

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 267. Pesticide Applicators
Amendment §267.3

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes an amendment to §267.3, concerning Pesticide Applicators License fees.

BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85 makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, a cost recovery fee is included in this amendment.

The Pesticide Applicator License Program was evaluated to determine the level of increase in fees based on the following criteria: The date of the last fee increase for the specific program area; licensee's ability to pay in comparison to average salary of professionals; the percentage of revenue above costs for the specific program; the cost of licenses compared to other similar licenses; and the value added analysis of the license. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of the program.

SECTION-BY-SECTION SUMMARY

Amendments to §267.3 contain increases in fees assessed against pesticide applicators for application fees, category examinations, category reexaminations, initial category licenses, renewal category licenses, license and/or identification card replacements, continuing education course reviews, and late fees. Specifically, §267.3(a)(1) increases the application fee by \$5; §267.3(a)(2) increases the category examination fee by \$20; §267.3(a)(3) increases the category reexamination fee by \$20; §267.3(a)(4) increases the initial category license fee for a two-year term by \$265; §267.3(a)(5) increases the renewal category license fee for a two-year term by \$265; §267.3(a)(6) increases the late fee by \$25; §267.3(a)(7) increases the license and/or identification card replacement fee by \$25; and §267.3(a)(8) increases the continuing education course review fee by \$25 per course.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each fiscal year of the first five years the section is in effect, there will be fiscal implications to the state as a result of enforcing or administering the section as proposed. The effect on state government will be an estimated increase in revenue to the state of \$51,567 in 2006 and \$77,350 in 2007 through 2010. These additional revenues will offset a portion of the increased costs associated with the legislative increase in pay, longevity pay, and travel reimbursement; however, many of the licensees are local governmental entities, and to raise the fees to fully cover the costs of the program would be detrimental to these local governmental entities. Implementation of the proposed section will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there will be no effect on small businesses or micro-businesses required to comply with the section as proposed. This conclusion was determined by an interpretation of the rules that small businesses and micro-businesses will not be required to pay an increased fee in order to comply with the section because currently, all non-commercial pesticide applicators must be employed by political subdivisions of the state or federal government. There are no small businesses or micro-businesses licensed under this program. There will be an increase in the licensing fees for persons required to maintain a pesticide applicator license. The economic cost to persons required to comply with the fee for the license will increase from \$750 every two years to \$1,015 every two years, or a 35% increase in license fees. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is to generate funding to operate the program to continue enforcement of the safe operation of the mosquito control programs to ensure the public's safety.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendment 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 Michael J. Minoia, Environmental Health Group, Policy/Standards/Quality Assurance Unit, Environmental and Consumer Safety Section, Division of Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/834-6773, extension 2305 or by email to Michael.Minoia@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

STATUTORY AUTHORITY

The proposed amendment to §267.3 is authorized by Agriculture Code, §76.109(b), which authorizes a license fee to be set by the agency; 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 Chapter 1001, Health and Safety Code.

The proposed amendment affects the Agriculture Code, Chapter 76, the Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

LEGAL CERTIFICATION

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

LEGEND: (Proposed Amendments)

Single-Underline = Proposed new language

[Bold Print and Brackets] = Current language proposed for deletion

Regular Print = Current language

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

§267.3. Fees.

(a) Term, Expiration, and Fee Schedule. **[Prior to January 1, 2005, the term of all licenses is one year and expires on the anniversary of the effective date, unless renewed.]** Effective January 1, 2005, the term of all licenses is two years and expires on the second anniversary of the effective date. **[Some licenses will be renewed for a one-year term in 2005 in a manner to be determined by the department and two years thereafter.]** The schedule of fees is as follows:

(1) application fee - \$15 **[\$10]**;

(2) category examination fee - \$70 **[\$50]**;

(3) category reexamination fee - \$70 **[\$50]**;

(4) initial category license fee - \$1,015 for a two-year term. **[:]**

[(A) for a one year term is \$375; and]

[(B) for a two year term is \$750.]

(5) renewal category license fee - \$1,015 for a two-year term. **[:]**

[(A) for a one year term is \$375; and]

[(B) for a two year term is \$750.]

(6) late fee - \$50 **[\$25]**;

(7) license and/or identification card replacement fee - \$50 **[\$25]**; and

(8) continuing education course review fee - \$50 **[\$25]** per course.

(b) - (d) (No change.)