

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 295. Occupational Health
Subchapter C. Texas Asbestos Health Protection
Amendments §§295.42 - 295.56, 295.61

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes amendments to §§295.42 - 295.56, and 295.61, concerning Asbestos Health Protection fees.

BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85 makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, a cost recovery fee is included in this amendment.

Programs with regulatory authority over asbestos health protection were evaluated to determine the level of increase in fees based on the following criteria: The date of the last fee increase for the specific program area; licensee's ability to pay in comparison to average salary of professionals; the percentage of revenue above costs for the specific program; the cost of licenses compared to other similar licenses; and the value added analysis of the license. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of each program.

SECTION-BY-SECTION SUMMARY

Amendments to §§295.42 - 295.56, and 295.61 contain increases in fees for two-year registration and license terms assessed against an asbestos abatement worker, asbestos operations and maintenance contractor (restricted), asbestos operations and maintenance supervisor (restricted), asbestos abatement contractor, asbestos abatement supervisor, individual asbestos consultant, asbestos consultant agency, asbestos project manager, asbestos inspector, asbestos management planner, air monitoring technician, asbestos management planner agency, asbestos laboratory, asbestos training provider, asbestos transporter, and asbestos notifications. References to one-year registration and license fees have been deleted because the program no longer issues one-year registrations and licenses. Specifically §295.42(b) increases the asbestos abatement workers license fee by \$5, §295.43(c) increases the asbestos operations and maintenance contractor (restricted) license fee by \$20, §295.44(b) increases the asbestos operations and maintenance supervisor (restricted) license fee by \$45, §295.45(c) increases the asbestos abatement contractor license fee by \$70, §295.46(b) increases the asbestos abatement supervisor license fee by \$45, §295.47(c) increases the individual asbestos consultant license fee by \$45, §295.48(c) increases the asbestos consultant agency license fee by \$30, §295.49(b) increases the asbestos project manager license fee by \$20, §295.50(b) increases the asbestos inspector license fee by \$10, §295.51(c) increases the asbestos management planner license fee by \$20, §295.52(c) increases the air monitoring technician license fee by \$10, §295.53(d) increases the asbestos management planner agency license fee by \$30, §295.54(b) increases the asbestos laboratory license fee by \$30, §295.55(b) increases the asbestos training provider license fee by \$70, §295.56(b) increases the asbestos transporters license fee by \$30, §295.61(g)(1) increases the administrative fee by \$5; and §295.61(j)(3) increases the basis for notification fees by \$5 per asbestos reporting unit and increases the administrative fees by \$5. In addition,

§295.61(j)(3) increases the maximum fee by \$210 per notification, except for schools, which have an increase of \$20 per notification.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each fiscal year of the first five years the sections are in effect, there will be fiscal implications to the state as a result of enforcing or administering the sections as proposed. The effect on state government will be an estimated increase in revenue to the state of \$132,387 in 2006 and \$198,580 in 2007 through 2010. These additional revenues will offset the increased costs associated with the legislative increase in pay, longevity pay, and travel reimbursement. Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there are anticipated economic costs to small businesses or micro-businesses required to comply with the sections as proposed. There will be an increase in the licensing fees for businesses or persons required to maintain an asbestos related license. The probable economic cost to businesses or persons required to comply with the fee for the license will be an increase of approximately 7% for a two-year license. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to generate funding to operate the program to ensure the public and worker safety with regard to asbestos related projects.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Michael J. Minoia, Environmental Health Group, Policy/Standards/Quality Assurance Unit, Environmental and Consumer Safety Section, Division of Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/834-6773, extension 2305 or by email to Michael.Minoia@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

STATUTORY AUTHORITY

The proposed amendments to §§295.42 - 295.56, and 295.61 are authorized by Health and Safety Code, §1954.056, which requires the department to adopt a schedule of fees; Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendments affect the Health and Safety Code, Chapters 12, 1954, and 1001; and Government Code, Chapter 531.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

LEGEND: (Proposed Amendments)

Single-Underline = Proposed new language

[Bold Print and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for designated subdivisions

§295.42. Registration: Asbestos Abatement Workers.

(a) (No change.)

(b) Fee. **[The fee for a one-year registration term is \$30.]** The fee for a two-year registration term is \$65 **[\$60]**.

(c) - (g) (No change.)

§295.43. Licensure: Asbestos Operations and Maintenance Contractor (Restricted).

(a) - (b) (No change.)

(c) Fee. **[The fee for a one-year license term is \$120.]** The fee for a two-year license term is \$260 **[\$240]**.

(d) - (g) (No change.)

§295.44. Licensure: Asbestos Operations and Maintenance Supervisor (Restricted).

(a) (No change.)

(b) Fee. **[The fee for a one-year license term is \$90.]** The fee for a two-year license term is \$225 **[\$180]**.

(c) - (f) (No change.)

§295.45. Licensure: Asbestos Abatement Contractor.

(a) - (b) (No change.)

(c) Fee. **[The fee for a one-year license term is \$500.]** The fee for a two-year license term is \$1,070 **[\$1,000]**.

(d) - (f) (No change.)

§295.46. Licensure: Asbestos Abatement Supervisor.

(a) (No change.)

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(b) Fee. [**The fee for a one-year license term is \$300.**] The fee for a two-year license term is \$645 [**\$600**].

(c) - (f) (No change.)

§295.47. Licensure: Individual Asbestos Consultant.

(a) - (b) (No change.)

(c) Fees. [**The fee for a one-year license term is \$300.**] The fee for a two-year license term is \$645 [**\$600**].

(d) - (i) (No change.)

§295.48. Licensure: Asbestos Consultant Agency.

(a) - (b) (No change.)

(c) Fee. [**The fee for a one-year license term is \$200.**] The fee for a two-year license term is \$430 [**\$400**].

(d) - (f) (No change.)

§295.49. Licensure: Asbestos Project Manager.

(a) (No change.)

(b) Fee. [**The fee for a one-year license term is \$150.**] The fee for a two-year license term is \$320 [**\$300**].

(c) - (e) (No change.)

§295.50. Licensure: Asbestos Inspector.

(a) (No change.)

(b) Fee. [**The fee for a one-year license term is \$60.**] The fee for a two-year license term is \$130 [**\$120**].

(c) - (f) (No change.)

§295.51. Licensure: Asbestos Management Planner.

(a) - (b) (No change.)

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(c) Fee. [**The fee for a one-year license term is \$120.**] The fee for a two-year license term is \$260 [**\$240**].

(d) - (g) (No change.)

§295.52. Licensure: Air Monitoring Technician.

(a) - (b) (No change.)

(c) Fee. [**The fee for a one-year license term is \$50.**] The fee for a two-year license term is \$110 [**\$100**].

(d) - (g) (No change.)

§295.53. Licensure: Asbestos Management Planner Agency.

(a) - (c) (No change.)

(d) Fee. [**The fee for a one-year license term is \$200.**] The fee for a two-year license term is \$430 [**\$400**].

(e) - (g) (No change.)

§295.54. Licensure: Asbestos Laboratory.

(a) (No change.)

(b) Fee. [**The fee for a one-year license term is \$200.**] The fee for a two-year license term is \$430 [**\$400**].

(c) - (f) (No change.)

§295.55. Licensure: Asbestos Training Provider.

(a) (No change.)

(b) Fee. [**The fee for a one-year license term is \$500.**] The fee for a two-year license term is \$1,070 [**\$1,000**].

(c) - (g) (No change.)

§295.56. Licensure: Asbestos Transporters.

(a) (No change.)

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(b) Fee. [**The fee for a one-year license term is \$200.**] The fee for a two-year license term is \$430 [**\$400**].

(c) - (e) (No change.)

§295.61. Operations: Notifications.

(a) - (f) (No change.)

(g) Consolidated notifications of small operations. Notifications involving a series of small, separate asbestos O&M or abatement operations (each less than 160 square feet or 260 linear feet or 35 cubic feet in size) may be combined by listing the information on a single notification form. Predict the combined additive amount of asbestos to be removed or stripped during a calendar year of January 1 through December 31. If the total amount is less than one asbestos reporting unit per subsection (j) of this section, and the facility is not a public building, a notification is not required. If the facility is a public building, a notification is required for any amount. The department shall be notified at least 10 working days (not calendar days) before the end of the calendar year preceding the year for which notice is being given.

(1) The building owner shall keep records of the individual O&M projects in an O&M manual. An amendment of the annual notification shall be submitted if the amount of asbestos that is abated surpasses that amount of asbestos that was predicted in the original notification by 20%. Fees will be based upon the annual notification and any amendments. The fee that is calculated for the amended notification will only be for the amount of asbestos (number of ARUs) that increased from the original notification. The \$55 [**\$50**] administrative fee will not be reassessed.

(2) (No change.)

(h) - (i) (No change.)

(j) Asbestos notification fees.

(1) - (2) (No change.)

(3) Basis for fees. The fees shall be based on the total amount of the regulated asbestos-containing material (RACM) reported to be removed as defined in 40 CFR §61.141 or asbestos-containing building material (ACBM) reported to be removed as defined in §295.31(c) of this title (relating to General Provisions) and notified in accordance with §295.34(f) of this title (relating to Asbestos Management in Facilities and Public Buildings), and subsection (a) of this section. The fee shall be calculated at the rate of \$30 [**\$25**] per asbestos reporting unit (ARU). The number of ARUs associated with the removal activity is determined by dividing the number of linear feet by 260, the number of square feet [**reported**] by 160, and the number of cubic feet by 35 and adding these individual results. The sum of this addition, minus any fraction, shall then be multiplied by the \$30 [**\$25**] rate to calculate the notification fee. The

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minimum fee shall be a \$55 [**\$50**] administration fee per original notification. The maximum fee shall be \$3,210 [**\$3,000**] per notification, except for schools, which shall be \$320 [**\$300**] per notification. The fee shall be assessed only for the amount of asbestos to be removed. If no asbestos is removed or if the amount of asbestos removed is less than two ARUs, only the minimum administrative fee shall be assessed. Annual notifications of maintenance activities subject to 40 CFR, Part 61, Subpart M and subsection (g) of this section, are included in the fee requirement. If less than the reported amount will be removed, a notification amendment should be provided to the department no later than five working days following the completion of the project. A refund request must be sent with the amended notification. A new invoice will be sent to the building owner which will reflect a new fee based upon the actual amount of asbestos that was removed. If the fee has been paid, refunds will be made, when appropriate, minus a \$55 [**\$50**] administrative fee. Revision of the form will require an additional fee only if the amount of reportable asbestos to be removed is increased.

(4) (No change.)