

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 295 OCCUPATIONAL HEALTH
SUBCHAPTER C TEXAS ASBESTOS HEALTH PROTECTION

EMERGENCY RULE ADOPTION PREAMBLE

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts on an emergency basis an amendment to §295.65 in Title 25 Texas Administrative Code, Chapter 295, Occupational Health, Subchapter C, Texas Asbestos Health Protection, concerning an emergency rule in response to COVID-19 in order to set forth standards by which licensed training providers can provide live online asbestos refresher courses as an alternative to in-person courses. As authorized by Texas Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020 proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. DSHS and HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Texas Asbestos Health Protection rule regarding live online refresher courses.

To protect asbestos licensees and the public health, safety, and welfare during the COVID-19 pandemic, HHSC, on behalf of DSHS, adopts an emergency rule amendment to §295.65, Training: Approval of Training Courses, that sets forth requirements for DSHS to approve live online refresher courses as an alternative to in-person refresher courses. Completion of an annual asbestos refresher course is required to renew an asbestos license and engage in asbestos detection and abatement, which is an essential service in Texas. The rule requires approval by DSHS of live online refresher training courses; requires that online refresher courses have systems in place to authenticate student identity, protect sensitive user information, provide an interactive component, monitor time spent online, provide technical support, provide a distinct certificate, and allow course audits by DSHS; requires submission of an application for approval; and requires additional recordkeeping.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Occupations Code §1954.051 and §1954.053. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Health and Safety Code, Chapter 1001. Texas Occupations Code §1954.051 authorizes the Executive Commissioner of HHSC to adopt rules governing general rulemaking authority. Texas Occupations Code §1954.053 authorizes the Executive Commissioner of HHSC to adopt rules governing performance standards and work practices.

The amendment implements Texas Government Code §531.0055 and Texas Occupations Code §1954.051 and §1954.053.

The agency hereby certifies that the emergency rulemaking has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

ADDITIONAL INFORMATION

For further information, please call: (512) 834-6608.

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§295.65. Training: Approval of Training Courses.

(a) – (h) (No change.)

(i) COVID-19 emergency rule for live online asbestos refresher training. An online course that is presented to a student live by a licensed training provider may be provided if the course meets the requirements of this subsection.

(1) Scope.

(A) For purposes of this subsection, a live online asbestos refresher training course (online refresher course) means an online asbestos refresher training course that is presented with simultaneous, real-time interaction between the instructor and student. Self-paced training that can be taken at any time or place is prohibited.

(B) A training provider must not provide, offer, or claim to provide an online refresher course without applying for and receiving approval from the department as required under this subsection.

(C) An online refresher course must be approved separately from an in-person refresher course.

(D) A licensed training provider may apply for approval to provide an online refresher course that the training provider is approved to teach in-person.

(2) Online refresher course requirements. A training provider that offers an online refresher course must have a system in place that:

(A) authenticates the identity of the student taking the training and their eligibility to enroll in the course to deter fraud and falsification of student identity;

(B) uses encryption technology to protect sensitive user information;

(C) ensures that the student is focusing on the training material throughout the entire training period, such as a strong interactive component to ensure continued student focus through discussion between the student and approved instructor or approved guest speaker, or interactive video clips, or both;

(D) monitors and records a student's actual time spent online, including applicable breaks;

(E) allows the student to ask questions of an approved instructor or approved guest speaker and allows the instructor or guest speaker to provide a response to the student's question during the online refresher course;

(F) provides technical support to the student during the online refresher course to address any technical issue as soon as possible but no later than the end of the course day. If a student is inadvertently logged out of an online session due to a technical issue, the student must be given credit for the portion of the course completed and be required to make-up the portion of the course missed;

(G) reduces the opportunity for document fraud by providing a distinct online refresher course certificate that contains all the requirements of subsection (f) of this section and specifies that the course is a live online refresher course; and

(H) provides the department unrestricted access to an online refresher course for auditing purposes and at no charge at any time the course is being given.

(3) Approval requirements.

(A) A licensed training provider must submit an application for approval of an online refresher course to the department that includes, in addition to the requirements of subsection (d)(2) of this section and §295.64(i) of this title (relating to Training: Required Asbestos Training Courses), the following:

(i) that the application is for an online refresher course;

(ii) the discipline of the online refresher course;

(iii) documentation of the systems in place required by paragraph (2) of this subsection; and

(iv) a technical support plan that describes potential technical issues that may occur and how the issues will be immediately handled.

(B) If approved by the department to conduct online refresher training, the training provider must clearly identify that the course is approved by the department when advertising or registering a student for the course.

(4) Notification requirements. For online refresher courses, the group photograph required in subsection (f)(3) of this section may include multiple frames or photographs if a single group photograph is not feasible.

(5) Recordkeeping requirements. A licensed training provider that is approved to administer an online refresher course is subject to the following additional recordkeeping requirements.

(A) Student identity authentication and verification data.

(B) Student online time tracking data.

(C) Training instructor, guest speaker, and technical support contact data.

(6) Disciplinary action.

(A) For purposes of license or registration renewal, the department will not accept certificates from an online refresher course that was not approved by the department.

(B) Failure to obtain approval before conducting an online refresher course and failure to meet the requirements of this subsection may result in disciplinary action against the licensed training provider.

(C) The department will withdraw course approval if the training provider fails to meet the requirements of this subsection.