**401 KAR 58:005. Accreditation of asbestos professionals.**

      RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 224.20-300, 224.20-310, 224.20-320, 224.99-010, 40 C.F.R. 763.80-763.99, Appendices A-E-Subpart E, as published in the Code of Federal Regulations, July 1, 1996, 15 U.S.C. 2601-2692, as amended November 28, 1990 (Toxic Substances Control Act)

      STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224. 20-110, 224.20-120, 224.20-300, 224.20-310, 224.20-320, 224.99-010, 40 C.F.R. 763.80-763.99, Appendices A-E-Subpart E, as published in the Code of Federal Regulations, July 1, 1996, 15 U.S.C. 2601-2692 as amended November 28, 1990

      NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. KRS 224.20-300 allows the cabinet to develop, adopt, and maintain a comprehensive statewide asbestos contractor accreditation program relating to asbestos. This administrative regulation provides for the accreditation of persons who inspect for asbestos in school, public, and commercial buildings; who design, supervise, or perform response actions in school, public, or commercial buildings, and who prepare plans addressing potential and actual asbestos hazards in school buildings. Additionally, this administrative regulation provides for the review and approval of training courses that are prerequisites for accreditation.

      Section 1. Definitions. (1) "Abatement project design" means a plan specifying the scope of a proposed response action and the procedures, equipment, and controls to be used to conduct the response action, in compliance with applicable regulations, in a school, public, or commercial building.

      (2) "Abatement project designer" means a person who prepares an abatement project design.

      (3) "Accredited" means that a person has been issued an accreditation certificate pursuant to Section 5 of this administrative regulation.

      (4) "Asbestos" means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, actinolite, and tremolite.

      (5) "Asbestos abatement activity" means an inspection, a management plan, an abatement project design, or a response action.

      (6) "Asbestos abatement supervisor" means the person responsible for the on-site supervision of a response action in a school, public, or commercial building. An asbestos abatement supervisor may also perform the duties of an asbestos abatement worker.

      (7) "Asbestos abatement worker" means a person who performs a response action.

      (8) "Compliance inspection" means activity performed by federal, state, or local regulatory agencies to determine adherence to statutes and administrative regulations.

      (9) "Contingent approval" means temporary approval contingent upon a training course provider's submitting to a site audit.

      (10) "Day" means a calendar day.

      (11) "Discipline" means inspection, management planning, abatement project design, asbestos abatement supervision, or asbestos abatement work.

      (12) "EPA-approved state" means a state which has been authorized by the U.S. EPA to approve training courses for accreditation purposes.

      (13) "EPA-approved training course" means an initial or refresher training course for the discipline for which accreditation is requested and which is approved by the U.S. EPA or an EPA-approved state at the time the course is taken to comply with the requirements of 15 USC 2646 (Section 206 of the Toxic Substances Control Act (TSCA)), as amended November 28, 1990.

      (14) "Management plan" means a document submitted or maintained by a local education agency (LEA) to satisfy the requirements of 40 CFR 763.93 and 401 KAR 58:010. Inspection findings, asbestos management strategies, and required records are among the contents of a management plan, pursuant to 40 CFR 763.93 through 763.94.

      (15) "Management planner" means a person who develops management plans. A management planner may also perform the duties of an inspector.

      (16) "Proof of training" means a document issued by a training course provider to a course attendee pursuant to Unit I.D. of the Kentucky Asbestos Accreditation Program (KAAP). The KAAP document is incorporated by reference in Section 11 of this administrative regulation.

      (17) "State" means a state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, the Trust Territory of the Pacific Islands, and the Virgin Islands.

      Section 2. Applicability. This administrative regulation shall apply to:

      (1) Persons required to be accredited pursuant to 401 KAR 58:010 and the Kentucky Asbestos Accreditation Program (KAAP); and

      (2) Persons who provide accreditation training in the Commonwealth of Kentucky pursuant to the KAAP.

      Section 3. Prohibitions. (1) The cabinet shall not consider a person for initial accreditation or accreditation renewal unless the training requirements of Section 9 of this administrative regulation are completed prior to application.

      (2) A person shall not engage in, nor allow a person to engage in, an asbestos abatement project at a school on or after October 12, 1988, or at a public or commercial building on or after the effective date of this administrative regulation, unless an accreditation certificate to engage in these projects has been issued to the person by the cabinet, is currently in effect, and is maintained on the person at all times while the asbestos abatement project is being conducted.

      (3) A person shall not provide accreditation training in Kentucky unless the requirements of Section 10 of this administrative regulation have been met.

      Section 4. Applications for Accreditation. (1) Applications for initial accreditation and accreditation renewal shall be made on form DEP 6038, which is incorporated by reference in Section 11 of this administrative regulation. The application shall include a copy of the most current proof of training in the discipline for which accreditation is requested.

      (a) In lieu of a proof of training, the applicant may submit other proof of satisfactory completion from an EPA-approved state pursuant to Unit H of the KAAP document.

      (b) The proof of training or other proof of satisfactory completion issued by the training provider shall contain the information required in Unit I.C. of the KAAP document.

      (c) If original proofs of training are submitted with the request for accreditation, they shall be returned to the applicant when the requested accreditation certificate is provided or when the cabinet denies the request for accreditation in writing.

      (2) Applications for accreditation shall be signed by the individual requesting accreditation. The signature shall constitute personal affirmation that the statements made in the application are true and complete.

      (3) Applications shall be accompanied by the applicable accreditation fee as specified in Section 7(1) and (2) of this administrative regulation.

      Section 5. Consideration of Applications. The cabinet shall make a determination regarding issuance or denial of accreditation based upon the information contained in the application and the qualification requirements of the KAAP document. The cabinet may deny an application for accreditation if the cabinet determines that the applicant willfully made a misstatement in the application, or if the applicant has violated a provision of this administrative regulation, the KAAP document, 401 KAR 58:010, or 401 KAR 58:025, or for other good cause. Failure by an applicant to supply information required by the cabinet to act upon the renewal applications shall result in denial of that renewal.

      (1) Application for initial accreditation. Within fifteen (15) days after receipt of an application for initial accreditation, the cabinet shall make a completeness determination concerning the application. If the application is not complete, the cabinet shall identify the additional information that is necessary in order to evaluate the application. Issuance by the cabinet of the accreditation certificate within this fifteen (15) day period shall have the effect of documenting the completeness of the application.

      (a) Within fifteen (15) days after the application is deemed complete, the cabinet shall make a determination to issue or deny the accreditation certificate, unless the cabinet determines, and the applicant concurs, that an additional period of time is necessary.

      (b) If the application is approved, the cabinet shall issue an accreditation certificate. If accreditation is denied, the cabinet shall notify the applicant, in writing, of the reason for denial and shall provide an opportunity for appeal.

      (2) Application for renewal of accreditation. The cabinet shall make its determination to approve or deny a request for renewal within fifteen (15) days of receipt of a complete renewal application.

      (a) If the renewal is approved, the cabinet shall issue a renewed accreditation certificate pursuant to this administrative regulation and 401 KAR 58:010.

      (b) If the renewal is denied, the cabinet shall notify the applicant, in writing, of the reason for denial and shall provide an opportunity for appeal.

      Section 6. Duration of Accreditation Certificates. Unless the cabinet revokes an initial accreditation certificate, pursuant to Unit I.G. of the KAAP document, the certificate shall remain in effect until expiration of the proof of training issued pursuant to Unit I.D. of the KAAP document.

      (1) An expired accreditation certificate may be renewed if the applicant completes all requirements for renewal of accreditation within one (1) year after the accreditation certificate has expired.

      (2) If a person fails to renew an accreditation certificate within one (1) year of expiration of a previously-issued accreditation certificate, the individual shall complete all requirements for initial accreditation to receive accreditation.

      Section 7. Fees. Fees shall be submitted to the cabinet by check or money order, made payable to the Kentucky State Treasurer.

      (1) Initial accreditation.

      (a) The fee for inspector, management planner, abatement project designer, or asbestos abatement supervisor accreditation shall be 100 dollars.

      (b) The fee for asbestos abatement worker accreditation shall be twenty (20) dollars.

      (c) The fee for accreditation in more than one (1) discipline shall be obtained by summing the fees for each of the requested accreditations.

      (2) Renewal of accreditation. The fee for renewal of accreditation for each discipline shall be one-half (1/2) the initial accreditation fee.

      (3) Course review fees. Training providers who request cabinet review for approval of training courses shall submit the required fee with the request for a course review. The formula for the fee for course review shall be 350 dollars per day of training times the total number of days of training. The minimum review fee for course approval shall be 350 dollars.

      Section 8. Accreditation Revocation. The cabinet may revoke an accreditation issued under this administrative regulation pursuant to Unit I.G and Unit III of the KAAP document.

      Section 9. Training Requirements. (1) Initial accreditation. To be eligible for initial accreditation, an applicant shall successfully complete an EPA-approved training course in the discipline for which accreditation is requested within one (1) year prior to the date on which the application is filed. Eligibility for accreditation shall expire one (1) year after successful completion of the training course.

      (2) Renewal of accreditation. Accreditation shall be renewed annually.

      (a) To be eligible for accreditation renewal, an applicant shall successfully complete an EPA-approved refresher course in the discipline for which accreditation renewal is requested, pursuant to Unit I.E. of the KAAP document.

      (b) An applicant may renew accreditation only in a discipline for which he has been accredited during the two (2) year period immediately preceding the date the application is filed.

      Section 10. Approval of Training Courses. (1) Providers of courses that are not EPA-approved shall either gain approval from an EPA-approved state or apply for and receive contingent approval from the cabinet, pursuant to this administrative regulation and the KAAP document before presenting the course in Kentucky.

      (2) EPA-approved training courses shall be considered approved by the cabinet at the same level as their approval by the U.S. EPA or an EPA-approved state (i.e., contingent or full).

      (3) Training providers shall allow representatives of the cabinet to attend, evaluate, and monitor a training course presented in Kentucky without charge to the cabinet. Cabinet representatives shall not be required to give advance notice of their attendance to perform compliance inspections of training programs or to upgrade the approval of a course from contingent approval to full approval.

      (a) The training provider shall provide written notification to the cabinet of:

      1. An upcoming training course, at least ten (10) days before the course is presented;

      2. The training provider's name, address, phone number, and a contact person;

      3. Training course title;

      4. Inclusive dates of the training course and examination;

      5. Description of the training course as either a public offering, contract training, or in-house training for the provider's employees;

      6. Location of and directions to the training facility; and

      7. The language in which the course will be taught.

      (b) If the training course is cancelled, the provider shall notify the cabinet at least twenty-four (24) hours before the scheduled start date.

      (4) The application for course approval shall be accompanied by the applicable review fee as specified in Section 7(3) of this administrative regulation. The cabinet shall receive the total applicable review fee prior to the course being granted contingent approval.

      (5) Contingent approval. Applications for contingent approval by the cabinet shall be made pursuant to Unit III of the KAAP document.

      (a) If the training course is to be presented in Kentucky, the application shall include written certification by the training provider that the requirements of subsection (3) of this section shall be met if the training course is approved.

      (b) The cabinet shall review the training provider's request for course approval pursuant to the KAAP document and this administrative regulation. If there are no deficiencies the cabinet shall give the training provider written notification that the training course has been given contingent approval. Unless suspended or revoked by the cabinet, contingent approval of a training course shall be valid for one (1) year and shall not be renewed. Throughout this year, the training provider shall meet the requirements of subsection (3) of this section.

      (6) Full approval. For full approval of a training course, the training provider shall meet the contingent course approval criteria of subsection (5) of this section, the applicable course-content criteria of the KAAP document, and the criteria specified in paragraph (a) of this subsection.

      (a) Full approval criteria.

      1. Course administration. The physical environment in which the course is conducted shall be conducive to learning (e.g. adequate lighting and ventilation, minimal distractions, and adequate classroom layout). Teaching equipment shall operate properly. Classroom materials and instructional aids shall be organized in a logical fashion that is conducive to learning.

      2. Teaching effectiveness. Instructors shall use clear and effective presentation methods, including stating the purpose and giving an overview for each topic, adhering to the agenda, checking for student comprehension, using teaching aids, and organizing presentation into logically-sequenced segments. Instructors shall also demonstrate their own satisfactory knowledge of course content by defining terms clearly, emphasizing key concepts, using analogies and examples correctly and appropriately, and distinguishing fact from opinion.

      3. Hands-on training administration. Physical environment and equipment shall be conducive to learning (e.g., functional equipment, appropriate student-to-work station ratio, appropriate student-trainer ratio, and adequate space and time.) The trainer shall demonstrate the techniques covered, use appropriate hands-on teaching materials, and ensure student participation.

      4. Courses to be audited by the cabinet for full approval shall be presented in English, unless prior arrangements have been made with the cabinet. The cabinet may require course providers whose courses are not presented in English to seek approval from an EPA-approved state which has the linguistic capabilities to review these courses adequately.

      (b) Duration of full approval. Full approval shall remain in effect unless suspended or revoked.

      (c) Suspension or revocation of training course approval. The cabinet may suspend or revoke the approval of a training course pursuant to this administrative regulation and Units II and III of the KAAP document.

      Section 11. Materials Incorporated by Reference. (1)(a) "Form DEP 6038, Application for Individual Accreditation/ Asbestos Abatement Program," is incorporated by reference.

      (b) The Division for Air Quality document for the "Kentucky Asbestos Accreditation Program, May 1998" is incorporated by reference.

      (2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

      (a) The Division for Air Quality, 200 Fair Oaks Lane, First Floor, Frankfort, Kentucky, 40601, (502) 564-3999;

      (b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102-8942, (606) 929-5285;

      (c) Bowling Green Regional Office, 2642 Russellville Road, Bowling Green, Kentucky 42101, (270) 746-7475;

      (d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

      (e) Frankfort Regional Office, 200 Fair Oaks Lane, Third floor, Frankfort, Kentucky 40601, (502) 564-3358;

      (f) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

      (g) London Regional Office, 875 S. Main Street, Room 345, London Kentucky 40741, (606) 330-2080;

      (h) Owensboro Regional Office, 3032 Alvey Park Drive W, Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

      (i) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468. (15 Ky.R. 133; Am. 1651; eff. 1-25-89; Recodified from 401 KAR 63:045, 2-24-92; 24 Ky.R. 1920; 2710; eff. 7-7-98; TAm eff. 8-9-2007; TAm eff. 5-20-10; TAm eff. 9-16-2013.)

**401 KAR 58:010. Local education agencies.**

      RELATES TO: KRS 224.10-100(10), 224.20-100, 224.20-110, 224.20-120, 224.20-300, 40 C.F.R. 763.80, 763.84, 763.85, 763.86, 763.87, 763.88, 763.90, 763.91, 763.92, 763.93, 763.94, 763.95, 763.99, Appendices A B and D (October 30, 1987), 15 U.S.C. 2601 Toxic Substances Control Act II and the related sections which follow as in effect on July 18, 1988

      STATUTORY AUTHORITY: KRS Chapter 13A, 224.10-100, 224.20-300, 224.20-310, 224.99-010, 40 C.F.R. 763.80, 763.84, 763.85, 763.86, 763.87, 763.88, 763.90, 763.91, 763.92, 763.93, 763.94, 763.95, 763.99, Appendices A, B, and D (October 30, 1987), Toxic Substances Control Act II (15 U.S.C. 2601 and the related sections which follow, as in effect on July 18, 1988)

      NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. KRS 224.20-300 authorizes the cabinet to develop, adopt, and maintain a comprehensive statewide asbestos contractor accreditation program relating to asbestos in schools. This administrative regulation provides for the control of asbestos emissions in schools by requiring local education agencies to submit management plans to provide for the adequate identification and assessment of asbestos in schools and the removal or other appropriate treatment of friable asbestos-containing materials.

      Section 1. Definitions. As used in this administrative regulation and applicable portions of 40 CFR Part 763, the following terms shall have the following meanings. If not defined in this section, a term shall have the meaning given it by commonly accepted usage.

      (1) "Act" means the Toxic Substances Control Act (TSCA), 15 USC 2601 and the related sections which follow, as in effect on July 18, 1988.

      (2) "Accessible" means, when referring to ACM, that the material is subject to disturbance by school building occupants or custodial or maintenance personnel in the course of their normal activities.

      (3) "Accredited" means when referring to an individual or a laboratory that the individual or laboratory is accredited in accordance with section 206 of Title II of the Act.

      (4) "Accreditation certificate" means a certificate issued by the cabinet attesting to the qualifications of an individual to perform specified asbestos abatement projects.

      (5) "Air erosion" means the passage of air over friable ACBM which may result in the release of asbestos fibers.

      (6) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite, and actinolite.

      (7) "Asbestos abatement project" means any project intended to identify, assess, plan for, or respond to an asbestos hazard in a school building.

      (8) "Asbestos-containing material" or "ACM" means, when referring to school buildings, any material or product which contains more than one (1) percent asbestos by area.

      (9) "Asbestos-containing building material" or "ACBM" means surfacing ACM, thermal system insulation ACM, or miscellaneous ACM that is found in or on interior structural members or other parts of a school building.

      (10) "Asbestos debris" means:

      (a) Pieces of ACBM that can be identified by color, texture, or composition; or

      (b) Dust, if the dust is determined by an accredited inspector to be ACM.

      (11) "Cabinet" has the meaning given it in KRS 224.01-010.

      (12) "Damaged friable miscellaneous ACM" means friable miscellaneous ACM which has deteriorated or sustained physical injury so that the internal structure (cohesion) of the material is inadequate or, if applicable, which has delaminated so that its bond to the substrate (adhesion) is inadequate, or which for any other reason lacks fiber cohesion or adhesion qualities. Damage or deterioration may be illustrated by the separation of ACM into layers; separation of ACM from the substrate; flaking, blistering, or crumbling of the ACM surface; water damage; significant or repeated water stains, scrapes, gouges, mars, or other signs of physical injury on the ACM. Asbestos debris originating from the ACBM in question may also indicate damage.

      (13) "Damage friable surfacing ACM" means friable surfacing ACM which has deteriorated or sustained physical injury so that the internal structure (cohesion) of the material is inadequate, or which has delaminated so that its bond to the substrate (adhesion) is inadequate, or which for any other reason lacks fiber cohesion or adhesion qualities. Damage or deterioration may be illustrated by the separation of ACM into layers; separation of ACM from the substrate; flaking, blistering, or crumbling of the ACM surface; water damage; significant or repeated water stains, scrapes, gouges, mars, or other signs of physical injury on the ACM. Asbestos debris originating from the ACBM in question may also indicate damage.

      (14) "Damaged or significantly damaged thermal system insulation ACM" means thermal system insulation ACM on pipes, boilers, tanks, ducts, and other thermal system insulation equipment where the insulation has lost its structural integrity, or its covering, in whole or in part, is crushed, water-stained, gouged, punctured, missing, or not intact so that it is not able to contain fibers. Damage may be further illustrated by occasional punctures, gouges, or other signs of physical injury to ACM; occasional water damage on the protective coverings or jackets; or exposed ACM ends or joints. Asbestos debris originating from the ACBM in question may also indicate damage.

      (15) "Day" means calendar day.

      (16) "Emergency response action" means a response action that was not planned but results from a sudden, unexpected event. This term includes operations necessitated by nonroutine failure of equipment.

      (17) "Encapsulation" means the treatment of ACBM with a material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers, as the encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

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

      (19) "EPA" or "U.S. EPA" means the United States Environmental Protection Agency.

      (20) "EPA-approved training course" means a training or refresher course that is approved by the U.S. EPA, at the time the course is taken as meeting the requirements of section 206 of the Act.

      (21) "Fiber release episode" means any uncontrolled or unintentional disturbance of ACBM resulting in visible emission.

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

      (23) "Functional space" means a room, group of rooms, or homogeneous area (including crawl spaces or the space between a dropped ceiling and the floor or roof deck above), such as classrooms, a cafeteria, gymnasium, hallways, designated by an individual accredited to prepare management plans, or design or conduct response actions.

      (24) "High-efficiency particulate air" or "HEPA" means a filtering system capable of trapping and retaining at least 99.97 percent of all monodispersed particles three/tenths (0.3) um in diameter or larger.

      (25) "Homogeneous area" means an area of surfacing material, thermal system insulation material, or miscellaneous material that is uniform in color and texture.

      (26) "Inspector" means an individual who identifies, assesses the condition of, or collects preabatement air samples or bulk samples of ACM.

      (27) "Inspection" means an identification of the status of asbestos in schools, including identification of, assessment of the conditions of, or collection of preabatement air samples or bulk samples of, ACM. This term also includes reinspections, after the initial inspection has been performed.

      (28) "Local education agency" or "LEA" means:

      (a) Any local education agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 USC 3381), which means, a public board of education or other public authority legally constituted for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision, or any combination of school districts or counties recognized as an administrative agency for its public elementary or secondary schools. This term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

      (b) The owner of any nonpublic, nonprofit elementary or secondary school building.

      (c) The governing authority of any school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 USC 921, and the related sections which follow).

      (29) "Management plan" means a plan submitted by an LEA and which is not disapproved, which contains the items required in 40 CFR 763.93.

      (30) "Management planner" means an individual who uses data gathered by inspectors to assess asbestos hazards, and by doing so determines appropriate response actions and develops management plans.

      (31) "Miscellaneous ACM" means miscellaneous material that is ACM in a school building.

      (32) "Miscellaneous material" means interior building material on structural components, structural members, or fixtures, such as floor and ceiling tiles, and does not include surfacing material or thermal system insulation.

      (33) "Nonfriable" means material in a school building which when dry may not be broken, crumbled, pulverized, or reduced to powder by hand pressure.

      (34) "Operations and maintenance program" or "O&M program" means a program of work practices to maintain friable ACBM in good condition, ensure cleanup of asbestos fibers previously released, and prevent further release by minimizing and controlling friable ACBM disturbance or damage.

      (35) "Person" has the meaning given it in KRS 224.01-010.

      (36) "Potential damage" means circumstances in which:

      (a) Friable ACBM is in an area regularly used by building occupants, including maintenance personnel, in the course of their normal activities; or

      (b) There are indications that there is a reasonable likelihood that the material or its covering will become damaged, deteriorated, or delaminated due to factors such as changes in building use, changes in operations and maintenance practices, changes in occupancy, or recurrent damage.

      (37) "Potential significant damage" means circumstances in which:

      (a) Friable ACBM is in an area regularly used by building occupants, including maintenance personnel, in the course of their normal activities;

      (b) There are indications that there is a reasonable likelihood that the material or its covering will become significantly damaged, deteriorated, or delaminated due to factors such as changes in building use, changes in operations and maintenance practices, changes in occupancy, or recurrent damage; or

      (c) The material is subject to major or continuing disturbance, due to factors including, but not limited to, accessibility or, under certain circumstances, vibration or air erosion.

      (38) "Preventive measures" means actions taken to reduce disturbance of ACBM or otherwise eliminate the reasonable likelihood of the material's becoming damaged or significantly damaged.

      (39) "Removal" means the taking out or the stripping of substantially all ACBM from a damaged area, a functional space, or a homogeneous area in a school building.

      (40) "Repair" means returning damaged ACBM to an undamaged condition or to an intact state so as to prevent fiber release.

      (41) "Response action" means a method, including but not limited to removal, encapsulation, enclosure, repair, operations and maintenance, that protects human health and the environment from friable ACBM.

      (42) "Routine maintenance area" means an area, such as a boiler room or mechanical room, that is not normally frequented by students and in which maintenance employees or contract workers regularly conduct maintenance activities.

      (43) "School" means any elementary or secondary school as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 USC 2854).

      (44) "School building" means:

      (a) Any structure suitable for use as a classroom, including a school facility such as a laboratory, library, school eating facility, or facility used for the preparation of food;

      (b) Any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education;

      (c) Any other facility used for the instruction or housing of students or for the administration of education or research programs;

      (d) Any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in paragraphs (a) to (c) of this subsection;

      (e) Any portico or covered exterior hallway or walkway; or

      (f) Any exterior portion of a mechanical system used to condition interior space.

      (45) "Significantly damaged friable miscellaneous ACM" means damaged friable miscellaneous ACM where the damage is extensive and severe.

      (46) "Significantly damaged friable surfacing ACM" means damaged friable surfacing ACM in a functional space where the damage is extensive and severe.

      (47) "State" means a state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, the Trust Territory of the Pacific Islands, and the Virgin Islands.

      (48) "Surfacing ACM" means surfacing material that is ACM.

      (49) "Surfacing material" means material in a school building that is sprayed on, troweled on, or otherwise applied to surfaces, such as acoustical plaster on ceilings and fireproofing materials on structural members, or other materials on surfaces for acoustical, fireproofing, or other purposes.

      (50) "Thermal system insulation" means material in a school building applied to pipes, fittings, boilers, breeching, tanks, ducts, or other interior structural components to prevent heat loss or gain, or water condensation, or for other purposes.

      (51) "Thermal system insulation ACM" means thermal system insulation that is ACM.

      (52) "Timely manner" means that the LEA has fulfilled or is fulfilling its responsibilities in a manner that is as expeditious as possible, taking into account circumstances which are unique to the LEA. The determination of timeliness shall be made by the cabinet.

      (53) "um" means micrometer.

      (54) "Vibration" means the periodic motion of friable ACBM which may result in the release of asbestos fibers.

      Section 2. Applicability. The provisions of this administrative regulation shall apply to all LEAs.

      Section 3. Responsibilities of LEAs. (1) The subject matter of this administrative regulation is governed by 40 CFR 763.80, 763.84, 763.85, 763.86, 763.87, 763.88, 763.90, 763.91, 763.92, 763.93, 763.94, 763.95, and 763.99, and Appendices A, B, and D, as promulgated by the U.S. EPA on October 30, 1987 (52 FR 41846). All LEAs shall comply with the provisions of the federal regulations listed in this subsection.

      (2) No LEA may permit, allow, or require any individual or other person to perform any asbestos abatement project after October 12, 1988, unless the individual has been issued by the cabinet an accreditation certificate to so engage in these projects in accordance with the provisions of 401 KAR 58:005, which is currently in effect, and which is maintained on his person.

      (3) LEAs shall revise their management plans when changes in the schools, school buildings, status of the ACM, or response actions occur. The LEA may submit only the revised portion of the plan. If the entire plan is resubmitted then the revised portions shall be clearly indicated. These revisions shall comply with the applicable provisions of 40 CFR 763.80, 763.84, 763.85, 763.86, 763.87, 763.88, 763.90, 763.91, 763.92, 763.93, 763.94, 763.95, and 763.99, and Appendices A, B, and D. LEAs shall submit the revisions according to the provisions of Section 5 of this administrative regulation.

      Section 4. Deferrals. If a LEA is unable to submit to the cabinet its management plan required in 40 CFR 763.93 by October 12, 1988, it may request a deferral to May 9, 1989, for the submission of the plan for one (1) or more schools under its jurisdiction. Deferral requests shall be submitted to the cabinet by the original due date of October 12, 1988, shall be notarized, and shall contain all of the requirements of subsections (1) to (5) of this section. Deferral requests may be submitted using forms prepared by the cabinet for that purpose.

      (1) A listing of all schools covered by the request.

      (2) A statement and brief explanation as to why the LEA, despite good faith efforts, will not be able to meet the original October 12, 1988, deadline for submittal of its management plan.

      (3) A statement that the LEA has made at least one (1) of the following documents available for inspection at each school for which a deferral is sought:

      (a) A solicitation by the LEA to contract with an accredited inspector or accredited management planner for inspection or management plan development, respectively;

      (b) A letter certifying that school district personnel are enrolled in an EPA-approved training course for inspection and management plan development;

      (c) Documentation showing that suspected ACM from the school is being analyzed at an accredited laboratory; or

      (d) Documentation showing that an inspection or management plan has been completed in at least one (1) other school under the LEA's authority.

      (4) A statement giving assurance that the LEA has carried out notification of affected groups and, for public schools, a public meeting. Before filing a deferral request, a LEA shall notify affected parent, teacher, and employee organizations of its intent to file its request. For public schools, the LEA shall discuss the request at a public meeting of the school board, and affected organizations shall be notified in advance of the time and place of the meeting.

      (5) A proposed schedule outlining all significant activities leading up to submission of a management plan by May 9, 1989, including the inspection of the school. This schedule shall contain a deadline of no later than December 22, 1988, for entering into a contract with an accredited inspector, unless inspections are to be performed by accredited school personnel. Laboratory analysis and management plan development shall also be included in the activity schedule.

      (6) The cabinet shall respond to the LEA in writing within thirty (30) days of receipt of the request to acknowledge whether the deferral request is complete or incomplete. If incomplete, the cabinet shall identify in the response the items which are missing from the request. The LEA may correct and refile its request with the cabinet no later than fifteen (15) days after it has received a response from the cabinet.

      (7) The deferral request shall be considered to be granted only when the cabinet has responded in writing that the deferral request is accepted as complete.

      (8) An LEA whose deferral request has been approved shall submit to the cabinet a management plan no later than May 9, 1989. The plan shall include a copy of the deferral request and the appropriate assurances of subsections (1) to (5) of this section which accompanied the original request. The cabinet shall review the deferred management plan in accordance with the procedures in Section 6 of this administrative regulation, except the LEA shall submit a revised deferred plan within thirty (30) days of disapproval. The cabinet may extend the thirty (30) day period by not more than thirty (30) days.

      (9) Deferral or acceptance of the deferred management plan shall not exempt the LEA from its responsibility to begin implementation of the deferred management plan by July 9, 1989.

      Section 5. Submittal of Plans. (1) Management plans required in 40 CFR 763.93, deferred management plans, and revisions to management plans shall be submitted using forms approved by the cabinet for that purpose and shall contain all the information that the cabinet deems is necessary to determine if the plan should be approved, including all information required in 40 CFR 763.93.

      (2) Except as specified in subsection (3) of this section, management plans, deferred management plans, and revisions to management plans submitted after October 12, 1988, shall include the fee specified in Section 8 of this administrative regulation. LEAs which submitted plans on or before October 12, 1988, shall submit to the cabinet the fee specified in Section 8 of this administrative regulation by December 12, 1988.

      (3) Management plan revisions shall be submitted as follows:

      (a) If an LEA acquires or otherwise puts into service any building or portion of a building, and if that building or portion of a building would have been required to be included in the management plan if it had been in use at the time the plan was submitted, then the LEA shall submit a management plan for the building or portion to the cabinet for review and approval, with the fees required in Section 8 of this administrative regulation. The LEA shall notify the cabinet of any building that will be deleted from the plan prior to its deletion; this notification shall not require the submittal of any fees.

      (b) If an LEA intends to change a planned response action from removal to any other response action, then the LEA shall submit a revision to the management plan for review and approval, with the fees required in Section 8 of this administrative regulation.

      (c) If an LEA intends to delay the date of removal, encapsulation, or enclosure of asbestos-containing material for more than one (1) year beyond the date identified in the management plan, then the LEA shall submit a revision to the management plan for review and approval with the required fees. If the delay in these response actions shall be one (1) year or less from the date identified in the management plan, then the LEA shall notify the cabinet of the new date. The notification shall not constitute a plan revision and shall not require the submittal of any fees, but the proposed action shall require approval by the cabinet before the response action begins.

      (d) If an LEA intends to perform any response actions identified in paragraph (c) of this subsection in advance of the date identified in the management plan, then the LEA shall notify the cabinet of the new date, and shall receive the cabinet's approval before the response action begins. The notification shall not require the submittal of any fees.

      (e) If an LEA intends to remove asbestos-containing material which is identified in the management plan to be encapsulated, enclosed, or otherwise treated in a manner other than removal, then the LEA shall notify the cabinet of the proposed removal. The notification shall not constitute a plan revision and shall not require the submittal of any fees, but the proposed action shall require the cabinet's approval before the response action begins.

      (f) An LEA shall not be required to notify the cabinet of small scale, short-duration maintenance activities and shall not be required to submit plan revisions or fees for these activities. Notification of these activities may be required under 401 KAR 58:025.

      Section 6. Consideration of Management Plans. (1) At any time, the cabinet shall disapprove the management plan, deferred management plan, or revised management plan if the plan:

      (a) Does not conform with the requirements of this administrative regulation, 401 KAR 58:025, or 401 KAR 58:040;

      (b) Does not assure that any action or service required to be performed by accredited individuals in any of the regulations contained in 40 CFR 763, Subpart E will be performed by accredited individuals, and does not assure that the provisions of Section 3(2) of this administrative regulation will be met;

      (c) Does not contain a response action schedule which is reasonable and timely as determined by the cabinet, taking into account circumstances relevant to the speed at which the friable ACM in the school buildings under the LEAs authority should be responded to, including human exposure to the asbestos while the friable ACM remains in the school building, and the ability of the LEA to continue to provide educational services to the community; or

      (d) Does not provide response actions which adequately protect human health or the environment from friable ACBM.

      (2) The cabinet shall deny a management plan if the cabinet determines that the LEA willfully made any misstatements in the plan, or the LEA cannot reasonably be expected to fulfill the obligations of the plan.

      (3) If the cabinet disapproves a plan, the cabinet shall explain in writing to the LEA the reasons why the plan was disapproved and the changes that shall be made in the plan. Within thirty (30) days after the date on which notice of the plan's disapproval is received, the LEA shall revise the plan to conform with the suggested changes. The cabinet may extend the thirty (30) day period for not more than ninety (90) days.

      Section 7. Notification. As required in 40 CFR 763.93 the management plan shall contain the dates when each response action will begin and end. If the schedule is amended, the LEA shall notify the cabinet of any response action which will occur and which must be performed by an accredited individual, at least ten (10) days prior to commencement, unless the response action is an emergency response action that must be performed by an accredited individual. The LEA shall notify the cabinet of these emergency response actions as soon as possible, as determined by the cabinet, prior to commencing the emergency response action. If the notification is not in writing, then written confirmation of the response action shall also be provided as soon as possible, as determined by the cabinet.

      Section 8. Fees. Fees required in this section shall be submitted to the cabinet by check or money order, payable to the Kentucky State Treasurer.

      (1) The fee for review of each management plan or deferred management plan shall be sixty (60) dollars for each school building that is identified in the plan as containing ACM and thirty (30) dollars for each school building that is identified in the plan as not containing ACM.

      (2) The fee for review of a revision to the management plan shall be thirty (30) dollars for each building contained in the revision and in the original management plan, for which a new response action is proposed. For each new building contained in the revision, the fee shall be sixty (60) dollars if the building contains ACM, and thirty (30) dollars if it does not contain ACM.

      Section 9. Penalties. Any LEA which violates any provision of this administrative regulation shall be subject to the appropriate enforcement action as provided under KRS 224.99-010. (15 Ky.R. 1341; Am. 1654; 2011; eff. 1-25-89; Recodified from 401 KAR 63:050, 2-24-92; TAm eff. 8-19-2007.)

**401 KAR 58:025. 40 C.F.R. Part 61 national emission standard for asbestos.**

      RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 224.99-010, 40 C.F.R. 61.140-61.157, 42 U.S.C. 7401, 7412, 7414, 7416, 7601

      STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, 224.99-010, 42 U.S.C. 7401, 7412, 7414, 7416, 7601

      NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation adopts the National Emission Standard for Asbestos, codified in 40 C.F.R. 61.140 through 61.157. Delegation of implementation and enforcement authority for the federal NESHAP Program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 U.S.C. 7412(l).

      Section 1. Definitions. (1) "Administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 61 NESHAP states that the United States Environmental Protection Agency retains enforcement authority.

      (2) "Part 61 NESHAP" means the National Emission Standard for Asbestos, codified in 40 C.F.R. 61.140 through 61.157, Subpart M.

      Section 2. Applicability. This administrative regulation shall apply to sources subject to 40 C.F.R. 61.140 through 61.157, Subpart M. Owners and contractors of these sources shall comply with the following:

      (1) The applicable provisions codified in 40 C.F.R. 61.140 through 61.157, Subpart M, "National Emission Standard for Asbestos";

      (2) The applicable provisions and requirements codified in "Appendix A to Subpart M of Part 61-Interpretive Rule Governing Roof Removal Operations"; and

      (3) Completion and submittal of Form DEP 7036 to the Division for Air Quality prior to renovation or demolition.

      Section 3. Incorporation by Reference. (1) Form DEP 7036, "Notification of Asbestos Abatement/Demolition/Renovation", May 1998, is incorporated by reference.

      (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

      (a) The Division for Air Quality, 200 Fair Oaks Lane, First Floor, Frankfort, Kentucky 40601, (502) 564-3999;

      (b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;

      (c) Bowling Green Regional Office, 2642 Russellville Road, Bowling Green, Kentucky 42101, (270) 746-7475;

      (d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

      (e) Frankfort Regional Office, 200 Fair Oaks Lane, First Floor, Frankfort, Kentucky 40601, (502) 564-3999;

      (f) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

      (g) London Regional Office, 875 S. Main Street, London Kentucky 40741, (606) 330-2080;

      (h) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; or

      (i) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468.

      (3) Form DEP 7036 is available electronically at [http://air.ky.gov](http://air.ky.gov/). (11 Ky.R. 885; eff. 1-7-85; Am. 13 Ky.R. 934; eff. 12-2-86; recodified from 401 KAR 57:011, 6-10-97; 24 Ky.R. 1927; 2717; eff. 7-7-98; 31 Ky.R. 401; eff. 1-4-2005; 33 Ky.R. 4229; 34 Ky.R. 596; 970; eff. 11-14-2007; TAm eff. 5-20-10; TAm eff. 9-16-2013.)

**401 KAR 58:040. Requirements for asbestos abatement entities.**

      RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120

      STATUTORY AUTHORITY: KRS 224.10-100

      NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the control of asbestos emissions from asbestos abatement projects.

      Section 1. Applicability. (1)(a) Except as provided in paragraph (b) of this subsection, the provisions of this administrative regulation shall apply to each asbestos abatement entity which is involved in any asbestos abatement project.

      (b) An asbestos abatement entity shall not be required to obtain the certificate as required in Section 3 of this administrative regulation or attend the training required in Section 10 of this administrative regulation in order to conduct asbestos abatement projects which are not subject to the provisions of 401 KAR 58:025, however, that entity shall comply with the provisions of Sections 4(3) and 12 of this administrative regulation when performing such projects.

      (2) Any person may request that the cabinet determine whether a project is an asbestos abatement project. Such a request shall include the type of disturbance involved, a description of the friable asbestos materials, and laboratory data sheets with bulk sample results, methods of analysis, and the signature of the analyst. The cabinet shall make its determination, in writing, not later than ten (10) working days after it has received a written request with complete and accurate information adequate to make a determination.

      Section 2. Definitions. As used in this administrative regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010 or 401 KAR 58:025.

      (1) "Air lock" means a system of enclosures within the containment area consisting of two (2) doorways, curtained with polyethylene sheeting, at least three (3) feet apart.

      (2) "Asbestos abatement project" means any renovation or demolition activity at a facility which may cause a disturbance of friable asbestos material.

      (3) "Asbestos abatement entity" means any partnership, firm, association, corporation, sole proprietorship, or other business concern, any governmental agency, or any other organization, composed of one (1) or more employees or members, or any individual involved in any of the asbestos-related activities specified in subsection (2) of this section.

      (4) "Certificate" means a permit issued by the cabinet pursuant to KRS 224.10-100(19) to allow an asbestos abatement entity to engage in asbestos abatement projects, including the use of equipment or practices that control the emissions of asbestos fibers into the outside air.

      (5) "Certification fee" means a fee established by the cabinet pursuant to KRS 224.10-100(20) for the issuance of certificates to asbestos abatement entities according to the provisions of this administrative regulation.

      (6) "Clean room" means an uncontaminated area or room which is part of the worker decontamination enclosure system with provisions for storage of workers' street clothes and clean protective equipment.

      (7) "Clearance air monitoring" means the monitoring of air conducted inside the work area after cleanup of an asbestos abatement project has been completed.

      (8) "Containment area" means the entire area in which an asbestos abatement project is conducted; this includes, but is not limited to, the work area, equipment room, shower room, clean room, and all associated air locks.

      (9) "Demolition" means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations.

      (10) "Emergency operation" means a renovation operation that was not planned but results from a sudden, unexpected event. This term includes operations necessitated by nonroutine failures of equipment.

      (11) "Equipment room" means a contaminated area or room which is part of the worker decontamination enclosure system with provisions for storage of contaminated clothing and equipment.

      (12) "Facility" means any institutional, commercial, or industrial structure, installation, or building, excluding apartment buildings having no more than four (4) dwelling units.

      (13) "Facility component" means any pipe, duct, boiler, tank, reactor, turbine, or furnace at or in a facility; or any structural member of a facility.

      (14) "Friable asbestos material" means any material containing more than one (1) percent asbestos by weight that hand pressure can crumble, pulverize, or reduce to powder when dry.

      (15) "Glove bag" means a manufactured device consisting of plastic with a thickness of six (6) mils or more, two (2) inward-projecting long-sleeve rubber gloves, one (1) inward-projecting water-wand sleeve, an internal tool pouch, and an attached, labeled receptacle for asbestos waste. The glove bag is constructed and installed in such a manner that it surrounds the object or area from which the asbestos containing material is to be removed, and contains all asbestos fibers released during the removal process.

      (16) "Glove bag technique" means a method of removing asbestos from pipes, ducts, valves, joints, and other nonplanar surfaces, which uses one (1) or more glove bags.

      (17) "HEPA filtration" means high efficiency particulate air filtration found in respirators and vacuum systems capable of filtering particles greater than or equal to three-tenths (0.3) microns in size, with 99.97 percent efficiency.

      (18) "HVAC" means a heating, ventilation, and air conditioning system.

      (19) "Lockdown agent" means a protective coating or sealant which is applied to a surface from which asbestos-containing material has been removed.

      (20) "OSHA" means the Occupational Safety and Health Administration.

      (21) "Polyethylene sheeting" or "polyethylene bags" means sheeting or bags of polyethylene plastic with a thickness of six (6) mils or more, except as otherwise specified.

      (22) "Publicly owned facility" means any facility owned by the state, or any political subdivision thereof, municipality, or other public entity.

      (23) "Renovation" means altering in any way one (1) or more facility components. Operations in which load-supporting structural members are wrecked or taken out are excluded.

      (24) "Shower room" means a room between the clean room and the equipment room in the worker decontamination enclosure system with hot and cold running water controllable at the tap and suitably arranged for complete showering during decontamination.

      (25) "Structure" means a whole facility, building, or a major portion thereof, such as a building wing.

      (26) "Work area" means the contaminated area within the containment area that contains the friable asbestos material which is to be abated.

      Section 3. Prohibition. No asbestos abatement entity shall engage in any asbestos abatement project which is subject to the provisions of 401 KAR 58:025 after April 1, 1988, unless:

      (1) A certificate to so engage in such projects has been issued by the cabinet in accordance with the provisions of this administrative regulation, and is currently in effect. The provisions of this subsection shall not apply during the demonstration of compliance required in Section 6(2) of this administrative regulation.

      (2) At least one (1) person identified in Section 10 of this administrative regulation is in attendance at the site of the containment area during the execution of the project.

      Section 4. Work Practice Requirements. Except as specified, the work practice requirements of this section shall apply to asbestos abatement entities which perform the indicated asbestos abatement projects. The provisions of this section shall not apply to asbestos abatement entities which perform asbestos abatement projects at the entities' own manufacturing or industrial facilities when the projects are performed exclusively by employees of the manufacturer or industry.

      (1) Renovations addressed in 401 KAR 58:025. Any asbestos abatement entity that engages in any asbestos abatement project, including emergency operations, which is determined to be subject to the provisions of 401 KAR 58:025 and involves renovation shall comply with the following work practice requirements:

      (a) All objects and exposed surfaces in the work area shall be cleaned. Movable objects may then be removed. Objects not removed from the work area shall be covered with polyethylene sheeting secured in place. All openings within the containment area, including windows, doorways, elevator openings, corridor entrances, drains, ducts, grills, grates, diffusers, skylights, and openings created by the construction of any barriers, shall be sealed with polyethylene sheeting. Containment areas shall be established by permanent walls extending from the floor to the ceiling, or where permanent walls do not exist, by barriers. Barriers shall be constructed of polyethylene sheeting attached securely in place.

      (b) Floor sheeting shall be installed within the containment area and shall consist of at least two (2) layers of polyethylene sheeting. Floor sheeting shall extend up side walls at least twelve (12) inches and shall be sized to minimize seams. No seams shall be located at wall-to-floor joints.

      (c) Wall sheeting shall be installed throughout the containment area according to the procedures specified in this paragraph. All wall sheeting shall consist of polyethylene sheeting, with each layer having a thickness of at least four (4) mils, shall be securely installed to minimize seams, and shall extend beyond each wall-to-floor joint at least twelve (12) inches. No seams shall be located at wall-to-wall joints.

      1. Within the work area. Wall sheeting on a permanent wall shall consist of at least two (2) layers. Wall sheeting on a barrier shall consist of at least one (1) layer.

      2. Within all other areas of the containment area. Wall sheeting on a permanent wall shall consist of at least one (1) layer. No wall sheeting is required where barriers are used.

      (d) A worker decontamination enclosure system shall be provided, consisting of a clean room, shower room, and equipment room, each separated from each other and from the work area by air locks and accessible through doorways protected with two (2) overlapping polyethylene sheets.

      (e) All HVAC equipment in or passing through the containment area shall be shut down, locked out, and tagged to advise personnel not to activate the equipment. All intake and exhaust openings and any seams in system components shall be sealed with polyethylene sheeting and waterproof tape.

      (f) Warning signs shall be displayed at all approaches to any location where airborne fiber levels can be expected to exceed background levels. Such signs shall be of a vertical format measuring twenty (20) inches in length and fourteen (14) inches in width, and shall contain the following information which shall be printed in letters of sufficient size and contrast as to be readily visible and legible:

DANGER

ASBESTOS

CANCER AND LUNG DISEASE HAZARD

AUTHORIZED PERSONNEL ONLY

RESPIRATORS AND PROTECTIVE CLOTHING

ARE REQUIRED IN THIS AREA

      (g) Negative pressure ventilation units with HEPA filtration and in sufficient number to provide one (1) workplace air change every fifteen (15) minutes shall be operated continuously for the duration of the project. The duration of the project for this requirement shall be considered to be from the time that a containment area is established and wall and floor sheeting are installed through the time that acceptable final clearance air monitoring results are obtained.

      (h) All friable asbestos material shall be thoroughly wetted through to the substrate prior to removal.

      (i) Facility components shall be removed intact or in large sections whenever possible and shall be carefully lowered to the floor. Other friable asbestos material shall be removed in small sections.

      (j) Materials located at heights greater than fifteen (15) feet but less than or equal to fifty (50) feet above the floor shall be dropped into inclined chutes or onto scaffolding or containerized at their elevated levels for eventual disposal. For materials located at heights greater than fifty (50) feet above the floor, a dust-tight enclosed chute shall be constructed to transport removed material to containers on the floor.

      (k) At no time shall the friable asbestos material that has been removed be allowed to accumulate or become dry.

      (l) For porous surfaces that have been stripped of friable asbestos materials, a lockdown agent shall be applied to securely seal any residual fibers that may be present. The lockdown agent should be chosen so as to be compatible with subsequent covering.

      (m) Following abatement, wall sheeting and floor sheeting shall be removed and containerized for disposal. A sequence of HEPA filtration vacuuming, wet wiping all exposed surfaces, and surface drying shall be performed until no visible residue is observed in the work area. A minimum of twenty-four (24) hours after wet wiping shall be required to ensure that sufficient drying has occurred.

      (n) All asbestos-containing waste, except for large facility components, shall be thoroughly wetted before being placed into containers for disposal. Large components shall be thoroughly wetted before being wrapped in polyethylene sheeting for disposal. Disposal shall occur at locations identified in paragraph (u) of this subsection.

      (o) Wet asbestos-containing waste shall be double bagged in polyethylene bags placed in sealed, rigid containers (for example: steel drums, fiber drums, or heavy cardboard boxes) for transport to the approved landfill identified in paragraph (u) of this subsection. Large facility components may be wrapped in two (2) layers of polyethylene sheeting which are secured with waterproof tape for disposal.

      (p) All polyethylene sheeting that is used in an asbestos abatement project shall be treated as asbestos-containing waste.

      (q) All wrapping or containerizing of asbestos-containing waste shall be done in such a manner so as to prevent the outside of the wrapping or container from being contaminated with asbestos fibers.

      (r) All packaged wastes (boxes, drums, and wrapped components) shall be labeled according to the provisions of 40 CFR 61.152, filed by reference in 401 KAR 58:025.

      (s) Clearance air monitoring shall be performed. At least five (5) samples of air per work area, or one (1) sample per room, whichever is greater, shall be obtained for the clearance air monitoring. A sample volume of 3,000 liters of air shall be used. The air samples shall be obtained when the air is being artificially circulated so that the fibers remain airborne during the sampling. Barriers shall not be dismantled, and openings shall not be uncovered, until the final samples show total fiber concentrations of less than or equal to 0.01 fibers per cubic centimeter of air. The method for determining compliance with the provisions of this paragraph shall be either of the methods specified in Appendix M to "Guidance for Controlling Asbestos-Containing Materials in Buildings" (U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances, EPA 560/5-85-024, June 1985). Appendix M, "Detailed Specifications for Sampling and Analyzing Airborne Asbestos," is hereby adopted and filed herein by reference.

      1. Copies of Appendix M to "Guidance for Controlling Asbestos-Containing Materials in Buildings" are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

      2. Copies of the material incorporated by reference in this administrative regulation shall be available for public review at the offices of the Division for Air Quality as listed in 401 KAR 50:015.

      (t) Transport and disposal of asbestos-containing waste shall occur in a manner that will not permit the release of asbestos fibers into the outside air.

      (u) Disposal shall occur at a site that has approval from the Division of Waste Management to accept asbestos-containing waste according to the provisions of Title 401, Chapter 47, and shall meet all other applicable local, state, and federal laws.

      (v) The asbestos abatement entity shall submit copies of all results of sampling obtained during clearance air monitoring and all disposal receipts to the building owner and the cabinet.

      (2) Demolitions addressed in 401 KAR 58:025. Any asbestos abatement entity that engages in any asbestos abatement project which is determined to be subject to 401 KAR 58:025 and involves demolition shall comply with the following work practice requirements:

      (a) Any demolition of a structure or portion of a structure which contains facility components composed of or covered by friable asbestos material shall be preceded by a removal of all such materials prior to demolition, according to the requirements of subsection (1) of this section.

      (b) In lieu of the requirements specified in subsection (1)(a), (b), (c), (e), and (l) of this section, asbestos abatement entities engaging in demolition activities shall comply with the following requirements:

      1. Before beginning a demolition project, all doors, windows, floor drains, vents, and other openings to the outside of the building and to areas within the building that do not contain asbestos materials, shall be sealed off with polyethylene sheeting and waterproof tape; and

      2. If a structure is to be partially demolished, all HVAC equipment in the demolition area or passing through it but servicing areas of the building which will remain, shall be shut down, locked out, tagged to advise personnel not to activate the equipment, and thoroughly sealed with polyethylene sheeting and waterproof tape.

      (c) Clearance air monitoring as described in subsection (1)(s) of this section shall be required, following abatement activities conducted for demolition purposes, prior to demolition.

      (d) All other requirements of subsection (1) of this section, unless specifically deleted in paragraph (b) of this subsection, shall apply to demolition abatement activities.

      (3) Any asbestos abatement entity engaged in an asbestos abatement project, including emergency operations, not subject to the requirements of subsections (1) and (2) of this section shall take reasonable precautions to prevent the release of asbestos fibers to the outside air. Such precautions shall include, but not be limited to:

      (a) Construction of adequate barriers or use of wall and floor sheeting to contain asbestos fibers released within the containment area;

      (b) Wetting of all friable asbestos materials prior to removal and keeping them wet until containerized;

      (c) Use of HEPA filtration vacuum equipment and wet cleaning techniques to clean up the work area following the project until there is no visible residue;

      (d) Appropriately wrapping or containerizing asbestos-containing waste and labeling the packaged waste (wrapped components, boxes, or fiber or metal drums); and

      (e) Transportation to and disposal at a location identified in subsection (1)(u) of this section in a manner that does not release fibers into the outside air.

      (4) In lieu of the work practice requirements of subsection (1)(a) to (e), (g), (i), (m), (n), (p), and (s) of this section, subsection (2)(b) and (c) of this section, and subsection (3)(a) and (c) of this section, the asbestos abatement entity may elect to use the glove bag technique for an asbestos abatement project. Such technique is an acceptable alternative to those requirements. The cabinet may, on a case-by-case basis, approve other alternative work practice requirements for an asbestos abatement project provided that the asbestos abatement entity submits the alternative to the requirements to the cabinet, in writing prior to beginning the asbestos abatement project, and demonstrates to the satisfaction of the cabinet that compliance with the requirements prescribed in this section is not practical or not feasible and that the proposed alternative to the requirements provides an equivalent control of asbestos and is not in conflict with any applicable local, state, or federal law.

      Section 5. Applications. (1) No asbestos abatement entity shall be considered for certification unless the training requirements of Section 10 of this administrative regulation have been completed prior to application.

      (2) Applications for certification required under Section 3 of this administrative regulation shall be made on a form prepared by the cabinet for such purpose and shall contain such information as the cabinet shall deem necessary to determine whether the certificate should be issued.

      (3) Applications for certification shall be signed by a duly authorized agent of the asbestos abatement entity. Such signature shall constitute personal affirmation that the statements made in the application are true and complete.

      (4) Failure to supply information required or deemed necessary by the cabinet to enable it to act upon the certification application shall result in denial of the certificate.

      (5) Any asbestos abatement entity which submits an application for certification shall include with the application a filing fee, as specified in Section 8 of this administrative regulation.

      Section 6. Consideration of Applications. (1) Within thirty (30) days after receipt of an application for certification, the cabinet shall advise the asbestos abatement entity as to whether or not the application is complete, and if not complete, what additional information is necessary in order to evaluate the application.

      (2) Within fifteen (15) days after the application for certification is deemed complete, the cabinet shall contact the asbestos abatement entity to establish a date when the cabinet can witness an asbestos abatement project which shall be performed by the entity to demonstrate compliance with the provisions of this administrative regulation.

      (3) The cabinet shall make its determination concerning the application, including its approval or denial, within thirty (30) days after attendance at the asbestos abatement project demonstration, unless the cabinet determines that an additional period of time is necessary to adequately review the application or its evaluation of the demonstration. The cabinet shall notify the asbestos abatement entity, in writing, of its determination and shall set forth its reasons for any denials.

      (4) If the application is approved, the asbestos abatement entity shall submit the certification fee, as specified in Section 8 of this administrative regulation. Upon receipt of the certification fee, the cabinet shall issue to the asbestos abatement entity the certificate to engage in asbestos abatement projects, according to the provisions of this administrative regulation.

      (5) The cabinet shall deny an application for certification if the cabinet determines that any provision of this administrative regulation or 401 KAR 58:025 is not met, if the asbestos abatement entity willfully made any misstatements in the application, or if the owner or operator of an asbestos abatement entity, or an entity with a different name to which a certificate had previously been issued, cannot reasonably be expected to conduct himself or herself in a manner that is consistent with the acceptance of responsibility for asbestos abatement projects. The cabinet shall make determinations regarding issuance or denial of the certification based upon the applicant's actions during any prior term of certification, the information contained in the application, and any other pertinent information that is available to the cabinet.

      (6) Certificates issued hereunder shall be subject to such terms and conditions as set forth and embodied in the certificate as the cabinet shall deem necessary to ensure compliance with the requirements of this administrative regulation and of 401 KAR 58:025.

      Section 7. Duration and Renewal of Certificates. (1) Unless the cabinet revokes a certificate, that certificate, including renewal of certification, shall remain in effect for one (1) year after the date of issuance.

      (2) No asbestos abatement entity shall be considered for renewal of certification unless the training requirements of Section 10 of this administrative regulation have been completed prior to application.

      (3) Applications for renewal of certification shall be made on a form prepared by the cabinet for such purpose and shall contain such information as the cabinet shall deem necessary to determine whether the certificate should be issued. Applications for renewal shall be submitted not earlier than ninety (90) days and not later than thirty (30) days before the date of expiration.

      (4) Applications for renewal of certification shall be signed by a duly authorized agent of the asbestos abatement entity. Such signature shall constitute personal affirmation that the statements made in the application are true and complete.

      (5) Failure to supply information required or deemed necessary by the cabinet to enable it to act upon the renewal application shall result in denial of that renewal.

      (6) Any asbestos abatement entity which submits an application for renewal of certification shall include with the application a filing fee, as specified in Section 8 of this administrative regulation.

      (7) The cabinet shall make its determination concerning the application, including its approval or denial, within thirty (30) days of receipt of a complete renewal application. The cabinet shall notify the asbestos abatement entity, in writing, of its determination and shall set forth its reasons for any denials.

      (8) If the renewal is approved, the asbestos abatement entity shall submit the fee for renewal of certification, as specified in Section 8 of this administrative regulation. Upon receipt of the fee, the cabinet shall issue to the asbestos abatement entity the renewed certificate to engage in asbestos abatement projects, according to the provisions of this administrative regulation.

      (9) The cabinet may deny an application for renewal of certification if the asbestos abatement entity has failed to comply fully with all applicable requirements of this administrative regulation or of 401 KAR 58:025 during the year preceding the renewal application.

      Section 8. Fees. The provisions of this section shall not apply to any publicly owned facility, as defined in Section 2 of this administrative regulation. All fees shall be submitted to the cabinet as a certified check or money order, payable to the Kentucky State Treasurer.

      (1) Filing fee. Each asbestos abatement entity shall submit with the application for certification or renewal of certification, a filing fee, as specified in paragraph (a) or (b) of this subsection. Such fee is not refundable if the certification is denied or the application is withdrawn. The filing fee, shall be applied toward the certification or renewal fee when the certificate is issued, pursuant to Section 6 or 7 of this administrative regulation.

      (a) The filing fee for certification shall be $100.

      (b) The filing fee for renewal of certification shall be fifty (50) dollars.

      (2) Certification or renewal fee. A fee as specified in paragraph (a) or (b) of this subsection, shall be submitted to the cabinet prior to the issuance of the certificate or renewed certificate to any asbestos abatement entity.

      (a) The certification fee shall be $500.

      (b) The fee for renewal of certification shall be $250.

      Section 9. Certification Revocation. The cabinet may revoke any certification issued under this administrative regulation if the asbestos abatement entity:

      (1) Willfully makes any misstatements or knowingly omits information in the certification application, renewal application, or any amendments thereto;

      (2) Fails to comply with the terms or conditions of the certification;

      (3) Fails to comply with the work practice requirements in Section 4 of this administrative regulation; or

      (4) Fails to properly dispose of friable asbestos materials.

      Section 10. Training Requirements. (1) As a part of the certification as required in Section 3 of this administrative regulation, the asbestos abatement entity shall provide at least one (1) supervisory person who will be in attendance during the execution of each asbestos abatement project with an initial training course approved by the cabinet, and an annual retraining course approved by the cabinet.

      (2) Persons identified in subsection (1) of this section shall be required to successfully complete a written examination, administered by the training sponsors, at the completion of the training or retraining course in order to demonstrate familiarity with those issues relevant to the safe performance of asbestos abatement activities. Correct response to at least seventy (70) percent of the examination questions shall be necessary to meet the requirements of this subsection.

      (3) As a part of the certification as required in Section 3 of this administrative regulation, persons identified in subsection (1) of this section shall attend an orientation program sponsored by the cabinet, concerning the requirements, procedures, and standards established by this administrative regulation.

      (4) If at any time, the supervisory person identified in subsections (1) through (3) of this section is no longer employed by the asbestos abatement entity to which the certificate has been issued, or is no longer in attendance during the execution of asbestos abatement projects for such entity, the entity shall immediately notify the cabinet. The cabinet may continue the certificate, based upon a showing that there is another employee who has fulfilled the training requirements in this section, and who will be in attendance during the execution of asbestos abatement projects for the entity.

      Section 11. Training Course Requirements. (1) The initial training course required in Section 10(1) of this administrative regulation shall provide, as a minimum, information on the following topics:

      (a) The physical characteristics of asbestos, including fiber size, aerodynamic characteristics, and physical appearance;

      (b) The health hazards of asbestos;

      (c) Employee personal protective equipment;

      (d) Recommended medical monitoring procedures, benefits of medical monitoring, and employee access to records;

      (e) Air monitoring procedures;

      (f) State-of-the-art work practices for asbestos abatement activities;

      (g) Personal hygiene;

      (h) Additional safety hazards that may be encountered during abatement activities and how to deal with them;

      (i) The requirements, procedures, and standards established by federal regulations;

      (j) Contract specifications and bidding procedures, liability insurance and bonding, and legal consideration related to asbestos abatement; and

      (k) Establishing respiratory protection programs, medical surveillance programs, and U.S. EPA and OSHA recordkeeping requirements.

      (2) The yearly retraining course required in Section 10(1) of this administrative regulation shall, as a minimum, adequately review the topics in subsection (1) of this section, update information on state-of-the-art procedures and equipment, and review regulatory changes and interpretations.

      (3) The course entitled "Supervision of Asbestos Abatement Projects," as approved by the U.S. EPA, shall satisfy the requirements for initial training and retraining courses, as specified in subsections (1) and (2) of this section.

      (4) Training courses, other than the course referenced in subsection (3) of this section, may be approved by the cabinet on a case-by-case basis. The cabinet may approve such training courses, based on the cabinet's determination that the course would provide equivalent training as the course specified in subsection (3) of this section. A prospective course sponsor shall submit, as a minimum, the following information:

      (a) Information about the course sponsor;

      (b) Course location and fees;

      (c) Copies or description of course handouts;

      (d) A detailed description of course content and the amount of time allotted to each major topic;

      (e) A description of teaching methods to be utilized and a list of all audio-visual materials;

      (f) A list of all personnel to be involved in course preparation and presentation and a brief description of the background, special training, and qualifications of each;

      (g) A description of student evaluation methods to be used;

      (h) A description of course evaluation methods to be used;

      (i) Any restriction on attendance (language, etc.); and

      (j) A copy of the written examination which will be administered at completion of the course.

      Section 12. Records. (1) Each asbestos abatement entity shall maintain records of all asbestos abatement projects which it performs and shall make these records available to the cabinet upon request. The asbestos abatement entity shall retain the records for at least six (6) years.

      (2) The asbestos abatement entity shall record the following information for each project:

      (a) Name and address of supervisor responsible;

      (b) The location and description of the project and the estimated amount of asbestos removed;

      (c) Starting and completion date. If the completion date differs from that originally scheduled, include reasons for delay;

      (d) Summary of the procedures used to comply with all applicable requirements, including copies of all notifications, if applicable;

      (e) Name and address of the waste disposal site and disposal receipts, including the amount of asbestos-containing material disposed; and

      (f) Results of all air sampling conducted during the asbestos abatement project, if applicable, including personal, area, and clearance samples.

      Section 13. Penalties. Any asbestos abatement entity which violates any provision of this administrative regulation shall be subject to the appropriate enforcement action as provided under KRS 224.99-010. (14 Ky.R. 670; eff. 11-6-87; recodified from 401 KAR 63:042, 6-10-97; TAm eff. 8-9-2007.)