

**DEPARTMENT OF ENERGY AND ENVIRONMENT**

**NOTICE OF FINAL RULEMAKING**

**Mold Assessment and Remediation Licensure Regulations**

The Director of the Department of Energy and Environment (DOEE or Department), pursuant to the authority set forth in Sections 103(b)(1)(B)(ii)(III) and 107(4) of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.03 (b)(1)(B)(ii)(III) and 8-151.07(4) (2013 Repl. & 2015 Supp.)); Title III, Subtitle B of the Air Quality Amendment Act of 2014, effective September 9, 2014 (D.C. Law 20-135; D.C. Official Code §§ 8-241.01 *et seq.* (2013 Repl. & 2015 Supp.)); and Mayor’s Order 2006-61, dated June 14, 2006, hereby gives notice of the intent to promulgate a new Chapter 32 of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR), the Mold Assessment and Remediation Licensure Regulations.

This rulemaking implements the provisions of Title III, Subtitle B of the Air Quality Amendment Act of 2014 by providing mold licensure and certification mechanisms for all mold assessment or remediation professionals who operate in the District of Columbia. This rulemaking also sets a threshold above which a property owner must employ assessment and remediation professionals if the property is rented for residential use.

The proposed regulations were first published in the *D.C. Register* on April 3, 2015 at 62 DCR 3941, followed by a Notice of Public Hearing posted in the *D.C. Register* on May 29, 2015, at 62 DCR 6954. A Notice of Second Proposed Rulemaking was published on September 25, 2015, at 62 DCR 12746. This Notice of Final Rulemaking includes non-substantial revisions that clarify the original intent of the rules, including a clarifying change to the definition of “dwelling unit,” by adding a definition for “transient housing business,” in accordance with Chapter 28 of Title 47 of the District of Columbia Official Code. The Department received comments on the second proposed rulemaking. All comments were given due consideration and provided a response. Interested persons can find both the comments and the Department’s response at <http://doee.dc.gov/moldlicensureregs>.

These rules were adopted as final on January 12, 2016, and will become effective upon publication of this notice in the *D.C. Register*.

**Title 20, ENVIRONMENT, is amended by adding a new Chapter 32 as follows:**

**CHAPTER 32 MOLD LICENSURE AND CERTIFICATION**

- 3200 PURPOSE AND SCOPE**
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**3200**            **PURPOSE AND SCOPE**

- 3200.1            The purpose of this chapter is to implement Title III of the Air Quality Amendment Act of 2014 (Act), effective September 9, 2014 (D.C. Law 20-135; D.C. Official Code §§ 8-241.01 *et seq.*
  
- 3200.2            This chapter establishes (1) a licensing program for indoor mold assessment and remediation professionals performing work on all properties in the District of Columbia, (2) a mold contamination threshold for residential properties of ten square feet (10 ft.<sup>2</sup>) of indoor mold growth in an affected area, and (3) guidelines for residential indoor mold assessment and remediation below the threshold level.
  
- 3200.3            Indoor mold remediation obligations of residential property owners and tenants are stated in D.C. Official Code § 8-241.04 (2013 Repl. & 2015 Supp.).

**3201**            **EXCEPTIONS AND THRESHOLD FOR MOLD PROFESSIONALS**

- 3201.1            This chapter shall not apply to:
  - (a)            The following activities when not conducted for the purpose of complying with D.C. Official Code § 8-241.04 (2013 Repl. & 2015 Supp.):
    - (1)            Routine cleaning;
    - (2)            The diagnosis, repair, cleaning, or replacement of plumbing, heating ventilation, air conditioning, electrical, or air duct systems or appliances;
    - (3)            Commercial or residential real estate inspections; or
    - (4)            The incidental discovery or emergency containment of indoor

mold growth during the conduct or performance of services listed in this subsection.

- (b) The repair, replacement, or cleaning of construction materials during the construction of a structure; or
- (c) A pest control inspection conducted by a person regulated under Chapter 23 of this title.

3201.2 A license shall not be required under this chapter to perform mold assessment or remediation in a residential property containing a total surface area of less than ten square feet (10 ft.<sup>2</sup>) of indoor mold growth in an affected area.

3201.3 A license shall not be required under this chapter to perform mold assessment or remediation in an outdoor area or a non-residential property.

3201.4 A license shall not be required under this chapter to perform mold assessment or remediation when it is performed by the owner of a residential dwelling unit when the dwelling unit is owner occupied.

3201.5 An individual shall not be required to be licensed under this chapter to perform mold assessment or mold remediation while supervised by a licensee.

3201.6 An individual shall not be required to be licensed under this chapter if they are currently licensed by the District of Columbia or another jurisdiction in another field (including, but not limited to, medicine, architecture, or engineering) who provide to a licensee only consultation related to that other field. In such a case, the responsibility for the project or activity remains with the licensee.

3201.7 An individual shall not be required to be licensed under this chapter if they are performing the regulated activities of a licensed insurance adjuster, including investigation and review of losses to insured property, assignment of coverage, and estimation of the usual and customary expenses due under the applicable insurance policy, including expenses for reasonable and customary mold assessment and remediation.

3201.8 An individual who is performing mold assessment or remediation under the licensing exemption(s) of § 3201.2 and identifies indoor mold growth of ten square feet (10 ft.<sup>2</sup>) or more in an affected area shall:

- (a) Immediately cease all assessment or remediation work; and
- (b) Advise the person requesting the assessment or remediation that the exemption under § 3201.2 is no longer applicable and that any additional work in the area shall be conducted by a licensee under this chapter.

**3202                    REQUIREMENTS AND FEES TO OBTAIN A LICENSE**

- 3202.1            Regardless of the exceptions in § 3201, an individual shall not engage in the business of mold assessment or mold remediation without a license issued pursuant to this section.
- 3202.2            Each individual applying for a license under this chapter shall be at least eighteen (18) years old at the time of application.
- 3202.3            An individual applying for a license under this chapter shall apply to the Department after passing an examination approved by the Department pursuant to this subsection.
- 3202.4            The Department may administer an examination following the standards enumerated in this section to assist in the licensure of indoor mold assessment and remediation professionals.
- 3202.5            The Department may approve examinations offered by organizations that are recognized in the mold assessment or mold remediation industry. The Department may also approve other states' examinations. The Department's website shall contain an active list of approved examinations.
- 3202.6            The Department shall adhere to the following standards for approval of mold assessment and remediation examinations:
- (a)    The examination shall be proctored;
  - (b)    The mold assessment examination shall cover:
    - (1)    The physical sampling and detailed evaluation of data obtained from a building history and inspection to formulate a hypothesis about the origin, identity, location, and extent of amplification of indoor mold growth; and
    - (2)    Mold remediation strategies.
  - (c)    The mold remediation examination shall cover remediation planning and the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter.
- 3202.7            The Department may consider the following standards when approving an examination:
- (a)    The overall difficulty of the examination, including the depth and variety of questions, and the score required to pass;

- (b) The examination covers topics referenced in § 3208.7; and
- (c) The recognized organization providing the examination requires examinees to participate in initial and refresher training, following the standards in § 3208, in the areas of mold assessment or remediation.

3202.8 An individual shall have either passed a Department-approved examination or recertified their credential no more than two (2) years prior to submitting an application to the Department.

3202.9 An individual applying to be licensed as an indoor mold assessment or remediation professional shall meet one or more of the following education and experience requirements of this subsection:

- (a) At least a two (2) year associate degree, or the equivalent, with at least thirty (30) semester hours in microbiology, engineering, architecture, industrial hygiene, occupational safety, or a related field of science from an accredited institution and a minimum of one (1) year of documented relevant field experience;
- (b) A certified industrial hygienist, a professional engineer, a professional registered sanitarian, a certified safety professional, or a registered architect, with at least six (6) months of documented relevant field experience; or
- (c) A high school diploma or the equivalent with a minimum of three (3) years of documented relevant field experience.

3202.10 An applicant for an indoor mold assessment or remediation professional license shall submit a completed application that includes the following:

- (a) A fee of three hundred dollars (\$300) for an initial application.
- (b) Documentation that the applicant meets the following requirements:
  - (1) The age requirement, as specified in § 3202.2;
  - (2) The examination requirement, as specified in § 3202.4 or 3202.5;
  - (3) One of the educational and experience requirements, as specified in § 3202.9;
  - (4) The insurance requirement, as specified in § 3207;
  - (5) Upon Department approval of training providers, the training requirements, as specified in § 3208; and

(6) Any other information that the Department requires for a complete application.

(c) For a renewal, submit the evidence required in § 3202.10(b)(2), (4), (5), and (6), and a fee of one hundred and five dollars (\$105).

3202.11 Submission of a current, valid license for mold assessment or remediation that is issued by another state, as approved by the Department following the standards established in this section, is sufficient for practice as an indoor mold assessment or remediation professional in the District of Columbia, if the applicant includes in an application to the Department:

(a) A fee of three hundred dollars (\$300) for an initial application.

(b) Documentation that the applicant meets the following requirements:

(1) The applicant is licensed and in good standing by an approved state; and

(2) Any other information that the Department requires for a complete application.

(c) For a renewal, submit the evidence required in paragraph (b) and a fee of one hundred and five dollars (\$105).

3202.12 The term of each license shall be two (2) years.

3202.13 A licensee whose license has expired but continues to hold himself or herself out as an indoor mold assessment or remediation professional is in violation of this chapter.

3202.14 Beginning in 2017, license fees charged by the Department may be adjusted annually based on the change in the Consumer Price Index value published by the U.S. Department of Labor for all-urban consumers.

### **3203 SCOPE OF MOLD LICENSES**

3203.1 An indoor mold assessment professional is permitted to:

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

(b) Collect samples for mold analysis during a mold assessment;

- (c) Plan surveys to identify conditions favorable for indoor mold growth or to determine the presence, extent, amount, or identity of mold or suspected mold in a building;
- (d) Conduct activities recommended in a plan developed under paragraph (c) of this subsection and describe and interpret the results of those activities;
- (e) Determine locations at which the licensee or individuals under the licensee's supervision shall record observations, take measurements, or collect samples;
- (f) Prepare a mold assessment report, including the observations made, measurements taken, and locations and analysis;
- (g) Develop a mold management plan for a building or dwelling unit, including recommendations for periodic surveillance, response actions, and prevention and control of indoor mold growth;
- (h) Prepare a mold remediation protocol, including the evaluation and selection of appropriate remediation strategies, personal protective equipment, engineering controls, project layout, post-remediation verification evaluation methods and criteria, and preparation of plans and specifications; and
- (i) Evaluate a mold remediation project for the purpose of verifying that indoor mold identified for the remediation project has been remediated as outlined in a mold remediation protocol.

3203.2 An indoor mold remediation professional is permitted to:

- (a) Perform mold remediation, as defined in § 3299.1;
- (b) Prepare a mold remediation work plan providing instructions for the remediation efforts to be performed for a mold remediation project;
- (c) Conduct and interpret the results of activities recommended in a mold remediation work plan developed under paragraph (b) of this subsection; and
- (d) Complete appropriate sections of a verification report, as defined in § 3299.1.

**3204 PROHIBITIONS AND LICENSEE OBLIGATIONS**

3204.1 An individual shall not perform indoor mold assessment or remediation in the District of Columbia, unless licensed by the Department, or exempted by § 3201.

3204.2 Regardless of the exceptions in § 3201, a person shall not use the name or title of “licensed,” “professional,” “certified,” or any other term or terms that communicates a level of expertise in mold assessment or remediation, unless that person is an individual licensed by the Department or employs individuals who are licensed with the Department.

3204.3 All persons using such names or titles as referenced in § 3204.2 shall have readily available their name and license number or the name and license number of the individual(s) who are an employee of that person and who are also licensed by the Department.

3204.4 All licensees shall:

- (a) Perform only services that they are licensed to conduct;
- (b) Meet or exceed the minimum industry standards for mold assessment and remediation and the standards set in this chapter;
- (c) Disclose any known or potential conflict of interest to any party affected by such conflicts;
- (d) To the extent required by law, keep confidential any personal information (including medical conditions) obtained during the course of a mold-related activity;
- (e) Promptly furnish required documents or information to the Department and promptly respond to requests for information from the Department;
- (f) Maintain knowledge and skills for continuing professional competence;
- (g) Promptly report alleged misrepresentation or violations of the Act or this chapter to the Department;
- (h) Competently and efficiently perform their duties and report to the Department incompetent, illegal, or unethical conduct of any licensee; and
- (i) Supervise any person assisting with the licensee’s work and ensure that supervisees are following best practices and applicable laws and regulations.

3204.5 Licensees shall not:

- (a) Accept or offer any compensation to any other mold licensee or their company for the referral of any mold-related business;



- (b) Assess or remediate any property in which the indoor mold assessment professional or indoor mold remediation professional or their company has any financial interest;
- (c) Misrepresent any professional qualifications or credentials;
- (d) Provide any information to the Department or client that is false, deceptive, or misleading;
- (e) Work if impaired as a result of drugs, alcohol, sleep deprivation, or other conditions and not allow supervisees to work if the licensee knows or reasonably should know that the supervisee is impaired;
- (f) Make any false, misleading, or deceptive claims, or claims that are not readily subject to verification, in any advertising, announcement, presentation, or competitive bidding;
- (g) Make a representation that is designed to take advantage of the fears or emotions of the public or a customer;
- (h) Retaliate against any person who reported in good faith to any District of Columbia agency, department, or instrumentality, alleging incompetent, illegal, or unethical conduct; or
- (i) Supervise the work of more than ten (10) individuals at one time.

3204.6 Indoor mold assessment professionals shall:

- (a) Provide to the client a mold assessment report following an initial mold assessment;
- (b) If the licensee includes the results of the initial assessment in a mold remediation protocol or a mold management plan, not provide a separate assessment report;
- (c) If indoor mold growth is identified in a mold assessment, provide to the client a mold remediation protocol before a remediation project begins;
- (d) Within ten (10) days, after successful completion of remediation activities, provide a verification report to the client and the appropriate indoor mold remediation professional or, if an indoor mold assessment professional ceases to be involved with a project before it passes verification, provide a final status report to the client and the appropriate indoor mold remediation professional; and

- (e) In all issued reports, protocols, or other documents, include the date when the document was issued to the client and all indoor mold assessment professionals' names, license numbers, and, if applicable, business name and addresses.

3204.7 When conducting mold remediation, indoor mold remediation professionals shall:

- (a) Provide to a client a mold remediation work plan for the project before the mold remediation preparation work begins;
- (b) Inquire of the client or property owner whether any known or suspected hazardous materials, including lead-based paint and asbestos, are present in the project area, and, if present, follow appropriate work practices in accordance with District and federal law;
- (c) Provide to the property owner a completed verification report not later than the tenth (10<sup>th</sup>) day after receiving the verification report from the indoor mold assessment professional; and
- (d) In all issued reports, plans, or other documents, include the date when the document was issued to the client and all indoor mold remediation professionals' names, license numbers, and, if applicable, business name and addresses.

**3205 MINIMUM PERFORMANCE STANDARDS AND WORK PRACTICES FOR LICENSEES**

3205.1 Indoor mold assessment professionals shall adhere to the following minimum standards:

- (a) If an indoor mold assessment professional determines that personal protective equipment should be used during a mold assessment project, the indoor mold assessment professional shall ensure that all individuals who engage in assessment activities and who will be, or are anticipated to be, exposed to indoor mold growth are provided with, fit tested for, and trained on the appropriate use and care of the specified personal protective equipment;
- (b) If samples for laboratory analysis are collected during the assessment:
  - (1) Sampling and analysis shall be performed according to industry best practices;
  - (2) Preservation methods shall be implemented for all samples where necessary;

- (3) Proper sample documentation, including the sampling method, the sample identification code, each location and material sampled, the date collected, the name of the person who collected the samples, and the project name or number, shall be recorded for each sample; and
  - (4) Proper chain of custody procedures shall be used;
- (c) If mold remediation is to be conducted by an indoor mold remediation professional, prepare a mold remediation protocol that is specific to each remediation project and provide the protocol to the client before the remediation begins. The mold remediation protocol shall specify:
- (1) The rooms or areas where the work shall be performed;
  - (2) The estimated quantities of materials to be cleaned or removed;
  - (3) The methods to be used for each type of remediation in each area;
  - (4) The personal protective equipment to be used by indoor mold remediation professionals. A minimum of an N-95 respirator is recommended during mold-related activities when indoor mold growth could or will be disturbed. An indoor mold assessment professional may specify additional or more protective personal protective equipment if he or she determines that it is warranted;
  - (5) The proposed types of containment, as described in (d) of this subsection, to be used during the project in each area; and
  - (6) The proposed verification procedures and criteria, as described in paragraph (h) of this subsection, for each type of remediation in each area;
- (d) Containment shall be specified in a mold remediation protocol when a total surface area of ten square feet (10 ft.<sup>2</sup>) or more of indoor mold growth is in an affected area, unless the indoor mold assessment professional describes in the mold remediation protocol why containment is not necessary;
- (e) If walk-in containment is used, supply and return air vents shall be covered with plastic, and air pressure within the walk-in containment shall be lower than the pressure in building areas adjacent to the containment;
- (f) An indoor mold assessment professional indicating a specific disinfectant, biocide, or antimicrobial coating in a mold remediation protocol shall recommend only products or brands if it is registered by the District of

Columbia and the United States Environmental Protection Agency for the intended use and uses consistent with the manufacturer's labeling instructions;

- (g) A decision by an indoor mold assessment professional to use products in paragraph (f) of this subsection shall take into account the potential for occupant sensitivities and possible adverse reactions to chemicals that have the potential to be off-gassed from surfaces coated with such products; and
- (h) In the remediation protocol for the project, the indoor mold assessment professional shall specify:
  - (1) At least one industry-recognized analytical method for use within each remediated area to determine whether the indoor mold growth identified for the project has been remediated as outlined in the mold remediation protocol;
  - (2) The criteria to be used for evaluating analytical results to determine whether the mold remediation project is verified as complete;
  - (3) That post-remediation assessment shall be conducted while walk-in containment is in place, if walk-in containment is specified for the project; and
  - (4) The procedures to be used in determining whether the underlying causes of the mold identified for the project have been remediated so that it is reasonably certain that the mold will not return from those same causes.

3205.2 Indoor mold remediation professionals shall adhere to the following standards:

- (a) An indoor mold remediation professional shall prepare a mold remediation work plan that is specific to each project, fulfills all the requirements of the mold remediation protocol, and provides specific instructions or standard operating procedures for how a mold remediation project shall be performed. The indoor mold remediation professional shall provide the mold remediation work plan to the client before site preparation work begins;
- (b) If an indoor mold assessment professional specifies in the mold remediation protocol that personal protective equipment is required for the project or if the indoor mold remediation professional determines that individuals require personal protective equipment, the indoor mold remediation professional shall provide the specified personal protective

equipment to all individuals who engage in remediation activities and who will, or are anticipated to, disturb or remove indoor mold growth. The recommended minimum personal protective equipment is an N-95 respirator;

- (c) Containment specified in the remediation protocol shall be used on a mold remediation project;
- (d) If walk-in containment is used, supply and return air vents shall be covered with plastic, and air pressure within the walk-in containment shall be lower than the pressure in building areas adjacent to the containment;
- (e) Signs advising that a mold remediation project is in progress shall be displayed at all accessible entrances to remediation areas and shall meet the following requirements:
  - (1) The signs shall be at least eight (8) inches by ten (10) inches in size and shall bear the words “NOTICE: Mold remediation project in progress” in black on a yellow background; and
  - (2) The text of the signs shall be legible from a distance of ten (10) feet;
- (f) No person shall remove or dismantle any walk-in containment structures or materials from a project site prior to receipt, by the indoor mold remediation professional overseeing the project, of a written notice from an indoor mold assessment professional that the project has been verified as complete as described under § 3299.1;
- (g) Disinfectants, biocides, and antimicrobial coatings may be used only if their use is specified in a mold remediation protocol, if they are registered by the District of Columbia and the United States Environmental Protection Agency for the intended use, and if the use is consistent with the manufacturer’s labeling instructions; and
- (h) If a protocol specifies the use of such a product, as referenced in paragraph (g), but does not specify the brand or type of product, an indoor mold remediation professional may select the brand or type of product to be used, subject to the other provisions of this chapter.

**3206 MINIMUM WORK GUIDELINES AND REQUIREMENTS FOR NON-LICENSEES: ASSESSMENT**

3206.1 In general, an indoor mold assessment professional should be consulted when assessing the extent of a moisture problem, indoor mold growth, and performing other related activities.

- 3206.2 The following guidelines are applicable to non-licensed individuals performing mold assessment on areas potentially affected by less than ten square feet (10 ft.<sup>2</sup>) of indoor mold growth; unless exempt by § 3201, a non-licensed individual shall not perform mold assessment on ten square feet (10 ft.<sup>2</sup>) or more of indoor mold growth in an affected area.
- 3206.3 Prior to taking any steps to clean, scrape, remove, paint over, or otherwise remediate any indoor mold growth, a visual inspection should be performed that assesses the following:
- (a) The extent of water damage, indoor mold growth, and affected building materials;
  - (b) Crawl spaces, attics, behind wallboards, carpet backing and padding, wallpaper, baseboards, insulation, and other materials that are suspected of hiding indoor mold growth;
  - (c) Ventilation systems for damp conditions and indoor mold growth on system components, like filters, insulations, and coils or fins; and
  - (d) Certain materials that are susceptible to indoor mold growth when damp, including ceiling tiles, paper-covered gypsum wallboard (drywall), structural wood, and other cellulose-containing surfaces.
- 3206.4 If assessment work might disturb indoor mold growth, personal protective equipment, like gloves and respiratory protection, should be worn.
- 3206.5 If indoor mold growth or water-damaged materials are visually identified, remediation shall be conducted in accordance with the guidance document published by the Department.
- 3206.6 If ten or more square feet (10 ft.<sup>2</sup>) of indoor mold growth in an affected area is visually identified, the property owner, unless if exempt by § 3201.4, shall hire an indoor mold assessment professional who is licensed pursuant to § 3202 to conduct an indoor mold assessment.

### **3207 LICENSEE INSURANCE REQUIREMENTS**

- 3207.1 An indoor mold assessment professional shall maintain general liability and errors and omissions insurance coverage of at least one million dollars (\$1,000,000) for preliminary and post-remediation mold assessment.
- 3207.2 An indoor mold remediation professional shall maintain a general liability insurance policy in an amount of at least one million dollars (\$1,000,000) that includes specific coverage for mold-related and general pollution claims.

3207.3 An indoor mold assessment professional or an indoor mold remediation professional shall maintain the applicable insurance policy unless covered under an employer's policy.

**3208 APPLICANT AND LICENSEE TRAINING REQUIREMENTS**

3208.1 Upon the Department's approval of training organizations, applicants and licensees shall meet the training requirements in this section.

3208.2 The same training performed to obtain and maintain a third-party accreditation can be used to meet the requirements in this section.

3208.3 Applicants and licensees shall take and complete training performed by Department-approved training providers.

3208.4 The Department shall require the following individuals to complete twenty-four (24) hours of training, with a minimum of four (4) hours of hands-on training, no more than two (2) years prior to submission of the application:

- (a) Applicants seeking an initial District indoor mold assessment or remediation professional license; and
- (b) Applicants that have allowed their District indoor mold assessment or remediation professional license to lapse for two (2) years or more.

3208.5 The Department shall require the following individuals to complete four (4) hours of refresher training no more than two (2) years prior to submission of the application: licensees seeking to renew a District indoor mold assessment or remediation professional license that either have not allowed their license to lapse or have allowed their license to lapse for less than two (2) years.

3208.6 Upon the Department's approval of training organizations, the Department shall develop and maintain an active list of approved training providers on its website.

3208.7 The Department shall consider the following standards when approving twenty-four (24) hour training courses:

- (a) For an indoor mold assessment professional, the course shall address the following topics:
  - (1) Role and responsibilities of an indoor mold assessment professional;
  - (2) Background information on mold, including health effects;

- (3) Employee personal protective equipment;
  - (4) Workplace safety hazards, including other environmental hazards, such as lead and asbestos;
  - (5) Knowledge of building construction related to eliminating moisture problems, including elements of airflow, mechanisms of moisture and heat flow, humidity, the building envelope, and porous and nonporous materials;
  - (6) Current relevant industry work practices and standards, including the use and reading of moisture meters and an understanding of HVAC systems;
  - (7) Pre-assessment planning and interpretation of previous mold assessment records;
  - (8) Mold assessment report development and recordkeeping;
  - (9) Inspection and sampling techniques for mold assessment;
  - (10) Designing a mold management plan, mold remediation protocol, and verification report;
  - (11) Public, employee, and building occupant relations;
  - (12) Liability and insurance issues relating to mold assessment; and
  - (13) Supervisory techniques for mold assessment activities including implementation of required work practices and prevention of unsafe work practices.
- (b) For an indoor mold remediation professional, the course shall address the following topics:
- (1) Role and responsibilities of an indoor mold remediation professional;
  - (2) Background information on mold including health effects;
  - (3) Employee personal protective equipment;
  - (4) Workplace safety hazards, including other environmental hazards such as lead and asbestos;
  - (5) Knowledge of building construction related to eliminating



moisture problems, including elements of airflow, mechanisms of moisture and heat flow, humidity, the building envelope, and porous and nonporous materials;

- (6) Current relevant industry work practices, including the use and reading of moisture meters, duct cleaning, and use of drying equipment;
  - (7) Pre-remediation planning and interpretation of a mold assessment report and a mold remediation protocol;
  - (8) Designing a mold remediation work plan;
  - (9) Liability and insurance issues relating to mold remediation;
  - (10) Recordkeeping for mold remediation projects; and
  - (11) Supervisory techniques for mold remediation activities including implementation of required work practices and prevention of unsafe work practices.
- (c) For an indoor mold assessment and remediation professional, the course should address the District's mold statute (D.C. Official Code §§ 8-231.01 *et seq.*) and this chapter.

3208.8 The Department shall consider the following standards when approving refresher training courses lasting four (4) hours: Comprehensive review of the respective twenty-four-hour (24) course topics with specific emphasis and update on current relevant mold assessment and remediation industry work practices and standards.

3208.9 When considering training providers for approval, the Department shall give preference to training providers that meet the following standards:

- (a) Instructors and guest speakers present in person at least fifty percent (50%) of the classroom instruction and all of the hands on instruction;
- (b) Courses that require hands-on practical training are presented in an environment that permits each student to have actual experience performing tasks associated with mold-related activities;
- (c) Student-to-instructor ratios and facilities are conducive to learning;
- (d) Those providing training have experience, education, or training in teaching workers or adults in the areas of mold assessment, remediation, or a related field;

- (e) Development and implementation of plans to maintain and improve the quality of the training program to reflect innovations in the field;
- (f) The provider is not also providing a Department-approved third-party examination;
- (g) The provider requires students to pass a closed-book, fifty (50) question multiple choice examination after training to ensure retention of topics covered by the course, requiring a passing score of seventy percent (70%) or higher; and
- (h) Upon the student passing training examinations in paragraph (g), the provider issues completion certificates to the students.

### **3209 NOTIFICATION REQUIREMENTS**

3209.1 An indoor mold assessment professional shall notify the Department when he or she determines that a property has ten or more square feet (10 ft.<sup>2</sup>) of indoor mold growth in an affected area, in accordance with the following requirements:

- (a) The notification shall include the address of the site, a short description of the building and its mold condition, building owner, the date(s) of the assessment, and the name and license number of the indoor mold assessment professional; and
- (b) The notification shall be provided to the Department no more than five (5) calendar days after issuance of a mold assessment report, mold remediation protocol, or a mold management plan.

3209.2 An indoor mold remediation professional shall notify the Department of a planned mold remediation at a property when it has ten or more square feet (10 ft.<sup>2</sup>) of indoor mold growth in an affected area, in accordance with the following requirements:

- (a) The notification shall include the address of the site, a short description of the building, the building owner, the start date, the anticipated stop date, and the name and license number of the indoor mold remediation professional;
- (b) The indoor mold remediation professional shall notify the Department at least five (5) calendar days prior to the date when remediation is scheduled to start;
- (c) After notification, if the scheduled start date changes, the indoor mold remediation professional shall provide the Department with the proper scheduled date at least five (5) calendar days prior to the scheduled start of

remediation;

- (d) After notification, if the scheduled stop date changes by more than one (1) calendar day, the indoor mold remediation professional shall provide the Department with the proper stop date as soon as practicable but no later than one (1) calendar day after the indoor mold remediation professional is aware of the new stop date;
- (e) The notification requirements of paragraphs (b), (c), and (d) do not apply in the event of an emergency, however in an emergency the indoor mold remediation professional shall provide the Department with a notification according to paragraph (a) as soon as practicable but no later than the following business day after the indoor mold remediation professional identifies the emergency; and
- (f) The notification requirements of paragraphs (b), (c), and (d) do not apply when, previously unknown to the indoor mold remediation professional, 10 square feet or more (10 ft.<sup>2</sup>) of indoor mold growth in an affected area is revealed during the remediation process, in which case the indoor mold remediation professional shall provide the Department with a notification according to paragraph (a) as soon as practicable but no later than the following business day after the indoor mold growth is revealed.

**3210 INDOOR MOLD REMEDIATION PROFESSIONAL RECORD-KEEPING REQUIREMENTS**

3210.1 An indoor mold remediation professional shall maintain the following records and documents on-site at a project for its duration:

- (a) A copy of the mold remediation work plan and all mold remediation protocols used in the preparation of the work plan;
- (b) A listing of the names and applicable license numbers for all individuals working on the remediation project; and
- (c) The written contract between the indoor mold remediation professional or his/her employer and the client, and any written contracts related to the mold remediation project between the indoor mold remediation professional or his/her employer and any other party.

**3211 INSPECTION**

3211.1 The Department may inspect or investigate the business practices of any person that it has reason to believe is licensed in accordance with this chapter, holding themselves out as an indoor mold assessment or remediation professional, or performing work that shall only be performed by an indoor mold assessment or

remediation professional.

3211.2 The Department, upon presenting proper identification, shall have the right to enter at all reasonable times any area or environment, including, but not limited to, any containment area, building, construction site, storage, or office area, or vehicle to review and copy records or question any person for the purpose of ensuring compliance with this chapter.

3211.3 If a person denies access to the Department acting pursuant to the authority of the Act or this chapter, the Department may apply for an administrative search warrant in a court of competent jurisdiction, in addition to other actions authorized by law and regulations.

## **3212 DENIAL, SUSPENSION, MODIFICATION, OR REVOCATION OF LICENSES**

3212.1 The Department shall initiate an action denying, suspending, modifying, or revoking a license by issuing a notice of denial, suspension, modification, or revocation.

3212.2 Except as provided in § 3212.5, the notice of proposed denial, suspension, modification, or revocation shall be in writing, and shall include the following:

- (a) The name and address of the holder of the license;
- (b) A statement of the action or proposed action and the effective or proposed effective date and duration of the denial, suspension, modification, or revocation;
- (c) The ground upon which the Department is proposing to deny, suspend, modify, or revoke the certification or license;
- (d) Notice that the respondent has a right to request an administrative hearing before the District of Columbia Office of Administrative Hearings (OAH), in accordance with Rules of Practice and Procedure of OAH set forth in Chapter 28 of Title 1 of the District of Columbia Municipal Regulations;
- (e) A statement that the respondent has the right, at the respondent's expense, to legal representation at the hearing; and
- (f) Information notifying the respondent of any scheduled hearing date or of any actions necessary to obtain a hearing, and the consequences of failure to comply with the suspension or immediate revocation, if applicable.

3212.3 The Department may issue a notice of denial, suspension, modification, or revocation, if the Department finds that the applicant or license holder:

- (a) Has failed to comply with a provision of the Act or a rule in this chapter;
- (b) Has misrepresented facts relating to a mold-related activity to a client, the Department, or other District agency;
- (c) Has made a false statement or misrepresentation material to the issuance, modification, or renewal of a license;
- (d) Has submitted a false or fraudulent record, invoice, or report;
- (e) Has a history of repeated violations of District regulation; or
- (f) Has had a certification or license denied, revoked, or suspended either by the Department or by another state or jurisdiction.

3212.4 Pursuant to § 3213.3, the applicant or license holder shall have (15) calendar days from the date of service of the notice of denial, suspension, modification, or revocation to request a hearing with OAH to show cause why the license should not be denied, revoked, modified, or suspended.

3212.5 The Department may immediately suspend a license to protect the public health, safety, or welfare, or the environment. The suspension shall be immediately effective pending further investigation.

3212.6 The Department may serve a notice of modification, suspension, or revocation in addition to any other administrative or judicial penalty, sanction, or remedy authorized by law.

3212.7 An individual whose license has been revoked or denied by the Department shall not be eligible to apply for any license available under this chapter until a period of ninety (90) days has passed after the effective date of such suspension, revocation or denial.

**3213 ENFORCEMENT AND PENALTIES**

3213.1 The Department may enforce a violation of the Act or this chapter by issuing one or more of the following:

- (a) Notice of Violation;
- (b) Notice of Infraction;
- (c) Cease and Desist Order, which shall take effect immediately, or a Compliance Order;

- (d) Notice of suspension, revocation, or denial of a license pursuant to § 3212; or
- (e) Any other order necessary to protect human health or the environment, or to implement this chapter consistent with the purposes of the Act.

3213.2 Orders issued pursuant to § 3213.1(b), (c), and (e):

- (a) Shall identify the name and address of the recipient;
- (b) Shall identify the alleged violation or threatened violation;
- (c) May require the respondent to conduct corrective action;
- (d) Shall make clear the basis for the order and that the respondent's failure to take the measures directed will constitute an additional violation of the Act or the chapter; and
- (e) Shall state the process for objecting to the order.

3213.3 A person may object to an order by requesting a hearing within fifteen (15) calendar days of service, or twenty (20) calendar days if service is made by United States mail, as follows:

- (a) If specific instructions are not on the order, the owner, individual, firm, or entity shall file a written request for a hearing, including the grounds for the objection, with the Office of Administrative Hearings (OAH), established pursuant to the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code, §§ 2-1831.01 *et seq.*), in accordance with the Rules of Practice and Procedure of the Office of Administrative Hearings set forth in Title 1 DCMR Chapter 28;
- (b) If a hearing is not requested within the specified time period, the order becomes final and remains in effect until the Department determines that any applicable corrective actions have been completed; and
- (c) A hearing request does not stay the effective date of a Cease and Desist Order.

3213.4 The Department may also initiate a civil action in the Superior Court of the District of Columbia to secure a temporary restraining order, preliminary injunction, or other relief necessary for enforcement of these rules.

**3299 DEFINITIONS**

3299.1

When used in this chapter or Title III of the Air Quality Amendment Act of 2014, the following words and phrases shall have the meaning as described:

**Affected** – in close proximity, likely impacted from the same source of water intrusion or moisture accumulation.

**Certified industrial hygienist** - an industrial hygienist who is certified by the American Board of Industrial Hygiene.

**Certified safety professional** - any individual who has been certified by the American Society of Engineers, American Board of Industrial Hygiene, or other nationally recognized health and safety industry organization, as determined by the Department.

**Conflict of interest** - because of other past, present, or future planned activities or relationships, the licensee is unable, or potentially unable, to render impartial services to the client.

**Containment** – a component or enclosure designed or intended to prevent the release of mold or mold-containing dust or materials into surrounding areas in the building during mold-related activities.

**Containment area** – an area that has been enclosed to prevent the release of mold or mold-containing dust or materials into surrounding areas.

**Department** – The Department of Energy and Environment or its successor agency.

**Dwelling Unit** – a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation. The term “dwelling unit” does not include any room or group of rooms in a transient housing business or a dormitory.

**Emergency** – a situation in which water damage has occurred and a delay in mold remediation would allow indoor mold growth to increase.

**Final Status Report** – a document issued by an indoor mold assessment professional that includes:

- (a) A description of relevant worksite observations;
- (b) The type and location of relevant measurements made and samples collected at the worksite;
- (c) Relevant data obtained at the worksite, such as temperature,

humidity, and material moisture readings;

- (d) The results of analytical evaluation of the samples collected at the worksite;
- (e) Copies of relevant photographs; and
- (f) Any conclusions that the indoor mold assessment professional has drawn.

**Indoor mold assessment professional** – an individual who conducts mold assessment as defined in this section and who is licensed under this chapter as an indoor mold assessment professional.

**Indoor mold growth** – mold that exists on an interior surface of a building, including common spaces, utility spaces, HVAC, or other systems, and is visible.

**Indoor mold remediation professional** – an individual who conducts mold remediation as defined in this section and who is licensed under this chapter as an indoor mold remediation professional.

**License** – any license issued by the Department under this chapter.

**Licensee** – an individual licensed under this chapter to perform mold assessment or remediation.

**Mold** – living or dead fungi or related products or parts, including spores, hyphae, and mycotoxins.

**Mold analysis** – the examination of a sample collected during a mold assessment for the purpose of:

- (a) Determining the amount or presence of or identifying the genus or species of any living or dead mold or related parts (including spores and hyphae) present in the sample;
- (b) Growing or attempting to grow fungi for the purposes of paragraph (a); or
- (c) Identifying or determining the amount or presence of any fungal products, including but not limited to mycotoxins and microbial volatile organic compounds, present in the sample.

**Mold assessment** - an inspection, investigation, or survey, including by visual observation or other means, of a dwelling unit or other structure regarding



the presence, identification, or evaluation of mold that may include one or more of the following:

- (a) The development of a mold assessment report;
- (b) The development of a mold remediation protocol;
- (c) The development of a mold management plan; and
- (d) The collection or analysis of a mold sample(s).

**Mold assessment report** - a document prepared by an indoor mold assessment professional for a client that describes any observations made, measurements taken, and locations and analytical results of samples taken during a mold assessment. An assessment report can be either a stand-alone document or a part of a mold management plan or mold remediation protocol.

**Mold management plan** - a document prepared by an indoor mold assessment professional for a client that provides guidance on how to prevent and control indoor mold growth at a location.

**Mold professional** – indoor mold assessment and indoor mold remediation professionals.

**Mold-related activities** - the performance of a mold assessment, mold remediation, or related activities.

**Mold remediation** - the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter.

**Mold remediation protocol** - a document, prepared by an indoor mold assessment professional for a client, that:

- (a) Includes relevant photograph(s) of the scene of mold remediation prior to remediation;
- (b) Specifies the estimated quantities and locations of materials to be remediated; and
- (c) Specifies the proposed remediation methods and verification criteria for each type of remediation in each type of area for a mold remediation project.

**Mold remediation work plan** - a document, prepared by an indoor mold

remediation professional that fulfills all of the requirements of the mold remediation protocol and provides specific instructions or standard operating procedures for how a mold remediation project shall be performed.

**Person** - an individual, corporation, company, contractor, subcontractor, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, District government entity, or any other association of individuals.

**Personal Protective Equipment** – items worn on an individual that limit their exposure to mold, including but not limited to gloves, goggles, respirators, and body suits.

**Preventive activities** - actions intended to prevent future indoor mold growth at a remediated area, including repairing leaks and other sources of water intrusion, and applying biocides or anti-microbial compounds.

**Professional engineer** - an engineer registered in a United States or Canadian jurisdiction.

**Professional registered sanitarian** - a sanitarian registered in a United States or Canadian jurisdiction, or by a Department-approved national organization.

**Project** - mold-related activities at a particular address for which a specific start date and a specific stop date is or will likely be provided.

**Registered Architect** - An architect registered in a United States or Canadian jurisdiction.

**Relevant field experience** - experience that involves:

- (a) For a mold indoor mold assessment professional: conducting microbial sampling or investigations; or
- (b) For a mold indoor mold remediation professional: mold remediation as defined in this section.

**Residential Property** - a building that contains one or more dwelling units, including common areas. Each street address constitutes a different residential property.

**Routine cleaning** - cleaning that is ordinarily done on a regular basis.

**Start date** - the date on which the mold remediation begins. Preparation work is not considered mold remediation.

**Stop date** - the date following the day on which an indoor mold assessment professional issues a verification report to the client and the applicable indoor mold remediation professional.

**Supervise or supervision** - to direct and exercise control over the activities of an individual by being physically present at the job site or, if not physically present, accessible by telephone within ten minutes and able to be at the site within one hour of being contacted.

**Survey** - an activity undertaken in a building to determine the presence or absence, location, or quantity of indoor mold or to determine the underlying condition(s) contributing to indoor mold growth, whether by visual or physical examination or by collecting samples of potential mold for further analysis.

**Transient housing business** - A business licensed, or required to be licensed under D.C. Official Code § 47-2828 and its implementing regulations, that provides or offers lodging for a consideration. Transient housing businesses include, but are not limited to, hotels, motels, inns, rooming houses, bed and breakfast establishments and boarding houses. A transient housing business also includes any building or part of a building that the owner also occupied where customers are provided with, or offered, lodging, for consideration for a period of less than thirty (30) consecutive days.

**Verification report** - a document that an indoor mold assessment professional issues when the indoor mold assessment professional determines that a project's remediation has been successful. The report includes:

- (a) A description of relevant worksite observations;
- (b) The type and location of relevant measurements made and samples collected at the worksite;
- (c) Relevant data obtained at the worksite, including but not limited to temperature, humidity, and material moisture readings;
- (d) The results of analytical evaluation of the samples collected at the worksite;
- (e) Copies of relevant photographs;
- (f) If necessary, recommendations of specific professional disciplines that may be needed to determine that the cause and origin of moisture leading to indoor mold growth has been properly

remediated;

- (g) If additional professional disciplines are recommended in paragraph (f), a statement that the project's verified completion is contingent upon said discipline(s) performing work that remediates the cause and origin of moisture leading to indoor mold growth;
- (h) An area for the indoor mold remediation professional that worked on the project to include his or her name, signature, company name, and license number, with language stating "I hereby certify that I completed mold remediation on this project"; and
- (i) Clear statements, based on the indoor mold assessment professional's observation, that:
  - (1) All project areas are free from visible mold, and visible dust and debris as they are related to the project;
  - (2) All work has been completed in compliance with the remediation protocol;
  - (3) All identified underlying causes of the mold have been remediated so that it is reasonably certain that the mold will not return from these same causes; and
  - (4) The project is verified as complete.

**Visible** - capable of being seen with the naked eye, either by a lay person following the guidelines in § 3206, or by an indoor mold assessment professional following the standards in this chapter and best industry practices.