

Chapter HSS 159

ASBESTOS CERTIFICATION AND TRAINING
ACCREDITATION

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Note: Chapter HSS 159 was created as an emergency rule effective November 3, 1989.

Subchapter I — General Provisions

HSS 159.01 Authority and purpose. This chapter is promulgated under the authority of s. 140.06, Stats., to ensure that persons performing asbestos abatement or asbestos management activities in or on buildings are protected from harm while engaged in those activities and that their activities do not adversely affect the health or safety of other persons. This is accomplished by requiring that before anyone engages in asbestos abatement or asbestos management work, he or she is to successfully complete a training course that meets the requirements of the U.S. environmental protection agency (EPA) and this chapter. This chapter requires that training courses be accredited by the department, applying EPA standards, and that persons engaged in asbestos abatement or management activities have a certification card issued by the department which is evidence that they have successfully completed that training.

History: Cr. Register, July, 1990, No. 415, eff. 8-1-90.

HSS 159.02 Scope. (1) **APPLICABILITY.** (a) 1. This subchapter and subch. II apply to any person performing asbestos abatement or asbestos management activities in or on a school building or other publicly owned or privately owned building, except for a building owned or leased by a private organization other than a school that uses its own employees to remove or manage the asbestos.

2. The effective date of this subchapter and subch. II for any person performing asbestos abatement or asbestos management activities in or on a non-school privately owned building, who is not a public employe, shall be February 1, 1991.

(b) This subchapter, subch. III, and Appendix A apply to any person, school, facility or other organization that conducts asbestos abatement or asbestos management training for inspectors, management planners, supervisors, including air sampling professionals, workers and project designers.

(2) **APPROVED COMPARABLE COMPLIANCE.** The department may approve an alternative to any requirement in this chapter that is not a statutory requirement when the department is provided with satisfactory

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proof that the alternative will achieve results which are closely equivalent to the results of literal application of the requirement.

History: Cr. Register, July, 1990, No. 415, eff. 8-1-90.

HSS 159.03 Definitions. In this chapter:

(1) "Accreditation" means approval of a training course for a specific job classification on the basis of its compliance with the model plan and subch. III.

(2) "ACM" or "asbestos-containing material" means asbestos or any material or product which contains more than one percent of asbestos, as determined by a method approved by the national institute of occupational safety and health (NIOSH), the U.S. environmental protection agency (EPA) or the U.S. occupational safety and health administration (OSHA).

(3) "Air sampling professional" means a person certified as an asbestos supervisor who oversees the progress and condition of a project through air sampling and other acceptable supervisory techniques.

(4) "Asbestos" means chrysotile, crocidolite, amosite, fibrous tremolite, fibrous actinolite or fibrous anthophyllite.

(5) "Asbestos abatement activity" means any activity which disturbs asbestos-containing material, including but not limited to the repair, enclosure, encapsulation or removal of ACM and the renovation or demolition of any part of a building, including the roof and sidings.

(6) "Asbestos inspector" means a person who inspects a building for the presence of ACM or reinspects the building to assess the condition of previously identified asbestos or the presence of other ACM.

(7) "Asbestos management activity" means an inspection for ACM, the design of an asbestos response action or the development of an asbestos management plan.

(8) "Asbestos management plan" means the document which specifies the plan for managing ACM in a building in order to protect the occupants of the building and the environment.

(9) "Asbestos management planner" means a person who develops a plan to manage asbestos in a building and who makes recommendations for the best response actions to be taken to manage ACM in the building.

(10) "Asbestos supervisor" means a person who oversees an asbestos abatement project or functions as an air sampling professional and has the authority to require changes in performance practices or to halt the project.

(11) "Asbestos worker" means a person who sets up containment, repairs, removes, encapsulates, encloses, loads out or disposes of ACM from a building.

(12) "Building" means a structure for support or shelter of persons or property, including a non-occupied structure such as a parking garage, a tower or a tunnel.

(13) "Certification" means the issuance of an identification card to an applicant who has successfully completed a U.S. environmental protection Register, January, 1991, No. 421

tion agency (EPA) or department accredited course in a specific asbestos job classification.

(14) "Contingent approval" means an accreditation status that is provisionally granted based only on a review of training course curriculum and other information and materials.

(15) "Department" means the Wisconsin department of health and social services.

(16) "Encapsulation" means the treatment of ACM with a material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers.

(17) "Enclosure" means an airtight, impermeable, permanent barrier around ACM to prevent the release of asbestos fibers into the air.

(18) "EPA" means the U.S. environmental protection agency.

(19) "Friable" means material that, when dry, may be crumbled, pulverized or reduced to powder by hand pressure, including previously nonfriable material when that material becomes damaged to the extent that when dry it may be crumbled, pulverized or reduced to powder by hand pressure.

(20) "Full approval" means a completed accreditation status granted after on-site monitoring of a training course previously granted contingent approval.

(21) "Job classification" means one of the asbestos abatement or management job classifications listed in s. HSS 159.11(2).

(22) "Model plan" means the EPA Model Contractor Accreditation Plan for States, 40 CFR part 763, subpart E, Appendix C, Sections I and III, adapted as Appendix A to this chapter.

(23) "O & M worker" or "operations and maintenance worker" means any person who is involved in the repair, operation, service or maintenance of a building that will result in the disturbance of ACM in the building or who provides custodial and maintenance services in a building where ACM is present or suspected or assumed to be present but whose activities do not normally result in the disturbance of ACM.

(24) "OSHA" means the U.S. occupational safety and health administration.

(25) "Project designer" means a person who has had explicit training in planning and designing asbestos abatement projects by successfully completing an accredited project design course and who may plan asbestos abatement projects or O & M activities.

(26) "Removal" means the taking out of any or all ACM in or on a building.

(27) "Renovation" means the removing, stripping or disturbing of asbestos material used on any pipe, duct, boiler, tank, reactor, turbine, furnace or structural surface, excluding operations in which load-supporting structural members are wrecked or taken out.

(28) "Repair" means returning damaged ACM to an undamaged condition or to an intact state in order to prevent fiber release.

(29) "Response action" means a method such as removal, encapsulation, enclosure, repair or operations and maintenance for protecting human health and the environment from ACM.

(30) "School" means any local school district, the owner of any non-public, non-profit elementary or secondary school building or any governing authority of any school operated under 20 USC 921 to 932, including a home-based private educational program when the students come from more than one family.

(31) "School building" has the meaning given in 40 CFR 763.83 for a building for students in classes in any grade or grades from kindergarten to grade 12.

(32) "Trainer" means any person, partnership, corporation, institution or any other organization or agency, including an agency of the state or a local government, that seeks or receives accreditation for an asbestos abatement or management training course to be conducted by the trainer.

History: Cr. Register, July, 1990, No. 415, eff. 8-1-90.

HSS 159.04 Penalties. Any person who violates any provision of this chapter shall be subject to a forfeiture of not less than \$25 nor more than \$100 for each violation as provided in s. 140.06(11), Stats.

History: Cr. Register, July, 1990, No. 415, eff. 8-1-90.

HSS 159.05 Appeals. (1) Any denial of an application for certification or accreditation under this chapter or any suspension, revocation or non-renewal of a certification card or an accreditation status is subject to administrative review under ch. 227, Stats.

(2) An appeal shall be in writing and shall take the form of a request for a hearing. The request for a hearing shall be filed with the department's office of administrative hearings no later than 20 calendar days after the date of the denial, suspension or revocation, and is considered filed when received by that office.

Note: The mailing address of the Department's Office of Administrative Hearings is P.O. Box 7875, Madison, WI 53707.

History: Cr. Register, July, 1990, No. 415, eff. 8-1-90.

Subchapter II - Certification of Persons to do Asbestos Abatement or Asbestos Management

HSS 159.10 Certification requirement. (1) **ASBESTOS ABATEMENT AND ASBESTOS MANAGEMENT PERSONNEL.** Except for an O & M worker, no person subject to this chapter may act independently, under contract or be employed to perform asbestos inspection, abatement, design, management or supervisory activity unless he or she has a valid certification card issued by the department.

(2) **OPERATIONS AND MAINTENANCE (O & M) WORKERS.** (a) The certification and identification requirements under this subchapter do not apply to O & M workers.

(b) A person functioning as an O & M worker whose O & M activities will result in the disturbance of ACM shall complete 16 hours of training
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described in 40 CFR 763.92(a) and shall have evidence signifying completion of the course.

(c) An O & M worker whose O & M activities will not normally result in the disturbance of ACM in a building where ACM may be present shall receive at least 2 hours of awareness training which shall include but need not be limited to the training described in 40 CFR 763.92(a).

(d) 1. An O & M worker who works in a school building or public building shall complete the training required under par. (b) or (c) by the effective date of this chapter. An O & M worker hired on or after August 1, 1990 shall complete the training within 60 days after being hired.

2. An O & M worker who works in a privately owned non-school building shall complete training required under par. (b) or (c) by February 1, 1991. An O & M worker hired on or after February 1, 1991, shall complete the training within 60 days after being hired.

(e) Repair work that may be performed by an O & M worker is limited to repair work that meets all of the following standards:

1. Removal of ACM is not the primary goal of the repair work;
2. Employees' exposure to asbestos can be kept below the action level as defined in 29 CFR 1926.58(b);
3. The repair work is part of the asbestos maintenance program of an organization that claims exemptions from the requirements of 29 CFR 1926.58(e)(6); and
4. The repair work is non-repetitive and not a series of small-scale jobs that if performed would result in a large-scale removal.

History: Cr. Register, July, 1990, No. 415, eff. 8-1-90.

HSS 159.11 Certification procedure. (1) **CONDITIONS FOR CERTIFICATION.** (a) A person wanting to be certified under this subchapter shall complete a department accredited course in the particular job classification under sub.(2) in which certification is sought and pass an examination approved by the department.

(b) An applicant for certification shall submit to the department, along with the application form and photograph required under sub.(5), the fee required under sub.(7) and a notarized photocopy of an original certificate showing successful completion of a department accredited course in the job classification in which certification is being sought. The notary shall attest to the photocopy being an accurate copy of the original certificate.

(2) **JOB CLASSIFICATION.** Certification to perform asbestos abatement or management activities shall be specific for one of the following job classifications:

- (a) Asbestos inspector;
- (b) Asbestos management planner;
- (c) Asbestos supervisor, as either a project supervisor or an air sampling professional;
- (d) Asbestos worker; or,

(e) Project designer.

(3) TRAINING. The department may conduct training or contract for training required to prepare persons for certification or O & M work and may establish fees for the training it conducts. Any fees collected may not exceed the actual cost of training and shall be credited to the appropriation under s. 20.435(1)(gm), Stats., as provided by s. 140.06(8), Stats.

(4) TESTING. The department may design, prepare, administer and revise examinations to test for competency in the areas where training or certification is required.

(5) APPLICATION. A person desiring certification or recertification shall apply on a form provided by the department. When applying, the applicant shall provide a recent identifying photograph for use on the certification card.

Note: For a copy of the application form, write or phone the Asbestos Training and Certification Program, Bureau of Environmental Health, Division of Health, 1414 E. Washington, Madison, WI 53703, telephone (608) 266-9382.

(6) CERTIFICATION CARD ISSUANCE. (a) Within 14 days after receipt of a completed application for certification or recertification, a recent photograph, a notarized copy of the original training certificate and the payment of the fee required under sub.(7), the department shall grant or deny certification. If certification is granted, the department shall issue or arrange for the issuance of a certification card for a specific job classification under sub.(2). Issuance of the card means the person has met certification requirements for that job classification. If certification is not granted, the department shall give the applicant reasons in writing why the application was denied.

(b) Certification shall remain valid for one year from the date of course completion unless sooner suspended or revoked.

(c) The department may suspend, revoke or withhold certification by written notification to the person who applied for or was issued a certification card if it determines that:

1. The person is not qualified to be certified;
2. The person has displayed a pattern of conduct which in the department's judgment constitutes unreasonable risk to the health and safety of persons or the environment; or
3. False information was provided as part of the application process.

(d) The person being certified is responsible for the card issued to him or her. It is not the property of that person's employer. The employer may not confiscate the certification card of the person who has been certified.

(7) FEES. (a) An applicant for certification or recertification under this subchapter shall pay a fee as follows:

1. For certification as an asbestos inspector, a fee of \$150.00;
2. For certification as an asbestos management planner, a fee of \$100.00;
3. For certification as an asbestos worker, a fee of \$50.00;

4. For certification as an asbestos supervisor, a fee of \$100.00; and

5. For certification as a project designer, a fee of \$150.00.

(b) If a certification card is lost, stolen, or damaged, the person shall request the department to issue a replacement card and shall include with that request the payment of a fee of \$8.00 and a recent identifying photograph.

(c) The department shall void the certification status of an applicant if a check tendered to make payment to the state under this subsection is not paid by the bank on which it is drawn.

History: Cr. Register, July, 1990, No. 415, eff. 8-1-90.

HSS 159.12 Recertification. (1) No person may perform asbestos abatement or asbestos management activities after the expiration date on that person's certification card. To continue to perform those activities after that date, the person shall in advance of the expiration date take a refresher course in the job classification specified on the card, apply to the department for recertification, pay the fee, and be recertified by the department.

(2) The person who was certified may take a refresher course up to a year after the expiration of his or her certification. The applicant shall retake the complete course if the time period between expiration and the refresher class is one year or more. In the interim, no asbestos abatement or management work may be performed without current and valid certification.

(3) As a condition of recertification, the department may require a person to pass an examination.

History: Cr. Register, July, 1990, No. 415, eff. 8-1-90.

HSS 159.13 Reciprocity for certification. (1) If a person residing in another state holds a valid certification issued by a state other than Wisconsin, and that certification was issued based on successful completion of an EPA-accredited training course or a training course accredited by a state under a system at least as stringent as the model plan, the person may be deemed to have satisfied the training requirement of s. HSS 159.11(1)(a).

(2) In order to be eligible for Wisconsin certification under this section, the person shall present to the department a notarized photocopy of the certificate issued by the other state, a recent identifying photograph, pay the fee required under s. HSS 159.11(7), and, if required by the department, successfully complete an examination. If the department approves the application, the department shall issue a certification card pursuant to s. HSS 159.11(6).

History: Cr. Register, July, 1990, No. 415, eff. 8-1-90.

HSS 159.14 Abatement notification. (1) Any person proposing to undertake an asbestos abatement activity in a school building or other public or private building, except for O & M work in s. HSS 159.10(2)(e), shall notify the department not less than 10 days prior to the start of the activity. Notification shall be made by submitting a copy of the form used to notify the department of natural resources of the intent to demolish or renovate a building facility, structure or installation containing asbestos material.

Note: For a copy of the notification form, write or phone the Asbestos Training and Certification Program, Bureau of Environmental Health, Division of Health, 1414 E. Washington, Madison, WI 53703, telephone (608) 266-9382, or write the Asbestos Coordinator, Department of Natural Resources, Box 7921, Madison, WI 53707.

(2) The date of postmark by U.S. mail shall be the official date of notification. The department's date of receipt stamp shall be the official date for notification by means other than the U.S. mail.

(3) In an emergency, notification shall be by telephone before the work is done followed by a written notice sent to the department within 48 hours after the handling of the emergency.

(4) The department shall consider the emergency notification procedure in sub.(3) as compliance to the abatement notification requirement for contracts or activities that develop in a period of less than 10 days. The written notice shall be sent to the department within 48 hours after the notification by telephone.

History: Cr. Register, July, 1990, No. 415, eff. 8-1-90.

HSS 159.15 Enforcement. (1) The department may enter, at any reasonable time, any property, premises or place in which any person required to have a certification card is engaged in any asbestos abatement activity to determine if that person has a valid certification card.

(2) No person may refuse entry or access to any representative of the department authorized by the department to act under this chapter if that representative requests entry for purposes of determining compliance with this subchapter, provided that the representative presents a valid identification issued by the department and complies with all the health and safety procedures established by law for persons engaged in asbestos abatement activities.

(3) Only a Wisconsin asbestos certification card is valid in this state for asbestos abatement or asbestos management activities described in this subchapter. A card for each person engaged in asbestos abatement activities shall be on the job site during work periods.

(4) An asbestos supervisor certified by the department shall be at the asbestos abatement site at all times while abatement work is being done.

History: Cr. Register, July, 1990, No. 415, eff. 8-1-90.

Subchapter III — Accreditation of Training Courses

HSS 159.20 General requirements (1) No person may advertise or conduct asbestos abatement or asbestos management training in this state if the training course is not accredited by the department.

(2) To obtain accreditation for a training course, a trainer shall comply with subch. I, this subchapter and Section III of Appendix A, and the training course shall be in compliance with Section I of Appendix A.

(3) No trainer may deny training to any person solely on account of sex, race, color, creed, national origin, ancestry, sexual orientation or disability.

History: Cr. Register, July, 1990, No. 415, eff. 8-1-90.

HSS 159.21 Accreditation procedure. (1) **SUBMISSION.** Any person seeking accreditation of training courses under this subchapter shall submit Register, January, 1991, No. 421

to the department the information and materials specified in Section III of Appendix A, any other information and materials requested by the department and the fee required under sub. (3). Application shall be made on a form provided by the department.

Note: For a copy of the application form, write or phone the Asbestos Training and Certification Program, Bureau of Environmental Health, 1414 E. Washington Ave., Madison, WI 53703, telephone (608) 266-9379.

(2) **COURSE APPROVAL.** (a) *Contingent approval.* The department shall review all information and materials submitted under sub. (1) for compliance with Appendix A and this subchapter. If the department determines that the information and materials are acceptable, the department shall grant contingent approval and notify the trainer in writing within 60 days after receiving all required information and materials.

(b) *Full approval.* After the department grants contingent approval to a training course, a department representative shall monitor the course on-site to ascertain whether or not full approval should be granted. The department shall notify the trainer in writing of approval or of disapproval within 60 days after monitoring the course. If accreditation is not granted, the department shall give the trainer reasons in writing for the denial.

(c) *Only training courses.* The department does not give accreditation to an overall training program or to a training institution. Departmental accreditation is only for a specific training course designed for a person seeking certification or recertification in the job classification for which he or she is being trained. A trainer may only list training courses as department or EPA accredited if those courses are accredited and relate to asbestos certification or recertification.

(3) **Fees.** (a) The department shall charge a fee of \$750 for the accreditation of each training course and a fee of \$250 for each refresher course.

(b) The department shall void the accreditation status of a training course if a check tendered to make payment to the state is not paid by the bank on which it is drawn.

History: Cr. Register, July, 1990, No. 415, eff. 8-1-90.

HSS 159.22 Training notification. (1) A trainer shall notify the department whenever the trainer has scheduled a training course to begin. Notification shall be at least 3 weeks in advance of the starting date. In an emergency, the trainer shall notify the department by telephone of any change in the submitted schedule at least 24 hours before the start of the course. The trainer shall notify the department as soon as possible if a course is cancelled.

Note: To notify the department about a change in the schedule, phone (608) 266-9379.

(2) The trainer shall permit department representatives to attend, evaluate and monitor any training course and have access to records of training courses at any reasonable time without charge or hindrance to the department.

(3) The trainer shall notify the department before an unevaluated training staff member or faculty member not previously included in an application for accreditation will teach a training course. Notification to the department shall be at least one week before the start of the course.

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(4) If subsequent to approval by the department a training course is altered, modified, or changed in regard to teaching staff, curriculum, training materials or content, the training course remains subject to the requirements of this subchapter and the model plan and shall be resubmitted to the department for approval.

History: Cr. Register, July, 1990, No. 415, eff. 8-1-90.

HSS 159.23 Periodic evaluation. The department may audit a training course on-site on a periodic and unannounced basis for the purpose of ascertaining whether or not the training course continues to meet accreditation requirements.

History: Cr. Register, July, 1990, No. 415, eff. 8-1-90.

HSS 159.24 Enforcement. The department may deny, revoke or suspend accreditation of a training course by written notification to the trainer for a reason including but not limited to:

(1) The course or course alteration fails to meet requirements found in Appendix A:

(2) Deceptive use of training course certificates;

(3) Misrepresentation of a training course; or

(4) The violation of any provision of subch. I or this subchapter.

History: Cr. Register, July, 1990, No. 415, eff. 8-1-90.