~~_____ (B) a governmental agency, including local, state or federal agencies;~~

~~_____ (C) an association with a membership of 25 or more persons, or its affiliate; or~~

~~_____ (D) a commercial education business;~~

~~_____ (3) the activity must have a record keeping procedure which includes a register of who took the course and the number of continuing education units earned;~~

~~_____ (4) the organization must implement procedures for verifying participant's attendance;~~

~~_____ (5) the activity must be at least 50 minutes in length of actual instruction time. Round table discussions and more than one speaker for the total of 50 minutes per activity is permissible. No credit will be given for time used for other non-relevant activities; and~~

~~_____ (6) the activity must be conducted in compliance with all applicable federal and state laws, including the Americans with Disabilities Act (ADA) requirements for access to activities.~~

~~(h) Organizations shall send, e mail, or fax notification of upcoming continuing education to the department at least 15 days prior to the event which includes the:~~

~~_____ (1) date(s) of the continuing education activity;~~

~~_____ (2) time of the continuing education activity ;~~

~~_____ (3) location of the continuing education activity;~~

~~_____ (4) title of the activity; and~~

~~_____ (5) name of the instructor(s).~~

~~(i) Commercial education businesses, in addition to the items listed in subsection (h) of this section, shall submit a request for approval on department forms; and shall not represent any course as approved until such approval is granted by the department in writing.~~

~~(j) The curriculum of an approved activity must include one or more of the following subjects:~~

~~_____ (1) zoning and zoning ordinance enforcements;~~

~~_____ (2) sign regulations;~~

~~_____ (3) home occupations;~~

~~_____ (4) housing codes and ordinances;~~

~~_____ (5) building abatement;~~

~~_____ (6) nuisance violations;~~

~~_____ (7) abandoned vehicles;~~

~~_____ (8) junk vehicles;~~

~~_____ (9) health ordinances;~~

~~_____ (10) basic processes of law related to code enforcement;~~

~~_____ (11) professional, supervisory or management training related to the profession of code enforcement; or~~

~~_____ (12) legislative or legal updates related to the profession of code enforcement.~~

~~(k) Documentation of continuing education activity shall be maintained by the organization for three years, including:~~

~~_____ (1) a roster which shall include the following:~~

~~_____ (A) name, address, phone number, code enforcement officer or code enforcement officer in training registration number, social security number (used to coordinate continuing education activity information with the department's records), and signature of the registrant; and~~

~~_____ (B) number of continuing education hours earned by each individual;~~

~~_____ (2) copy of notification and description of method transmitted to the department as required by subsection (h) of this section; and~~

~~_____ (3) copies of all program materials sufficient to demonstrate compliance with this section.~~

~~(l) At the conclusion of the activity the organization shall distribute to those registered code enforcement officers and code enforcement officers in training who have successfully completed the activity a certificate of completion which shall include the name of the registrant; the name of the organization providing the training, the title of the activity; the date and location of the activity, and the continuing education hours earned. The certificate shall state "Approved in accordance with 25 Texas Administrative Code, §130.20 for code enforcement officer/code enforcement officer in training registration renewal in Texas." It shall include a breakdown of the hours earned on each topic listed under subsection (j) of this section.~~

~~(m) Each registered code enforcement officer and code enforcement officer in training shall collect and keep certificates of completion of approved courses. These certificates of completion will be used to document the attendance of a registered code enforcement officer or code enforcement officer in training at approved courses. The department will conduct random audits for compliance with this requirement.~~

~~(n) Failure to comply with the annual continuing education hour requirements for the registered code enforcement officer or code enforcement officer in training registration issued by the department will:~~

~~_____ (1) result in suspension of a code enforcement officer or code enforcement officer in training registration until the necessary credits for continuing education are successfully completed; and~~

~~_____ (2) require the registered code enforcement officer or code enforcement officer in training to make new application for registration as a code enforcement officer or code enforcement officer in training, if the registered code enforcement officer or code enforcement officer in training does not renew within one year after the original registration expired.~~

~~(o) The department may fail to accept any or all courses for registration renewal if an organization fails to file a timely notice of upcoming continuing education, fails to retain documentation related to the activity as required by this section, or fails to comply with any other requirements that are a basis for approval or that are a part of this subchapter.~~

~~(p) A registered code enforcement officer or code enforcement officer in training registration may file a written request for an extension of time for compliance with any deadline in this subsection. Such request for extension, not to exceed 30 days, shall be granted by the department if the registered code enforcement officer or code enforcement officer in training files appropriate documentation to show good cause for failure to comply timely with the requirements of this subsection. Good cause includes, but is not limited to, extended illness, extended medical disability, or other extraordinary hardship which is beyond the control of the person seeking the extension.~~

~~(q) Initial certification in the 12 months preceding renewal will be accepted as proof of the continuing education required by subsection (c) of this section if the certification is listed as follows.~~

~~_____ (1) International Code Council (ICC):~~

~~_____ (A) residential building inspector;~~

~~_____ (B) residential electrical inspector;~~

~~_____ (C) residential mechanical inspector;~~

~~_____ (D) residential plumbing inspector;~~

~~_____ (E) commercial building inspector;~~

~~_____ (F) commercial electrical inspector;~~

~~_____ (G) commercial mechanical inspector;~~

~~_____ (H) commercial plumbing inspector;~~

~~_____ (I) fire inspector I;~~

~~_____ (J) fire inspector II;~~

~~_____ (K) residential combination inspector;~~

~~_____ (L) commercial combination inspector;~~

~~_____ (M) certified building official;~~

~~_____ (N) accessibility inspector;~~

~~_____ (O) zoning inspector;~~

~~_____ (P) property maintenance and housing inspector; or~~

~~_____ (Q) housing code official; or~~

~~_____ (2) International Association of Plumbing and Mechanical Officials (IAPMO):~~

~~_____ (A) voluntary plumbing inspector; or~~

~~_____ (B) voluntary mechanical inspector; or~~

- ~~_____ (3) National Fire Protection Association (NFPA):~~
- ~~_____ (A) certified fire protection specialist;~~
- ~~_____ (B) fire inspector I;~~
- ~~_____ (C) fire inspector II;~~
- ~~_____ (D) certified building inspector;~~
- ~~_____ (E) certified residential electrical inspector; or~~
- ~~_____ (F) certified master electrical inspector; or~~
- ~~_____ (4) International Association of Electrical Inspectors (IAEI):~~
- ~~_____ (A) building 1 & 2 family dwelling;~~
- ~~_____ (B) building general;~~
- ~~_____ (C) electrical 1 & 2 family dwelling;~~
- ~~_____ (D) electrical general;~~
- ~~_____ (E) fire protection general;~~
- ~~_____ (F) fire protection plan review;~~
- ~~_____ (G) mechanical 1 & 2 family dwelling;~~
- ~~_____ (H) mechanical general;~~
- ~~_____ (I) plumbing 1 & 2 family dwelling; or~~
- ~~_____ (J) plumbing general or;~~
- ~~_____ (5) National Swimming Pool Foundation (NSPF) certified pool-spa operator.~~