

**Department of State Health Services**  
**Council Work Session Agenda Memo for State Health Services Council**  
**May 18, 2016**

**Agenda Item Title:** Repeal of rules and new rules concerning Texas Asbestos Health Protection

**Agenda Number:** 1.c.

**Recommended Council Action:**

For Discussion Only

For Discussion and Action by the Council

**Background:**

The Asbestos Program is housed in Division for Regulatory Services. The purpose of the program is to protect public health by preventing the general public and persons who perform asbestos-related activities from being exposed to asbestos.

Training is required for all individuals who perform asbestos-related activities in commercial buildings, and licensure or registration is required for all individuals and companies that perform asbestos-related activities in public buildings in Texas. Laboratories that analyze asbestos samples taken from public buildings, transporters that transport asbestos-containing materials from public buildings, and training providers that provide training for licensure in Texas must be licensed as well. DSHS issued 3,893 initial and renewal licenses in fiscal year 2015. There are currently 7,441 licensed individuals and companies.

DSHS is required by law to be notified of all renovation projects that involve asbestos and of all demolition projects regardless of the presence of asbestos. DSHS was notified of 8,223 asbestos projects and demolitions during fiscal year 2015. Schools are required by law to maintain management plans for asbestos in school buildings. DSHS asbestos inspectors enforce training requirements, licensure and registration requirements, and safe work practices during renovation and demolition of commercial and public buildings and schools. Inspections are completed for notified projects, for projects not notified but observed by the inspector, and in response to public complaints. DSHS asbestos inspectors performed 3,980 building inspections and 397 school inspections in fiscal year 2015.

**Summary:**

The new rules will increase clarity and readability by re-ordering and grouping the rule sections into subchapters by topic, editing for plain language and consistency in terminology, updating citations, and reducing redundancy between rule sections. The new rules will enhance DSHS' enforcement ability, reference the recently-implemented online notification system, remove reference to the Asbestos Advisory Committee that was abolished by the 78th Legislature, and reduce the regulatory burden on business owners and persons who perform asbestos-related activities.

The new rules will implement significant changes that include:

- Allowing stakeholders to employ alternate, possibly less expensive and more efficient, abatement methods if those methods will not exceed the Texas public building exposure limit (TPBEL). *Affects building owners and licensees.*
- Adding rule sections specific to a code of ethics for licensees and conflicts of interest. *Affects licensees.*
- Modifying the asbestos consultant, asbestos air monitoring technician (AMT), and asbestos project manager license eligibility requirements. *Affects license applicants.*
- Adding a new training instructor license. *Affects licensed training providers and current instructors.*
- Requiring municipalities that issue renovation or demolition permits, based on evidence of a survey or an architect or engineer's certification statement, to require that the evidence of the survey be in writing and the certification statement include specific elements. *Affects municipalities.*
- Eliminating a pathway to laboratory licensure based solely on proficiency through the American Industrial Hygiene Association (AIHA) Proficiency Analytical Testing Program, without also attaining AIHA

accreditation. *Affects licensees.*

- Requiring a licensed AMT to be on the AIHA Asbestos Analyst Registry in order to analyze airborne fibers in the field. *Affects licensees.*

The review of the rules complies with the four-year review required by Government Code, Section 2001.039.

### **Key Health Measures:**

Regarding stakeholder satisfaction, DSHS has an online customer service survey that provides the responder with the opportunity to comment in a narrative format on any topic the responder chooses.

Regarding asbestos abatement activities and demolitions, DSHS monitors the number of asbestos projects that are performed in compliance with department rules and state and federal regulations during discretionary and complaint-initiated inspections. DSHS also monitors the number and type of alleged violations that are referred for enforcement action, the number and type of violation findings, and the amount of penalties assessed.

Regarding licensure, DSHS monitors the number and types of licensure examinations administered and passed; the number and type of licensure applications received; and the number and type of licenses issued, suspended, revoked, or denied.

DSHS will analyze the information received in customer service surveys and shifts in these statistics following adoption of the new rules in order to evaluate the effectiveness of the rules. DSHS will monitor inspection results to evaluate changes in work practices, compliance levels, and enforceability of the rules. Experienced program staff who have extensive phone communication with asbestos professionals will assist in determining the clarity of the rules. DSHS will evaluate notification data for trends in work practices and compliance rates.

DSHS expects that trends in the monitored statistics will substantiate improved compliance corresponding to the clarified rule requirements; documentation from customer satisfaction surveys will substantiate improved stakeholder satisfaction; and documentation provided in asbestos abatement/demolition notification forms will substantiate widespread use of the alternate abatement methods for minimizing costs to stakeholders. DSHS also expects the new tiered system for notification fees, which makes fees easier to calculate, will result in fewer deficiencies related to notifications.

### **Summary of Input from Stakeholder Groups:**

DSHS notified stakeholders in July 2014 of its plan to review the Texas Asbestos Health Protection Rules for possible changes and requested feedback from interested stakeholders during a 30-day informal recommendation period. The notification was distributed by stakeholder mailing lists and posted on DSHS' website. In April 2016, notice of the completion of the draft rule was mailed to licensees and other interested stakeholders. DSHS also sent a GovDelivery email to stakeholders that contained the draft rule, a summary of the recommendations received in 2014 and DSHS' responses to those recommendations, and a notification of an informal comment period and tentative rule timeline. DSHS scheduled a public meeting to receive informal comments for April 26, 2016.

DSHS received approximately 153 recommendations from 31 stakeholders including UT Austin, American Electric Power, NASA Johnson Space Center, and NATEC of Texas, Inc. Numerous recommendations were incorporated into the draft rule, including improvements to decontamination shower systems; updates to work practices for removal of resilient floor coverings; addition of new definitions to clarify rule language; a reduction of some license fees; and incorporation of 20 rule clarifications. In addition, the notification fee schedule has been greatly simplified through the creation of tiered system that will make fees easier to calculate.

**Approved by Assistant Commissioner/Director:** Kathryn C. Perkins, R.N., M.B.A. **Date:** 4/13/2016

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**Approved by CPEA:** Carolyn Bivens **Date:** 4/26/2016