

**SPCS Advisory Committee 3rd Quarter Meeting
July 22,2021**

Proposed Rule Revisions Index
(if not listed below, no revision have been suggested)

Division 1

7.114
7.115

Division 2

7.121
7.122
7.124
7.132
7.133
7.134
7.135
7.136

Division 3

7.142
7.144
7.156

Division 4

7.161

Division 5

7.172
7.173
7.174
7.176
7.178

Division 7

7.201
7.202
7.203
7.204

<u>TITLE 4</u>	AGRICULTURE
<u>PART 1</u>	TEXAS DEPARTMENT OF AGRICULTURE
<u>CHAPTER 7</u>	PESTICIDES
<u>SUBCHAPTER H</u>	STRUCTURAL PEST CONTROL SERVICE
<u>DIVISION 1</u>	GENERAL PROVISIONS
RULE §7.114	Definition of Terms

In addition to the definitions set out in the Structural Pest Control Act, Chapter 1951, Texas Occupations Code, the following words, names, and terms shall have the below meanings for this subchapter, unless the context clearly indicates otherwise.

- (1) Adjacent--An area having a common wall, ceiling, or floor.
- (2) Apprentice registration--A registration by a commercial or noncommercial business entity of an individual who is training and/or performing structural pest control services for the business.
- (3) Area of common access--An area that an individual is likely to be present in or at on a regular basis, such as a building entranceway, mailboxes, laundry rooms, beverage machines, building bulletin boards, hallways, etc.
- (4) Calendar year--January 1 to December 31.
- (5) Category--A type of structural pest control that an individual licensee or business licensee is authorized to perform.
- (6) Chairman--An individual elected by members of the Structural Pest Control Advisory Committee to preside over meetings.
- (7) Committee--The Structural Pest Control Advisory Committee. An eleven-member committee appointed by the Commissioner, whose responsibility is to gather information and advise the Commissioner and the Department on the business of structural pest control.
- (8) Course provider--The person, company, or organization that compiles, organizes, writes and/or produces category specific training or continuing education courses.
- (9) Department--The Texas Department of Agriculture.
- (10) Effective Date --beginning date an employee (e.g. Apprentice) is registered to a business licensee.
- (10) Household--Residential structure occupied or intended for occupancy by a single individual, cohabitating individuals, or a family.
- (11) Inactive license--A license for which certification requirements have been maintained, but technicians and certified applicators are prohibited from legally engaging in structural pest control services, advertising, or solicitation.
- (12) Infest--To exist in, on, around or invade a structure in a manner that may limit the use or enjoyment of, or cause harm or damage to: households, railroad cars, ships,

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docks, trucks, airplanes, or other structures, or its contents, or its inhabitants, including any humans or pets; pests, unwanted plants, or diseases of trees, shrubs, or other plantings in a park or adjacent to a residence, business establishment, industrial plant, institutional building or street.

(13) Integrated Pest Management (IPM)--A pest management strategy that relies on multiple pest control tactics, including the judicious use of pesticides, informed by accurate identification and scientific knowledge of pests, reliable monitoring methods to assess pest presence, preventative measures to avoid pest infestations, and thresholds to determine when corrective control measures are needed.

(14) Obnoxious and undesirable animals or plants--Animals or weeds as defined in §1951.003 of the Occupations Code, that limit the use or enjoyment or cause harm or damage of any type to people, pets, structures, landscapes, or the environment. Animals excluded from this definition are members of the Order Primates, hoofed mammals, members of Family Ursidae, members of the Genus Felis, members of the Genus Canis, domestic livestock, ratites, gallinaceous birds and alligators.

(15) Occupations Code--Unless otherwise specified, all references shall be to the Texas Occupations Code, Chapter 1951.

(16) Other noncommercial entity--Any workplace with three (3) or more full-time employees.

(17) Physically present--Face-to-face contact at a work location where supervisor and supervisee are physically in the same space. Face-to-face does not include video or audio calls using electronic devices.

(18) Self-study course--A self-study, online or electronic course taken for the purpose of continuing education or training.

(19) SPCA--Structural Pest Control Act, Texas Occupations Code, Chapter 1951.

(20) TPCL--Texas Pest Control License.

(21) Vice-Chairman--An individual elected by members of the Structural Pest Control Advisory Committee to preside over meetings in the absence of the Chairman.

(22) WDIR--Texas Official Wood Destroying Insect Report.

(23) Work location--Anywhere structural pest control services are performed or where a meeting is being held for the purpose of supervision or training (job site/classroom).

(24) Workplace--Any non-residence structure with three or more full-time paid employees that is treated by a licensed business or a certified noncommercial applicator.

The proposed amendment to §7.114 clarifies a term used by the Department.

DRAFT 6/3/2021

**Texas Department of Agriculture
Structural Pest Control Service
Penalty Matrix**

Tables S1, S2, and S3 represent the Hazard or Potential Hazard (HPH) associated with the noncompliance issues listed throughout the Structural Pest Control Penalty Matrix (matrix). Within the tables, the Minor, Moderate, or Major designations take into consideration the Nature, Circumstances, Extent, and Gravity (NCEG) of the situation, which resulted in the noncompliant finding.

*The tables show the maximum penalties that may be imposed for a given violation. All penalties are up to the designated amount/penalty indicated and shall be determined by the Department at its discretion.

Table S1 – Low Hazard Potential*

	Minor	Moderate	Major
1 st Violation	Warning	\$150	\$300
2 nd Violation	\$150	\$300	\$450
3 rd & subsequent violations	\$300	\$450	\$600

Table S2 – Moderate Hazard Potential*

	Minor	Moderate	Major
1 st Violation	\$300	\$750	\$1500
2 nd Violation	\$500	\$1000	\$2000
3 rd & subsequent violations	\$750 Revocation/Suspension	\$1500 Revocation/Suspension	\$3000 Revocation/Suspension

Table S3 – High Hazard Potential*

	Minor	Moderate	Major
1 st Violation	\$500	\$1000	\$2000
2 nd Violation	\$1000	\$2000	\$4000
3 rd & subsequent violations	\$1500 Revocation/Suspension	\$3000 Revocation/Suspension	\$5000 Revocation/Suspension

Table S4 – Maximum Hazard Potential*

	Minor	Moderate	Major
1 st Violation	\$1000	\$1500	\$2000
2 nd Violation	\$2000	\$2500	\$3000
3 rd & subsequent violations	\$3000 Revocation/Suspension	\$4000 Revocation/Suspension	\$5000 Revocation/Suspension

DRAFT 6/3/2021

ALL ACTIONS IN RESPONSE TO NONCOMPLIANCE WITH CHAPTER 7, SUBCHAPTER H OF THE TEXAS ADMINISTRATIVE CODE ARE AUTHORIZED UNDER CHAPTER 12 OF THE TEXAS AGRICULTURE CODE.

Violation	Texas Administrative Code Section Number(s)	Table Violation
DIVISION 2—LICENSES		
Operating without a license	7.121	S4
<u>Operating without a responsible certified applicator</u>	<u>7.121 (a)</u>	<u>S3</u>
No known address or incorrect address for business/noncommercial	7.122	S1
Insurance lapse/No insurance	7.123	S3
Cheating/unauthorized assistance on exams	7.125 (10) -(15)(e)	S3
Failure to notify <u>of</u> change of address: Business/Noncommercial	7. 126 127(ek); 7.161(17)	S1
<u>Transferring, Borrowing, renting, loaning or leasing a Department license.</u>	<u>7.127 (i)</u>	<u>S4</u>
Failure to notify change of employers—Certified applicator/technician	<u>7.126 /</u> 7.142	S1
Failure to notify of loss of responsible certified applicator	7. 128 129	S2
Non-commercial doing business as commercial or more than one employer without additional license(s)	7.131	S3
<u>Failure to complete required apprentice training prior to taking the exam & being issued a license</u>	<u>7.132</u>	<u>S3</u>
Refusal to release training records on employment change	<u>7.132(k)</u> /7.133(eje)	S1
Performing work w/out supervision in a category an apprentice is not properly trained in <u>7.133(h)</u>	<u>7.133</u> 132(h)	S3
Failure to maintain technician and/or apprentice training records	<u>7.132</u> /7.133	S2
Failure to meet minimum continuing education/technician requirements	7.133(hc)/7.134(b)	S2
DIVISION 3—COMPLIANCE AND ENFORCEMENT		
No TPCL numbers or magnetic numbers on vehicle	7.141	S1
Failure to <u>timely</u> register an employee	7.142(b)	S2
Failure to supervise an employee	7.143 /7.143	S3
Use records incomplete	7.144	S1
Failure to maintain use records	7.144	S2
No business name, location address or mailing address, business license number (TPCL), or telephone number on contracts	7.145	S1
No business name, business license number and letter, location or mailing address, telephone number, or statement that the business is licensed and regulated by the Texas Department of Agriculture on a contract, warranty, termite disclosure document or guarantee (or incomplete/incorrect)	7.145(a); 7.161(16)	S1
Failure to post/provide a pest control sign	7.146	S1
Failure to provide consumer information sheet	7.147	S1
Failure to make consumer information sheet available upon request	7.147	S1
Failure of school or daycare to notify parents	7.148	S1
Failure to maintain emergency waivers	7.148(d)	S1
Failure of apartment management or employers to post notice and provide consumer information sheets	7.148	S1
Use inconsistent with labeling	7.150	S3
Any FIFRA violation--unlabeled container	7.151	S3
Any violation of label instructions regarding storage or disposal	7.151	S3

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DRAFT 6/3/2021

Advertising violations	7.152	S3
Failure to cooperate/allow inspection or provide information/records or providing false information	7.156	S3
<u>Failure of IPM Coordinator to complete IPM Coordinator CEUs</u>	<u>7.202</u>	<u>S2</u>

DRAFT 6/3/2021

DIVISION 4—UNLAWFUL ACTS AND GROUNDS FOR REVOCATION		
Misrepresentation, deceit, or fraud for the purpose of inducing others to act thereon to their damage	7.161(1)	S4
Operating out of category	7.161(10)	S3
Misrepresentation in any application for license	7.161(2)	S4
Any violation of the label which causes environmental problem	7.161	S4
Working in a manner which could be injurious	7.161(8)	S3
Use of cancelled or unregistered pesticides not approved under Texas Agriculture Code §76.041	7.161(12)	S3
Failure to surrender license as Department ordered	7.162	S3
DIVISION 5—TREATMENT STANDARDS		
<u>Use of a unregistered pesticide for a termite treatment</u>	<u>7.172(a) /and—7.173 (b)</u>	<u>S3</u>
Application/service performed inconsistent with treatment disclosure	7.172(c)	S2
Post-construction treatment at less than label volume/rate	7.172(a)	S3
Failure to post WDIR/Termite Post-Treatment Sticker	7.172(d) and 7.177	S2
Pre-construction treatment made at less than label volume/rate	7.173(b)	S3
<u>Any violation of pre-construction treatment rules including failure to notify</u>	<u>7.173</u>	<u>S3</u>
Failure to provide SPCS/D-2-4 form	7.174(b)(810)	S2
Incomplete termite treatment disclosure documents/termite disclosure document violations	7.174	S2
Apprentice performing WDI Report	7.175(a)	S3
Failure to provide accurate/incomplete WDIR Inspection	7.175	S2
Any fumigation violation besides label violations	7.178	S3
DIVISION 7—INTEGRATED PEST MANAGEMENT PROGRAM FOR SCHOOL DISTRICTS		
Any violation regarding IPM Program essential elements	7.201	S2
Failure to comply with IPM in schools	7.201	S2
Making a pesticide application inconsistent with pesticide use in schools	7.202	S3
<u>Failure to meet minimum IPM Coordinator continuation education requirements</u>	<u>7.202</u>	<u>S2</u>
OTHER VIOLATIONS		
First time (and subsequent) offenders that operate without the proper license after a demonstration of prior knowledge of the SPCS requirements. (Not including late renewal)		S4
Fraud		S4
Grossly negligent or intentional poisoning of a person or animal		S4
Repetitive or unreasonable refusal to allow the Department to exercise its legal authority to inspect licensees and/or investigate complaints		S4
Violations involving institutional disregard for compliance		S4

The proposed amendments to the penalty matrix in §7.115 create additional penalties to to deter conduct detrimental to public health and safety, the environment, and consumer confidence and to prevent unfair competition by noncompliant businesses. These proposed amendments further update the penalty matrix's referenced Texas Administrative Code citations.

TITLE 4	AGRICULTURE
PART 1	TEXAS DEPARTMENT OF AGRICULTURE
CHAPTER 7	PESTICIDES
SUBCHAPTER H	STRUCTURAL PEST CONTROL SERVICE
DIVISION 2	LICENSES
RULE §7.121	Types and Requirements of Licenses

(a) Business Licensee- Any person engaged in structural pest control for compensation must secure a business license in the business's operating name from the Department for each business location, including branch offices. Each business license holder must designate a responsible certified commercial applicator for each business location who is not also serving as a responsible certified commercial applicator for any other business licensee or any other business location. The business license may reflect only those categories in which at least one (1) certified applicator is actively licensed. A business licensee may not operate at any time without a responsible certified applicator designated or current general pest liability insurance.

(b) Responsible Certified Commercial Applicator- A certified commercial applicator who has been designated and notified by the business license holder to be responsible for training and supervision of all pest control operations of the business. The person may be employed by other business location(s) as a certified commercial applicator, but may only be the designated responsible certified commercial applicator for (1) one business license location.

(c) Certified Commercial Applicator- A person licensed in at least one (1) category as a certified commercial applicator who can perform pest control services, identifications, and control measures without direct supervision but under general supervision of the responsible certified commercial applicator. A certified commercial applicator must hold a separate license for every business for which the certified commercial applicator is employed but is not required to hold a separate license for branch offices of an employer. [A certified commercial applicator](#) ~~Certified Applicators may only provide services in categories in which the certified commercial applicator is they are certified.~~

(d) Certified Noncommercial Applicator- An employee of a governmental entity, apartment building, day care center, hospital, nursing home, hotel, motel, lodge, warehouse, food-processing establishment, school or educational institution, and other noncommercial entity. A person licensed in at least one (1) category as a noncommercial certified applicator may perform pest control services, identifications, and control measures without direct supervision. A certified noncommercial applicator must be licensed for every business entity for which the

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certified noncommercial applicator is employed but is not required to hold a separate license for branch offices of an employer.

(e) Responsible Certified Noncommercial Applicator- A certified noncommercial applicator who has been designated and notified by the noncommercial entity to be responsible for training, supervision, and records of all noncommercial apprentices and technicians of the noncommercial entity.

(f) Technician- A person licensed in at least one (1) category who performs pest control services under the direct supervision of a commercial or noncommercial certified applicator. A technician must be licensed for every business or noncommercial entity for which the technician is employed, but is not required to hold a separate license for branch offices of their employer. A technician Technicians may only provide services in categories in which the technician is they are certified.

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(g) Apprentice- A sales or service employee who is registered by a structural pest control business or noncommercial entity to complete the required training for a technician license and has not yet passed a technician exam. An apprentice may work only for the business or noncommercial entity for which they are registered.

The proposed amendment to §7.121 clarifies requirements for those licensed to perform structural pest control

TITLE 4	AGRICULTURE
PART 1	TEXAS DEPARTMENT OF AGRICULTURE
CHAPTER 7	PESTICIDES
SUBCHAPTER H	STRUCTURAL PEST CONTROL SERVICE
DIVISION 2	LICENSES
RULE §7.122	Applications for Licensing, Registration, Certification, and Approval

(a) The application for a business license, a certified applicator license, technician license, or for registration as an apprentice under this Chapter must be complete and submitted on a form prescribed by the Department. Failure to provide complete and accurate information may result in a change of the effective date of employment as documented by the Department.

(b) A license application may be denied if a same or similar license issued to the applicant by this or another state or federal government has been revoked, suspended, probated or denied during the preceding five-year period for any reason. For the purpose of this section, a license is similar if the license was issued for the practice of an occupation in which professional services are normally provided in-person.

(c) Licensees and applicants residing outside of Texas must designate in writing a resident agent for service of process in actions taken in the administration and enforcement of the SPCA. Each resident agent must be a citizen of Texas and maintain a permanent address within the state.

The proposed amendment to §7.122 addresses a possible effect of not following guidelines in seeking to obtain licensure.

<u>TITLE 4</u>	AGRICULTURE
<u>PART 1</u>	TEXAS DEPARTMENT OF AGRICULTURE
<u>CHAPTER 7</u>	PESTICIDES
<u>SUBCHAPTER H</u>	STRUCTURAL PEST CONTROL SERVICE
<u>DIVISION 2</u>	LICENSES
RULE §7.124	Structural License Categories

Pest control licenses may be issued in one or more of the following categories.

(1) Pest Control--The inspection or control of pests in and around structures or pest animals which may invade homes, restaurants, stores, and other buildings, attacking their contents or furnishings or being a general nuisance, but do not normally attack the building itself. Examples of such pests are cockroaches, silverfish, ants, fleas, ticks, flies, mosquitoes, rats, mice, skunks, raccoons, opossums, etc.

(2) Termite and Wood Destroying Insect Control--The inspection or control of termites, beetles, or other wood destroying insects and wood preservation by means other than fumigation in buildings, including homes, warehouses, stores, docks, or any other structures. This category includes the treatment of termites in trees in and around structures.

(3) Lawn and Ornamental--The inspection or control of pests or diseases of trees, shrubs, or other plantings in a park or in and around structures, business establishments, industrial parks, institutional buildings or streets.

(4) Weed Control--The inspection or control of weeds in right-of-ways, around homes, in a park or in and around structures, business establishments, industrial parks, institutional buildings, streets, and industrial environs.

(5) Structural Fumigation--The inspection or control of pests through fumigation of structures not primarily intended to contain food, feed, or grains.

(6) Commodity Fumigation--The inspection or control of pests through fumigation of processed commodities, raw agricultural commodities or structures normally used to contain commodities. This category does not include ~~raw agricultural commodities~~ the fumigation of agricultural equipment or any agricultural commodity located on the farm.

(7) Wood Preservation--Pest control that involves the addition of preservatives to wood products to extend the life of the wood products by protecting them from damage caused by insects, fungi, and marine borers. Examples of wood products may include crossties, poles, and posts. This includes the re-treatment of power-line poles with wood preservative pesticide including fumigants.

<u>TITLE 4</u>	AGRICULTURE
<u>PART 1</u>	TEXAS DEPARTMENT OF AGRICULTURE
<u>CHAPTER 7</u>	PESTICIDES
<u>SUBCHAPTER H</u>	STRUCTURAL PEST CONTROL SERVICE
<u>DIVISION 2</u>	LICENSES
RULE §7.132	Requirements for Apprentice Registration

- (a) An apprentice is a beginning employee, whose training program is the responsibility of the responsible certified applicator or noncommercial certified applicator and who may be trained by and work under the direct supervision of licensed certified applicators and technicians.
- (b) An apprentice must be at least 16 years of age.
- (c) An apprentice must be able to demonstrate proficiency in reading EPA approved pesticide labels and warnings.
- (d) An apprentice must submit an apprentice registration application for technician license within ten (10) days of beginning employment and training. Any training completed prior to the date of hire will not count towards required training needed to test and work without physically present supervision.
- (e) The application must be submitted on the form prescribed by the Department.
- (f) A fee shall be charged for each application.
- (g) An apprentice card will be issued by the Department and valid until the end of the month one (1) year from the month the date employment began when all of the above requirements are met and processed. Failure to provide complete and accurate information may result in a change of the effective date of employment.
- (h) Apprentices must not perform any pest control work without the physical presence of a licensed technician or a certified applicator. Upon completion of and documentation of the required study and on-the-job training and demonstrating competency in each area, the apprentice may work alone so long as a certified applicator is physically present for personal instruction three (3) days a week and the apprentice carries their registration card at all times.
- (i) The studies and job training required for an apprentice are as follows:
 - (1) complete at least two (2) hours of classroom training in each of the following general standards training subjects:
 - (A) federal and state laws regulating structural pest control and pesticide application;
 - (B) recognition of pests and pest damage;
 - (C) pesticide labels and label comprehension;
 - (D) pesticide safety;
 - (E) environmental protection;
 - (F) application equipment and techniques;

- (G) pesticide formulations and actions;
- (H) emergency procedures, pesticide cleanup, and procedures for immediate reporting of spills and misapplication;
- (I) basic principles of mathematics, chemistry, toxicology, and entomology; and
- (J) non-chemical pest control techniques, including biological, mechanical and integrated pest management techniques.

(2) Complete forty (40) hours of verifiable on-the-job training and eight (8) hours of classroom training in each category in which the apprentice is to provide pest control services. The responsible certified commercial applicator or certified noncommercial applicator must certify in the training records of each apprentice that the apprentice has completed the required training and has demonstrated competency in each category in which the apprentice is to provide service.

(3) The twenty (20) classroom hours of general standards training, forty (40) hours of verifiable on-the-job training, and eight (8) hours of classroom training in each category must be completed and documented on the verifiable training record prior to the apprentice taking the category exam and a license being issued.

(4) A student currently enrolled in or who has attended or graduated within the past twelve (12) months from an accredited school or university studying relevant materials may be credited with those courses toward classroom training hours for apprenticeship, if those hours have been provided by the school or university and documentation is provided which shows the student passed the class(es) submitted.

(5) An apprentice may maintain an apprentice card for a maximum of twelve (12) months. If an apprentice has not met the requirements to become a licensed technician in the twelve (12) month period, the apprentice must be re-registered as an apprentice and must repeat all training requirements for an apprentice. Previous training credit from previous apprentice registrations may not be applied to this requirement.

(j) A responsible certified commercial applicator or certified noncommercial applicator must maintain the verifiable training records and certification for each apprentice in the business files for two (2) calendar years after the calendar year in which the training or certification was completed. The verifiable training records form shall be prescribed by the Department and must include, but is not limited to, the following:

- (1) date training received;
- (2) number of hours of training;
- (3) subject of training;
- (4) printed name, signature, and license number of trainer;
- (5) designation of on-the-job training or classroom training;
- (6) competency evaluation by the responsible certified applicator;
- (7) printed name, signature, and license number of the trainer if the training was provided by a registered licensee of the business; and

(8) printed name, signature, and license number of the responsible certified applicator.

(k) When an apprentice changes employers due to a business acquisition or sale, or a change in the current employer's tax identification number, the employer who maintains the verifiable training records must make the verifiable training records available to the apprentice or the new employer within twenty (20) days of written request.

(l) It is a violation of this section for a business licensee or certified noncommercial applicator to allow an apprentice to perform work in a category in which the apprentice has not been properly trained. A certified applicator registered with the business must be physically present to give verbal instructions to an apprentice at least three (3) days a week and available during operating hours for questions and instructions as needed.

(m) An apprentice becomes a licensed technician by:

(1) completing a minimum six (6) hour technician training course approved by the Department in general training at least one (1) time prior to taking the examination;

(2) completing all training listed under subsection (i) of this section; and

(3) making a minimum passing grade of at least 70% on the technician examination.

(A) The examination may be taken as many times as necessary in the twelve (12) month period the employee holds an apprentice registration card.

(B) There shall be a fee charged per examination.

(C) The Technician Training Manual may be obtained from the Texas A&M AgriLife Extension Service.

(D) An individual must pass each category examination in which the apprentice applies to become licensed. Re-examination is not necessary if the license is renewed annually.

(E) Persons making a passing grade and who qualify for a technician license will be issued a license upon issuance of the grades.

(n) All testing procedures shall be governed by §7.125 of this title, relating to Examinations.

[The proposed amendments to §7.132 clarifies training requirements for working without physically present supervision.](#)

(3) for commercial preconstruction treatments other than baits, baiting systems, wood applied termiticide products, or physical barriers, the number of application tanks which were in use for the treatment, the capacity, in gallons, of each application tank, and the start and stop time for the treatment.

(c) These records shall be made available to the Department upon written or verbal request.

The proposed amendments to §7.144 give additional requirements for pest control use records.

<u>TITLE 4</u>	AGRICULTURE
<u>PART 1</u>	TEXAS DEPARTMENT OF AGRICULTURE
<u>CHAPTER 7</u>	PESTICIDES
<u>SUBCHAPTER H</u>	STRUCTURAL PEST CONTROL SERVICE
<u>DIVISION 2</u>	LICENSES
RULE §7.133	Technician License Requirements

(a) A technician is a person who has qualified for and been issued a technician's license pursuant to the provisions of §7.132 of this title, relating to Requirements for Apprentice Registration, whose training and supervision is the responsibility of the responsible certified applicator, and who works under the direct supervision of licensed certified applicators.

(b) A certified applicator registered with the business must be physically present to give verbal instructions to a technician at least one (1) day a week and available during operating hours for questions and instructions as needed.

(c) To add a category to a technician's license, a technician must complete eight (8) hours of classroom training and forty (40) hours of on-the-job training ~~OJT~~ prior to taking the that category's exam. The training must be recorded on the ~~v~~Verifiable ~~t~~Training ~~r~~Record form prescribed by the Department.

(ed) The Department shall require as a condition of the renewal of each commercial or noncommercial technician's license that the responsible certified applicator must certify on the verifiable training records form that the technician has completed eight (8) hours of verifiable training in the calendar year preceding the calendar year in which the renewal is to take place. No additional training will be required in the first calendar year in which a technician is first licensed. Changing employers or moving to an inactive status does not eliminate, defer or extend the CEU requirement.

(1) The eight (8) hours of verifiable training must be selected from the following general standard subject areas:

(A) Federal and state laws regulating structural pest control and pesticide application;

(B) Recognition of pest and pest damage;

(C) Pesticide labels and label comprehension;

(D) Pesticide safety;

(E) Environmental protection;

(F) Application equipment and techniques;

(G) Pesticide formulations and actions;

(H) Emergency procedures and pesticide cleanup, and procedures for the immediate reporting of spills and misapplications;

(I) Basic principles of mathematics, chemistry, toxicology, and entomology; or

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(J) Non-chemical pest control techniques including biological, mechanical, and integrated pest management techniques.

(2) Two (2) hours of the eight (8) hours of training may be on-the-job training or hands-on-training verified by the responsible certified applicator.

(3) Self-study training may be used if the responsible certified applicator certifies that the training is the appropriate training. Inactive technicians may only use self-study training every other year to satisfy their annual training requirement.

(4) A technician will receive one (1) hour of credit for each Department approved CEU course completed.

(5) No courses may be repeated for credit within the same re-certification year.

(~~de~~) All verifiable training records and certification for each ~~apprentice-technician~~ must be maintained in the business files for two (2) calendar years after the calendar year in which the training or certification was completed.

(~~ef~~) The verifiable training records forms must be made available to the licensee within twenty (20) days of written request to a current or former employer.

(~~fg~~) The business licensee, responsible certified commercial applicator, or certified noncommercial applicator shall be responsible for the proper certification and maintenance of employee training records in accordance with Chapter 7, Subchapter H of this title.

(~~gh~~) Technicians unable to certify their required training at renewal or during inspection will have twenty (20) days to submit the verifiable training records for training previously obtained prior to the initiation of enforcement proceedings.

(~~hi~~) Upon written request, the Commissioner may grant a hardship extension for completion of training requirements due to extenuating circumstances. The length of the extension is at the discretion of the Commissioner. All requests are subject to review and may require additional documentation.

The proposed amendment to §7.133 sets requirements technicians must follow to obtain licensure in additional categories.

TITLE 4	AGRICULTURE
PART 1	TEXAS DEPARTMENT OF AGRICULTURE
CHAPTER 7	PESTICIDES
SUBCHAPTER H	STRUCTURAL PEST CONTROL SERVICE
DIVISION 2	LICENSES
RULE §7.134	Continuing Education Requirements for Certified Applicators

(a) Except as provided in subsections (e) and (i) of this section, as a requirement of annual license renewal, the Department shall require each certified applicator to certify that they have completed Department approved CEUs that cover the applicator's category(ies) of certification for the preceding calendar year. This certification must be completed each calendar year for renewal of the certified applicator's license. Certified applicators who do not meet the re-certification requirements shall not be eligible to renew their licenses and will be subject to enforcement action. Licensees must obtain the appropriate number of CEUs in each calendar year as specified in this section. Changing employers or moving to an inactive status does not eliminate, defer or extend the CEU requirement.

(b) Each certified applicator is required to obtain two (2) CEUs in general training and one (1) unit in each category in which the applicator is certified. General training is defined to include the topics in §1951.351(c) of the Occupations Code. At least one (1) of the two (2) general training units required for recertification, must be in either federal and state laws, pesticide safety, environmental protection, or integrated pest management. The other may be in any general topic.

(c) No approved course may be repeated for credit within the same calendar year. No certified applicator who is also a course provider can satisfy their CEU requirements through a course she/he provides.

(d) CEUs may only be obtained through an approved self-study course every other year. Self-study courses will not be accepted two (2) years in a row and will result in deficiency upon review.

(e) Applicators will not be required to obtain CEUs during the first calendar year in which their license is issued. Applicators that become certified in additional categories during any calendar year will not be required to obtain units in those categories for that period.

(f) Each certified applicator must keep a certificate of completion for each course attended for a period of two (2) calendar years after the calendar year in which it was obtained, and submit such records to the Department upon request. These records are subject to inspection by the Department at any time. Continuing education certificates must be made available to the licensee within twenty (20) days of the written request to a training provider. A copy of a current or former employee's

continuing education certificates shall be made available to a licensee within twenty (20) days upon written request to the employer.

(g) The business licensee, responsible certified commercial applicator, and certified noncommercial applicator shall be responsible for the proper certification and maintenance of employee continuing education records in accordance with this subchapter.

(h) Certified applicators unable to certify their required continuing education requirements at renewal or during inspection will have twenty (20) days to submit the verifiable training records for training previously obtained prior to the initiation of enforcement proceedings. Certified applicators that do not meet the recertification requirements may have their licenses suspended in all deficient categories.

(i) Upon written request, the Commissioner may grant a hardship extension for completion of training requirements due to extenuating circumstances. The length of the extension is at the discretion of the Commissioner. All requests are subject to review and may require additional documentation.

<u>TITLE 4</u>	AGRICULTURE
<u>PART 1</u>	TEXAS DEPARTMENT OF AGRICULTURE
<u>CHAPTER 7</u>	PESTICIDES
<u>SUBCHAPTER H</u>	STRUCTURAL PEST CONTROL SERVICE
<u>DIVISION 2</u>	LICENSES
RULE §7.135	Criteria and Evaluation of Continuing Education Training

(a) The Department shall evaluate continuing education programs and assign the number of qualified category units. No more than one (1) unit will be assigned for any fifty (50) minutes of actual instruction time. A course may be approved for a maximum of two (2) years. After two years, any previously approved course must be updated to reflect changes in current laws, data and/or scientific research in order to requalify for approval for continuing education credit. The Department will consider the learning objectives, technical information given, the accuracy of the information, the relevance of the information to structural pest control, the qualifications of the instructor as determined by the provider, and the amount of actual training or self-study time devoted to each program in the process of evaluation. Each continuing education program, including self-study courses submitted for approval must contain the following:

- (1) a copy of handout materials, if any, which will be available to participants;
- (2) inclusive length of time of the course stated in hours and minutes;
- (3) date, time, physical address, and city of presentation; or if unknown, agreement to provide two (2) weeks' notice of each date of presentation;
- (4) the number of CEUs to be awarded;
- (5) the category(ies) of CEU eligibility;
- (6) a detailed course outline which will indicate the scope of the course and learning objectives;
- (7) videotapes, slides, compact discs, DVDs, download links, or other media presentations, if applicable;
- (8) examination for electronic, online or self-study courses, if applicable;
- (9) the course provider's name, physical address, telephone number, e-mail (if available), and company, organization or institution of higher learning affiliation; and
- (10) additional information, as requested.

(b) Parts of courses which focus on promotion of products and/or policies or procedures of a company will not be considered as part of approved instruction time.

(c) A self-study course is limited to one (1) CEU in the general training or a specific category. A course may be approved as a self-study if it meets the following additional criteria:

- (1) the course taker must take an examination designed to verify their knowledge of the material provided in the course. The course provider must grade the examination

and keep records for a minimum of two (2) calendar years after the calendar year in which the course was given; and

(2) the course taker's grade on the examination must be at least 70% correct to obtain credit for the course.

(d) The minimum requirements to qualify as a speaker, course presenter, self-study course provider (collectively referred to as "speaker") are:

(1) a degree from a recognized institution of higher learning which pertains to the course being taught;

(2) five (5) years' experience as an applicator certified by the Department with a current license in the category to be taught;

(3) verifiable proof of training and teaching experience within the preceding three (3) years; or

(4) a combination of education, work related training, and teaching experience which would be equivalent to two (2) of the three (3) speaker qualification requirements, as determined by the Department.

(e) Any person seeking approval of a continuing education course must submit the required information at least thirty (30) days prior to the first day of presentation or first offering of a self-study course. Any changes to approved courses must be submitted to the Department thirty (30) days prior to the date of presentation. The Department may waive this requirement due to extenuating circumstances.

(f) The Department shall evaluate and recommend credits within thirty (30) days from the date received.

(g) At its discretion, the Department may re-evaluate its approval of a course or speaker under the provisions this section.

(h) A certified applicator may request CEU credit by submitting the information required in subsections (a)(2), (a)(4)-(6), and (a)(9) of this section, and verification of attendance for any course attended by the certified applicator which was not previously approved by the Department. The Department will evaluate the request and notify the certified applicator of any CEUs awarded.

(i) The course provider is responsible for establishing procedures for:

(1) verification of completion, including accurately recording participant attendance throughout the stated class length;

(2) awarding course completion certificates;

(3) testing to verify a participant's comprehension of the subject matter presented;

(4) the qualifications, competence, and performance of the authors, speakers, presenters, or instructors who produce or present its courses; and

(5) preparation and administration of a self-study course examination.

(j) If the course provider is required to make an unexpected changes to an approved CEU course to include but not limited to the including switching approved speakers, location, time, or date of course, the course provider must notify the Department by via email within 24 hours of the change.

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(k) If an approved ~~and notified~~ CEU course needs to be cancelled for any reason, the course provider must notify the Department by email within seven (7) days of cancellation.

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(j) The course provider must issue a certificate of completion within twenty-one (21) days of the course to each applicator completing the course. This document must include at a minimum the following information:

- (1) participant's name and license number;
- (2) name of course provider or sponsoring agency, company or organization;
- (3) course number;
- (4) number of CEUs awarded;
- (5) CEU category; and
- (6) date and location of training or date of completion for self-study course.

(~~k~~m) The course provider must maintain course completion records for two (2) calendar years after the calendar year in which the course(s) were given and a list of participants must be forwarded to the Department within twenty-one (21) days of completion of the training course on the electronic form prescribed by the Department. The list must include the name of the course provider, course title and course number, number of CEUs awarded, speaker name, name and license number of participants.

(~~h~~i) For purposes of this section, a continuing education course is defined as specific instruction in a category presented by any one (1) course provider, company, or organization.

(~~m~~o) The Department may monitor course providers, speakers, or course presentations, and is exempt from any fee charged for attending a CEU if Department employees are monitoring the program as a part of the duties of their employment.

(~~n~~p) Course providers who falsify information on course certificates provided to participants are subject to penalties, including and up to denial of Department approval for future courses.

The proposed amendments to §7.136 and §7.137 give additional requirements for training providers seeking to change or cancel approved continuing education training.

<u>TITLE 4</u>	AGRICULTURE
<u>PART 1</u>	TEXAS DEPARTMENT OF AGRICULTURE
<u>CHAPTER 7</u>	PESTICIDES
<u>SUBCHAPTER H</u>	STRUCTURAL PEST CONTROL SERVICE
<u>DIVISION 2</u>	LICENSES
RULE §7.136	Criteria and Evaluation of Technician/Noncommercial Certified Applicator Training

(a) The Department must evaluate and approve Technician/Noncommercial Certified Applicator Training course programs. The course must be a minimum of six (6) hours and separate from other required apprentice or continuing education training. Each Technician/Noncommercial Certified Applicator Training Course submitted for approval must contain the following:

- (1) a copy of handout materials, if any, which will be distributed to participants during the course;
 - (2) inclusive length of time of the course stated in hours and minutes;
 - (3) date, time, and physical address of presentation; or if unknown, agreement to provide two (2) weeks' notice of each date of presentation;
 - (4) a detailed course outline which indicating the scope of the course and learning objectives (the course outline should follow the topics covered in the most recent Texas Pesticide Applicator General manual developed by Texas A&M AgriLife Extension);
 - (5) the course provider's name, physical address, telephone number, email (if available), and company, organization or institution of higher learning affiliation; and
 - (6) additional information as requested.
- (b) Parts of courses which focus on promotion of products, policies, or procedures of a company, will not be considered as part of approved instruction time.
- (c) Any person seeking approval of Technician/Noncommercial Certified Applicator Training course must submit the required information at least thirty (30) days prior to the first day of presentation. The Department may waive this requirement due to extenuating circumstances.
- (d) The Department shall evaluate and recommend approval or denial within thirty (30) days from the date received.
- (e) The course provider is responsible for establishing procedures for:
- (1) verification of completion, including accurately recording participant attendance throughout the stated class length;
 - (2) awarding course completion certificates;
 - (3) testing to verify a participant's comprehension of the subject matter presented;
 - (4) the qualifications, competence, and performance of the authors, speakers, presenters, or instructors who produce or present its courses, and

(5) preparation and administration of a self-study course examination.
(f) The minimum requirements to qualify as a speaker, course presenter, self-study course provider are:

- (1) a degree from a recognized institution of higher learning which pertains to the course being taught;
- (2) five (5) years' experience as an applicator certified by the Department with a current license in the category to be taught;
- (3) verifiable proof of training and teaching experience within the preceding three (3) years; or
- (4) a combination of education, work related training, and teaching experience which would be equivalent to two (2) of the three (3) speaker qualification requirements, as determined by the Department.

(g) If the course provider is required to make an unexpected changes to an approved CEU course to include but not limited to the approved speaker, including changes to location, time, or date of course, the course provider must notify the Department via email within 24 hours.

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(h) If an approved CEU course needs to already notified course date to be cancelled for any reason, the course provider must notify the Department by email within seven (7)-days of cancellation.

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(gi) The Technician/Noncommercial Certified Applicator Training course provider must issue a certificate within twenty-one (21) days of the course to each participant completing the course. This document must include at least the following information:

- (1) participant's name;
- (2) apprentice registration number, if applicable, or driver's license number or state issued ID number;
- (3) name of course provider, company, or organization;
- (4) course title (Technician Training Course/Noncommercial Certified Applicator Training Course) and number; and
- (5) date and location of training.

(hj) The course provider must maintain course completion records for two (2) calendar years after the calendar year in which the course was given and a list of participants must be forwarded to the Department within twenty-one (21) days of completion of the training course. The list must include the name of the course provider, the course title, course number, name of participant, and apprentice registration number, if applicable.

(ik) The course will be approved for a maximum of two (2) years.

(jl) The Department may re-evaluate or cancel a currently approved training course during the calendar year for failure to comply with the elements of the requirements of this section.

(~~k~~m) Course providers who falsify information on course certificates provided to participants are subject to penalties, including and up to denial of Department approval for future courses.

The proposed amendments to §7.136 and §7.137 give additional requirements for training providers seeking to change or cancel approved continuing education training.

<u>PART 1</u>	TEXAS DEPARTMENT OF AGRICULTURE
<u>CHAPTER 7</u>	PESTICIDES
<u>SUBCHAPTER H</u>	STRUCTURAL PEST CONTROL SERVICE
<u>DIVISION 3</u>	COMPLIANCE AND ENFORCEMENT
RULE §7.142	Notice of Employment or Termination

(a) It shall be the duty of the business licensee or certified noncommercial applicator to inform the Department in writing of its employment and/or termination of all licensees and apprentices.

(b) Notice of employment of all licensees and apprentice registrations must be received by the Department within ten (10) days of the date of employment and must include the full name and license number of the employee, if applicable, the date of employment, and the facility location where the employee training records will be maintained, and other information as may be required.

(c) Notice of termination must include the former employee's name, license number, ~~and~~ and date of termination. Notice of termination must also include the employer's name and license number. and must be received by the Department within ten (10) days of the date of termination.

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The proposed amendment to §7.142 gives additional requirements for notifying the Department of an employee's termination.

<u>TITLE 4</u>	AGRICULTURE
<u>PART 1</u>	TEXAS DEPARTMENT OF AGRICULTURE
<u>CHAPTER 7</u>	PESTICIDES
<u>SUBCHAPTER H</u>	STRUCTURAL PEST CONTROL SERVICE
<u>DIVISION 3</u>	COMPLIANCE AND ENFORCEMENT
RULE §7.144	Pest Control Use Records

(a) The responsible certified applicator or certified noncommercial applicator shall ensure that correct and accurate records of all uses of pesticides and pest control devices registered with the EPA and the Department, including those pesticides that have been exempted from registration by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, Section 25b), are maintained for a period of two (2) years. Pest records must be kept on the premises of the business facility location or, in the case of a certified noncommercial applicator, the employer's premises. The records must include, but are not limited to:

- (1) the billing name and address of the customer, or the employer for whom a noncommercial applicator is working;
- (2) service address where the pesticides and/or devices were used, except that for utility pole re-treatments, records shall be kept for the location of each pole treated;
- (3) name of pesticides and EPA registration numbers should they be registered or pest control devices used ~~or EPA registration number~~;
- (4) total amounts of each pesticide applied where the percentage of active ingredient was not changed (ready to use pesticides);
- (5) pest control devices used and total number of each device;
- (6) the mixing rate and total amount of material applied or the percentage of active ingredient(s) and total amount of material applied for manufacturer's formulations that are mixed with water or other material, if applicable;
- (7) the target pest or purpose for which the pesticides or devices were used;
- (8) date the pesticides or pest control devices were used; and
- (9) the name, and license number of the person(s) receiving training, supervising, and applying pesticides or using pest control devices and the TPCL number (and letter if applicable) of the commercial business for which they are performing structural pest control services.

(b) For termite treatments, records must include:

- (1) the appropriate unit of measurement of the area treated per application site, i.e. square feet (excluding bait applications);
- (2) if a physical barrier is used, the appropriate unit of measurement (square foot or linear foot) of the physical barrier must be recorded and a diagram describing the installation will be provided; and

TITLE 4	AGRICULTURE
PART 1	TEXAS DEPARTMENT OF AGRICULTURE
CHAPTER 7	PESTICIDES
SUBCHAPTER H	STRUCTURAL PEST CONTROL SERVICE
DIVISION 3	COMPLIANCE AND ENFORCEMENT
RULE §7.156	Entry and Access

(a) The Department may conduct investigations and inspections of structural pest control activities involving any person in this state to determine compliance with the SPCA, and Department rules.

(b) In conducting investigations, the Department may:

(1) enter the premises of a licensee, business, or facility during normal business hours to examine records, question witnesses, inspect pesticides and equipment used for pest control, and collect samples;

(2) enter premises where individuals are performing or are suspected of performing pest control operations to inspect the use of pesticides and devices, [question any relevant individuals, witnesses or respondents](#), check employee credentials, collect samples, identify pests, and inspect equipment; and

(3) on public property, inspect pesticides and equipment, and question employees of persons conducting or suspected of conducting structural pest control activities.

(c) Any licensee [or other individual suspected of violations involving of the structural pest control](#) who interferes with an employee of the Department attempting to enter or access property, equipment, or records for purposes of this chapter, shall be subject to disciplinary action up to and including revocation of licenses and/or registrations.

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[The proposed amendments to §7.156 supplements the Department's abilities to conduct investigations and inspections involving structural pest control.](#)

<u>TITLE 4</u>	AGRICULTURE
<u>PART 1</u>	TEXAS DEPARTMENT OF AGRICULTURE
<u>CHAPTER 7</u>	PESTICIDES
<u>SUBCHAPTER H</u>	STRUCTURAL PEST CONTROL SERVICE
<u>DIVISION 4</u>	UNLAWFUL ACTS AND GROUNDS FOR REVOCATION
RULE §7.161	Grounds for Revocation, Suspension, Penalties, Reprimanding, Refusal To Examine, Refusal To Issue or Renew Licenses

Any such action may be accomplished by the department after notice and hearings, as provided for by Occupations Code, Chapter 1951 and the Administrative Procedures Act Texas Government Code, Chapter 2001. No revocation, suspension, annulment, or withdrawal of any license is effective unless prior to the institution of department proceedings, the department gave notice by personal service or by certified mail to the licensee of facts or conduct alleged to warrant the intended action, and the licensee was given the opportunity to show compliance with all requirements of law for the retention of the license. The following are grounds for revocation, suspension, penalties, reprimanding, refusal to examine, and refusal to issue or renew licenses:

- (1) misrepresentation for the purpose of defrauding; deceit or fraud; the making of a false statement with knowledge of its falsity for the purpose of inducing others to act thereon to their damage;
- (2) intentional misrepresentation in any application for a license;
- (3) engaging in an advertising practice prohibited in §7.152 of this title (relating to Advertising); advertising services which the licensee is not authorized to provide; engaging in false, misleading or deceptive acts or practices; [advertising in a name without a valid business license](#) or advertising in an unauthorized category;
- (4) has been convicted or has pleaded guilty to a violation of the Act as amended, or any regulation adopted hereunder, or any of the laws or regulations of this state, another state, or the United States, relating to the licensing of pest control operators and pesticide use;
- (5) has been convicted of or has pled guilty to a felony or misdemeanor involving moral turpitude, under the law of this state and other states of the United States within seven years prior to the date of application, provided that when the applicant is a defendant in any action in which the defendant is charged with a felony or a misdemeanor involving moral turpitude, the department may delay processing of the application until final disposition of any such criminal proceedings;
- (6) has a criminal background as explained in §7.~~129~~[130](#) of this title (relating to Licensing of Persons with Criminal Backgrounds);
- (7) failure of the licensee to supply the department or its authorized representative, upon request, with true and accurate information concerning methods and materials

used, or work performed, or other information essential to the public health and welfare and to the administration and enforcement of the Act;

(8) engaging in pest control practices in a manner that could be injurious to the public health, safety, or to the environment;

(9) failure to comply with contract specifications;

(10) performing work in a category for which the certified applicator or technician licensee is not licensed or an apprentice is not trained or licensed;

(11) failure of business licensee or certified noncommercial applicator to register employees or failure to pay license fee for employees;

(12) making a pesticide application inconsistent with the labeling of any pesticide as registered by the Environmental Protection Agency, the United States Department of Agriculture, or the state registration for that pesticide, or in violation of any condition or restriction placed upon the use of that pesticide by the Environmental Protection Agency, the United States Department of Agriculture, or the state;

(13) failure to make records of pesticide use and keep them available as required by the Act, as amended, and §7.144 this title (relating to Pest Control Use Records);

(14) failure of business licensee to notify the department when a certified applicator or apprentice leaves their employment;

(15) failure of business licensee to put identifying letters and numbers on vehicles as required by regulations;

(16) failure to print in proper size type the address and telephone number of the department and the statement that the business is licensed and regulated by the Texas Department of Agriculture;

(17) failure of business licensee or certified noncommercial applicator to notify the department of a change of address of their company or organization;

(18) failure of a business licensee or certified noncommercial applicator to give the department an address where licensee may be located;

(19) failure of the certified applicator or business licensee to adequately supervise employees;

(20) failure of certified applicator licensee, technician or apprentice to notify the department when he or she moves or changes employers;

(21) failure to maintain continuous minimum liability insurance and continuing to operate during lapsed period;

(22) failure to meet minimum continuing education or technician training requirements;

(23) failure to maintain technician or apprentice training records;

(24) failure to provide signs, disclosure and information sheets;

(25) failure to post signs or distribute information sheets;

(26) failure to comply with a final order of the Commissioner;

(27) Permitting, aiding, abetting or conspiring with a person to intentionally violate or circumvent a law or regulation enforced by the department;

(28) Denial, suspension, revocation, probation, fine or other license restriction or discipline against a licensee by a state, territory, or Indian tribal government or the federal government;

(29) Any violation of the regulations promulgated under this subchapter relating to treatment standards;

(30) failure to pay an agreed or court ordered administrative penalty;

(31) failure to comply with §7.135 or §7.136 of this title (relating to Criteria for Evaluation of Continuing Education and Criteria and Evaluation of Technician/Noncommercial Certified Applicator Training respectively);

(32) failure to comply with ~~§7.150~~ Division 7 of this title (relating to Schools);

(33) failure to comply with any section of the Act or these regulations; and

(34) failure to provide a disclosure document prior to, or accompanying, or at the same time, with a written estimate as described in §7.174 of this title (relating to ~~Termite~~ Wood Destroying Insect Treatment Disclosure Documents).

The proposed amendments to §7.161 supplements advertising violations, and modifies language to create consistency with current terminology and rule numbers.

<u>TITLE 4</u>	AGRICULTURE
<u>PART 1</u>	TEXAS DEPARTMENT OF AGRICULTURE
<u>CHAPTER 7</u>	PESTICIDES
<u>SUBCHAPTER H</u>	STRUCTURAL PEST CONTROL SERVICE
<u>DIVISION 5</u>	TREATMENT STANDARDS
RULE §7.172	Subterranean Termite Post Construction Treatments

(a) All pesticides used for post construction termite treatments must be registered with the EPA and the Department. All pesticide liquid applications must be made by using the application rates and methods and by following the precautionary statements on the labeling of the pesticide being used. All termite baiting system applications must be made using the methods and following the precautionary statements on the product label.

(b) A treatment of less than the entire structure will be permitted to accommodate the customer's requests to allow the treating company to perform the job in a manner prescribed by their professional evaluation and label requirements.

(c) All treatments must strictly adhere to the procedures outlined in the disclosure statement required in §7.174 of this title, relating to ~~Subterranean Termite, Drywood Termite and Related~~ Wood Destroying Insect Treatment Disclosure Documents. A deviation will be permitted when unexpected circumstances occur necessitating a change in the treatment and the applicator responsible for the treatment provides the customer with a written addendum to the contract or disclosure documents at the completion of the treatment.

(d) Upon completion of a termite treatment, or installation of a baiting system, the company responsible for providing the treatment must leave a durable sticker of not less than one (1) inch by two (2) inches in size on the wall adjacent to the water heater, electric breaker box, or beneath the kitchen sink giving the name, address, and telephone number of the business licensee, name and license number of the applicator, product used, the date of the treatment or installation of the baiting system, and a statement that the notice should not be removed.

(e) The business license holder or certified noncommercial applicator must keep and maintain a correct and accurate copy of the ~~Termite~~ Wood Destroying Insect Treatment Disclosure Documents for a period of two (2) years.

[The proposed amendments to §7.172 - §7.174 modify language to create consistency with current Department terminology.](#)

<u>TITLE 4</u>	AGRICULTURE
<u>PART 1</u>	TEXAS DEPARTMENT OF AGRICULTURE
<u>CHAPTER 7</u>	PESTICIDES
<u>SUBCHAPTER H</u>	STRUCTURAL PEST CONTROL SERVICE
<u>DIVISION 5</u>	TREATMENT STANDARDS
RULE §7.173	Subterranean Termite Pre-Construction Treatments

(a) Subsections (b) - (f) of this section do not apply to baits or baiting systems and subsections (c) - (d) of this section do not apply to wood applied termiticide products.

(b) All pesticides used for pre-construction termite treatments must be registered with the EPA and the Department. All pesticide liquid applications must be made by using the application rates and methods and by following the precautionary statements on the labeling of the pesticide being used.

(c) For a full treatment, the entire structure must be treated to provide a continuous horizontal and vertical pesticide barrier. The final treatment shall be performed within thirty (30) days of notification of completion of landscaping or one (1) year from the date of completion of construction, whichever comes first. However, when construction has proceeded to the point that all areas cannot be treated before the company providing the treatment is called to perform the application, a partial treatment is permitted if the owner of the structure or the person in charge of the construction and the licensee for the pest control company sign a statement attesting to the construction conditions, and attach it to the contract with an amended diagram or blueprint or building plat showing the exact areas to be treated and send copies to the owner of the property within seven (7) days of the application. A copy of the disclosure with an amended diagram or blueprint or building plat showing the exact areas to be treated must be made available to the Department upon request. A partial treatment will also be permitted if allowed by label directions and if the licensee proposing the treatment issues a Termite-Wood Destroying Insect Treatment Disclosure Document prior to the treatment.

(d) In order to comply with subsection (c) of this section, it will be necessary to return to the pretreatment site after the slab has been poured and/or piers and support beams have been placed to complete the treatment for the vertical barrier.

(e) A primary treatment of the wood framing (such as a borate treatment) must follow full label application instructions and must be performed with a termiticide that has specific label instructions to be used as a primary treatment to offer protection for prevention of subterranean termites in new construction. This treatment may be used in lieu of a full, partial, or bait treatment and must include application instructions to exposed surfaces of wood framing with exterior sheathing in place but before any walls are enclosed to a height of not less than two (2) feet above a contact with a slab foundation or a (2) foot horizontal and vertical treatment of wood above contact with

a concrete crawlspace or basement foundation. Label instructions must provide application instructions for the prevention of subterranean termite intrusion and tubing onto non-cellulose areas around bath-traps, plumbing penetrations and concrete foundation areas.

(f) Notice of all pre-construction treatments with contracts requiring treatment of a structure other than a single family dwelling must be submitted between the hours of 6:00 a.m. and 9:00 p.m. using the Department's designated notification system at least four (4), and no more than twenty-four (24), hours prior to a termiticide application. The licensee must provide address and site location, type of treatment (partial or full), date and time of treatment, approximate and appropriate unit of measurement used under contract, and the name, license number, and physical address of the pest control business. If the treatment is cancelled, notice of cancellation must be sent using the Department's designated notification system within one (1) hour of the time the pest control business learns of the cancellation.

(g) For all commercial pre-construction treatments other than baits, baiting systems, wood applied termiticide products or physical barriers, the licensee must maintain records of the appropriate unit of measurement treated per application site, amount of termiticide used per application site, rate at which termiticide is mixed for each application site, number of application tanks which were in use for the treatment, the capacity, in gallons, of each application tank, and the start and stop time for the treatment. The business license holder or, in the case of the certified noncommercial applicator, the applicator must keep and maintain a correct and accurate copy of the pre-construction treatment and disclosure records for a period of two (2) years. A baiting system may be used in lieu of a pre-construction treatment if installed within thirty (30) days of notification of completion of landscaping. All termite baiting system applications must be made using the methods and following the precautionary statements on the product label. If a physical barrier is used, the appropriate unit of measurement of the physical barrier must be recorded and a diagram describing the installation must be provided.

The proposed amendments to §7.172 - §7.174 modify language to create consistency with current Department terminology.

TITLE 4

PART 1

CHAPTER 7

SUBCHAPTER H

DIVISION 5

RULE §7.174

AGRICULTURE

TEXAS DEPARTMENT OF AGRICULTURE

PESTICIDES

STRUCTURAL PEST CONTROL SERVICE

TREATMENT STANDARDS

~~Subterranean Termite, Drywood Termite and Related~~ Wood
Destroying Insect Treatment Disclosure Documents

(a) As part of each written estimate submitted for a subterranean termite, drywood termite, powder post beetle, wood boring beetle or related wood destroying insect (excluding carpenter ants) treatment to a customer, the pest control business proposing the treatment must present the prospective customer or designee with disclosure documents. Verbal estimates may be provided to customers to advise of a general range of treatment costs, but a written estimate must be provided before beginning a treatment. Written estimates for termite and related wood destroying insect treatments and treatment disclosure documents shall only be made by licensed technicians or certified applicators licensed in the termite category.

(b) Each subterranean termite, drywood termite, powder post beetle, wood boring beetle or related wood destroying insect (excluding carpenter ants) treatment disclosure document must include, but is not limited to:

(1) the business name, address, phone number, TPCL number, and the date the written estimate was submitted;

(2) the address or physical location of the structure to be treated;

(3) a diagram or blueprint or building plat and description of the structure or structures to be treated to include the following:

(A) numerical perimeter measurements of the entire structure as accurately as practical;

(B) areas of active or previous termite activity;

(C) areas to be treated;

(D) known wood destroying insect activity;

(E) areas of conditions conducive to infestation by wood destroying insects; and

(F) construction details and other information about construction relevant to the treatment proposal;

(4) a label for any pesticide recommended or used. If a physical barrier is used, the appropriate unit of measurement of the physical barrier must be recorded and a diagram describing the installation must be provided;

(5) the complete details of the warranty provided, if any;

(6) the signature of approval on the disclosure documents by a certified applicator or licensed technician in the termite category employed by the company making the proposal;

(7) the concentration of termiticide used or minimum number of bait stations to be installed;

(8) for subterranean termite post construction treatments, the following statements and definitions in at least 8-point type:

(A) A termite treatment may be a partial treatment or spot treatment using termiticide, approved physical barriers, or a baiting system. These types of treatments are defined as follows:

(i) Partial Treatments. This technique allows a wide variety of treatment strategies but is more involved than a spot treatment (see definition below). Ex.: treatment of some or all of the perimeter, bath traps, expansion joints, stress cracks, portions of framing, walls and bait locations.

(ii) Spot Treatments. Any treatment which concerns a limited, defined area less than ten (10) linear or square feet that is intended to protect a specific location or "spot." Often there are adjacent areas that are susceptible to termite infestation which are not treated.

(iii) Baiting Systems. This type of treatment may include interior and/or perimeter placement of monitoring or baiting systems along with routine inspection intervals. The baiting technique may include one (1) or more locations as prescribed by the product label and instructions.

(iv) Barriers. If a physical barrier is used, the square footage of the physical barrier must be recorded and a diagram describing the installation will be provided.

(B) The types of treatment defined may apply to construction types as follows:

(i) Pier and Beam. Treatment of the outer perimeter including porches, patios and treatment of the attached garage. In the crawl space, treatment would include any soil to structure contacts (piers and/or pipes).

(ii) Slab Construction. Treatment of the perimeter and all known slab penetrations as well as any known expansion joints or stress cracks.

(9) for all termite treatments the following statement in at least 8-point type: For all treatments there will be a diagram showing exactly what will be treated. Treatment specifications and warranties for those treatments may vary widely. Review the pesticide label provided to you for minimum treatment specification. If you have any questions, contact the pest control company or the Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711-2847. Phone (866) 918-4481;

(10) for any pre-construction treatment, the "Proper Pre-Construction Subterranean Termite Treatments - A Guide for Builders and Consumers" guide, must be provided to the contractor or purchaser of the pre-treatment service prior to the beginning of the treatment. The text and format of the termite pre-treatment disclosure document is available on the Structural Pest Control Service website at:

<http://www.TexasAgriculture.gov/spcs>, or by contacting the Texas Department of Agriculture at the address provided in paragraph (9) of this subsection;

(11) for drywood termite, powder post beetle, wood boring beetle, and other related wood destroying insect treatments the following statements and definitions in at least 8-point type: A drywood termite, powder post beetle, wood boring beetle, or other related wood destroying insect treatment may be a full treatment or spot treatment. These types of treatments are defined as follows:

(A) Full Treatment: A treatment to control 100% of the insect infestation by tarpaulin fumigation or appropriate sealing method. A full treatment by fumigation is designed to eliminate every insect colony. It should include the infested structure and all attached structures; or

(B) Spot Treatment: Any treatment less than a full treatment by tarpaulin fumigation. This treatment should be considered only when a drywood termite, powder post beetle, wood boring beetle or related insect infestation has a limited and defined area of infestation. Adjacent areas susceptible to dry wood termite, powder post beetle, wood boring beetle or related insect infestations are not treated. Because of the nature of wood destroying insects, these untreated areas may continue to harbor drywood termites, powder post beetle, wood boring beetle, and related insects throughout the structure without detection;

(12) a consumer information sheet described in §7.147 of this title, relating to Consumer Information Sheet; and

(13) The jurisdiction statement, "Licensed and regulated by: Texas Department of Agriculture, P.O. Box 12847, Austin, TX 78711-2847, Phone (866) 918-4481, Fax (888) 232-2567."

(c) For a re-treatment of a property for an existing customer, the pest control business must provide the following before conducting the re-treatment:

(1) the label of the pesticide to be used;

(2) a diagram or updated diagram of the structure showing areas to be treated; and

(3) a consumer information sheet described in §7.147, of this title.

(d) The business license holder or, in the case of the certified noncommercial applicator, the applicator must keep and maintain correct and accurate copies of the Disclosure Documents for a period of two (2) years.

[The proposed amendments to §7.172 - §7.174 modify language to create consistency with current Department terminology.](#)

<u>TITLE 4</u>	AGRICULTURE
<u>PART 1</u>	TEXAS DEPARTMENT OF AGRICULTURE
<u>CHAPTER 7</u>	PESTICIDES
<u>SUBCHAPTER H</u>	STRUCTURAL PEST CONTROL SERVICE
<u>DIVISION 5</u>	TREATMENT STANDARDS
RULE §7.176	Real Estate Transaction Inspection Reports

(a) All inspection reports issued regarding the visible presence or absence of termites, other wood destroying insects and conditions conducive to infestation of wood destroying insects in connection with a real estate transaction must be made on a form prescribed by the Department. Forms must be maintained in the inspection file.

No alterations or revisions to the Department prescribed form are permitted; however, larger graphs, photos or other supporting documentation may be attached as an addendum to supplement the preexisting information.

(b) Lending providers such as the Veterans Administration may require the inspection results on another form. That form is supplemental to the required Department form and must be maintained in the inspection file.

(c) The Department report form includes a space to report conditions consistent with §7.175 of this title, relating to the Official Wood Destroying Insect Report Inspection Procedures, which is available at: <http://www.TexasAgriculture.gov/spcs/>, or by contacting the Texas Department of Agriculture, P.O. Box 12847, Austin, TX 78711-2847, (866) 918-4481.

(d) For each inspection, copies of the completed form must be prepared for:

- (1) the person who ordered the inspection; and
- (2) business files of the business license holder issuing the report.

(e) The licensee issuing the report must retain records of inspection reports for a minimum of two (2) years.

<u>TITLE 4</u>	AGRICULTURE
<u>PART 1</u>	TEXAS DEPARTMENT OF AGRICULTURE
<u>CHAPTER 7</u>	PESTICIDES
<u>SUBCHAPTER H</u>	STRUCTURAL PEST CONTROL SERVICE
<u>DIVISION 5</u>	TREATMENT STANDARDS
RULE §7.178	Structural Fumigation Requirements

(a) Fumigation of structures to control wood destroying insects or other pests shall be performed only under the direct on-site supervision of a certified applicator licensed in the category of structural fumigation. Direct on-site supervision means that the certified applicator exercising such supervision must be present at the site of the fumigation during the introduction of the fumigant, any reentry prior to aeration, during the initial aeration process and when the structure is released for occupancy.

(b) All motor vehicles used by a licensee or licensee's employees in conducting structural fumigation services, to include the transportation of tarps and fumigants, shall display the TPCL number of the business. The transportation of all fumigants shall be done consistent with label directions.

(c) A licensee licensed in the structural fumigation category may subcontract the performance of a structural fumigation to another licensee licensed in the structural fumigation category. The primary contractor shall notify the customer that the performance of the structural fumigation service will be performed by another properly licensed business other than the primary contractor. This written notification shall be a part of the disclosure documents as a separate statement itself or attached to the disclosure documents, and must be signed and dated by the customer. Both the primary contractor and the subcontractor shall maintain a copy of the disclosure documents issued to and signed and dated by the customer, and the report as described in subsection (1) of this section for a period of two (2) years.

(d) Structural fumigation shall be performed in compliance with all label requirements applicable to state and federal laws and regulations.

(1) During a fumigation, whenever the presence of two (2) persons trained in the use of fumigant is required by the fumigant label, at least one (1) of these persons must be the certified applicator providing direct on-site supervision as described in subsection (a) of this section and the second person must be trained in the necessary safety precautions.

(2) Two (2) trained persons shall be present at each fumigation site during the introduction of the fumigant, any reentry prior to aeration, during the initial aeration process, and if the label requires, until the active aeration period with all operable doors and windows open is completed and the structure is secured for the remaining aeration period.

(3) During these periods of time, two (2) operational Self-Contained Breathing Apparatuses (SCBA) must be present at the fumigation site. Fumigators must have in their possession any keys necessary to unlock secondary locking devices and/or an access device that would allow for immediate access to the structure the entire time the structure is under fumigation.

(4) A trained person in structural fumigation ~~may~~must be a registered apprentice, licensed technician, or certified applicator in the structural fumigation category having been trained in the proper use of a SCBA and clearing devices.

(e) Prior to the release of the fumigant, warning signs shall be posted in plainly visible locations on or in the immediate vicinity of all entrances to the structure under fumigation and shall not be removed until the premises is determined safe for occupancy. Ventilation shall be conducted with due regard for public safety.

(f) Local fire, police, or emergency authorities shall be notified of the structural fumigation prior to introduction of the fumigant. Notification shall be made in writing, by email or by telephone as long as a record is made of the name of the person that was informed and the date and time. The same agency shall be informed that the structure is released for occupancy.

(g) The space to be fumigated shall be vacated by all occupants prior to the commencement of fumigation. The space to be fumigated shall be sealed in such manner to ensure that the concentration of the fumigant released is retained in compliance with the manufacturer's recommendations. Fumigation tarps with puncture holes, tears, rips, or splitting seams must be taped or repaired in such a manner to ensure that the concentration of the fumigant released is retained in compliance with the manufacturer's recommendations.

(h) Warning signs shall be printed in red on white backgrounds and shall contain the following statement in letters not less than two (2) inches in height: "Danger-Fumigation." Signs must also depict a skull and crossbones, not less than one (1) inch in height, the name of the fumigant, the date and time fumigant was introduced, and the name, license number, and telephone number where the certified applicator performing the fumigation may be reached twenty-four (24) hours a day.

(i) On any structure that has been fumigated, the certified applicator responsible for the fumigation shall, immediately upon completion, post a durable sticker on the wall adjacent to the electric breaker box, water heater, or beneath the kitchen sink. This must be a durable sticker not less than one (1) inch by two (2) inches in size. It must have the name and license number of the certified applicator, date of fumigation, fumigant used, and the purpose for which it was fumigated (target pest).

(j) A certified applicator performing the fumigation shall use adequate warning agents with all fumigants that lack such properties. When conditions involving abnormal hazards exist, the person exercising direct on-site supervision shall take such safety precautions in addition to those prescribed to protect the public health

and safety. The certified applicator responsible for the fumigation shall visibly inspect the structures to assure vacancy prior to introduction of fumigant.

(k) The certified applicator responsible for the fumigation shall also post a person or persons to guard the location whenever a licensed applicator is not present from the time the fumigant is introduced until the label concentration for aeration is reached. The person posted at the location shall deter entry into the structure by routinely inspecting the structure under fumigation at least once each hour. The person posted at the location shall remain alert and on duty as directed by the certified applicator. The certified applicator responsible for the fumigation shall secure all entrances to the structure in such a manner as to prevent entry by anyone other than the certified applicator responsible for the fumigation. The structure must remain secured by secondary locking devices until the structure is released for occupancy.

(l) For the purpose of maintaining proper safety, establishing responsibility in handling the fumigants, and to ensure a successful fumigation the business performing the structural fumigation shall compile and retain a report for each fumigation job and/or treatment for a period of at least two (2) years. The certified applicator responsible for the fumigation must have a copy of the report at the time of the fumigation. The report for each fumigation job or treatment must contain the following information to be recorded as the fumigation progresses:

- (1) name, address and business license number of the pest control business;
- (2) name and address of property and owner;
- (3) measured cubic feet fumigated;
- (4) target pest or pest controlled;
- (5) fumigant or fumigants used, EPA registration number and amount;
- (6) name of warning agent and amount used;
- (7) temperature and wind conditions;
- (8) time gas introduced and aerated (date and hour);
- (9) name and license number of the certified applicator responsible for the fumigation and providing direct on-site supervision;
- (10) list of any extraordinary safety precautions taken;
- (11) date and time released for occupancy (signed by certified applicator);
- (12) the dates and times local fire, police or emergency authorities were notified;
- (13) the identification of clearing devices used; and
- (14) proof that the Department was notified of the structural fumigation with the date and time of the notification.

(m) Fumigations for the purpose of controlling wood destroying insects are subject to the provisions of §7.174 of this title, relating to ~~Subterranean Termite, Drywood Termite and Related~~ Wood Destroying Insect Treatment Disclosure Documents.

(n) Every licensee engaged in application of a fumigant is required to use an approved and calibrated clearance device consistent with the fumigant label.

- (1) The approved and calibrated clearance device must be used consistently

with the label.

(2) An independent and qualified facility or person must perform calibration of the clearance device not less than annually and anytime it is suspected to be inaccurate. Calibration must be in compliance with the manufacturer's requirements.

(3) Proof of calibration must be kept on file for a period of two (2) years and available for review by the Department. The record of proof for each clearing device shall contain the date of calibration and the name of the independent and qualified facility or person who performed the calibration.

(o) The certified applicator responsible for the fumigation shall be responsible for following label requirements for aeration and clearing of the structure that is being fumigated.

(p) Notice of all fumigations of a structure must be submitted using the Department's designated notification system between the hours of 6:00 a.m. and 9:00 p.m., at least four (4), and no more than twenty-four (24) hours prior to the structural fumigation application. If the structural fumigation is cancelled, notice of the cancellation must be sent using the Department's designated notification system within three hours of the time the pest control company learns of the cancellation. The licensee must provide:

- (1) address and site location;
- (2) fumigant to be used;
- (3) date and time of treatment (for the purposes of this section the time of treatment is when the business conducting the fumigation is scheduled to arrive at the fumigation site);
- (4) measured cubic feet under contract;
- (5) the name and license number of the business licensee; and
- (6) the name and license number of the certified applicator responsible for overseeing the fumigation.

(q) Before an individual may apply for an initial certified applicator's license in the structural fumigation category the following experience requirements must be met:

- (1) Attend a forty (40) hour structural fumigation school that has at least sixteen (16) hours of hands on training, and has been approved by the Department; or
- (2) Obtain forty (40) hours of on-the-job training with at least sixteen (16) hours of hands on training that is approved by the Department. Department approved hands-on-training includes the following:

- (A) Inspect structure and identify pest(s) prior to fumigation;
- (B) Prepare disclosure documents pursuant to the provisions of §7.174, of this title;
- (C) Measure structure and calculate volume;
- (D) Calculate dosage of fumigant;
- (E) Notify local fire, police or emergency authority as appropriate;

- (F) Secure materials left inside structure, check pilot lights & appliances;
 - (G) Tarp, place snakes, or otherwise seal structure for fumigation;
 - (H) Post the structure and secure entrances to the structure;
 - (I) Instruct the person (guard) on duty at the site on responsibilities and safety precautions;
 - (J) Set up equipment including splash pan and fans;
 - (K) Introduce fumigant and warning agent (if required) to the structure;
 - (L) Aerate structure;
 - (M) Take down tarps, remove snakes, remove locks, or otherwise remove sealing material;
 - (N) Clear the structure;
 - (O) Store and/or dispose of fumigant containers;
 - (P) Prepare the report of fumigation required by subsection (l) of this section; and
 - (Q) Securing the fumigant for transportation consistent with label directions.
- (r) Current certified applicators with the structural fumigation category must receive four (4) hours of training per year to maintain their structural fumigation certification. The four (4) hours of training may be classroom or on the job training. Department approved hands-on-training includes the following:
- (1) Inspect structure and identify pest(s) prior to fumigation;
 - (2) Prepare disclosure documents pursuant to the provisions of §7.174 of this title;
 - (3) Measure structure and calculate volume;
 - (4) Calculate dosage of fumigant;
 - (5) Notify local fire, police or emergency authority as appropriate;
 - (6) Secure materials left inside structure, check pilot lights & appliances;
 - (7) Tarp, place snakes, or otherwise seal structure for fumigation;
 - (8) Post the structure and secure entrances to the structure;
 - (9) Instruct the person (guard) on duty at the site on responsibilities and safety precautions;
- (10) Provide onsite supervision during application (only one applicator per company may claim provision of onsite supervision);
- (11) Set up equipment including splash pan and fans;
 - (12) Introduce fumigant and warning agent (if required) to the structure;
 - (13) Aerate structure;
 - (14) Take down tarps, remove snakes, remove locks, or otherwise remove sealing material;
 - (15) Clear the structure;
 - (16) Provide onsite supervision during aeration and clearing (only one applicator per company may claim provision of onsite supervision);
 - (17) Store and/or dispose of fumigant containers;
 - (18) Prepare the report of fumigation required by subsection (l) of this section; and
 - (19) Securing the fumigant for transportation consistent with label directions.
- (s) In addition to the four (4) hours of training per year, certified applicators must acquire one (1) CEU per year in structural fumigation to maintain the certification following initial testing.

(t) A verifiable performance/training records form will be made available to the Department upon request. These performance/training records forms shall be kept on a format prescribed by the department in the business file for at least two (2) years. The responsible certified applicator for the company that performed the training must certify in the training records of each certified applicator that the certified applicator has completed the required training and has demonstrated competency. The verifiable performance/training records form will be made available to the certified applicator or technician upon written request.

The proposed amendments to §7.178 modify language to create consistency with current Department practices and terminology.

<u>TITLE 4</u>	AGRICULTURE
<u>PART 1</u>	TEXAS DEPARTMENT OF AGRICULTURE
<u>CHAPTER 7</u>	PESTICIDES
<u>SUBCHAPTER H</u>	STRUCTURAL PEST CONTROL SERVICE
<u>DIVISION 7</u>	INTEGRATED PEST MANAGEMENT PROGRAM FOR SCHOOL DISTRICTS
RULE §7.201	Responsibility of School Districts to Adopt an IPM Program

Each school district shall establish, implement, and maintain an Integrated Pest Management (IPM) program. An IPM program is a regular set of procedures for preventing and managing pest problems using an integrated pest management strategy, as defined in §7.114 of this title (relating to Definition of Terms). The school district is responsible for each IPM Coordinator's compliance with these regulations.

(1) The IPM program shall contain these essential elements:

(A) a school board approved IPM policy, stating the school district's commitment to follow integrated pest management guidelines in all pest control activities that take place on school district property. The IPM policy statement shall include:

(i) a definition of IPM consistent with this section;

(ii) a reference to Texas laws and rules governing pesticide use and IPM in public schools;

(iii) information about who can apply pesticides on school district property; and

(iv) information about designating, registering, and required training for the school district's IPM Coordinator. The Superintendent and IPM Coordinator will maintain a copy of the policy.

(B) a monitoring program to determine when pests are present and when pest problems are severe enough to justify corrective action;

(C) the preferential use of lower risk pesticides and the use of non-chemical management strategies to control pests, rodents, insects and weeds;

(D) a system for keeping records of facility inspection reports, pest-related work orders, pest control service reports, pesticide applications, and pesticide complaints;

(E) a plan for educating and informing school district employees about their roles in the IPM program; and

(F) written guidelines that identify thresholds for when pest control actions are justified.

(2) Each school district superintendent shall appoint an IPM Coordinator(s) to implement the school district's IPM program. Not later than 90 days after the superintendent designates or replaces an IPM Coordinator(s), the school district must report to the Department the newly appointed coordinator's name, address, telephone

number, email address and the effective date of the appointment. A school district that appoints more than one IPM Coordinator shall designate a Responsible IPM Coordinator who will have overall responsibility for the IPM program and provides oversight of subordinate IPM Coordinators regarding IPM program decisions. When a school district removes a IPM Coordinator, the departing IPM Coordinator, Superintendent or Superintendent's designee must notify the Department of the removal of the IPM Coordinator within ten (10) days in writing. A school district may not be without a new or interim an IPM Coordinator for more than 30 days without appointing a new or interim IPM Coordinator. An interim IPM Coordinator may not serve for more than 60 days unless they are designated as the IPM Coordinator.

(3) Each school district that engages in pest control activities must employ or contract with a licensed applicator, who may, if an employee, also serve as the IPM Coordinator.

(4) Each school district shall prior to or by the first week of school attendance, ensure that a procedure is in place to provide prior notification of pesticide applications in accordance with this chapter. Individuals who request in writing to be notified of pesticide applications may be notified by telephonic, written or electronic methods.

The proposed amendment to §7.201 give additional guidelines for when a school district notifies the Department about the removal or appointment on an IPM Coordinator.

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<u>TITLE 4</u>	AGRICULTURE
<u>PART 1</u>	TEXAS DEPARTMENT OF AGRICULTURE
<u>CHAPTER 7</u>	PESTICIDES
<u>SUBCHAPTER H</u>	STRUCTURAL PEST CONTROL SERVICE
<u>DIVISION 7</u>	INTEGRATED PEST MANAGEMENT PROGRAM FOR SCHOOL DISTRICTS
RULE §7.202	Responsibilities of the IPM Coordinator

The IPM Coordinator(s) shall be responsible for implementation of the school district IPM Program. In addition, the IPM Coordinator(s) shall:

(1) successfully complete a Department-approved IPM Coordinator training course within six months of appointment and maintain the certificate of completion from the IPM Coordinator training course as long as the individual serves as IPM Coordinator for a district;

(2) obtain at least six hours of Department-approved IPM continuing education units (CEU) every three years, beginning the effective date of this rule or the date of designation, whichever is later. The three-year period will begin from the date the IPM Coordinator receives initial training after being appointed by the superintendent, or if currently designated and trained as the IPM Coordinator, when this rule revision goes into effect. No approved course may be repeated for credit within the same three-year period. One of the six CEUs must be related to laws and regulations specific to IPM programs in schools. IPM Coordinators may satisfy the CEU requirements through one or more of the following methods:

(A) Completing a Department approved training course for IPM Coordinators;

(B) Completing courses that have been SPCS approved in the pest, lawn and ornamental, weed control or general IPM category; ~~or~~

(C) By submitting information for a course completed, that was not previously approved by the Department, for the evaluation of credit. The information must include the name of the instructor(s), verification of attendance at the course, length of time of the course stated in hours and minutes, a detailed course outline indicating the scope of the course and learning objectives, and the number of continuing education units requested. Additionally, the IPM Coordinator must demonstrate that the course content is appropriate and pertinent to the use of pesticides and the implementation of IPM strategies at school buildings and other school district facilities; or:

(3) If the IPM Coordinator is also a licensed applicator, the CEUs obtained for the license under §7.134 of this title (relating to Continuing Education Requirements for Certified Applicators) will count towards the six hours of IPM CEUs.

(4) Following the three-year effective CEU period, IPM Coordinators must maintain certificates of completion for one additional calendar year (period through December

31). The certificates are subject to inspection by the Department at any time upon request.

(5) The IPM Coordinator shall oversee and be responsible for:

(A) coordination of pest management personnel, ensuring that all school employees who perform pest control, including those employees authorized to perform incidental use applications, have the necessary training, are equipped with the appropriate personal protective equipment, and have the necessary licenses for their pest management responsibilities;

(B) ensuring that all IPM program records, including incidental use training records (as provided for under §7.205 of this title (relating to Incidental Use for Schools)), pest-related work orders, pest control service reports, pesticide applications, and pesticide complaints are maintained for a period of two years and are made available to a Department inspector upon request;

(C) working with district administrators to ensure that all pest control proposal specifications for outside contractors are compatible with IPM principles, and that contractors work under the guidelines of the school district's IPM policy;

(D) ensuring that all pesticides used on school district property, including residential properties, are in compliance with the school district's IPM program and that current pesticide labels and Safety Data Sheets (SDS) are available for interested individuals upon request;

(E) overseeing and implementing that portion of the plan that ensures that school district administrators and relevant school district personnel are provided opportunities to be informed and educated about their roles in the IPM program, reporting, and notification procedures;

(F) pesticide applications, including the approval of emergency applications at buildings and on school district grounds, including residential properties, are conducted in accordance with Division 7 of this subchapter; and

(G) maintaining a current copy of the school district's IPM policy and making available to a Department inspector upon request.

The proposed amendment to §7.202 clarifies gives an additional guideline regarding training required of a school district's IPM Coordinator.

<u>TITLE 4</u>	AGRICULTURE
<u>PART 1</u>	TEXAS DEPARTMENT OF AGRICULTURE
<u>CHAPTER 7</u>	PESTICIDES
<u>SUBCHAPTER H</u>	STRUCTURAL PEST CONTROL SERVICE
<u>DIVISION 7</u>	INTEGRATED PEST MANAGEMENT PROGRAM FOR SCHOOL DISTRICTS
RULE §7.203	Responsibilities of Certified Applicators and Licensed Technicians

The commercial or noncommercial certified applicator or licensed technician shall:

- (1) apply only EPA labeled pesticides, appropriate for the target pest, except as provided in Division 7 of this subchapter (relating to Integrated Pest Management Program for School Districts);
- (2) provide the structural pest management needs of the school district by following the school district's IPM program and these regulations;
- (3) obtain written approval from the IPM Coordinator(s) for the use of pesticides in accordance with Division 7;
- (4) handle and forward to the IPM Coordinator(s) records of IPM activities, any complaints relating to pest problems, and pesticide use;
- (5) ensure that pesticide use records are forwarded to the IPM Coordinator within two (2) business days or in a time frame as agreed to by the IPM Coordinator;
- (6) consult with the IPM Coordinator(s) concerning the use of control measures in buildings and grounds, including residential properties; and
- (7) ensure that all pest control activities are consistent with the school district's IPM program and IPM policy.

The proposed amendment to §7.203 brings the rule in line with guidance on persons performing pest control work otherwise regulated by the Department in Tex. Occ. Code §1951.053.

TITLE 4 AGRICULTURE

PART 1 TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 7 PESTICIDES

SUBCHAPTER H STRUCTURAL PEST CONTROL SERVICE

DIVISION 7 INTEGRATED PEST MANAGEMENT PROGRAM FOR SCHOOL DISTRICTS

RULE §7.204 Pesticide Use in School Districts

All pesticides used by school districts must be registered with the United States Environmental Protection Agency (EPA) and the Texas Department of Agriculture, with the exception of those pesticides that have been exempted from registration by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Section 25(b). All pesticides used by school districts must also bear a label as required by FIFRA and Chapter 76 of the Texas Agriculture Code. Pesticides intended and labeled for use on humans are exempt from this section. Pesticide use must also meet the following requirements:

(1) Pest control signs shall be posted at least 48 hours prior to a pesticide application inside school district buildings, including residential properties, as provided for under §7.148 of this title (relating to Responsibilities of Unlicensed Persons for Posting and Notification).

(2) For outdoor applications made on school district grounds, including residential properties, the treated area must be identified at all entry points with a sign, or must be secured using a locking device, a fence or other practical barrier such as commercially available barrier caution tape, or periodically monitored to keep students out of the treated area until the allowed reentry time.

(3) Pesticides used on school district property shall be mixed outside of student occupied areas of buildings and grounds.

(4) The use of non-pesticide control measures, non-pesticide monitoring tools and mechanical devices, such as glue boards and traps as permitted in accordance with Division 7 of this subchapter (relating to Integrated Pest Management Program for School Districts), are exempt from posting requirements. The use of non-pesticide tools and devices by unlicensed school district personnel, for monitoring purposes, shall be permitted. Monitoring by unlicensed school district personnel shall be done only as directed, under the supervision of the IPM Coordinator.

(5) Pesticide applications shall not be made to outdoor school grounds if such an application will expose students to physical drift of pesticide spray particles. Reasonable preventive measures shall be taken to avoid the potential of drift to occur.

(6) School districts are allowed to apply the following pesticides to control pests, rodents, insects and weeds at school buildings, grounds or other facilities in accordance with the approval for use and restrictions listed for each category:

(A) Green Category Pesticides.

(i) Definition: A pesticide will be designated as a Green Category pesticide if it meets the following criteria:

~~(I) all active ingredients belonging to EPA toxicity categories III and IV;~~

~~(I)~~ it contains a CAUTION signal word on the product label, unless no signal word is required to appear on the product label as determined by EPA; and

~~(III)~~ it consists of the active ingredient boric acid; disodium octoborate tetrahydrate or related boron compounds; silica gel; diatomaceous earth; or belongs to the class of pesticides that are insect growth regulators; microbe-based insecticides; botanical insecticides containing no more than 5% synergist (and does not include synthetic pyrethroids); biological (living) control agents; pesticidal soaps; natural or synthetic horticultural oils; or insect and rodent baits in tamper-resistant containers; or for crack-and-crevice use only;

(ii) Approval for Use: Green Category pesticides do not require prior written approval. These pesticides may be applied at the licensee's discretion under the guidelines of the school district IPM program.

(iii) Restrictions:

(I) Green Category pesticides may be applied indoors if students are not present and are not expected to be present in the room or treated area at the time of application. Reentry into the treated area is permitted as soon as the application is complete, the pesticide spray has dried, or the reentry interval specified on the pesticide label has expired, whichever interval is longer.

(II) Green Category pesticides may be applied outdoors if students are not present within ten (10) feet of the application site at the time of treatment. Students are allowed reentry into the treated area as soon as the application is complete, the pesticide spray has dried or the reentry interval specified on the pesticide label has expired, whichever interval is longer.

(B) Yellow Category Pesticides.

(i) Definition: A pesticide will be designated as a Yellow Category pesticide if it meets the following criteria:

~~—(I) all active ingredients belonging to EPA toxicity categories III and IV;~~

(II) it contains a CAUTION signal word on the product label, unless no signal word is required to appear on the product label as determined by EPA; and

(III) it does not meet the criteria to be designated as a Green Category pesticide under subparagraph (A)(i) of this paragraph.

(ii) Approval for Use: Yellow Category pesticides require written approval from the certified applicator prior to their use. Yellow Category pesticide approvals shall have a duration of no longer than six (6) months or six (6) applications per site, whichever occurs first.

(iii) Restrictions:

(I) Yellow Category pesticides may be applied indoors if students are not present or not expected to be present in the room or treated area within the next four (4) hours following the application, or until the reentry interval specified on the pesticide label has expired, whichever interval is longer.

(II) Yellow Category pesticides may be applied outdoors if students are not present or not expected to be present within ten (10) feet of application site and the area is secured and reentry is in accordance with this section for no less than four (4) hours, or until the reentry interval specified on the pesticide label has expired, whichever interval is longer.

(III) The treated area must be clearly posted at all entry points with a sign, or secured using a locking device, a fence or other practical barrier such as commercially available barrier caution tape, or periodically monitored to keep students out of the treated area until the allowed reentry time.

(C) Red Category Pesticides.

(i) Definition: A pesticide will be designated as a Red Category Pesticide if it meets the following criteria:

~~—(I) all active ingredients belonging to EPA toxicity category I or II;~~

(II) it contains a WARNING or DANGER signal word on the product label; and

(III) it contains an active ingredient that has been designated as a restricted use pesticide, a state-limited-use pesticide or a regulated herbicide; and it does not meet the criteria to be designated as a Green Category pesticide under subparagraph (A)(i) of this paragraph, or a Yellow Category pesticide under subparagraph (B)(i) of this paragraph.

(ii) Approval for Use: Prior to the application, licensees must provide written justification to the IPM Coordinator for the use of the Red Category pesticide and must obtain signed approval

for the application from the IPM Coordinator. Red Category pesticide approvals shall have a duration of no longer than three (3) months or three (3) applications per site, whichever occurs first.

(iii) Restrictions.

(I) Red Category pesticides may be applied indoors if students are not present and are not expected to be present in the room or treated area within eight (8) hours following the application, or until the reentry interval specified on the pesticide label has expired, whichever interval is longer.

(II) Red Category pesticides may be applied outdoors if students are not present within twenty-five (25) feet of the application site, the area is secured in accordance with this section, and reentry by students is prohibited for no less than eight (8) hours, or until the reentry interval specified on the pesticide label has expired, whichever interval is longer.

(III) The treated area must be clearly posted at all entry points with a sign, or secured using a locking device, a fence or other practical barrier such as commercially available barrier caution tape, or periodically monitored to keep students out of the treated area until the allowed reentry time.

The proposed amendment to §7.204 modifies criteria for designating pesticides in the green, yellow, or red categories.