

AGRICULTURE CODE

TITLE 2. DEPARTMENT OF AGRICULTURE

CHAPTER 12A. GENERAL LICENSING PROVISIONS

SUBCHAPTER A. POWERS AND DUTIES OF DEPARTMENT RELATED TO LICENSING

Sec. 12A.001. APPLICABILITY OF PROVISIONS. The general licensing, regulatory, and enforcement provisions of Chapter 12 and this chapter apply to licensing and regulatory programs administered by the department under any law.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.03, eff. September 1, 2009.

Sec. 12A.002. CEASE AND DESIST ORDER. (a) If it appears to the commissioner that a person who is not licensed by the department is violating a statute or rule that requires the person to hold a license issued by the department or a statute or rule relating to an activity regulated by the department, the commissioner after notice and opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.03, eff. September 1, 2009.

Sec. 12A.003. RISK-BASED INSPECTIONS. For each person licensed or regulated by the department that the department may inspect:

(1) the department may conduct additional inspections based on a schedule of risk-based inspections using the following criteria:

- (A) the type and nature of the person;
- (B) whether there has been a prior violation by the person;
- (C) the inspection history of the person;
- (D) any history of complaints involving the person; and

(E) any other risk-based factor identified by the department; and

(2) the department may waive any inspection requirement under law if an emergency arises or to accommodate complaint investigation or risk-based inspection schedules.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.03, eff. September 1, 2009.

Sec. 12A.004. INSPECTION AND ENFORCEMENT STRATEGIC PLAN.

(a) The department shall develop and publish an annual plan for each state fiscal year to use the inspection and enforcement resources of the department strategically to ensure public safety and protect agriculture and consumers in this state.

(b) The department shall seek input from stakeholders when developing each annual plan.

(c) The department shall collect and maintain information that accurately shows the department's inspection and enforcement activities. Each annual plan must include a report of the information collected by the department that shows the department's inspection and enforcement activities over time.

(d) The information described by Subsection (c) must include data regarding violations of statutes or department rules, including:

(1) the number, type, and severity of:

(A) violations the department found to have occurred;

(B) violations the department referred for enforcement to the section of the department responsible for enforcement; and

(C) violations for which the department imposed a penalty or took other enforcement action;

(2) the number of major violations for which the department imposed a penalty or took other enforcement action; and

(3) the number of repeat major violations, categorized by license type, if applicable.

(e) The department shall publish each annual plan on the department's Internet website not later than July 1 of the year

preceding the state fiscal year in which the department implements the plan.

Added by Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 9, eff. September 1, 2021.

Sec. 12A.005. CRIMINAL HISTORY EVALUATION. The department shall perform the duties of a licensing authority under Chapter 53, Occupations Code, for each license issued by the department under this code or other law, including issuing guidelines under Section 53.025, Occupations Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 9, eff. September 1, 2021.

SUBCHAPTER B. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 12A.051. INFORMATION REGARDING COMPLAINTS AND ENFORCEMENT PROCESS. (a) The department shall:

(1) inform applicants, license holders, and the public on the department's Internet website, in department brochures, and on any other available information resource about the department's enforcement process, including each step in the complaint investigation and resolution process, from initial filing through final appeal, and the opportunity to request an informal settlement conference; and

(2) inform license holders that a license holder may obtain information about a complaint made against the license holder and may obtain on request a copy of the complaint file.

(b) Except as provided by Subsection (d), the department shall provide to a license holder against whom a complaint has been filed:

(1) the allegations made against the license holder in the complaint; and

(2) on the license holder's request, any information obtained by the department in its investigation of the complaint.

(c) The department shall provide the information required under Subsection (b) in a timely manner to allow the license holder time to respond to the complaint.

(d) The department is not required to provide the following information to a license holder:

(1) the name of a confidential informant whose testimony will not be used in any hearing as evidence against the license holder;

(2) attorney-client communications;

(3) attorney work product; or

(4) any other information that is confidential or not subject to disclosure under law, rule of evidence, or rule of civil procedure.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. [1016](#)), Sec. 6.03, eff. September 1, 2009.

Sec. 12A.052. COMPLAINT AND VIOLATION ANALYSIS. The department shall analyze complaints filed with and violations discovered by the department to identify any trends or issues related to certain violations, including:

(1) the reason for each complaint or violation;

(2) how each complaint or violation was resolved; and

(3) the subject matter of each complaint or violation that was not within the jurisdiction of the department and how the department responded to the complaint or violation.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. [1016](#)), Sec. 6.03, eff. September 1, 2009.

SUBCHAPTER C. ISSUANCE AND RENEWAL OF LICENSES

Sec. 12A.101. REPLACEMENT LICENSE; FEE. The department shall issue to a license holder whose license has been lost or destroyed or whose name has been changed a replacement license if the license holder submits to the department:

(1) an appropriate application; and

(2) a fee in an amount established by department rule.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. [1016](#)), Sec. 6.03, eff. September 1, 2009.

SUBCHAPTER D. EXAMINATIONS

Sec. 12A.151. EXAMINATION PROCEDURES. For each licensing examination administered by the department, the department shall:

(1) adopt policies and guidelines detailing the procedures for the testing process, including test admission and internal test administration procedures; and

(2) post on the department's Internet website the policies that reference the testing procedures.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.03, eff. September 1, 2009.

Sec. 12A.152. EVALUATION OF EXAMINATION QUESTIONS. For each licensing examination administered by the department, the department shall periodically evaluate the effectiveness of examination questions in objectively assessing an applicant's knowledge.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.03, eff. September 1, 2009.

SUBCHAPTER E. PENALTIES AND ENFORCEMENT PROCEDURES

Sec. 12A.201. INFORMAL PROCEEDINGS. (a) The department by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) an informal proceeding held in compliance with Section 2001.054, Government Code.

(b) The department shall offer the opportunity to conduct an informal settlement conference by telephone.

(c) The department shall:

(1) provide a license holder sufficient opportunity to indicate whether the terms of a proposed order are acceptable to the license holder;

(2) indicate in the notice of violation that the license holder has the opportunity described by Subdivision (1); and

(3) allow a license holder who does not agree with a proposed order to request an informal settlement conference.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. [1016](#)), Sec. 6.03, eff. September 1, 2009.