

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION
SUBCHAPTER A GENERAL PROVISIONS

§296.1. General Provisions.

(a) Purpose. Asbestos is a known carcinogen and health hazard. Preventing asbestos disease depends on limiting exposure of an individual to asbestos fibers. The purpose of this chapter is to control and minimize public exposure to airborne asbestos by regulating asbestos-related activities in public buildings, commercial buildings, and facilities, as defined in §296.21 of this chapter (relating to Definitions). This chapter implements Texas Occupations Code, Chapter 1954 (relating to Asbestos Health Protection); Texas Health and Safety Code, Chapter 161, Subchapter Q (relating to Installation of Asbestos); and federal regulations of the Environmental Protection Agency (EPA), as adopted by reference in §296.2 of this chapter (relating to Reference of Federal Standards). Any federal regulations of the Occupational Safety and Health Administration with which a person is required to comply is not limited by the applicability or effect of the provisions of this chapter.

(b) Scope.

(1) This chapter applies to a person disturbing, removing, encapsulating, or enclosing any amount of asbestos within a public building for any purpose, including repair, renovation, dismantling, demolition, installation, or maintenance operations, or any other activity that may involve the disturbance, encapsulation, enclosure, or removal of any amount of asbestos-containing building material, whether intentional or unintentional. This chapter establishes:

_____ (A) licensing requirements;

_____ (B) building owner and licensee responsibilities;

_____ (C) applicable requirements for the performance of asbestos-related activities in public buildings; and

_____ (D) notification requirements.

(2) For purposes of enforcing the EPA National Emission Standards for Hazardous Air Pollutants (NESHAP) specific to asbestos, as defined in §296.21(61) of this chapter, this chapter applies to facilities as defined in §296.21(41) of this chapter and facility owners or operators as defined in §296.21(42) of this chapter.

(3) For purposes of enforcing the EPA Asbestos Model Accreditation Plan (MAP), as defined in §296.21(56) of this chapter, this chapter applies to commercial buildings as defined in §296.21(25) of this chapter.

(4) For purposes of enforcing the federal regulations adopted to implement the Asbestos Hazard Emergency Response Act (AHERA), this chapter applies to local education agencies (LEAs) as defined in §296.21(51) of this chapter.

(c) Exclusions. This chapter does not apply to a single private residence or a single apartment building with no more than four dwelling units, except for a residential building subject to NESHAP as described in §296.191(g)(4)(A) - (C) of this chapter (relating to Asbestos Management in a Public Building, Commercial Building, or Facility).

(d) Severability. Should any section or provision in this chapter be adjudged invalid by a court of competent jurisdiction, such finding will not affect any other section or provision.

(e) License possession requirements. Anyone engaged in asbestos-related activities that require a license must provide proof of a current license, upon request, to any representative from the Department of State Health Services (DSHS), to an employer, or to a prospective employer if licensure is required for employment. All licensees must have the identification card issued by DSHS on-site at all times while engaged in any asbestos-related activity.

(f) Days. A day means calendar day unless working day, as defined in §296.21(96) of this chapter, is specified.

§296.2. Reference of Federal Standards.

(a) Adoption by reference. The Executive Commissioner of the Health and Human Services Commission (executive commissioner) adopts by reference and enforces the following asbestos-related federal regulations as part of this chapter:

(1) the asbestos-specific provisions of the National Emission Standards of Hazardous Air Pollutants specific to asbestos, 40 CFR Part 61, Subpart M, regarding demolition and renovation activities: §61.140, adopted effective November 20, 1990; §61.141, amended effective June 19, 1995; §61.145, amended effective January 16, 1991; §61.146, amended effective June 19, 1995; §61.148, adopted effective November 20, 1990; §61.150, amended effective November 17, 2003; §61.152, amended effective November 20, 1990; §61.156, amended effective August 19, 2004; §61.157, adopted effective November 20, 1990; and Appendix A, amended effective June 19, 1995; and

(2) except as otherwise provided in this paragraph, 40 CFR Part 763, Subpart E, (relating to Asbestos-Containing Materials in Schools) adopted under the Asbestos Hazard Emergency Response Act: §§763.80-763.86, adopted effective October 30, 1987; §763.87, amended effective June 19, 1995; §763.88, adopted effective October 30, 1987; §763.90, amended effective August 3, 2012; §763.91 and §763.92, amended effective November 15, 2000; §§763.93-763.97, adopted effective October 30, 1987; §763.98, amended effective October 13, 2005; §763.99, adopted effective October 30, 1987; Appendix A, adopted effective

October 30, 1987; Appendix C and Appendix D, amended effective August 23, 2019; and Appendix E, amended effective June 19, 1995. The executive commissioner does not adopt from Appendix C (relating to Asbestos Model Accreditation Plan), the Environmental Protection Agency's (EPA) recommended project monitor accreditation category in its Asbestos Model Accreditation Plan.

(b) References to federal standards, guidance, and analytical methods. The executive commissioner references the following asbestos-related federal regulations, guidance documents, and analytical methods in this chapter:

(1) the provisions of the National Institute of Standards and Technology, 15 CFR Part 285, §§285.1-285.3, §§285.5-285.14, effective May 30, 2001, §285.4, amended effective December 20, 2011, and §285.15 amended effective July 3, 2007 (relating to National Voluntary Laboratory Accreditation Program);

(2) the provisions of OSHA, 29 CFR Part 1910, Subpart H, §1910.120, amended effective July 15, 2019 (relating to Hazardous waste operations and emergency response);

(3) the provisions of OSHA, 29 CFR Part 1910, Subpart I, §1910.132, amended effective January 17, 2017 (relating to General requirements);

(4) the provisions of OSHA, 29 CFR Part 1910, Subpart I, §1910.134, amended effective July 8, 2011 (relating to Respiratory protection);

(5) the provisions of OSHA, 29 CFR Part 1910, Subpart Z, §1910.1001, amended effective July 15, 2019, Appendix A, amended effective October 11, 1994, and Appendix B, amended effective June 29, 1995 (relating to Asbestos);

(6) the provisions of OSHA, 29 CFR Part 1910, Subpart Z, §1910.1200, amended effective February 8, 2013 (relating to Hazard Communication);

(7) the provisions of OSHA, 29 CFR Part 1926, Subpart C, §1926.32, amended effective June 30, 1993 (relating to Definitions);

(8) the provisions of OSHA, 29 CFR Part 1926, Subpart Z, §1926.1101, amended effective July 15, 2019 (relating to Asbestos);

(9) the provisions of EPA, 40 CFR Part 763, Subpart G, effective December 15, 2000 (relating to Asbestos Worker Protection);

(10) the provisions of Pipeline and Hazardous Materials Safety Administration, 49 CFR Part 172, Subpart H, §172.700 and §172.701, effective May 15, 1992, §172.702, amended effective, May 30, 1996, and §172.704, amended effective December 23, 2015 (relating to Hazardous materials table, special provisions, hazardous materials communications, emergency response and information, training requirements, and security plans);

(11) the NIOSH 7400 analytical method, entitled, "Asbestos and Other Fibers by PCM," published in the NIOSH Manual of Analytical Methods, Fifth Edition, Third Issue, June 14, 2019;

(12) the EPA/600/R-93/116 analytical method, entitled, "Method for the Determination of Asbestos in Bulk Building Materials," July 1993; and

(13) the EPA Publication for O&M activities entitled, "Managing Asbestos in Place: A Building Owner's Guide to Operations and Maintenance Programs," (also known as the EPA Green Book), July 1990.

(c) Availability. Links to the documents in subsection (a) and (b) of this section are available on the Texas Department of State Health Services' Asbestos Program website, <http://www.dshs.texas.gov/asbestos/>. Copies of the documents listed in subsection (a) of this section are available for review during normal business hours at DSHS's Consumer Protection Division office in Austin, Texas, and at DSHS regional offices.

(d) State and federal standards. A requirement otherwise stated in applicable state statute or this chapter that is more stringent than a federal standard adopted by reference in subsection (a) of this section must be met.

§296.3. Compliance with National Emission Standards for Hazardous Air Pollutants (NESHAP) and Memorandum of Understanding between the Texas Commission on Environmental Quality and the Texas Department of State Health Services for the Regulation of the NESHAP for Asbestos.

(a) An owner or operator of a demolition or renovation activity, as defined in §296.21(69) of this chapter (relating to Definitions), must comply with NESHAP for all covered activities.

(b) A DSHS representative may enter any facility to inspect and investigate conditions to determine compliance with this chapter in accordance with Texas Occupations Code §1954.060(b), Texas Health and Safety Code §12.018, and §296.271(c) of this chapter (relating to Inspections and Investigations).

(c) The Executive Commissioner of the Health and Human Services Commission adopts by reference a memorandum of understanding between the predecessor agencies for DSHS and the Texas Commission on Environmental Quality, adopted by rule, effective September 5, 1999, in 30 TAC §7.122 (relating to Adoption of Memorandum of Understanding between the Texas Natural Resource Conservation Commission (commission) and the Texas Department of Health (TDH) Regarding Emissions Related to Asbestos Demolition and Renovation Activities) concerning the inspection of solid waste facilities that receive asbestos waste.

(d) DSHS may take enforcement action as described in Subchapter Q of this chapter (relating to Compliance) for violations of NESHAP.

§296.4. Compliance with Federal Regulations Implementing the Asbestos Hazard Emergency Response Act (AHERA).

(a) A local education agency must ensure compliance with AHERA for all schools under its administrative control.

(b) A DSHS representative may enter any regulated school building to inspect and investigate conditions to determine compliance in accordance with Texas Occupations Code §1954.060(b), Texas Health and Safety Code §12.018, and §296.271(c) of this chapter (relating to Inspections and Investigations).

(c) DSHS may take enforcement action as described in Subchapter Q of this chapter (relating to Compliance) for violations of AHERA.

TITLE 25 HEALTH SERVICES
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CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION
SUBCHAPTER B DEFINITIONS

§296.21. Definitions.

The following words and terms, when used in this chapter, have the following meaning, unless the context clearly indicates otherwise.

(1) Abatement preparation--Preparation before asbestos abatement begins, which includes the following activities:

(A) removing any movable objects from the interior space of a public building once an asbestos abatement contractor takes control of that space for the purpose of asbestos abatement;

(B) pre-cleaning, wet wiping, HEPA vacuuming, and sealing a penetration or opening;

(C) installing plastic sheeting, such as a critical barrier, any part of a decontamination system, or any part of the water line connections to a shower, drain, or filtration;

(D) setting-up or using a load-out or bag-out system;

(E) selecting, installing, or maintaining a respiratory system or fiber reduction system (such as misting or spraying);

(F) posting warning signs;

(G) installing engineering controls, including local exhaust ventilation equipped with a HEPA filter dust collection system, construction of a containment or isolation mechanism to control processes producing asbestos dust, and ventilation of the regulated area to move contaminated air away from the breathing zone of persons in containment and toward a filtration or collection device equipped with a HEPA filter;

(H) installing scaffolding in an area in which asbestos may be disturbed during the installation; and

(I) installing, setting-up, and calibrating monitoring devices, including sampling systems and manometers.

(2) ACM--Asbestos-containing building material. Surfacing, TSI, or miscellaneous ACM that is found in, or on interior structural members or other parts of, a public or commercial building.

(3) Accredited person--A person who has attended and passed, within the last year, the appropriate asbestos course, as described in the MAP, that:

(A) has been approved by DSHS and offered by a DSHS-licensed asbestos training provider;

(B) has been approved by another state that has the authority from EPA to approve courses; or

(C) has been approved directly by EPA.

(4) ACM--Asbestos-containing material. Materials or products, including any single material component of a structure or any layer of a material sample that, when analyzed for asbestos using the method specified in 40 CFR Part 763, Subpart E, Appendix E, Section 1 (relating to Polarized Light Microscopy), by a laboratory accredited by the NVLAP for polarized light microscopy, or by using the EPA-recommended method listed in EPA/600/R-93/116 for transmission electron microscopy, are found to contain:

(A) for purposes of complying with this chapter's provisions relating to a public building, 1.0% or more asbestos;

(B) for purposes of complying with AHERA provisions relating to a school building, greater than 1.0% asbestos;

(C) for purposes of complying with NESHAP provisions relating to commercial buildings and facilities, greater than 1.0% asbestos; or

(D) for purposes of complying with OSHA provisions relating to occupational asbestos exposure, greater than 1.0% asbestos.

(5) Act--The Texas Asbestos Health Protection Act, Texas Occupations Code, Chapter 1954.

(6) ACWM--Asbestos-containing waste material. This term includes mill tailings or any waste material that contains asbestos and is generated by a source subject to the provisions of NESHAP or this chapter. This term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with asbestos. As applied to demolition and renovation operations, this term also includes RACM and materials contaminated with asbestos, including disposable equipment and clothing.

(7) Adequately wet--Sufficiently mixed or penetrated with liquid to prevent the release of particulates. If visible emissions are observed coming from ACM, then that material is not adequately wet. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

(8) Aggressive air sampling--Collecting air samples after walls, ceilings, and floors are swept with the exhaust of an unaltered leaf blower that is operated per the manufacturer's instructions and is directed at all surfaces to cause loose asbestos fibers to become airborne.

(9) AHERA--For purposes of this chapter, the Asbestos Hazard Emergency Response Act of 1986, 15 USC §2641, et seq., and EPA's implementing regulations under 40 CFR Part 763, Subpart E (relating to Asbestos-Containing Materials in Schools), adopted by reference as part of this chapter.

(10) Airlock--A system for permitting movement into and out of the containment that controls air-flow patterns such that the air flows only towards the inside of the enclosure to which the decontamination system is attached. An airlock may consist of overlapping curtains, partitions to a separate chamber, or both.

(11) Air monitoring--The collection of air samples for the analysis of fibers.

(12) Amended water--Water to which a surfactant (wetting agent) has been added to increase the ability of the liquid to penetrate ACM.

(13) Asbestos--The asbestiform varieties of chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite.

(14) Asbestos abatement--Asbestos removal, encapsulation, or enclosure to reduce or eliminate, or that has the effect of reducing or eliminating, a concentration of asbestos fibers or an ACM.

(15) Asbestos abatement activity--Asbestos abatement, or any on-site abatement preparations or cleanup related to the abatement.

(16) Asbestos abatement project design--The design for an asbestos abatement project that includes, at minimum:

(A) the review of the survey report of a public building for ACBM;

(B) the evaluation and selection of appropriate asbestos abatement methods;

(C) the preparation of the project layout;

(D) the preparation of specifications and plans; and

(E) the determination of environmental controls, abatement procedures, and personal protection equipment to be employed every day of the asbestos abatement activity, from the start through the completion date of the project.

(17) Asbestos-related activity--Activities including:

(A) the removal, encapsulation, or enclosure of asbestos, whether intentional or unintentional;

(B) the preparations for final clearance;

(C) the performance of an asbestos survey;

(D) the development of an asbestos survey report, management plan, or response action;

(E) the design of an asbestos abatement project;

(F) the collection or analysis of a bulk asbestos sample;

(G) the monitoring for airborne asbestos; or

(H) any other activity for which a license is required under the Act.

(18) Asbestos removal--Any action that disturbs, dislodges, strips, or otherwise takes away asbestos fibers or ACM.

(19) ASTM E1494-18--The 2018 edition of the Standard Practice for Testing Physical Properties of Friable Surfacing Materials developed by ASTM International, www.astm.org.

(20) Bag-out area--An area distinct from the decontamination area that is used to decontaminate asbestos waste bags before placing them into outer bags.

(21) Building owner--The owner of record of a building.

(22) Category I nonfriable ACM--Asbestos-containing packings, gaskets, resilient floor-covering material, and asphalt roofing products determined to be ACM.

(23) Category II nonfriable ACM--Any material determined to be ACM, excluding Category I nonfriable ACM, that when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

(24) CFR--The Code of Federal Regulations.

(25) Commercial building--The interior space of any building that does not otherwise fall within the definition of a public building. Interior space includes exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space. This term includes industrial buildings, federal government-owned buildings, warehouses, and factories. This term does not include a detached single private residence or single apartment building with four or fewer dwelling units.

(26) Commissioner--The commissioner of the Department of State Health Services.

(27) Containment--A portion of the regulated area that has been sealed and placed under negative air pressure using negative air machines with HEPA filters.

(28) Critical barrier--An impermeable barrier, such as plastic sheeting or dividing wall, sealing any opening between the containment and adjacent areas.

(29) Decontamination area--An enclosed area consisting of an equipment room, shower room, and clean room that is used for the decontamination of persons, materials, and equipment that are contaminated with asbestos. This area is adjacent to, and where feasible, connected to, the containment.

(30) Demolition--The wrecking or removal of any load-supporting structural member of a public building or facility for the purpose of razing the building or portion of the building to the ground, or the intentional burning of any public building or facility. The removal of load-supporting structural members followed by resupport of the structure is considered renovation, not demolition. Moving a building from its foundation is considered demolition.

(31) Designated person--The individual designated by an LEA in accordance with, and to ensure compliance with, AHERA.

(32) Disturbance--Activities that disrupt the matrix of ACM, render ACM friable, or generate visible debris from ACM.

(33) DSHS--The Department of State Health Services.

(34) Emergency renovation operation--A renovation operation that was not planned but results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden. This term includes operations necessitated by nonroutine failures of equipment or systems, such as water, steam, and electrical systems.

(35) Emergency responder--Any person responsible for mitigation activities in a medical emergency, fire emergency, hazardous material emergency, or natural disaster.

(36) Employee--A person who works in expectation of compensation in the service of an employer and whose work performance is subject to the direction and control of the employer.

(37) Encapsulation--A method of control of asbestos fibers in which the surface of ACM is penetrated by or covered with a coating prepared for that purpose. Painting with a non-encapsulant that does not disturb asbestos is not an asbestos-related activity.

(38) Enclosure--The construction of an airtight, impermeable, permanent wall and ceiling or comparable barrier around ACM to prevent the release of asbestos fibers into the air.

(39) EPA--The United States Environmental Protection Agency.

(40) Exposure assessment--A determination by an employer in accordance with 29 CFR §1926.1101(f) of the level of employee exposure to asbestos fibers by analyzing breathing zone air samples that are representative of an 8-hour time-weighted average and a 30-minute representative short-term exposure of each employee.

(41) Facility--Any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding a single residential building having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this chapter, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building.

(42) Facility owner or operator--Any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

(43) Federal government-owned building--Any building owned by the United States Federal Government. This term does not include space leased by the United States Federal Government.

(44) Friable asbestos material--Any ACM that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

(45) HEPA--A high-efficiency particulate air filtration, capable of trapping and retaining 99.97% of mono-dispersed airborne particles that are 0.3 micron or larger in diameter.

(46) HVAC--Heating, ventilation, and air conditioning.

(47) Independent third-party air monitor--A person retained to collect area air samples to be analyzed for the owner of the building or facility being abated.

(48) Installation--A building or structure, or group of buildings or structures, at a single demolition or renovation site controlled by the same owner or operator. A project involving a single private residence or a single apartment building with no more than four dwelling units is not considered an installation. When there are two or more residential buildings on the same site that are controlled by the same owner or operator, the buildings are considered an installation under NESHAP.

(49) Intact--As defined in 29 CFR §1926.1101(b), ACM that has not crumbled, been pulverized, or otherwise deteriorated so that the asbestos is no longer likely to be bound with its matrix.

(50) Layer--Any constituent of an asbestos bulk sample that exhibits different physical properties, such as color or composition, and can be separated from the rest of the sample with an instrument, such as a modeler's knife.

(51) LEA--Local education agency. An LEA includes:

(A) a public board of education or other public authority legally constituted within a state 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 of a state, or such combination of school districts or counties as are recognized in a state as an administrative agency for its public elementary or secondary schools;

(B) any other public institution or agency having administrative control and direction of a public elementary or secondary school; and

(C) the owner of any nonpublic, nonprofit elementary or secondary school building.

(52) License--Any license or registration issued under this chapter.

(53) Licensee--A person who has been issued a license or registration by DSHS under this chapter.

(54) Major fiber release episode--Any uncontrolled or unintentional disturbance of ACBM, resulting in a visible emission, which involves the falling or dislodging of more than three square feet or three linear feet of friable ACBM.

(55) Management plan--A written plan for a public building that describes appropriate actions for surveillance and management of ACM in the building.

(56) MAP--Asbestos Model Accreditation Plan. As described in Appendix C (relating to Asbestos Model Accreditation Plan) of AHERA and adopted by reference into this chapter, EPA's model accreditation plan that provides standards for initial training, examinations, refresher training courses, applicant qualifications, decertification, and reciprocity.

(57) Mini-containment--A small walk-in containment that accommodates no more than two people and conforms to its localized work area. A mini-containment is constructed of 6-mil thick plastic sheeting or the equivalent and is kept under negative pressure by means of a HEPA vacuum or similar ventilation unit as described for a mini-enclosure in 29 CFR §1926.1101(g)(5)(vi).

- (58) MSDS--Material safety data sheet. (See also the definition of SDS.)
- (59) Municipality--A general-law, home-rule, or special-law municipality as defined in the Texas Local Government Code §1.005 (relating to Definitions).
- (60) Negative exposure assessment--A demonstration by an employer in accordance with 29 CFR §1926.1101(f) that employee exposure during an operation is expected to remain below the PELs for the duration of the applicable asbestos-related activity.
- (61) NESHAP--The EPA National Emission Standards for Hazardous Air Pollutants specific to asbestos, in 40 CFR Part 61, Subpart M (relating to National Emission Standard for Asbestos), as adopted by reference in this chapter.
- (62) NIOSH--The National Institute for Occupational Safety and Health.
- (63) Nonfriable ACM--ACM that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.
- (64) Nonscheduled renovation operation--A renovation operation necessitated by the routine failure of equipment, which is expected to occur within a given period based on past operating experience, but for which an exact date cannot be predicted.
- (65) NVLAP--National Voluntary Laboratory Accreditation Program. NVLAP is a federal program administered by the National Institute of Standards and Technology, an office of the U.S. Department of Commerce. NVLAP provides third-party accreditation to testing and calibration laboratories based on evaluation of their technical qualifications and competence to carry out specific calibrations or tests. Accreditation procedures and requirements are described in 15 CFR Part 285 (relating to National Voluntary Laboratory Accreditation Program), which references clauses 4 and 5 of the international standard, ISO/IEC 17025, as the criteria for accreditation.
- (66) O&M activity--Operations and maintenance activity that includes repairs, maintenance, renovation, installation, replacement, or cleanup of building materials or equipment.
- (67) OSHA--The Occupational Safety and Health Administration, part of the U.S. Department of Labor.
- (68) OSHA regulations--Regulations found in 29 CFR (relating to Labor), including 29 CFR §1926.1101 and portions of 29 CFR Parts 1926 (relating to Safety and Health Regulations for Construction) and 1910 (relating to Occupational Safety and Health Standards), as referenced in this chapter or otherwise applicable to a person subject to this chapter.

(69) Owner or operator of a demolition or renovation activity--Any person who owns, leases, operates, controls, or supervises a facility being demolished or renovated, or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

(70) PELS--Permissible exposure limits, as described in 29 CFR §1926.1101(c).

(71) Permit--A license, certificate, approval, registration, consent, or other form of authorization that a person is required by law, rule, regulation, order, or ordinance to obtain to perform an action, or initiate, continue, or complete a project.

(72) Person--A person is:

(A) an individual, including a sole proprietorship; or

(B) a corporation, partnership, governmental subdivision or agency, association, or any other legal entity.

(73) Planned renovation operation--A renovation operation, or a number of renovation operations, in which some RACM will be removed or stripped within a given period of time and that can be predicted. Individual nonscheduled renovation operations are included if a number of renovation operations can be predicted to occur during a given period of time based on operating experience.

(74) Public building--The interior space of a building used, either in the past or at present, or to be used, for a purpose that involves public access or occupancy, such as a school, hospital, or prison. Interior space includes exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space. The term includes any such interior space during a period of vacancy, including the period during preparations before demolition. The term does not include:

(A) an industrial facility to which access is limited principally to employees of the facility because of processes or functions that are hazardous to human safety or health;

(B) a federal government-owned building or installation (civilian or military);

(C) a private residence;

(D) an apartment building with no more than four dwelling units;

(E) a manufacturing facility or building that is part of a manufacturing facility, to which access is limited to workers and invited guests under controlled conditions;

_____ (F) a building, facility, or any portion of which, before demolition, has been determined to be structurally unsound and in danger of imminent collapse by a professional engineer or a city, county, or state government official; or

_____ (G) the portion of a building that has become structurally unsound due to demolition.

_____ (75) Public school--An elementary or secondary school operated by publicly elected or appointed school officials in which the program and activities are under the control of these officials and that is supported primarily by public funds.

_____ (76) RACM--Regulated asbestos-containing material. RACM means:

_____ (A) friable asbestos material;

_____ (B) Category I nonfriable ACM that has become friable;

_____ (C) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading; or

_____ (D) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations.

_____ (77) Regulated area--An area where on-site asbestos-related activity is performed, and any adjoining area where debris and waste accumulate from such asbestos-related activity, including any area within which airborne concentrations of asbestos exceed or there is a reasonable possibility they may exceed the PELs, in accordance with 29 CFR §1926.1101 (relating to Asbestos).

_____ (78) Renovation--Additions to or alterations of a building, including by removal, repairing, or rebuilding.

_____ (79) Resilient floor-covering material--For purposes of this chapter, this term includes adhesives, sheet vinyl flooring, and resilient tile, such as vinyl composition tile, asphalt tile, and rubber tile.

_____ (80) Response action--A method, including removal, encapsulation, enclosure, repair, and operations and maintenance that protects human health and the environment from friable ACM.

_____ (81) Responsible person--The individual that is appointed by the licensed asbestos abatement contractor, asbestos operations and maintenance contractor, asbestos laboratory, asbestos consultant agency, asbestos management planner agency, or asbestos training provider as responsible for compliance with the requirements for the licensee under this chapter.

_____ (82) RFCI--Resilient Floor Covering Institute.

(83) School--Any day or residential public or private non-profit elementary or secondary school, kindergarten through grade 12.

(84) School building--Any structure suitable for use as a classroom, including:

(A) a school facility, such as a laboratory, library, eating facility, or facility used for the preparation of food;

(B) a gymnasium or other facility that is specially designed for athletic or recreational activities for an academic course in physical education;

(C) a facility used for the instruction or housing of students or for the administration of educational or research programs;

(D) a maintenance, storage, or utility facility, including any hallway, essential to the operation of any of the preceding facilities described in this definition;

(E) a portico or covered exterior hallway or walkway; or

(F) an exterior portion of a mechanical system used to condition interior space.

(85) SDS--Safety data sheet. A written or printed material concerning a hazardous chemical that is prepared in compliance with OSHA regulations in 29 CFR §1910.1200(g) (relating to Hazard communication). This term reflects a change in terminology from MSDS and updated format requirements, based upon the adoption of the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals.

(86) Specifications and plans--Site-specific asbestos abatement description, consisting of:

(A) a clear and understandable written description of the determinations made during the asbestos abatement project design, including the work to be performed, such as asbestos abatement methods and air clearance procedures to be used, abatement preparations to be made, and equipment to be used; and

(B) drawings, floor plans, or the equivalent, that distinctly display the location of asbestos abatement activities and equipment to be used with a level of detail and in a size sufficient to make each location visually discernable.

(87) SSSD activities--Small-scale, short-duration activities are work operations where a negative-pressure containment cannot be constructed because of the configuration of the work environment. SSSD activities include tasks, such as removal of asbestos-containing insulation on pipes, removal of small quantities of asbestos-containing insulation on beams or above ceilings, replacement of an asbestos-containing gasket on a valve, installation or removal of a small section of

drywall, or installation of electrical conduits through or proximate to ACM. SSSD activities can be further defined as the following:

(A) removal of small quantities of ACM only if required in the performance of another maintenance activity not intended as asbestos abatement;

(B) removal of asbestos-containing TSI, not to exceed amounts greater than those that can be contained in a single, standard (60 inches by 60 inches) glove bag and not intended as asbestos abatement;

(C) minor repairs to damaged TSI that do not require removal;

(D) repairs to a piece of asbestos-containing wallboard; and

(E) repairs, involving encapsulation, enclosure, or removal, to small amounts of ACM only if required in the performance of emergency or routine maintenance activity and not intended solely as asbestos abatement. Such work may not exceed amounts greater than those which can be contained in a single prefabricated mini-containment.

(88) SSSD O&M activity--An O&M activity that is limited to SSSD activities.

(89) Start date--The date defined as:

(A) Asbestos abatement start date. For the purpose of notification to DSHS as required in §296.251 of this chapter (relating to Notifications), the date that the actual disturbance of asbestos begins. Abatement preparation that does not disturb asbestos is not the asbestos abatement start date.

(B) Demolition start date. The date that the demolition begins. Asbestos preparation that does not wreck or remove a load-bearing structural member or move a building from its foundation is not the demolition start date.

(90) Stop date--The date defined as:

(A) Asbestos abatement stop date (completion date).

(i) For the purpose of notification to DSHS as required in §296.251 of this chapter, the date that clearance is achieved as described in §296.211(h)(C)(iii) of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building).

(ii) For removal of resilient floor-covering material in accordance with §296.171 of this chapter (relating to Removal of Resilient Floor-Covering Material), the asbestos abatement stop date is the date that the ACBM is removed from the substrate and properly containerized as required in the RFCI work practices.

(iii) For NESHAP projects, the asbestos abatement stop date is the date that all RACM is removed from the substrate and properly containerized.

(B) Demolition stop date (completion date). In public buildings, commercial buildings, or facilities that do not contain RACM, the date that the wrecking or removal operations of load-bearing structural components or both are completed. In structurally unsound buildings or facilities that contain RACM, the demolition stop date is the date that load-bearing structural components are removed and RACM is containerized or removed from the site in accordance with 40 CFR §61.150 (relating to Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations).

(91) Surfacing material--Material 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.

(92) Survey--An inspection activity undertaken in a public building, commercial building, or facility to determine the quantities and locations of homogeneous areas of ACBM by assuming suspect material or collecting samples of such material and assessing its condition, whether by visual or physical examination.

(A) This term includes reinspections of friable and nonfriable known or assumed ACBM previously identified, as described in 40 CFR §763.85(b) (relating to Inspection and reinspections).

(B) This term does not include:

(i) a periodic surveillance as described in 40 CFR §763.92(b) (relating to Training and periodic surveillance) performed solely for the purpose of recording or reporting a change in the condition of known or assumed ACBM;

(ii) an inspection performed by an employee or agent of federal, state, or local government solely for the purpose of determining compliance with applicable statutes or regulations; or

(iii) a visual inspection of the type described in 40 CFR §763.90(i) (relating to Response actions) solely for the purpose of determining proper completion of a response action.

(93) Survey report--A report that contains:

(A) for a public building:

(i) a written description, diagram, or both that clearly and accurately identifies and reflects the location and boundaries of each homogeneous area of suspected ACBM that is assumed to be ACM or was sampled for ACM, including the

sampling location for each bulk sample and the dates that each sample was collected;

(ii) a written description of:

(I) the manner used to determine sampling locations;

(II) the estimated amount of ACBM in each homogeneous area in square feet or, for ACBM on piping, in linear feet;

(III) the type of material sampled; and

(IV) the condition and friability of the ACBM, and the assessment of ACBM must conform to generally accepted industry standards, such as the AHERA requirements specified in 40 CFR Part 763, Subpart E (relating to Asbestos-Containing Materials in Schools), §§763.85 - 763.88, which is the required method for schools;

(iii) the name, signature, and, as applicable, accreditation and state of accreditation or license number of the inspector performing each activity;

(iv) the name, signature, and as applicable, accreditation and state of accreditation or license number of the licensed management planner or consultant employing the licensed asbestos inspector performing each activity; and

(v) a copy of the analyses of any bulk samples, the dates of analyses, and a copy of any other laboratory reports pertaining to the analyses; or

(B) for a NESHAP facility, a record of the thorough inspection of the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM that identifies:

(i) the location of ACM; and

(ii) the inspector that performed the survey.

(94) TSI--Thermal system insulation. TSI is ACM applied to pipes, fittings, boilers, breeching, tanks, ducts, or other interior structural components to prevent heat loss or gain, water condensation, or for other similar purposes.

(95) USC--The United States Code.

(96) Working days--Monday through Friday, including a holiday that falls on one of those days.

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION
SUBCHAPTER C STANDARDS OF CONDUCT

§296.31. Conflict of Interest.

(a) Independent third-party air monitoring. The public building owner or authorized representative must provide for an appropriately licensed third party to perform area monitoring and project clearance monitoring for airborne concentrations of asbestos fibers during an abatement project, as required in §296.211(h)(1) of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building). The third party who analyzes an area sample collected during the abatement project must not be employed or subcontracted for that purpose by an asbestos abatement contractor hired to conduct the asbestos abatement project by or for the owner except that an O&M contractor who owns or manages the building may hire a licensed air monitoring technician, licensed air monitoring technician project monitor, or a licensed asbestos consultant to perform air clearance monitoring for that building as required in §296.213 of this chapter (relating to Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building).

(b) Licensee conflict of interest.

(1) Without limiting the restrictions of §1954.254 and §1954.255 of the Act, for a project in a public building:

(A) a licensed asbestos consultant or licensed asbestos consultant agency for the project must not hire a licensed asbestos abatement contractor for the same project;

(B) a licensed asbestos abatement contractor for the project must not hire a licensed asbestos consultant or a licensed asbestos consultant agency for the same project, except that a licensed asbestos consultant or licensed consultant agency may be hired to collect and analyze personal samples to evaluate worker exposure, in accordance with 29 CFR §1926.1101 (relating to Asbestos);

(C) a person that is a licensed asbestos abatement contractor and licensed asbestos consultant must not act in both capacities on the same project; and

(D) a licensed asbestos management planner, licensed asbestos management planner agency, or licensed asbestos inspector that is also a licensed asbestos abatement contractor must not act as the asbestos abatement contractor on a project for which the licensee also performed a survey or, if otherwise authorized by the person's license, developed the management plan.

(2) A person must not be the responsible person for two companies that hold the same type of license.

(c) Municipality exemption. Notwithstanding subsection (b) of this section, a municipality may hire a licensed person to perform asbestos surveys, write management plans, design abatement projects, and abate asbestos in the same building or facility, consistent with the scope of the individual's licensure. This exemption does not relieve a municipality from the requirements of subsection (a) of this section. Area and project clearance monitoring activities must be performed by an independent third party who is not an employee of the municipality.

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION
SUBCHAPTER D LICENSE AND REGISTRATION

§296.41. License and Registration Requirements.

(a) License and registration requirements. A person must be licensed or registered in compliance with the Act and this chapter to perform any asbestos abatement or asbestos-related activity that requires a license or registration under the Act or this chapter.

(b) Qualifying work experience.

(1) A licensee who performs supervision for any form of pre-licensure work experience required to obtain a license under any of the following provisions must provide direct, in-person supervision in the immediate proximity of the trainee and is the responsible licensee for such supervised acts.

(2) For the purpose of determining the work experience required under this chapter for an initial license, eight hours of qualifying on-the-job work experience equals one day of the required work experience.

(3) Work experience gained from performing removal of resilient floor-covering material under this section does not apply toward the training or work experience requirements for a registration or license to perform other asbestos-related activities.

(c) Age requirement. An individual applying for a license or registration under this chapter must be at least 18 years old.

(d) Term and expiration. The term of a new license or registration is two years and expires on the second anniversary of the issue date. The term of a renewal license or registration is two years after the date the previous license or registration expires.

(e) License or registration card. A license or registration identification card issued by DSHS is valid for the person named on the card until the license or registration expires or is revoked.

(f) Responsibility to report violations. A licensee who becomes aware of a violation of this chapter must report the violation to DSHS within 24 hours after becoming aware of the violation if the violation is not immediately corrected by the responsible party. The phone number to report a violation is on the Violation Notification Procedure poster that must be posted at the entrance to the regulated area as required in §296.211(i) of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building).

(g) Prohibition. A licensee is subject to disciplinary action, in addition to a violation of the Act or this chapter, if the licensee engages in the following activities:

(1) alters, sells, assigns, or transfers a license or registration issued in accordance with this chapter;

(2) makes any false, misleading, or deceptive claim in any asbestos-related advertising, announcement, presentation, or competitive bidding; or

(3) engages in activities prohibited in §296.271 of this chapter relating to (Inspections and Investigations) or §296.313 of this chapter (relating to Denial, Suspension, or Revocation of License or Reprimand of Licensee).

(h) Penalties. A licensee is subject to applicable administrative, civil, and criminal sanctions for any violation as described in Subchapter Q of this chapter (relating to Compliance). State and federal violations and citations become a part of a licensee's DSHS record.

§296.42. Initial and Renewal Applications.

(a) General requirements. To apply for a license or registration as required in this chapter, an applicant must submit a complete and signed application on the form provided by DSHS. DSHS will not accept an altered application form. A complete application includes all required documentation and payment of the application fee by check, money order, or proof of online payment. An applicant who applies for more than one license or registration must submit all required documentation with each application.

(b) Processing applications.

(1) Upon receipt of a complete application, DSHS will issue the following documents within the time periods set forth below, as applicable:

(A) license or identification (ID) card, or letter of acceptance:

(i) for a training provider license--90 days; and

(ii) for any other license or registration--45 days;

(B) letter of approval for examination--30 days;

(C) approval of additional training course--90 days; and

(D) duplicate license or ID card--30 days.

(2) If an application is incomplete, DSHS will issue a deficiency notice within the time periods set forth below:

_____ (A) for a training provider license--90 days;

_____ (B) for any other license or registration--45 days;

_____ (C) for an examination request--30 days.

____ (3) If an application remains incomplete after the deadline provided in the deficiency notice issued under subsection (b)(2) of this section, DSHS will issue a notice of proposed denial of license, registration, or examination, as applicable.

(c) Denial. DSHS may deny an application for license or registration of a person for fraud or misrepresentation or for failure to meet the standards established by this chapter, as described in Subchapter Q of this chapter (relating to Compliance). This includes §296.313 of this chapter (relating to Denial, Suspension, or Revocation of License or Reprimand of Licensee), and as required in §296.315 of this chapter (relating to Suspension of License under Texas Family Code Chapter 232), or for any reason allowed by law.

(d) Renewal notices. DSHS sends a renewal notice to the licensee before the license expires. However, a licensee must renew a license before the license expiration date, even if the licensee does not receive a renewal notice. The renewal notice includes the following:

____ (1) the license type;

____ (2) the time period allowed for renewal; and

____ (3) the applicable renewal fee.

(e) Renewal requirements.

____ (1) A license may not be renewed more than 60 days before or more than one year after the license expires. An applicant may renew a license if the applicant:

_____ (A) meets the requirements to renew the license;

_____ (B) pays the required fee;

_____ (C) submits a renewal application along with all required documentation; and

_____ (D) has complied with all final orders resulting from any violation of this chapter.

____ (2) If a licensee submits an incomplete application, including an application resubmitted in response to a deficiency letter, and the application is not complete, or the deficiency resolved before the license expiration date, the license expires on the expiration date and engaging in activities for which a license is required is a violation of this chapter. If a licensee submits a complete renewal application with

the required fee and documentation before the license expires, the current license does not expire until DSHS approves or denies the application.

(f) Re-application for license. A person whose license has expired must not engage in activities for which the license is required. If a license has been expired for more than one year, the person may not renew the license. The person may obtain a new license by complying with the requirements and procedures at the time of application for obtaining an initial license, including the examination requirements.

(g) Application for duplicate license. A licensee may obtain a duplicate or replacement license by submitting:

___ (1) an application for a duplicate license;

___ (2) an unaltered, 2-inch by 2-inch, color photograph of the face (without tinted glasses, hats, bandanas, or other articles that may obscure the head or any part of the face) with a white background taken within the past 12 months and submitted either on photo quality paper or in digital format; and

___ (3) the required fee.

(h) Name change. A licensee must submit a name change application and required fee to change the name currently on record. DSHS does not charge a separate name change fee if the applicant submits the name change application with the renewal application. The name change application must be submitted with a copy of a divorce decree, marriage certificate, legal name change document, driver's license, or social security card showing the new name. If the tax identification number for a company has changed, a new license must be obtained.

(i) Physician's written statement. A copy of DSHS's Physician's Written Statement form must be submitted with all individual applications to document that the applicant has received a medical examination within the past 12 months, in accordance with 29 CFR §1926.1101(m) (relating to Asbestos) or 40 CFR §763.122 (relating to What does this subpart require me to do?), whichever is applicable. A current copy of the individual's Physician's Written Statement form must be on-site while performing asbestos-related activities.

§296.43. Acceptable Academic Credit.

(a) Any degrees or academic credit earned in the United States must be from a college or university that has a program accredited by a national accrediting organization that is also recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 USC §1001, et seq.).

(b) Any degrees and academic credit received from a university outside the United States may apply toward the education requirement for a license only if the course work and degrees could be counted as transfer credits by universities described in subsection (a) of this section. An applicant must furnish, at the applicant's own

expense, an original or certified copy of an evaluation of each foreign degree from a credential evaluation service that is acceptable to DSHS. An applicant must show proof of each degree and the date it was awarded by submitting an original or certified copy of each applicable transcript. Documents written in a language other than English must also be accompanied by a certified English translation.

(c) A high school diploma or equivalency diploma received from a school outside the United States may apply toward the education requirement for a license only if the education is equivalent to a diploma or equivalency diploma issued in the United States. An applicant must furnish, at the applicant's own expense, an original or certified copy of an evaluation of each foreign diploma from a credential evaluation service that is acceptable to DSHS. An applicant must show proof of each diploma and the date it was awarded by submitting an original or certified copy of the diploma. A document written in a language other than English must also be accompanied by a certified English translation.

§296.44. Out-of-State Applicants.

(a) Qualifications. Out-of-state applicants must comply with all licensing qualifications that are required for Texas residents.

(b) Documentation of education, experience, training, and medical examinations acquired out of state must be verifiable. DSHS may approve applications with out-of-state documentation on a case-by-case basis. If DSHS is unable to verify the documentation, the applicant is responsible for verifying the documentation.

(c) Texas Asbestos Law and Rules course. A person applying for an initial or renewal license or registration who did not receive any of the required training for that license or registration from a DSHS-licensed training provider must complete a three-hour Texas Asbestos Law and Rules course. The Texas Asbestos Law and Rules course must be completed within one year before DSHS receives the license or registration application. A training course taken from a DSHS-licensed training provider in an asbestos licensure or accreditation category other than the one for which license or registration is sought may substitute for the Texas Asbestos Law and Rules course.

(d) Interstate commerce. A foreign entity, as defined in Texas Business Organizations Code §1.002, that transacts business only in interstate commerce may qualify as not transacting business in Texas if the entity submits a statement with its license application that the entity engages only in interstate commerce, does not transact business in Texas, and is not a foreign entity that is required under Texas law to register with the Secretary of State. The statement must be in the form of a sworn affidavit from an individual authorized to make the statement on behalf of the entity.

(e) Formerly licensed in Texas. A person who was licensed by DSHS, moved to another state, and is currently licensed in the other state and has been in practice there for the two years preceding the date of application, may obtain a new DSHS

license without reexamination. The person must pay to DSHS a fee that is equal to two times the normally required renewal fee for the license term. The person must meet all other qualifications applicable to the new license.

(f) Provisional license or registration. A person who is currently licensed or registered as an asbestos abatement worker, asbestos abatement supervisor, asbestos inspector, or asbestos management planner in another state, including a foreign country, may request a provisional license or registration in the same discipline.

(1) A person may receive a provisional license or registration issued by DSHS if:

(A) the person has been licensed or registered in good standing for at least two years in another state, including a foreign country, that has licensing or registration requirements substantially equivalent to the requirements in this chapter;

(B) the person has passed a national or other examination recognized by DSHS relating to the provisional license requested;

(C) the person pays the nonrefundable provisional license or registration fee set forth in §296.91 of this chapter (relating to Fees); and

(D) the person is sponsored by a company that meets the insurance requirements of §296.45 of this chapter (relating to Insurance Requirements) with whom the person will practice during the time the person holds a provisional license or registration. DSHS may waive the requirement of sponsorship for an applicant if DSHS determines that compliance with §296.45 would be a hardship to the applicant.

(2) A provisional license or registration is valid until the date DSHS approves or denies the provisional license or registration holder's application for licensing or registration, or 180 days after the date the provisional license or registration is issued, whichever comes first.

(3) A person who holds a provisional license or registration issued in accordance with this section may apply for a license or registration if the applicant provides documentation showing successful completion of the Texas Asbestos Law and Rules course described in §296.73 of this chapter (relating to Asbestos Training Courses), pays the required licensing fee in addition to the provisional license or registration fee as outlined in §296.91 of this chapter, and meets the requirements in §296.46 of this chapter (relating to Initial and Renewal Licensure Requirements for an Individual), as applicable.

§296.45. Insurance Requirements.

(a) Liability insurance. Without limiting any other applicable requirement of law, for purposes of this chapter:

(1) Each applicant and licensee who performs asbestos-related activities and who is required under §1954.105(c) of the Act or this subchapter to maintain specified liability insurance as a condition of licensure must meet the insurance and proof requirements of:

(A) this section;

(B) the sections of this subchapter applicable to each license they hold; and

(C) §1954.105(c) of the Act.

(2) The required liability insurance for each applicant and licensee must include coverage in the amount of at least \$1 million per occurrence.

(3) Each applicant and licensee required to have specified liability coverage for work performed for hire must obtain individual coverage, unless covered as required under the insurance of the individual's licensed employer. An applicant or licensee may satisfy applicable liability insurance requirements through coverage under the policy of that person's licensed employer only to the extent that the activities of the applicant or licensee requiring a license are performed on behalf of that employer.

(4) Each applicant and licensee must obtain, and submit with any license application, a certificate of insurance issued for the purpose of licensing in accordance with §1954.105(c) of the Act and this subchapter that verifies the liability coverage required under the Act and this subchapter for each license the applicant or licensee holds.

(A) A policy for the required liability coverage must be issued by a company or other person that is specifically authorized in Texas, for all relevant purposes, to issue the applicable policy. The applicant or licensee must provide any information requested by DSHS to demonstrate such authority.

(B) A governmental or other authorized applicant or licensee that is authorized by law to do so may provide proof of required liability coverage through a form other than a certificate of insurance for purchased insurance if it otherwise meets the requirements of this paragraph.

(i) An applicant or licensee that provides proof of required liability coverage under this subparagraph must identify the form of required liability coverage and provide any information requested by DSHS concerning that form and the authority for that form.

(ii) An applicant or licensee that is otherwise subject to specific requirements for liability coverage under this subchapter may request a variance from a requirement of this subchapter based upon a demonstrated legal limitation

to meeting that requirement, and a demonstrated alternative method for assessing and addressing the risks otherwise addressed by the required liability coverage.

(b) Pollution liability insurance. In addition to the liability insurance required by subsection (a)(2) of this section, each asbestos abatement contractor and asbestos transporter applicant and licensee must obtain liability insurance that includes pollution liability coverage for asbestos exposure in the amount of at least \$1 million per occurrence.

(c) Workers' compensation.

(1) An applicant or licensee who is an employer, as defined for purposes of the Texas Labor Code, Title 5, Subtitle A (relating to Texas Workers' Compensation Act) and who is not otherwise required by law to have workers' compensation insurance must, for purposes of this chapter, have and provide proof with the license application of workers' compensation insurance, except as otherwise provided under this paragraph. If an applicant is otherwise required by law to have workers' compensation insurance, the applicant must verify such insurance at the time of license application, as required under paragraph (2) of this subsection.

(A) Proof of workers' compensation insurance is not required if an applicant or licensee who certifies that the individual or entity will not use the applicable license for any activity for which workers' compensation insurance is required by the owner of a public building, or by the specifications and plans for the asbestos-related activity. Such certification may be utilized when a person applies for a license or renews it for a term during which the person will not utilize the license.

(B) If, during the license term of a licensee who has made a certification under subparagraph (A) of this paragraph, the licensee engages in asbestos-related activity with respect to a public building for which its owner requires workers' compensation insurance, or for which the specifications and plans for the asbestos-related activity require workers' compensation insurance, the licensee must submit the proof of workers' compensation insurance required under this subsection.

(2) Verification of workers' compensation required under paragraph (1) of this subsection must be provided to DSHS with an applicant or licensee's application in the following form:

(A) proof of workers' compensation insurance for asbestos-related activities performed in Texas and issued in compliance with Texas law on the appropriate form; or

(B) proof of self-insurance authorized in accordance with the Texas Workers' Compensation Act or Texas Labor Code, Title 5, Subtitle C (relating to Workers' Compensation Insurance Coverage for Certain Government Employees);

(i) an applicant or licensee other than a governmental entity must submit proof of self-insurance approval from the applicable authority; or

_____ (ii) a governmental entity that self-insures must submit any documentation requested by DSHS to verify its self-insurance status in accordance with applicable authority.

(d) Policy cancellation notification. The licensee must notify DSHS at least 10 days before the effective date of a policy cancellation by the licensee or the insurance company. The licensee must promptly replace the policy without lapse in coverage and submit the proof required under this section for the applicable coverage.

(e) Policy expiration. Before a policy expires, the licensee must promptly replace or renew the policy without lapse in coverage and must submit the proof required under this section for the applicable coverage.

(f) A licensee must not engage in an asbestos abatement activity or asbestos-related activity in a public building if not insured in accordance with §1954.105(c) of the Act and this section.

§296.46. Initial and Renewal Licensing Requirements for an Individual.

(a) Initial and renewal licensure and registration requirements. To receive or renew a license or registration for an asbestos abatement worker, asbestos abatement supervisor, asbestos operations and maintenance (O&M) supervisor, asbestos inspector, asbestos air monitoring technician, asbestos air monitoring technician project monitor (AMT/PM), asbestos management planner, asbestos consultant, or asbestos project manager, an applicant must submit a complete application as required under §296.42 of this chapter (relating to Initial and Renewal Applications) and the documentation required in this section. An out-of-state applicant must comply with §296.44 of this chapter (relating to Out-of-State Applicants).

(b) Initial requirements. An applicant for an initial license or registration must submit the following:

_____ (1) A copy of DSHS's Physician's Written Statement form that documents a medical examination performed within the past 12 months, as required in §296.42(i) of this chapter.

_____ (2) Copies of the initial training certificates and any refresher training courses to show current accreditation under §296.73 of this chapter (relating to Asbestos Training Courses) for the following licenses, as applicable:

_____ (A) an asbestos abatement worker--the initial Asbestos Abatement Worker course, and the Asbestos Contractor/Supervisor course may be substituted for the Asbestos Abatement Worker course and all subsequent refresher training courses must be for the same course taken as the initial training;

_____ (B) an asbestos abatement supervisor or asbestos O&M supervisor--the initial Contractor/Supervisor course;

_____ (C) an asbestos inspector--the initial Asbestos Inspector course;

_____ (D) an asbestos air monitoring technician--the initial Asbestos Air Monitoring Technician course;

_____ (E) an AMT/PM--the initial Asbestos Air Monitoring Technician and Asbestos Contractor/Supervisor courses;

_____ (F) an asbestos management planner--the initial Asbestos Inspector and initial Asbestos Management Planner courses;

_____ (G) an asbestos consultant--the initial Asbestos Project Designer, Asbestos Inspector, Asbestos Management Planner, and Asbestos Air Monitoring Technician courses; and

_____ (H) an asbestos project manager--the initial Asbestos Contractor/Supervisor course.

___ (3) A copy of the current photo-identification card issued by the training provider.

___ (4) An unaltered, 2-inch by 2-inch, color photograph of the face (without tinted glasses, hats, bandanas, or other articles that may obscure the head or any part of the face) with a white background taken within the past 12 months and submitted either on photo quality paper or in digital format.

___ (5) Proof of passing the DSHS examination as required in Subchapter G of this chapter (relating to State Licensing Examination), as applicable, for:

_____ (A) an asbestos abatement supervisor or asbestos O&M supervisor--DSHS's Asbestos Contractor/Supervisor examination;

_____ (B) an asbestos inspector--DSHS's Asbestos Inspector examination;

_____ (C) an asbestos air monitoring technician--DSHS's Air Monitoring Technician examination;

_____ (D) an AMT/PM--DSHS's Air Monitoring Technician and Asbestos Contractor/Supervisor examinations;

_____ (E) an asbestos management planner--DSHS's Asbestos Management Planner examination;

_____ (F) an asbestos consultant--DSHS's Asbestos Consultant examination; and

_____ (G) an asbestos project manager--DSHS's Asbestos Contractor/Supervisor examination.

(6) Written documentation of qualifying work experience as described in §296.41(b)(2) of this chapter (relating to License and Registration Requirements) for the following licensees, including contact information for the person who supervised the applicant and can verify the work experience for:

(A) an asbestos abatement supervisor--at least 90 days of verifiable qualifying work experience gained within the past 24 months from one or more of the following categories, as needed to fulfill the requirements:

(i) work experience as a licensed asbestos worker, asbestos abatement supervisor (during previous Texas or out-of-state licensure), AMT/PM, asbestos consultant, or asbestos project manager;

(ii) work experience as a MAP-accredited asbestos abatement worker, asbestos abatement supervisor, or asbestos project designer in Texas or another state, or as a MAP-accredited asbestos project monitor in another state conducting activities for which either a Texas license or a license in another state was not required, or for which the applicant held the required license; or

(iii) work experience performing air monitoring as a licensed or trained asbestos air monitoring technician or AMT/PM on at least five asbestos abatement projects; and

(I) work experience must have been gained while the license was current or after completion of training required under this chapter;

(II) if an applicant is relying on work experience as a trained air monitoring technician or AMT/PM, the applicant must have been authorized to perform the activity in the state where the work experience occurred, or must have performed the air monitoring within the immediate proximity and under the in-person and direct supervision of a licensed air monitoring technician, licensed AMT/PM, or licensed consultant; and

(III) no more than 30 days of air monitoring work experience as a licensed or trained asbestos air monitoring technician or AMT/PM may be counted towards the work experience requirements;

(B) an asbestos inspector--participation in at least five asbestos surveys performed within immediate proximity and under the in-person and direct supervision of a licensed asbestos inspector, licensed management planner, or licensed asbestos consultant, and work experience must have been gained after completion of training required for licensure as an asbestos inspector under this chapter;

(C) an air monitoring technician--performing air monitoring on at least three asbestos abatement projects for a total of at least 15 days, within the immediate proximity and under the in-person and direct supervision of a licensed air

monitoring technician, licensed AMT/PM, or licensed asbestos consultant working for a licensed asbestos laboratory or licensed asbestos consultant agency, and work experience must be gained after completion of the Asbestos Air Monitoring Technician course as described in §296.73 of this chapter;

(D) an AMT/PM--at least 30 days of verifiable qualifying work experience gained within the past 24 months that includes:

(i) performing air monitoring on at least three asbestos abatement projects for a total of at least 15 days, within the immediate proximity and under the in-person and direct supervision of a licensed air monitoring technician, licensed AMT/PM, or licensed asbestos consultant working for a licensed asbestos laboratory or licensed asbestos consultant agency, and work experience must be gained after completion of the Asbestos Air Monitoring Technician course as described in §296.73 of this chapter; and

(ii) any combination of qualifying work experiences from one or more of the following categories, as needed to fulfill the requirements:

(I) work experience as a licensed asbestos abatement worker, licensed asbestos abatement supervisor, licensed air monitoring technician, or licensed asbestos consultant during previous Texas or out-of-state licensure, or a licensed AMT/PM or licensed project manager during previous Texas licensure;

(II) work experience as a MAP-accredited asbestos abatement worker, asbestos abatement supervisor, asbestos project monitor, or asbestos project designer, in Texas or another state; and

(-a-) work experience must consist of activities for which either no Texas license or license in another state was required, or for which the applicant held the required license; and

(-b-) work experience must have been gained while accreditation was current in accordance with the MAP; or

(III) performing project monitoring within immediate proximity and under the in-person and direct supervision of a licensed asbestos consultant, AMT/PM, or asbestos project manager working for a licensed laboratory or asbestos consultant agency, and work experience must have been gained after completion of the Asbestos Contractor/Supervisor course as described in §296.73 of this chapter; and

(iii) to meet the work experience requirements under clauses (i) and (ii) of this subparagraph, work experience performing project monitoring and air monitoring during the same project may be used to satisfy the project monitoring and air monitoring work experience requirement;

(E) an asbestos management planner:

_____ (i) participation in the development of at least five management plans as a licensed asbestos management planner (during previous Texas or out-of-state licensure), or a licensed asbestos consultant or within immediate proximity and under the in-person and direct supervision of a licensed asbestos management planner or a licensed asbestos consultant, and work experience must have been gained after completion of the Asbestos Management Planner course as described in §296.73 of this chapter;

_____ (ii) participation in conducting five asbestos surveys, including development of asbestos survey reports, as a licensed inspector or licensed asbestos consultant or within the immediate proximity and under the in-person and direct supervision of a licensed inspector, licensed management planner, or licensed asbestos consultant, and work experience must have been gained after completion of the Asbestos Inspector course as described in §296.73 of this chapter; and

_____ (iii) to meet the work experience requirements under clauses (i) and (ii) of this subparagraph, work experience participating in an asbestos survey and then participating in the development of the management plan using that asbestos survey during the same project may be used to satisfy one management plan and one asbestos survey requirement;

_____ (F) an asbestos consultant--one of the following combinations of professional or educational achievement and work experience gained after completion of any training that is required to perform the applicable asbestos-related activity and performed while the training is current:

_____ (i) current status as a Texas-registered architect or a Texas-licensed professional engineer combined with at least 180 days of work experience performing asbestos-related activities in public buildings, in accordance with applicable law in effect at the time of the work experience and gained within the past four years; the asbestos-related work experience:

_____ (I) must include the following:

_____ (-a-) developing at least six specifications and plans within the immediate proximity and under the in-person and direct supervision of a licensed asbestos consultant;

_____ (-b-) conducting at least three asbestos surveys that include collecting bulk samples as a licensed asbestos inspector or licensed asbestos management planner or within the immediate proximity and under the in-person and direct supervision of a licensed asbestos inspector, licensed asbestos management planner, or licensed asbestos consultant;

_____ (-c-) performing project monitoring for at least 10 days within the immediate proximity and under the in-person and direct supervision of a licensed asbestos project manager, licensed AMT/PM, or consultant;

(-d-) performing air monitoring for at least 10 days within the immediate proximity and under the in-person and direct supervision of a licensed air monitoring technician, licensed AMT/PM, or a licensed asbestos consultant; and

(-e-) to meet the work experience requirements under items (-c-) and (-d-) of this subclause, work experience performing project monitoring and air monitoring during the same project may be used to satisfy the project monitoring and air monitoring work experience requirement;

(II) may include any of the following:

(-a-) developing one or more management plans as a licensed management planner or within the immediate proximity and under the in-person and direct supervision of a licensed asbestos management planner or licensed asbestos consultant;

(-b-) working as a licensed asbestos abatement supervisor; or

(-c-) working as a registered asbestos abatement worker, that may qualify for no more than 30 days of the required work experience; or

(ii) a bachelor's degree in architecture, engineering, or a physical or natural science from an accredited college or university combined with the following work experience:

(I) two years of work experience in an environmental field or in occupational health; and

(II) at least 180 days of work experience performing asbestos-related activities in public buildings, in accordance with applicable law in effect at the time of the work experience and gained within the past four years; the asbestos-related experience must meet the requirements of clause (i)(I) and (II) of this subparagraph; or

(iii) completion of 60 college credit hours from an accredited college or university, including 30 credit hours in engineering or natural or physical science and 9 credit hours in mathematics, combined with the following work experience:

(I) three years of work experience in an environmental field or in occupational health, and

(II) at least 250 days of work experience performing asbestos-related activities in public buildings, in accordance with applicable law in effect at the time of the work experience and gained within the past four years, and the asbestos-related work experience must meet the requirements of clause (i)(I) and (II) of this

subparagraph and in addition, the applicant must provide a letter of recommendation from a supervising licensed asbestos consultant; and

(G) an asbestos project manager--at least 15 days of verifiable qualifying work experience on at least three asbestos abatement projects gained within the past 24 months that includes any combination of qualifying work experience from one or more of the following categories, as needed to fulfill the requirements:

(i) work experience as a licensed asbestos abatement worker, licensed asbestos abatement supervisor, licensed asbestos consultant, or licensed air monitoring technician during previous Texas or out-of-state licensure, or as a licensed AMT/PM, or licensed project manager during previous Texas licensure;

(ii) work experience as a MAP-accredited asbestos abatement worker, asbestos abatement supervisor, asbestos project monitor, or asbestos project designer, in Texas or another state; and

(I) work experience must consist of activities for which either no Texas license or license in another state was required, or for which the applicant held the required license; and

(II) work experience must have been gained while accreditation was current in accordance with the MAP; or

(iii) work experience performing project monitoring within immediate proximity and under the in-person and direct supervision of a licensed AMT/PM, asbestos consultant, or asbestos project manager working for a licensed laboratory or asbestos consultant agency, and work experience must have been gained after completion of training required for licensure as an asbestos project manager under this chapter.

(7) Proof of the following education requirements for:

(A) an asbestos inspector, asbestos air monitoring technician, AMT/PM, or asbestos project manager--a high school diploma or equivalent;

(B) an asbestos management planner--an associate's degree or successful completion of a minimum of 60 credit hours from an accredited college or university; or

(C) an asbestos consultant--the education requirements set forth in subparagraph (6)(F) of this subsection.

(8) Proof of insurance coverage requirements for an asbestos inspector, asbestos management planner, and asbestos consultant--professional liability insurance coverage for errors and omissions individually or under the licensee's employer policy if performing work for hire, in accordance with §1954.105(c) of the Act and as required in §296.45 of this chapter (relating to Insurance

Requirements).

(c) Renewal requirements. An applicant renewing a license must submit the documentation as required for the initial application in subsection (b)(1)-(4) of this section and, if applicable, subsection (b)(8) of this section.

(d) Qualification renewal requirements. Licensees must not allow required qualifications (such as accreditation, DSHS's Physician's Written Statement form, or insurance requirements) to expire and continue to work as a licensee.

(e) Examination not required.

(1) A licensed consultant is not required to take a state examination to obtain an asbestos inspector, asbestos air monitoring technician, AMT/PM, or asbestos management planner licenses.

(2) A licensed management planner is not required to take a state examination to obtain an inspector license.

(3) A licensed AMT/PM is not required to take a state examination to obtain an asbestos air monitoring license.

§296.47. Initial and Renewal License Requirements for a Company.

(a) Initial and renewal licensure requirements. To receive or renew a license as an asbestos abatement contractor, asbestos operations and maintenance (O&M) contractor, asbestos management planner agency, asbestos consultant agency, asbestos transporter, or asbestos laboratory, an applicant must submit a complete application as required under §296.42 of this chapter (Initial and Renewal Applications) and the documentation required in this section. An out-of-state applicant must comply with §296.44 of this chapter (relating to Out-of-State Applicants).

(b) Initial requirements. An applicant for an initial license must submit the following:

(1) the name and license number of the appointed responsible person for an asbestos abatement contractor, an asbestos O&M contractor, a management planner agency, or an asbestos consultant agency;

(2) a copy of the current training certificate for the appointed responsible person documenting that training was completed as required in §296.73 of this chapter (relating to Asbestos Training Courses) for:

(A) an asbestos abatement contractor or asbestos O&M contractor--the Asbestos Contractor/Supervisor course;

(B) a management planner agency--the Asbestos Management Planner

course; or

(C) a consultant agency--the Asbestos Inspector, Asbestos Management Planner, Asbestos Air Monitoring Technician, and Asbestos Project Designer courses;

(3) in relation to the applicant's franchise tax account status, whichever applies:

(A) a certificate of account status from the Texas Comptroller of Public Accounts regarding the applicant's franchise tax account status, if the applicant is a taxable entity, as defined in Texas Tax Code §171.0002; or

(B) documentation that the applicant is not a taxable entity or is otherwise not subject to or exempt from franchise tax; and

(C) any verification relating to subparagraph (A) or (B) of this paragraph requested by DSHS;

(4) a copy of the applicant's assumed name certificate, with proof of required filing, if the applicant conducts business or renders professional services under an assumed name (commonly referred to as a DBA or "doing business as");

(5) if the applicant is an entity, as defined in Texas Business Organizations Code §1.002:

(A) documentation issued by the Secretary of State that verifies:

(i) a domestic entity's existence; or

(ii) a foreign entity's registration and authorization to conduct business in Texas; or

(B) if the applicant is a foreign entity to which §296.44(d) of this chapter applies, the applicant must submit a sworn affidavit that meets the requirements of that subsection;

(6) if the applicant is a nonfiling entity or a foreign nonfiling entity, as those terms are defined in Texas Business Organizations Code §1.002, documentation of that status on the application and any verification of that status requested by DSHS;

(7) a taxpayer identification number;

(8) the applicant's Texas sales tax permit number from the Texas Comptroller of Public Accounts, if applicable;

(9) the physical address of the central location where asbestos records are maintained, as required by §296.291 of this chapter (relating to Recordkeeping);

(10) proof of required insurance in accordance with §1954.105(c) of the Act and as required in §296.45 of this chapter (relating to Insurance Requirements) for:

(A) an asbestos abatement contractor or an asbestos O&M contractor--asbestos abatement liability coverage, including pollution liability coverage, if performing work for hire, and workers' compensation insurance, where required;

(B) an asbestos management planner agency, asbestos consultant agency, or an asbestos laboratory--professional liability insurance for errors and omissions, if performing work for hire and workers' compensation insurance, where required;

(C) an asbestos transporter--liability insurance coverage, including pollution liability coverage to transport for hire ACM for purposes of disposal and workers' compensation coverage insurance, where required;

(11) a copy of the applicant's standard operating procedures for an asbestos abatement contractor relating to activities involving ACBM or an asbestos O&M contractor relating to SSSD O&M activities involving ACBM in accordance with 29 CFR §1926.1101(g)(9), that must include the following:

(A) a written respiratory protection plan to be maintained and adhered to during periods of abatement activity;

(B) a description of on-site personnel decontamination procedures;

(C) a description of the procedures for handling and disposal of ACWM;

(D) a description of the engineering controls and work practices for asbestos abatement;

(E) a description of personal air monitoring procedures;

(F) a description of final cleanup procedures; and

(G) a description of the provisions for recordkeeping;

(12) for an asbestos transporter applicant, a copy of the applicant's emergency response plan prepared in compliance with 29 CFR §1910.120(q), unless exempt under the requirements of that section, which must include, without limitation:

(A) pre-emergency planning and coordination with outside parties;

(B) personnel roles, lines of authority, training, and communication;

(C) emergency recognition and prevention;

(D) safe distances and places of refuge;

_____ (E) site security and control;

_____ (F) evacuation routes and procedures;

_____ (G) decontamination;

_____ (H) emergency medical treatment and first aid;

_____ (I) emergency alerting and response procedures;

_____ (J) critique of response and follow-up; and

_____ (K) personal protection equipment and emergency equipment; and

_____ (13) the following proof applicable to each type of analysis for which an asbestos laboratory applicant is applying for a license to perform:

_____ (A) accreditation by the NVLAP for analysis of bulk samples by polarized light microscopy (PLM), if the laboratory is applying to perform PLM bulk analysis;

_____ (B) accreditation by the NVLAP for analysis of air samples by transmission electron microscopy (TEM), if the laboratory is applying to perform TEM air analysis; or

_____ (C) if the laboratory is applying to perform phase contrast microscopy (PCM) air analysis, proof of at least one of the following:

_____ (i) accreditation by the American Industrial Hygiene Association (AIHA) Industrial Hygiene Laboratory Accreditation Program and AIHA's most recent PCM proficiency testing results for the laboratory;

_____ (ii) proficiency according to the standards of the AIHA proficiency analytical testing (PAT) Program, including quarterly proficiency testing for airborne fibers by PCM and a quality assurance/quality control program, in accordance with the NIOSH 7400 method; or

_____ (iii) proficiency of the individual laboratory analysts through the AIHA asbestos analyst registry (AAR) and the most recent proficiency testing results.

(c) Renewal requirements. An applicant renewing a license must submit the documentation as required for the initial application in subsection (b)(1)-(10) of this section.

(d) Qualification renewal requirements. Licensees must not allow required qualifications (such as accreditation, DSHS's Physician's Written Statement form for the responsible person, or insurance requirements) to expire and continue to work as a licensee.

§296.48. Asbestos Abatement Worker.

(a) Registration required. A person must be registered as an asbestos abatement worker to perform asbestos abatement activities or loading or unloading of asbestos in a public building, including performing any maintenance, repair, installation, renovation, or cleaning that may dislodge, break, cut, abrade, or impinge on ACM.

(b) Registrant scope of practice. An asbestos abatement worker may perform asbestos abatement activities or O&M activities only while employed by a licensed asbestos abatement contractor or licensed asbestos operations and maintenance (O&M) contractor and supervised by a licensed asbestos abatement supervisor or licensed asbestos O&M supervisor.

(c) Registrant responsibilities. An asbestos abatement worker must:

(1) comply with standards of operation, including the applicable EPA and OSHA regulations adopted by reference in §296.2 of this chapter (relating to Reference of Federal Standards);

(2) comply with applicable OSHA requirements, including the requirements for the use of personal protective equipment;

(3) comply with the requirements of §296.211 of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building);

(4) comply with the work practices required under §296.212 of this chapter (relating to Standard Asbestos Abatement Practices and Procedures in a Public Building);

(5) comply with the restrictions and required work practices described in §296.213 of this chapter (relating to Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building) for SSSD O&M activities conducted under that section;

(6) comply with the restrictions and required work practices described in:

(A) §296.232 of this chapter (relating to Alternative Asbestos Abatement Practices and Procedures for Certain Nonfriable Asbestos-Containing Building Material (ACBM) in a Public Building);

(B) §296.233 of this chapter (relating to Alternative Asbestos Practices and Procedures for Small Projects and Repetitive Tasks in a Public Building); and

(C) §296.234 of this chapter (relating to Alternative Practices and Procedures for Removal of Whole Components of Intact Asbestos-Containing Material (ACM) in a Public Building) for activities conducted under these sections; and

(7) cooperate with DSHS personnel during inspections and investigations, as required in §296.271 of this chapter (relating to Inspections and Investigations).

§296.49. Asbestos Abatement Supervisor.

(a) License required. A person must be licensed as an asbestos abatement supervisor to directly oversee personnel and work practices and procedures during an asbestos abatement activity or project conducted in a public building.

(b) Licensee scope of practice.

(1) Licensee practice and limitations.

(A) An asbestos abatement supervisor must be employed by a licensed asbestos abatement contractor or asbestos operations and maintenance (O&M) contractor to supervise or perform asbestos abatement activities in a public building. An asbestos abatement supervisor employed by an O&M contractor is limited to supervising the work practices and procedures described in §296.213 of this chapter (relating to Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building) for SSSD O&M activities, as permitted under that section.

(B) An asbestos abatement supervisor may perform the duties of a registered asbestos abatement worker on any project.

(C) An asbestos abatement supervisor must not supervise or perform asbestos abatement activities in a public building when the asbestos project manager or asbestos consultant is not on-site, except during activities performed in accordance with:

(i) §296.213 of this chapter;

(ii) §296.232 of this chapter (relating to Alternative Asbestos Abatement Practices and Procedures for Certain Nonfriable Asbestos-Containing Building Material (ACBM) in a Public Building);

(iii) §296.233 of this chapter (relating to Alternative Asbestos Practices and Procedures for Small Projects and Repetitive Tasks in a Public Building); and

(iv) §296.234 of this chapter (relating to Alternative Practices and Procedures for Removal of Whole Components of Intact Asbestos-Containing Material (ACM) in a Public Building).

(2) Licensee responsibilities. An asbestos abatement supervisor must:

(A) comply with standards of operation, including the EPA regulations adopted by reference in §296.2 of this chapter (relating to Reference of Federal Standards);

_____ (B) comply with applicable OSHA regulations, including, as applicable, the work practices and controls in 29 CFR §1926.1101(g) (relating to Asbestos);

_____ (C) comply with the requirements of §296.211 of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building);

_____ (D) comply with the work practices required under §296.212 of this chapter (relating to Standard Asbestos Abatement Practices and Procedures in a Public Building);

_____ (E) comply with the restrictions and required work practices described in §296.213 of this chapter for SSSD O&M activities conducted under that section;

_____ (F) comply with the restrictions and required work practices described in §296.232 of this chapter, §296.233 of this chapter, and §296.234 of this chapter for activities conducted under those sections;

_____ (G) comply with personal protective equipment (PPE) requirements for employees who perform asbestos-related activities to ensure that PPE is worn in compliance with 29 CFR §1926.1101 or 40 CFR §763.122 (relating to What does this subpart require me to do?), whichever is applicable;

_____ (H) be on the project site at all times when asbestos abatement activities are being performed;

_____ (I) control access to the regulated area and entrance into containment as required in §§296.212, 296.213, and 296.232 - 296.234 of this chapter;

_____ (J) immediately correct any issue of noncompliance with asbestos abatement activity and if such an issue is related to the removal of ACBM, the asbestos abatement supervisor must stop the removal and must not resume removal until each identified issue has been corrected;

_____ (K) cooperate with DSHS personnel during inspections and investigations, as required in §296.271 of this chapter (relating to Inspections and Investigations); and

_____ (L) maintain records at the work site location, as required in §296.291 of this chapter (relating to Recordkeeping).

§296.50. Asbestos Abatement Contractor.

(a) License required. A person must be licensed as an asbestos abatement contractor to engage in asbestos abatement in a public building for others under contract or other agreement or otherwise be designated to perform that function.

(b) Licensee scope of practice.

(1) Licensee practice and limitations.

(A) An asbestos abatement contractor must employ licensed asbestos abatement supervisors and registered asbestos abatement workers to perform asbestos abatement activities.

(B) An asbestos abatement contractor must employ a responsible person who has completed the Asbestos Contractor/Supervisor training as required in §296.46 of this chapter (relating to Initial and Renewal Licensure Requirements for an Individual) to engage in asbestos abatement activities.

(C) An asbestos abatement contractor must employ a licensed asbestos operations and maintenance (O&M) supervisor or a licensed asbestos abatement supervisor to supervise an SSSD O&M activity performed as described in §296.213 of this chapter (relating to Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building).

(D) An asbestos abatement contractor may employ a licensed O&M supervisor or a licensed asbestos abatement supervisor to perform the duties of an asbestos abatement worker.

(E) An asbestos abatement contractor must not engage in an asbestos abatement activity in a public building unless the asbestos project manager or asbestos consultant and an asbestos abatement supervisor is on-site.

(2) Licensee responsibilities. An asbestos abatement contractor may be held responsible for a violation under this chapter by its employees or the responsible person. An asbestos abatement contractor must:

(A) require the responsible person to:

(i) oversee the operations for the asbestos abatement activities; and

(ii) comply with the applicable requirements of this chapter;

(B) require that its responsible person and any employee who performs an activity on behalf of the asbestos abatement contractor comply with all applicable:

(i) responsibilities for:

(I) licensed asbestos abatement supervisors, as required in §296.49 of this chapter (relating to Asbestos Abatement Supervisor);

(II) licensed asbestos air monitoring technicians, as required in §296.54 of this chapter (relating to Asbestos Air Monitoring Technician);

(III) licensed asbestos air monitoring technician project monitors, as required in §296.55 of this chapter (relating to Asbestos Air Monitoring Technician Project Monitor); and

(IV) licensed asbestos abatement workers, as required in §296.48 of this chapter (relating to Asbestos Abatement Worker); and

(ii) requirements of this chapter;

(C) employ at least one licensed asbestos abatement supervisor to oversee asbestos abatement activity for each project where asbestos abatement activity is occurring in a public building;

(D) comply with standards of operation, including the EPA regulations adopted by reference in §296.2 of this chapter (relating to Reference of Federal Standards);

(E) comply with applicable OSHA regulations, including, as applicable, the work practices and controls in 29 CFR §1926.1101(g) (relating to Asbestos);

(F) comply with the requirements of §296.211 of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building);

(G) comply with the work practices required under §296.212 of this chapter (relating to Standard Asbestos Abatement Practices and Procedures in a Public Building);

(H) comply with the restrictions and required work practices for SSSD O&M activities described in §296.213 of this chapter for SSSD O&M activities conducted under that section;

(I) comply with the restrictions and required work practices described in:

(i) §296.232 of this chapter (relating to Alternative Asbestos Abatement Practices and Procedures for Certain Nonfriable Asbestos-Containing Building Material (ACBM) in a Public Building);

(ii) §296.233 of this chapter (relating to Alternative Asbestos Practices and Procedures for Small Projects and Repetitive Tasks in a Public Building); and

(iii) §296.234 of this chapter (relating to Alternative Practices and Procedures for Removal of Whole Components of Intact Asbestos-Containing Material (ACM) in a Public Building) for activities conducted under those sections;

(J) at no cost to the employee, comply with personal protective equipment (PPE) requirements in 29 CFR §1910.132(h) (relating to General requirements), §1926.1101(h) and (i), and 40 CFR §763.122 (relating to What does this subpart

require me to do?), as applicable, for employees who perform asbestos-related activities. This includes:

(i) providing and maintaining PPE for employees;

(ii) training employees on the proper use, care, and inspection of PPE;

(iii) documenting training in the proper use, care, and inspection of PPE;

(iv) documenting respirator inspections; and

(v) ensuring compliance with the use of PPE;

(K) provide at no cost to the employee, an annual medical examination, as required in §296.42(i) of this chapter (relating to Initial and Renewal Applications) for each employee who performs an asbestos-related activity;

(L) ensure that each employee who performs asbestos-related activities has a current DSHS's Physician's Written Statement, as required in §296.42(i) of this chapter;

(M) ensure that each employee who performs asbestos-related activities is familiar with federal, state, and local standards for asbestos removal, encapsulation, and enclosure;

(N) obtain and keep on-site a copy of the current training certificate, as required in §296.73 of this chapter (relating to Asbestos Training Courses) for each employee who performs an asbestos-related activity;

(O) control asbestos exposure in all work, in compliance with 29 CFR §1926.1101 (relating to Asbestos) and 40 CFR §763.122, as applicable;

(P) provide and maintain in good working condition the necessary equipment for performing asbestos abatement activities;

(Q) if delegated by the owner, comply with the notification requirements, as required in §296.251 of this chapter (relating to Notifications);

(R) provide for temporary storage of ACWM, as required in §296.212(c)(8) of this chapter;

(S) provide for disposal of ACWM in accordance with 40 CFR §61.150 (relating to Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations):

(i) complete and provide a waste shipment record (manifest) for the asbestos transporter before the transporter departs with the waste on a form as described for the waste generator in 40 CFR §61.150(d);

_____ (ii) contact the waste site if a copy of the manifest signed by the owner or operator of the designated waste disposal site has not been received within 35 calendar days after the date the waste was accepted by the transporter;

_____ (iii) report in writing to DSHS in accordance with 40 CFR §61.150(d)(4) if a copy of the manifest signed by the owner or operator of the designated waste disposal site is not received within 45 calendar days after the date the waste was accepted by the transporter;

_____ (iv) provide a copy of the manifest signed by the owner or operator of the designated waste disposal site to the building owner or the building owner's authorized representative; and

_____ (v) maintain records in accordance with 40 CFR §61.150(d)(5) and §296.291 of this chapter (relating to Recordkeeping);

_____ (T) report a change of the responsible person in writing to DSHS within 10 working days after the change;

_____ (U) cooperate with DSHS personnel during inspections and investigations, as required in §296.271 of this chapter (relating to Inspections and Investigations); and

_____ (V) comply with recordkeeping requirements, as required in §296.291 of this chapter.

§296.51. Asbestos Operations and Maintenance Supervisor.

(a) License required. A person must be licensed as an asbestos operations and maintenance (O&M) supervisor to directly oversee the practices and procedures described in §296.213 of this chapter (relating to Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building), and to supervise any registered asbestos abatement workers performing such work, unless licensed as an asbestos abatement supervisor.

(b) Licensee scope of practice.

(1) An asbestos O&M supervisor must be employed by a building owner or manager who is a licensed asbestos O&M contractor or a licensed asbestos abatement contractor to perform or supervise the activities for which a license is required under subsection (a) of this section.

(2) An asbestos O&M supervisor may perform the duties of a licensed asbestos abatement worker on any project.

(3) An asbestos O&M supervisor must not supervise any asbestos-related activity in a public building that is outside the scope of §296.213 of this chapter.

(c) Licensee responsibilities. An asbestos O&M supervisor must:

(1) comply with standards of operation, including the EPA regulations adopted by reference in §296.2 of this chapter (relating to Reference of Federal Standards);

(2) comply with applicable OSHA regulations, including, as applicable, the work practices and controls in 29 CFR §1926.1101(g)(relating to Asbestos);

(3) comply with the requirements of §296.211 of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building);

(4) comply with the restrictions and required work practices described in §296.213 of this chapter for SSSD O&M activities conducted under that section;

(5) comply with personal protective equipment (PPE) requirements for employees who perform asbestos-related activities to ensure that PPE is worn in compliance with 29 CFR §1926.1101 or 40 CFR §763.122 (relating to What does this subpart require me to do?), whichever is applicable;

(6) immediately correct any issue of noncompliance with asbestos abatement activity and if such an issue is related to removal of ACBM, the asbestos O&M supervisor must stop the removal and must not resume removal until each identified issue has been corrected.

(7) cooperate with DSHS personnel during inspections and investigations, as required in §296.271 of this chapter (relating to Inspections and Investigations); and

(8) maintain records at work site locations, as required in §296.291 of this chapter (relating to Recordkeeping).

§296.52. Asbestos Operations and Maintenance Contractor.

(a) License required. A person must be licensed as an asbestos operations and maintenance (O&M) contractor to employ an asbestos O&M supervisor to supervise or perform asbestos SSSD O&M activities in a public building owned or managed by the O&M contractor.

(b) Licensee scope of practice.

(1) An asbestos O&M contractor is restricted to carrying out SSSD O&M activities as described in §296.213 of this chapter (relating to Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building).

(2) The asbestos O&M contractor's employees who perform asbestos SSSD O&M activities must be registered asbestos abatement workers, licensed O&M supervisors, or licensed asbestos abatement supervisors.

(3) An asbestos O&M contractor must employ a responsible person who has completed the Asbestos Contractor/Supervisor training as required in §296.46 of this chapter (relating to Initial and Renewal Licensure Requirements for an Individual) to carry out asbestos SSSD O&M activities.

(c) Licensee responsibilities. An O&M contractor may be held responsible for a violation under this chapter by its employees or the responsible person. An asbestos O&M contractor must:

(1) require the responsible person to:

(A) oversee the operations for the asbestos SSSD O&M activities; and

(B) comply with the applicable requirements of this chapter;

(2) require that its responsible person and any employee who performs an activity on behalf of the asbestos O&M contractor comply with all applicable:

(A) responsibilities for:

(i) licensed asbestos O&M supervisors, as required in §296.51 of this chapter (relating to Asbestos Operations and Maintenance Supervisor);

(ii) licensed asbestos abatement supervisors, as required in §296.49 of this chapter (relating to Asbestos Abatement Supervisor);

(iii) licensed asbestos air monitoring technicians, as required in §296.54 of this chapter (relating to Asbestos Air Monitoring Technician);

(iv) licensed asbestos air monitoring technician project monitor, as required in §296.55 of this chapter (relating to Asbestos Air Monitoring Technician Project Monitor); and

(v) registered asbestos abatement workers, as required in §296.48 of this chapter (relating to Asbestos Abatement Worker); and

(B) requirements of this chapter;

(3) employ at least one licensed asbestos O&M supervisor or licensed asbestos abatement supervisor to oversee or perform SSSD O&M activities involving asbestos abatement;

(4) comply with standards of operation, including the EPA regulations adopted by reference in §296.2 of this chapter (relating to Reference of Federal Standards);

(5) comply with applicable OSHA regulations, including, as applicable, the work practices and controls in 29 CFR §1926.1101(g) (relating to Asbestos);

(6) comply with the requirements of §296.211 of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building) and §296.213 of this chapter, as applicable, for the asbestos-related activity being performed;

(7) at no cost to the employee, follow personal protective equipment (PPE) requirements in 29 CFR §1910.132(h), §1926.1101(h) and (i), and 40 CFR §763.122 (relating to What does this subpart require me to do?), as applicable, for employees who perform asbestos-related activities. This includes:

(A) providing and maintaining PPE for employees;

(B) training employees in the proper use, care, and inspection of PPE;

(C) documenting training in the proper use, care, and inspection of PPE;

(D) documenting respirator inspections; and

(E) ensuring compliance with the use of PPE;

(8) provide at no cost to the employee, an annual medical examination, as required in §296.42(i) of this chapter (relating to Initial and Renewal Applications) for each employee who performs an asbestos-related activity;

(9) ensure that each employee who performs asbestos-related activities has a current DSHS's Physician's Written Statement, as required in §296.42(i) of this chapter;

(10) ensure that each employee who performs asbestos-related activities is familiar with federal, state, and local standards for asbestos removal, encapsulation, and enclosure;

(11) obtain and keep on-site a copy of the current training certificate, as required in §296.73 of this chapter (relating to Asbestos Training Courses) for each employee who performs an asbestos-related activity;

(12) control asbestos exposure in all work, in compliance with 29 CFR §1926.1101 and 40 CFR §763.122, as applicable;

(13) provide and maintain in good working condition and free of asbestos contamination the necessary equipment for employees to perform asbestos SSSD O&M activities;

(14) if delegated by the owner, comply with the notification requirements, as required in §296.251 of this chapter (relating to Notifications);

_____ (15) provide for temporary storage of ACWM, as required in §296.213(b)(15) of this chapter;

_____ (16) provide for disposal of ACWM in accordance with 40 CFR §61.150 (relating to Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations):

_____ (A) complete and provide a waste shipment record (manifest) for the asbestos transporter before the transporter departs with the waste on a form as described for the waste generator in 40 CFR §61.150(d);

_____ (B) contact the waste site if a copy of the manifest signed by the owner or operator of the designated waste disposal site has not been received within 35 calendar days after the date the waste was accepted by the transporter;

_____ (C) report in writing to DSHS in accordance with 40 CFR §61.150(d)(4) if a copy of the manifest signed by the owner or operator of the designated waste disposal site is not received within 45 calendar days after the date the waste was accepted by the transporter; and

_____ (D) provide a copy of the manifest signed by the owner or operator of the designated waste disposal site to the building owner or the building owner's authorized representative; and

_____ (E) maintain records in accordance with 40 CFR §61.150(d)(5) and §296.291 of this chapter (relating to Recordkeeping);

_____ (17) report a change of the responsible person in writing to DSHS within 10 working days after the change;

_____ (18) cooperate with DSHS personnel during inspections and investigations, as required in §296.271 of this chapter (relating to Inspections and Investigations); and

_____ (19) comply with recordkeeping requirements, as required in §296.291 of this chapter.

§296.53. Asbestos Inspector.

(a) License required. A person must be licensed as an asbestos inspector to conduct an asbestos survey in a public building.

(b) Licensee scope of practice.

_____ (1) An asbestos inspector may:

(A) determine the location and assess the condition of suspect ACBM in a public building;

(B) determine that ACBM is present in a public building by collecting bulk samples of suspected ACBM or assuming the suspected ACBM is ACM; and

(C) develop an asbestos survey report.

(2) An asbestos inspector must be employed by a licensed asbestos consultant agency or a licensed asbestos management planner agency to perform an asbestos survey in a public building.

(c) Licensee responsibilities. An asbestos inspector must:

(1) comply with standards of operation and sampling schemes, as required in §296.191 of this chapter (relating to Asbestos Management in a Public Building, Commercial Building, or Facility);

(2) prepare an asbestos survey report that includes, at a minimum:

(A) for a public building:

(i) a written description, diagram, or both that clearly and accurately identifies and reflects:

(I) the location and boundaries of each homogeneous area of suspected ACBM that is assumed to be ACM or was sampled for ACM;

(II) the sampling location for each bulk sample; and

(III) the dates that each sample was collected;

(ii) a written description of:

(I) the manner used to determine sampling locations;

(II) the estimated amount of ACBM in each homogeneous area in square feet or, for ACBM on piping, in linear feet;

(III) the type of material sampled; and

(IV) the condition and friability of the ACBM, and the assessment of ACBM must conform to generally accepted industry standards, such as the AHERA requirements specified in 40 CFR Part 763, Subpart E (relating to Asbestos-Containing Materials in Schools), §763.88(b), which is the required method for schools;

_____ (iii) the name, signature, and, as applicable, based upon the building type, accreditation and state of accreditation or license number of the inspector performing each activity; and

_____ (iv) a copy of the analyses of any bulk samples, the dates of analyses, and a copy of any other laboratory reports pertaining to the analyses; and

_____ (B) for a NESHAP facility, a record of the thorough inspection of the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM that identifies:

_____ (i) the location of ACM; and

_____ (ii) the inspector that performed the survey;

_____ (3) sign, date, and print the inspector's name and license number on the cover page of each asbestos survey report; and

_____ (4) cooperate with DSHS personnel during any inspection or investigation, as required in §296.271 of this chapter (relating to Inspections and Investigations).

§296.54. Asbestos Air Monitoring Technician.

(a) License required. A person must be licensed as an asbestos air monitoring technician (AMT) to perform air monitoring services for an asbestos abatement project or asbestos-related activity in a public building. A licensed AMT must have written delegated authority, as required in §296.58(b)(1)(K) of this chapter (relating to Asbestos Consultant) to perform project air monitoring in a public building. Unless otherwise prohibited in §296.31 of this chapter relating to (Conflict of Interest), a licensed asbestos consultant may also perform the duties of a licensed AMT and is subject to the same conditions, restrictions, and requirements applicable to an AMT under this section.

(b) Licensee scope of practice. An AMT may:

_____ (1) collect baseline, area, and clearance samples, if employed by an asbestos consultant agency or an asbestos laboratory;

_____ (2) collect personal samples in accordance with 29 CFR §1926.1101 (relating to Asbestos), if employed by a licensed asbestos consultant or licensed consultant agency that is hired by an asbestos abatement contractor or asbestos operations and maintenance (O&M) contractor, as described in §296.31(b)(1)(B); and

_____ (3) analyze airborne fibers in the field, if the AMT is employed by a licensed asbestos laboratory and:

_____ (A) is listed on the American Industrial Hygiene Association (AIHA) Asbestos Analyst Registry, as required in §296.61 of this chapter (relating to Asbestos Laboratory); or

_____ (B) has received the NIOSH 582 or NIOSH 582 Equivalent training and participates in the AIHA Proficiency Analytical Testing Program.

(c) Licensee responsibilities. An AMT must:

____ (1) collect area, baseline, and clearance air samples either:

_____ (A) as described in the asbestos abatement project specifications and plans; or

_____ (B) as required in §296.211(h) of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building) when specifications and plans are not required;

____ (2) collect personal air samples in accordance with 40 CFR Part 763, Subpart G (relating to Asbestos Worker Protection) or 29 CFR §1926.1101 (relating to Asbestos), whichever is applicable, when hired to collect personal samples;

____ (3) if analyzing air samples in the field, demonstrate, upon request by a DSHS inspector, competency in phase contrast microscopy analysis using the NIOSH 7400 method, including:

_____ (A) calibrating microscopes;

_____ (B) reading test slides provided by the DSHS inspector;

_____ (C) preparing sampling logs;

_____ (D) preparing sample slides;

_____ (E) performing calculations to determine sample time, flow rate, volume, sample count, fiber concentration, and time weighted average; and

_____ (F) providing documentation of AMT's NIOSH 582 or NIOSH 582 Equivalent training certificate and documentation of current participation in the AIHA Proficiency Analytical Testing Program or current registration with the AIHA Asbestos Analyst Registry;

____ (4) record in writing the results of area, baseline, clearance, and personal air samples that are analyzed, and document that area, baseline, and clearance air sample results are provided verbally, and personal air sample results are provided in writing, to the asbestos abatement contractor by the following time frames unless the consultant has designed a sampling strategy that deviates from these time frames:

_____ (A) the next working day after the date of sampling for any air sample analyzed on-site; or

_____ (B) the third working day after the date of initial sampling of friable ACBM for any air sample analyzed in an asbestos laboratory off-site;

_____ (5) cooperate with DSHS personnel during inspections and investigations, as required in §296.271 of this chapter (relating to Inspections and Investigations); and

_____ (6) comply with recordkeeping requirements, as required in §296.291 of this chapter (relating to Recordkeeping).

§296.55. Asbestos Air Monitoring Technician Project Monitor.

(a) License required. A person must be licensed as an asbestos air monitoring technician project monitor (AMT/PM) and have written delegated authority, as required in §296.58(b)(1)(J) and (K) of this chapter (related to Asbestos Consultant) to perform air monitoring services and asbestos project monitoring for an asbestos abatement project or related activity in a public building. Unless otherwise prohibited in §296.31 of this chapter (relating to Conflict of Interest), a licensed asbestos consultant may also perform the duties of a licensed AMT/PM and is subject to the same conditions, restrictions, and requirements applicable to an AMT/PM under this section.

(b) Licensee scope of practice.

_____ (1) An AMT/PM must be employed by a licensed asbestos consultant agency to monitor compliance with this chapter and the specifications and plans, on behalf of the building owner, during an asbestos abatement project.

_____ (2) An AMT/PM may:

_____ (A) provide personal air monitoring as required in §296.54 of this chapter (relating to Asbestos Air Monitoring Technician) and project air monitoring as required in §296.54 of this chapter and §296.58(c)(12) of this chapter;

_____ (B) provide project monitoring as required in §296.58(c)(11) of this chapter;

_____ (C) recommend to the asbestos consultant changes to the asbestos abatement specifications and plans; and

_____ (D) assist the asbestos consultant in the development of an asbestos exposure assessment.

(c) Licensee responsibilities. An AMT/PM must, consistent with the scope of the AMT/PMs delegated authority in accordance with section (a) of this section and §296.58(b)(1)(J) and (K) of this chapter, as applicable;

____ (1) perform project air monitoring, as required in §296.54(b) and §296.58(c)(12) of this chapter, or project monitoring, as required in §296.58(c)(11) of this chapter, or both, and provide the consultant with all project documents after completion of the project;

____ (2) cooperate with DSHS personnel during inspections and investigations, as required in §296.271 of this chapter (relating to Inspections and Investigations); and

____ (3) comply with recordkeeping requirements and maintain records on-site, as required in §296.291 of this chapter (relating to Recordkeeping).

(d) Asbestos air monitoring technician and asbestos project manager licensed before the effective date of this section. An individual holding both the asbestos air monitoring technician and project manager licenses issued before the effective date of this section may apply for the AMT/PM license and continue to perform work under and renew this license based upon the eligibility and renewal requirements of the Texas Asbestos Health Protection rules that were in effect when the individual licenses were issued. If an AMT/PM fails to timely renew the license and the license remains expired for one year or more, the license may not be renewed. The former AMT/PM may re-apply for an initial license by meeting all education, work experience, and other application requirements for initial licensure under §296.46 of this chapter (relating to Initial and Renewal Licensure Requirements for an Individual).

§296.56. Asbestos Management Planner.

(a) License required. A person must be licensed as an asbestos management planner to develop a plan to manage asbestos in a public building.

(b) Licensee scope of practice.

____ (1) An asbestos management planner may develop a management plan and perform the duties of a licensed asbestos inspector.

____ (2) An asbestos management planner must not be employed as a management planner at a company that employs another asbestos management planner, asbestos consultant, or an asbestos inspector, unless the company is licensed as an asbestos management planner agency, as required in §296.57 of this chapter (relating to Asbestos Management Planner Agency), or an asbestos consultant agency, as required in §296.59 of this chapter (relating to Asbestos Consultant Agency).

(c) Licensee responsibilities. An asbestos management planner must:

_____ (1) comply with standards of operation and sampling schemes, as required in §296.191 of this chapter (relating to Asbestos Management in a Public Building, Commercial Building, or Facility);

_____ (2) prepare asbestos survey reports, as required in §296.53(c)(2) of this chapter (relating to Asbestos Inspector);

_____ (3) prepare a management plan for a school in accordance with AHERA;

_____ (4) include the following, at a minimum, for any other management plan that is not subject to AHERA:

_____ (A) the date of the asbestos survey;

_____ (B) a copy of the asbestos survey report, prepared as required in §296.53(c)(2) of this chapter;

_____ (C) a description of assessments of all ACBM within the scope of the management plan;

_____ (D) for each person making the assessment:

_____ (i) the person's name and signature; and

_____ (ii) Texas license number;

_____ (E) a description of any recommended response action or preventative measures needed to reduce asbestos exposure or address potential hazards related to asbestos; and

_____ (F) a recommendation to address ACBM that is in poor condition (damaged or separating from building material or equipment) and the requirement to address ACBM that will be disturbed as part of any renovation, demolition, or O&M activity;

_____ (5) sign, date, and print the asbestos management planner's name and license number on the asbestos survey report and management plan, including on all drawings;

_____ (6) cooperate with DSHS personnel during any inspection or investigation, as required in §296.271 of this chapter (relating to Inspections and Investigations); and

_____ (7) comply with recordkeeping requirements, as required in §296.291 of this chapter (relating to Recordkeeping).

§296.57. Asbestos Management Planner Agency.

(a) License required. A person employing an asbestos management planner and one or more additional asbestos management planners, asbestos consultants, or asbestos inspectors to conduct asbestos management planning activity must be licensed as an asbestos management planner agency. This license is not required if the person is already licensed as an asbestos consultant agency.

(b) Licensee scope of practice.

(1) An asbestos management planner agency may employ:

(A) an asbestos management planner or asbestos consultant who is licensed, as required in this chapter and working in the capacity of that individual's license to conduct surveys, develop asbestos survey reports, and develop asbestos management plans; the duties of a licensed asbestos consultant employed by an asbestos management planner agency must be limited to those of a management planner; and

(B) a licensed asbestos inspector to conduct surveys and develop asbestos survey reports.

(2) An asbestos management planner agency must employ a responsible person who has completed the Asbestos Inspector and Asbestos Management Planner training referenced in §296.46 of this chapter (relating to Initial and Renewal Licensing Requirements for an Individual) to conduct surveys, develop asbestos survey reports, and develop asbestos management plans.

(c) Licensee responsibilities. An asbestos management planner agency may be held responsible for a violation under this chapter by its employees or the responsible person. An asbestos management planner agency must:

(1) require the responsible person to:

(A) oversee the operations for the asbestos management planner agency activities; and

(B) comply with the applicable requirements of this chapter;

(2) require that its responsible person and any employee who performs an activity on behalf of the asbestos management planner agency comply with all applicable:

(A) responsibilities for licensed asbestos inspectors, as required in §296.53 of this chapter (relating to Asbestos Inspector) and licensed asbestos management planners, as required in §296.56 of this chapter (relating to Asbestos Management Planner); and

(B) requirements of this chapter;

(3) comply with standards of operation, including the EPA regulations adopted by reference in §296.2 of this chapter (relating to Reference of Federal Standards);

(4) comply with the applicable OSHA regulations, including, as applicable, the work practices and controls in 29 CFR §1926.1101(g) (relating to Asbestos);

(5) comply with the requirements of §296.211 of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building);

(6) use generally accepted principles and practices in performing asbestos surveys and producing management plans, as required in §296.191 of this chapter (relating to Asbestos Management in a Public Building, Commercial Building, or Facility);

(7) at no cost to the employee, comply with personal protective equipment (PPE) requirements in 29 CFR §1910.132(h) (relating to General requirements), 29 CFR §1926.1101(h) and (i), and 40 CFR §763.122 (relating to What does this subpart require me to do?), as applicable, for employees who perform asbestos-related activities. This includes:

(A) providing and maintaining PPE for employees;

(B) training employees in the proper use, care, and inspection of PPE;

(C) documenting training in the proper use, care, and inspection of PPE;

(D) documenting respirator inspections; and

(E) ensuring compliance with the use of PPE;

(8) provide at no cost to the employee, an annual medical examination, as required in §296.42(i) of this chapter (relating to Initial and Renewal Applications) for each employee who performs an asbestos-related activity;

(9) ensure that each employee who performs asbestos-related activities has a current DSHS's Physician's Written Statement, as required in §296.42(i) of this chapter;

(10) ensure that each employee who performs asbestos-related activities is familiar with federal, state, and local standards for asbestos removal, encapsulation, and enclosure;

(11) ensure that each employee who performs asbestos-related activities receives annual training, as required in §296.73 of this chapter (relating to Asbestos Training Courses);

(12) provide and maintain in good working condition the necessary equipment for performing asbestos-related activities;

_____ (13) report a change of the responsible person in writing to DSHS within 10 working days after the change;

_____ (14) cooperate with DSHS personnel during any inspection or investigation, as required in §296.271 of this chapter (relating to Inspections and Investigations);

_____ (15) comply with recordkeeping requirements, as required in §296.291 of this chapter (relating to Recordkeeping).

§296.58. Asbestos Consultant.

(a) License required. A person must be licensed as an asbestos consultant to provide asbestos consulting services relating to a public building.

(b) Licensee scope of practice.

_____ (1) An asbestos consultant may:

_____ (A) design an asbestos abatement project;

_____ (B) specify work practices that vary from the minimum requirements, as described in §296.212(a)(1)(A) of this chapter (relating to Standard Asbestos Abatement Practices and Procedures in a Public Building);

_____ (C) collect bulk material samples and plan sampling strategies;

_____ (D) develop a management plan;

_____ (E) perform an asbestos survey and develop an asbestos survey report;

_____ (F) provide consultation regarding compliance with asbestos regulations and standards;

_____ (G) recommend abatement options, prepare contract documents for an asbestos abatement project, and provide technical specifications and plans;

_____ (H) provide the building owner with asbestos project monitoring services, asbestos air monitoring services, or sampling strategies, alone or in combination, to be used during an asbestos abatement project;

_____ (I) recommend appropriate personal protective equipment for an asbestos abatement activity;

_____ (J) designate a project manager or an asbestos air monitoring technician project monitor (AMT/PM) to provide project monitoring and delegate specific responsibilities and authority to the project manager or AMT/PM in writing, for

which the consultant, as well as the project manager or AMT/PM performing the delegated responsibility, are responsible;

(K) designate an asbestos air monitoring technician or AMT/PM to provide project air monitoring and delegate specific responsibilities and authority to the AMT or AMT/PM in writing, for which the consultant, as well as the AMT or AMT/PM performing the delegated responsibility, are responsible; and

(L) design, supervise, and direct an exposure assessment for purposes of §296.233(c) of this chapter (relating to Alternative Asbestos Practices and Procedures for Small Projects and Repetitive Tasks in a Public Building) that meet the requirements of that subsection.

(2) An asbestos consultant must not:

(A) design an asbestos abatement project that includes alterations to a building's structure, or its electrical, mechanical, or safety systems, or their components, unless the consultant is or works together with a licensed professional engineer in Texas and the specifications and plans are prepared in accordance with all applicable requirements of Texas Occupations Code, Chapter 1001 (relating to Engineers) and 22 TAC Part 6 (relating to Texas Board of Professional Engineers); or

(B) employ an asbestos inspector, asbestos project manager, asbestos air monitoring technician, AMT/PM, asbestos management planner, or any additional asbestos consultant to work in the capacity of that individual's license unless the asbestos consultant is licensed as an asbestos consultant agency, as required in §296.59 of this chapter (relating to Asbestos Consultant Agency).

(c) Licensee responsibilities. When providing the following professional services to the building owner or the building owner's authorized representative, an asbestos consultant must:

(1) provide the building owner or the building owner's authorized representative with a signed written asbestos survey report after completion of an asbestos survey or assessment, as described in §296.53(b) of this chapter (relating to Asbestos Inspector), which must advise the building owner of the recommendation to address ACBM or assumed ACBM that is damaged or separating and the requirement to address ACBM that will be disturbed as part of any renovation, demolition, or O&M activity;

(2) provide a management plan, as required in §296.56(c) of this chapter (relating to Asbestos Management Planner);

(3) design an asbestos abatement project, as described in §296.21(16) of this chapter related to (Definitions);

(4) design and supervise any clearance-level assessment that is performed under §296.233 of this chapter;

(5) prepare site-specific specifications and plans consisting of:

(A) a clear and understandable written description of the determinations made during the asbestos abatement project design including the work to be performed and:

(i) the location and total quantities of homogeneous areas of ACBM to be removed;

(ii) the asbestos abatement methods and air clearance procedures to be used;

(iii) the abatement preparations to be made;

(iv) the equipment to be used; and

(v) the appropriate selection of personal protective equipment to be used; and

(B) drawings, floor plans, or the equivalent, that distinctly display the location of asbestos abatement activities and equipment to be used with a level of detail and in a size sufficient to make each location visually discernable, including the approximate locations of:

(i) the negative air machines;

(ii) the decontamination unit;

(iii) the bag-out area, if used; and

(iv) the boundaries of the containment;

(C) a clear and understandable written description of ACWM disposal methods, including:

(i) labeling of ACWM containers, in accordance with 40 CFR §61.150(a)(1)(iv) and (v) (relating to Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations); and

(ii) marking ACWM transport vehicles, in accordance with 40 CFR §61.150(c);

(D) the consultant's signature on every page that addresses the scope of work or contains drawings related to the abatement work; and

_____ (E) a cover page with the consultant's signature, date, license number, and license expiration date;

_____ (6) if required under §296.212(a)(1)(A) of this chapter, receive written approval from DSHS for specifications and plans prepared for an asbestos abatement project design that includes dry removal or no negative air before releasing specifications and plans to the asbestos abatement contractor;

_____ (7) review specifications and plans developed by another asbestos consultant or asbestos consultant agency, for which the consultant must:

_____ (A) review every page that addresses the scope of work or contains drawings related to the asbestos abatement project for which the consultant is preparing documents, as required under this subparagraph;

_____ (i) amend each page, as needed; and

_____ (ii) sign every reviewed page; and

_____ (B) prepare a separate cover page that indicates the adequacy of the specifications and plans, references any amendments, and includes the consultant's signature, date, license number, and license expiration date; the consultant assumes responsibility for the content by signing the cover page;

_____ (8) provide the site-specific specifications and plans used for asbestos abatement and prepared by the consultant, developed by another asbestos consultant or asbestos consultant agency, or both to the building owner before the asbestos abatement begins;

_____ (9) advise on the selection and use of appropriate personal protective equipment for each asbestos abatement activity;

_____ (10) review suggested changes to the asbestos abatement specifications and plans recommended by the consultant's designated project manager or AMT/PM and, if amending specifications and plans:

_____ (A) amend each relevant page of the specifications and plans in writing;

_____ (B) sign every amended page; and

_____ (C) provide the amended specifications and plans to the designated project manager or AMT/PM, building owner, and asbestos abatement supervisor for the project;

_____ (11) provide project monitoring, either personally or through a project manager or AMT/PM to whom the consultant has specifically delegated authority and responsibility as required in subsection (b)(1)(J) of this section, as follows:

_____ (A) enter and inspect the regulated area, containment, or both and monitor asbestos abatement activities conducted, as required by regulations adopted by reference in §296.2 of this chapter (relating to Reference of Federal Standards), in Subchapter L of this chapter (relating to General Requirements, and Practices and Procedures for Asbestos Abatement in a Public Building), and Subchapter M of this chapter (relating to Alternative Asbestos Practices and Procedures in a Public Building), as applicable, for the duration of the project, every day of asbestos abatement activity, before the start of the asbestos abatement activity for the day, and routinely throughout the day, from the beginning of containment abatement preparation through completion of the removal of containment, final visual inspection of the project site, and loading of ACWM for transport, as applicable, to:

_____ (i) monitor the asbestos abatement activity by observing, reporting, and documenting that the regulated area, containment, or both is in compliance with this chapter and with the specifications and plans, as applicable;

_____ (ii) identify and document any issue of noncompliance and corrections needed;

_____ (iii) document correction of any identified issue of noncompliance with asbestos abatement activity in a regulated area, containment, or both, as applicable, before work proceeds;

_____ (iv) report any identified issue of noncompliance that was not corrected to DSHS, as required in §296.41(f) of this chapter (relating to License and Registration Requirements);

_____ (B) consult with and notify the asbestos abatement supervisor of:

_____ (i) any issue of noncompliance with the provisions of this chapter and the specifications and plans; and

_____ (ii) corrections that must be made;

_____ (C) remain on-site and in immediate proximity of the regulated area, or the regulated area and containment, as applicable, at all times when an asbestos abatement activity is being conducted and when ACWM is being loaded for transport into a dumpster or other transport container or vehicle;

_____ (12) provide project air monitoring, as required in §296.54(b) of this chapter (relating to Asbestos Air Monitoring Technician), either personally or through an air monitoring technician or AMT/PM to whom the consultant has specifically delegated authority and responsibility as required in subsection (b)(1)(J) of this section;

_____ (13) provide progress records and, when necessary, photographs relating to any professional services undertaken for the building owner;

(14) provide final close-out documents for each asbestos abatement project to the building owner or the building owner's authorized representative, including:

(A) baseline and area air monitoring results;

(B) clearance documentation, including visual inspection and clearance air monitoring results, as required in §296.211 of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building);

(C) copies of each required license ID card and certification for the consultant's personnel involved in the asbestos abatement project; and

(D) the asbestos abatement consultant's daily logs;

(15) cooperate with DSHS personnel during any inspection or investigation, as required in §296.271 of this chapter (relating to Inspections and Investigations); and

(16) comply with recordkeeping requirements, as required in §296.291 of this chapter (relating to Recordkeeping).

(d) Consultant licensed before the effective date of this section. An asbestos consultant who is issued a license before the effective date of this section and qualified for licensure with full-qualification membership in a national professional organization may continue to perform work with and renew that license under the eligibility and renewal requirements of the Texas Asbestos Health Protection rules that were in effect when the license was issued. If the asbestos consultant fails to timely renew the license and the license remains expired for one year or more, the license may not be renewed. The asbestos consultant may re-apply for an initial license by meeting all education, work experience, and other application requirements for initial licensure under this section.

§296.59. Asbestos Consultant Agency.

(a) License required. A person employing an asbestos consultant and one or more asbestos inspectors, asbestos project managers, asbestos air monitoring technicians, asbestos air monitoring technician project monitors (AMT/PM), asbestos management planners, or additional asbestos consultants working in the capacity of their licenses must be licensed as an asbestos consultant agency.

(b) Licensee scope of practice.

(1) An asbestos consultant agency may:

(A) employ an asbestos consultant, asbestos inspector, asbestos project manager, asbestos air monitoring technician, AMT/PM, or asbestos management planner licensed as required in this chapter and working in the capacity of that individual's license; and

_____ (B) represent a building owner by providing asbestos project monitoring services and asbestos air monitoring services during an asbestos abatement project.

____ (2) An asbestos consultant agency must employ a responsible person who has completed the training as referenced in §§296.46(b)(2)(G) and (c) of this chapter (relating to Initial and Renewal Licensure Requirements for an Individual) to engage in asbestos abatement activities.

(c) Licensee responsibilities. An asbestos consultant agency may be held responsible for a violation under this chapter by its employees or the responsible person. An asbestos consultant agency must:

____ (1) require the responsible person to:

_____ (A) oversee the operations for the asbestos consultant agency activities; and

_____ (B) comply with the applicable requirements of this chapter;

____ (2) require that its responsible person and any employee who performs an activity on behalf of the asbestos consultant agency comply with all applicable:

_____ (A) responsibilities for licensed asbestos project managers, as required in §296.62 of this chapter (relating to Asbestos Project Manager), licensed asbestos air monitoring technicians, as required in §296.54 of this chapter (relating to Asbestos Air Monitoring Technician), licensed asbestos air monitoring technician project monitors, as required in §296.55 of this chapter (relating to Asbestos Air Monitoring Technician Project Monitor), and licensed asbestos consultants, as required in §296.58 of this chapter (relating to Asbestos Consultant); and

_____ (B) requirements of this chapter;

____ (3) comply with standards of operation, including the EPA regulations adopted by reference in §296.2 of this chapter (relating to Reference of Federal Standards);

____ (4) comply with applicable OSHA regulations, including, as applicable, the work practices and controls in 29 CFR §1926.1101(g) (relating to Asbestos);

____ (5) comply with the relevant requirements in §296.211 of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building);

____ (6) comply with the abatement practices and procedures in §296.212 of this chapter (relating to Standard Asbestos Abatement Practices and Procedures in a Public Building), as applicable;

____ (7) comply with the restrictions and required work practices described in §296.213 of this chapter (relating to Asbestos Operations and Maintenance (O&M))

Practices and Procedures for O&M Licensees in a Public Building) for SSSD O&M activities conducted under that section;

(8) comply with the restrictions and required work practices described in §296.232 of this chapter (relating to Alternative Asbestos Abatement Practices and Procedures for Certain Nonfriable Asbestos-Containing Building Material (ACBM) in a Public Building) for activities conducted under that section;

(9) comply with the restrictions and required work practices described in §296.233 of this chapter (relating to Alternative Asbestos Practices and Procedures for Small Projects and Repetitive Tasks in a Public Building) for activities conducted under that section;

(10) comply with the restrictions and required work practices described in §296.234 of this chapter (relating to Alternative Practices and Procedures for Removal of Whole Components of Intact Asbestos-Containing Material (ACM) in a Public Building) for activities conducted under that section;

(11) at no cost to the employee, comply with personal protective equipment (PPE) requirements in 29 CFR §1910.132(h) (relating to General requirements), 29 CFR §1926.1101(h) and (i) and 40 CFR §763.122 (relating to What does this subpart require me to do?), as applicable, for employees who perform asbestos-related activities, including:

(A) providing and maintaining PPE for employees;

(B) training employees in the proper use, care, and inspection of PPE;

(C) documenting training in the proper use, care, and inspection of PPE;

(D) documenting respirator inspections; and

(E) ensuring compliance with the use of PPE;

(12) provide at no cost to the employee, an annual medical examination, as required in §296.42(i) of this chapter (relating to Initial and Renewal Applications), for each employee who performs an asbestos-related activity;

(13) ensure that each employee who performs asbestos-related activities has a current DSHS's Physician's Written Statement, as required in §296.42(i) of this chapter;

(14) ensure that each employee who performs asbestos-related activities is familiar with federal, state, and local standards for asbestos removal, encapsulation, and enclosure;

(15) ensure that each employee who performs an asbestos-related activity complies with the applicable training, as required in §296.73 of this chapter (relating to Asbestos Training Courses);

(16) provide and maintain in good working condition the necessary equipment for performing asbestos-related activities;

(17) report a change of the responsible person in writing to DSHS within 10 working days after the change;

(18) cooperate with DSHS personnel during any inspection or investigation, as required in §296.271 of this chapter (relating to Inspections and Investigations); and

(19) comply with recordkeeping requirements, in accordance with §296.291 of this chapter (relating to Recordkeeping).

§296.60. Asbestos Transporter.

(a) License required. A person must be licensed as an asbestos transporter to transport ACWM removed from a public building.

(b) Licensee scope of practice.

(1) An asbestos transporter may transport ACWM to a permitted waste disposal facility that accepts ACWM or to temporary storage off-site.

(2) An asbestos transporter must not transport ACWM that is not properly labeled or without a waste shipment record (manifest).

(c) Licensee responsibilities. An asbestos transporter must:

(1) comply with applicable requirements in 49 CFR, Subtitle B, Chapter I (relating to Pipeline and Hazardous Materials Safety Administration, Department of Transportation); NESHAP, specifically the provisions concerning asbestos transport; and, where applicable, Appendix D, (relating to Transport and Disposal of Asbestos Waste) of AHERA;

(2) provide and maintain in good working condition the necessary equipment for performing asbestos-related activity;

(3) at no cost to the employee, comply with personal protective equipment (PPE) requirements in 29 CFR §1910.132(h) (relating to General requirements) and 29 CFR §1926.1101(h) and (i) (relating to Asbestos) and 40 CFR §763.122 (relating to What does this subpart require me to do?), as applicable, for employees who will handle asbestos, including:

(A) providing and maintaining PPE for employees;

_____ (B) training employees on the proper use, care, and inspection of PPE;

_____ (C) documenting training in the proper use, care, and inspection of PPE;

_____ (D) documenting respirator inspections; and

_____ (E) ensuring employees use PPE properly;

____ (4) ensure that all employees who will be transporting, loading, or unloading asbestos are fully trained in accordance with 49 CFR, Subtitle B, Chapter I, Subchapter C (relating to Hazardous Materials Regulations);

____ (5) in anticipation of possible spills of ACWM, train employees on hazardous materials and emergency response operations in compliance with 29 CFR §1910.120 (relating to Hazardous waste operations and emergency response) and 49 CFR Part 172, Subpart H (relating to Training), as applicable;

____ (6) verify ACWM is properly labeled with warning labels, in compliance with 29 CFR §1926.1101(k) and generator labels, in accordance with 40 CFR §61.150(a)(1)(v) (relating to Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations) before accepting ACWM for transport, and if ACWM is unlabeled, the asbestos transporter must notify the asbestos abatement contractor;

____ (7) obtain a manifest from the asbestos abatement contractor on a form as described for the waste generator in 40 CFR §61.150(d) before transporting ACWM and deliver the ACWM with the manifest to a waste disposal facility on the approved list provided by the Texas Commission on Environmental Quality, and if transporting out of state, the asbestos transporter must follow the regulations of the receiving state applicable to delivery of the ACWM to an out-of-state disposal facility;

____ (8) provide a copy of the manifest signed by the owner or operator of the designated disposal site to the asbestos abatement contractor or the building owner or the building owner's authorized representative within 14 calendar days after the date the ACWM was accepted for disposal; and

____ (9) cooperate with DSHS personnel during any inspection or investigation, in accordance with §296.271 of this chapter (relating to Inspections and Investigations).

§296.61. Asbestos Laboratory.

(a) License required. A laboratory must be licensed as an asbestos laboratory before providing polarized light microscopy (PLM), phase contrast microscopy (PCM), or transmission electron microscopy (TEM) analysis of a bulk or air sample collected in a public building.

(b) Licensee scope of practice.

(1) Each branch office of a licensed asbestos laboratory must be separately licensed and accredited for each type of analysis it will perform.

(2) An asbestos laboratory must be appropriately accredited by the NVLAP to perform the following types of analysis:

(A) PLM analysis of a bulk sample; or

(B) TEM analysis of an air sample.

(3) An asbestos laboratory may analyze air samples by PCM:

(A) in the laboratory, if accredited by the American Industrial Hygiene Association (AIHA), the laboratory's individual analysts performing the analysis are listed on the AIHA Asbestos Analyst Registry (AAR), or the laboratory is enrolled and proficient in the AIHA Proficiency Analytical Testing (PAT) Program, as required in §296.47(b)(13)(C) of this chapter (relating to Initial and Renewal Licensure Requirements for a Company); and

(B) in the field only if the laboratory's individual analysts performing the analysis are licensed asbestos air monitoring technicians or AMT/PMs; and:

(i) listed on the AIHA AAR; or

(ii) the laboratory is enrolled in the AIHA PAT Program and performs quality control analysis on at least 10% of the samples analyzed.

(4) An asbestos laboratory or a laboratory's individual analyst must not perform asbestos analysis if the laboratory or analyst loses accreditation or proficiency, as applicable.

(c) Licensee responsibilities. An asbestos laboratory may be held responsible for a violation under this chapter by its employees or the responsible person. An asbestos laboratory must:

(1) maintain the proficiency and accreditation requirements, as required for licensure in §296.47(b)(13) of this chapter for each analytical method performed; any change in accreditation or proficiency must be reported in writing to DSHS within 10 working days after the change;

(2) employ one individual as the responsible person who is responsible for the asbestos laboratory's operations and compliance with this chapter; any change of the responsible person must be reported in writing to DSHS within 10 working days after the change;

(3) cooperate with DSHS personnel during any inspection or investigation, in accordance with §296.271 of this chapter (relating to Inspections and Investigations); and

(4) comply with recordkeeping requirements, as required in §296.291 of this chapter (relating to Recordkeeping).

§296.62. Asbestos Project Manager.

(a) License required. A person must be licensed as an asbestos project manager and have written delegated authority, as required in §296.58(b)(1)(J) of this chapter (relating to Asbestos Consultant) to perform asbestos project monitoring in a public building.

(b) Licensee scope of practice.

(1) An asbestos project manager must be employed by a licensed asbestos consultant agency to monitor compliance with this chapter and the specifications and plans, on behalf of the building owner, during an asbestos abatement project.

(2) An asbestos project manager may:

(A) perform project monitoring as required in §296.58(c)(11) of this chapter;

(B) recommend to the asbestos consultant changes to the asbestos abatement specifications and plans; and

(C) assist the asbestos consultant in the development of an asbestos exposure assessment.

(c) Licensee responsibilities. An asbestos project manager must, consistent with the scope of the project manager's delegated authority in accordance with subsection (a) of this section and §296.58(b)(1)(J) of this chapter, as applicable;

(1) provide project monitoring as required in §296.58(c)(11) of this chapter and provide the consultant with all project documents after completion of the project;

(2) cooperate with DSHS personnel during any inspection or investigation, as required in §296.271 of this chapter (relating to Inspections and Investigations); and

(3) maintain records on-site, as required in §296.291 of this chapter (relating to Recordkeeping).

(d) Project manager licensed before the effective date of this section. A project manager who is issued a license before the effective date of this section may continue to perform work with and renew that license based upon the eligibility and renewal requirements of the Texas Asbestos Health Protection rule that was in

effect when the license was issued. If an asbestos project manager fails to timely renew the license and the license remains expired for one year or more, the license may not be renewed. The former asbestos project manager may re-apply for an initial license by meeting all education, work experience, and other application requirements for initial licensure under §296.46 of this chapter (relating to Initial and Renewal Licensure Requirements for an Individual).

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION
SUBCHAPTER E TRAINING PROVIDER LICENSE AND TRAINING COURSES

§296.71. Asbestos Training Provider.

(a) License required. A person must be licensed as an asbestos training provider to offer training to an individual who seeks MAP accreditation or a DSHS license.

(b) Licensee scope of practice.

(1) Licensee practice and limitations.

(A) A licensed asbestos training provider may offer, schedule, and conduct any of the following courses for which the provider has received DSHS approval:

(i) one or more asbestos training courses designed to meet accreditation requirements in accordance with the MAP;

(ii) the Asbestos Air Monitoring Technician course, as required in §296.73 of this chapter (relating to Asbestos Training Courses); and

(iii) the Texas Asbestos Law and Rules course, as required in §296.73 of this chapter.

(B) An asbestos training provider must not:

(i) allow instructors to self-train in order to qualify for approval under subsection (f) of this section or accreditation;

(ii) combine course disciplines, hands-on training sessions, or other aspects of two courses, such as the Asbestos Abatement Worker course and the Asbestos Contractor/Supervisor course, that must not be taught in a combined course;

(iii) combine an initial training course with a refresher training course;

(iv) combine an Asbestos Abatement Worker course taught in one language with an Asbestos Abatement Worker course taught in another language;

(v) allow an instructor to teach the Asbestos Abatement Worker course in a language other than English unless the instructor can speak, read, and write effectively in that language;

(vi) allow a guest speaker to present more than 15% of a course;
or

_____ (viii) allow an unapproved instructor to teach an asbestos training course.

_____ (2) Licensee responsibilities. An asbestos training provider may be held responsible for a violation under this chapter by its employees or the responsible person. An asbestos training provider must:

_____ (A) require the responsible person to:

_____ (i) oversee the operations for the asbestos training provider activities;
and

_____ (ii) comply with the applicable requirements of this chapter;

_____ (B) require that its responsible person and any employee who performs an activity on behalf of the asbestos training provider comply with all applicable:

_____ (i) responsibilities for approved asbestos training instructors, as required in subsection (f) of this section; and

_____ (ii) requirements of this chapter;

_____ (C) provide for the course training equipment to be on-site and in proper working order;

_____ (D) provide for training in an environment that is conducive to learning and without excessive or avoidable external distractions and must:

_____ (i) not utilize a classroom for other purposes while training is being conducted; and

_____ (ii) only use facilities that have the following:

_____ (I) adequate lighting;

_____ (II) adequate seating and workspace for each trainee;

_____ (III) a climate-controlled environment in all areas used for training;
and

_____ (IV) clean restrooms that are readily accessible and in proper working order;

_____ (E) provide training taught by only asbestos training instructors who:

_____ (i) are approved by DSHS to teach the course; and

_____ (ii) possess current accreditation or training for the course being taught;

_____ (F) ensure that each approved asbestos training instructor employed by the asbestos training provider:

_____ (i) presents all course materials as outlined in the syllabus and as presented to DSHS for approval;

_____ (ii) provides a course review to improve comprehension before administering the course examination; and

_____ (iii) administers a closed-book examination at the conclusion of each initial training course;

_____ (G) comply with course notification requirements in subsection (c) of this section;

_____ (H) specify in promotional materials the course prerequisites for admission, the content of the course and requirements for successful completion;

_____ (I) comply with requirements for each asbestos training course for which the asbestos training provider is licensed, as required in §296.73 of this chapter, including requiring and verifying that:

_____ (i) the number of trainees does not exceed the applicable trainee-to-instructor ratio; and

_____ (ii) a trainee who has not met attendance standards or who has not passed the required final examination is not issued a training certificate;

_____ (J) confirm that each trainee possesses current accreditation or is within the 12-month grace period before granting the trainee admission to a refresher training course;

_____ (K) inform each prospective trainee, in the language of the course being taught, of the following:

_____ (i) that requirements and qualifications apply to each category of license being sought under this chapter and that more information can be found on the DSHS website;

_____ (ii) that, to maintain accreditation, refresher training must be taken before the accreditation expiration date, including:

_____ (I) a 12-month grace period after the accreditation expiration date to take the refresher training course to renew the accreditation during which time an individual must not perform any activity for which accreditation is required until the refresher training course is successfully completed and the accreditation is renewed; and

(II) that if the accreditation is not timely renewed within the 12-month grace period, the initial training must be completed again in order to obtain accreditation; and

(iii) that a trainee may not complete the course if the trainee misses more than 10% of a training course;

(L) provide instructions for locating the registration form for the state licensing examination and the examination schedule on DSHS's website;

(M) record each trainee's examination score;

(N) maintain security of all training certificates to ensure that trainees do not have access to the certificates until successful completion of the course;

(O) at the conclusion of each training course, issue a training certificate that meets the requirements in subsection (d)(1)(Q) of this section to each trainee who has completed the course and passed the required final examination;

(P) at the conclusion of each training course, issue a wallet-size photograph identification (ID) card that meets the requirements in subsection (d)(1)(R) of this section to each trainee who has completed the course and passed the required examination;

(Q) submit a training course roster to DSHS within 10 working days after the completion date of each course, including:

(i) the name of each trainee;

(ii) the unique identifier of each trainee that is determined by the asbestos training provider;

(iii) specification of successful or unsuccessful course completion for each trainee; and

(iv) an attached color group photograph of all trainees who successfully completed the course that is:

(I) taken at the end of the training course; and

(II) of sufficient size and clarity to identify each trainee;

(R) report a change of the responsible person in writing to DSHS within 10 working days after the change;

(S) permit DSHS representatives to observe, evaluate, and monitor any training course;

_____ (T) cooperate with DSHS personnel during any inspection or investigation, as required in §296.271 of this chapter (relating to Inspections and Investigations); and

_____ (U) comply with recordkeeping requirements, as required in §296.291 of this chapter (relating to Recordkeeping).

(c) Course notification requirements.

____ (1) Course notifications. An asbestos training provider must notify DSHS of each scheduled course. DSHS must receive the notification at least 10 working days before the start date of the course. A notification may include multiple courses. The notification must include:

_____ (A) the name, license number, and contact phone number of the asbestos training provider;

_____ (B) the name, approval number, and contact phone number of the asbestos training instructor;

_____ (C) the name of the course, and for the Asbestos Abatement Worker course, the language that the course is conducted in specified in the course name;

_____ (D) the physical location (address and room number or name of the conference room) where the training will be held, including all off-site field trip locations;

_____ (E) the start and end dates for the training course; and

_____ (F) the start and end times for each day of training.

____ (2) Amendments.

_____ (A) Notified courses must be amended by notifying DSHS by email or fax at least two working days before the start date of the course of the following course changes:

_____ (i) instructor;

_____ (ii) location;

_____ (iii) time; and

_____ (iv) date.

_____ (B) Amendments are not accepted for the following changes:

_____ (i) course discipline; or

_____ (ii) language of the course.

_____ (C) Notified courses must not be amended fewer than two working days before the start date of the course and must be cancelled if not timely amended as soon as possible, but no later than two hours after the scheduled start time.

_____ (3) Emergency notifications. A training provider may request emergency approval of a course if unforeseen circumstances prevent the asbestos training provider from meeting the 10-working-day notification requirement. The emergency notification must be submitted to DSHS by email or fax and must include a justification of why the 10-working-day notification requirement could not be met and must contain the information required in subsection (c)(1)(A)-(F) of this section. The emergency notification must be submitted at least three working days before the start date of the course. The training provider must receive written approval from DSHS before conducting the course.

_____ (4) Cancellation notifications. A training provider must notify DSHS of a course cancellation by email or fax as soon as possible, but no later than two hours after the scheduled start time of the course.

(d) Initial and renewal license requirements. To receive or renew a license as required in this section, an applicant must submit a completed application, as required in §296.42 of this chapter (relating to Initial and Renewal Applications) and the documentation required in this section. An out-of-state applicant must comply with §296.44 of this chapter (relating to Out-of-State Applicants).

_____ (1) Initial requirements. An applicant for an initial license must submit the following:

_____ (A) in relation to the applicant's franchise tax account status, whichever applies:

_____ (i) a certificate of account status from the Texas Comptroller of Public Accounts regarding the applicant's franchise tax account status, if the applicant is a taxable entity, as defined in Texas Tax Code §171.0002; or

_____ (ii) documentation that the applicant is not a taxable entity or is otherwise not subject to or exempt from franchise tax; and

_____ (iii) any verification relating to clause (i) or (ii) of this subparagraph that is requested by DSHS;

_____ (B) a copy of the applicant's assumed name certificate, with proof of required filing, if the applicant transacts business or renders professional services under an assumed name (commonly referred to as a DBA or "doing business as");

(C) if the applicant is an entity, as defined in Texas Business Organizations Code §1.002:

(i) documentation issued by the Secretary of State that verifies:

(I) a domestic entity's existence; or

(II) a foreign entity's registration and authorization to conduct business in Texas; or

(ii) if the applicant is a foreign entity to which §296.44(d) of this chapter applies, the applicant must submit a sworn affidavit that meets the requirements of that subsection;

(D) if the applicant is a nonfiling entity or a foreign nonfiling entity, as those terms are defined in Texas Business Organizations Code §1.002, documentation of that status on the application and any verification of that status that is requested by DSHS;

(E) a taxpayer identification number;

(F) the applicant's Texas sales tax permit number from the Texas Comptroller of Public Accounts, if applicable;

(G) the name and mailing address of each principal owner;

(H) a list of each course to be offered that includes the name of each asbestos instructor that will teach each course;

(I) the name of any guest speaker and the speaker's topics along with the completed asbestos guest speaker approval application form, as required in subsection (g) of this section;

(J) the name of the appointed responsible person;

(K) a description of any equipment and accessories that will be used for course instruction, such as hands-on items, audiovisual aids, and brochures;

(L) the applicant's refund and cancellation policies and if the applicant will provide the Asbestos Abatement Worker course in a language other than English, the refund and cancellation policies must be submitted in each language that the course will be offered;

(M) a detailed course outline for each day that includes start and end times for each topic covered, scheduled break times, and specific hands-on training activities for each course;

_____ (N) student training manuals, instructor notebooks, handouts, and related course materials, including all required elements listed in §296.73 of this chapter for each initial and refresher training course to be offered; and

_____ (i) if the applicant will provide the Asbestos Abatement Worker course in a language other than English, the training manuals and all related course materials must be submitted in each language in which the course will be offered; and

_____ (ii) if the applicant will use an EPA-developed manual, the applicant may submit a statement attesting to its use in place of submitting the manual;

_____ (O) the applicant's policy regarding the administration of the multiple-choice examination to be given at the conclusion of training, in accordance with §296.73 of this chapter, which at minimum, must state the following:

_____ (i) each trainee must obtain a passing score of at least 70% on the multiple-choice examination before receiving a training certificate;

_____ (ii) one multiple-choice re-examination is allowed per trainee for each course;

_____ (iii) questions from the original examination that are randomly reordered or questions randomized from course to course may be used for the re-examination;

_____ (iv) if a trainee fails the re-examination, the trainee must repeat the course and pass a new examination before issuance of the training certificate; and

_____ (v) a trainee must read the examination and mark the answers on a score sheet unless the trainee requests a reasonable testing accommodation under the Americans with Disabilities Act of 1990, 42 USC 12101 et seq. and is a qualified individual with a disability;

_____ (P) a copy of each examination and re-examination that will be administered at the end of each course and if the applicant will provide the Asbestos Abatement Worker course in a language other than English, examinations must be submitted in each language that the course is offered;

_____ (Q) a sample of the training certificate that will be issued to each trainee who completes the course and passes the final course examination, including:

_____ (i) a unique certificate number;

_____ (ii) the asbestos training provider's name, a field for the asbestos training provider's license number, phone number, and address;

_____ (iii) the printed name of the accredited person;

- _____ (iv) the discipline (name) of the training course completed;
- _____ (v) the printed name and signature of the asbestos instructor;
- _____ (vi) the start and end dates of the training course;
- _____ (vii) the expiration date of one year after the date upon which the person successfully completed the training course;
- _____ (viii) the printed name and signature of the responsible person, principal officer, owner, or chief executive officer of the asbestos training provider; and
- _____ (ix) a statement, as applicable, that the trainee:
- _____ (I) "has successfully completed the requisite training for asbestos accreditation under Title II of the Toxic Substances Control Act, 15 USC, Chapter 53, Subchapter II that meets the requirements of the Texas Asbestos Health Protection rules" (applicable to a MAP training course for which accreditation is issued); or
- _____ (II) "has successfully completed training that meets the requirements of the Texas Asbestos Health Protection rules" (applicable to the Asbestos Air Monitoring Technician course or the Texas Asbestos Law and Rules course);
- _____ (R) a sample of the training ID card that must be issued to each trainee who completes the course and passes the final course examination; the training ID card must include:
- _____ (i) the name of the asbestos training provider;
- _____ (ii) a color photo of the trainee's face (without tinted glasses, hats, bandanas, or other articles that may obscure the head or any part of the face) taken on a white background;
- _____ (iii) the name of the accredited person;
- _____ (iv) the discipline of the training course completed;
- _____ (v) the effective date of the accreditation; and
- _____ (vi) the unique certificate number shown on the training certificate for the accredited person; and
- _____ (S) verifiable documentation that each asbestos training instructor that will teach an asbestos training course and is employed by the applicant meets the qualifications listed in subsection (h)(1)(B) of this section.

(2) Renewal requirements. An applicant renewing a license must submit the following:

(A) documentation as required for the initial application in subsection (d)(1)(A)-(F) of this section;

(B) a copy of all policies, training resources, training certificates, or training manuals that the applicant seeks approval to amend with a detailed description of the specific changes that must be approved by DSHS before the training provider may implement the changes; and

(C) a list of all approved asbestos instructors and guest speakers the training provider intends to use in the asbestos training courses, including the courses that each instructor will teach, proof that the accreditation of each instructor is current and valid for each course the instructor will teach, and the topics that each guest speaker will present.

(e) Online asbestos refresher training course. An online asbestos refresher training course presented to a student by a licensed asbestos training provider may be conducted if the course meets the requirements of this subsection.

(1) Scope.

(A) For purposes of this subsection:

(i) an asynchronous online course means a course type that can be taken at any time;

(ii) a synchronous online course means an online course type that is taken live;

(iii) conducting an initial asbestos training course online is prohibited; and

(iv) an online course under this section will only be approved if it is a synchronous online course; an asynchronous online course will not be approved.

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

(C) An application for an online course must be submitted separately from an application for approval for an in-person refresher course.

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

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

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

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

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

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

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

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

_____ (G) reduces the opportunity for document fraud by providing a distinct course certificate that contains all the requirements of subsection (d)(1)(Q) of this section and specifies the course type and that the course is online; and

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

____ (3) Approval requirements.

_____ (A) A licensed training provider must submit an application for approval of an online course to DSHS that includes, in addition to the requirements of subsection (d)(2) of this section and §296.73 of this chapter, the following:

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

_____ (ii) the type and discipline of the course;

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

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

(v) a description of the method used to verify student's attendance as required in subparagraph (4)(B) of this subsection.

(B) Upon receipt of a complete application and the required application fee, DSHS will issue the training provider contingent course approval. DSHS will conduct an audit of the online course. If DSHS finds that the course:

(i) meets the requirements of this chapter, DSHS will remove the contingent course approval status within 45 days of the course audit.

(ii) does not meet the requirements of this chapter, DSHS will issue a deficiency notice within 45 days of the course audit.

(I) If the training provider does not submit the corrections identified in the deficiency notice, if applicable, and request a second audit by the deadline provided in the deficiency notice, DSHS will issue a notice of withdrawal of contingent approval of the training course.

(II) A training provider may request two audits to remove the contingent course status.

(III) If the training provider fails to meet the requirements of this chapter after the third audit, DSHS will issue a notice of withdrawal of contingent approval of the training course and the training provider must reapply for approval of the course.

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

(4) Additional notification, course, and roster requirements.

(A) The course type must be submitted with the course notification.

(B) Training instructors must:

(i) view each student during the course to ensure student focus;

(ii) validate student identity during registration and after each break and lunch period; and

(iii) have at least one support staff member assist the instructor to monitor online students during an in-person course that is also being presented online.

(C) The group photograph may include multiple frames or photographs, if a single group photograph is not feasible, to meet the requirement of section (b)(2)(Q)(iv) of this subsection.

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

(A) Student identity authentication and verification data.

(B) Student online time tracking data.

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

(6) Disciplinary action.

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

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

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

(f) Approval of additional training courses.

(1) A licensed training provider must request approval to provide any additional training course that was not submitted as part of the initial application for the training provider's license. To apply for approval, the training provider must submit:

(A) an Asbestos Course Approval Application for each course;

(B) the fee as outlined in §296.91 of this chapter (relating to Fees);

(C) student training manuals, instructor notebooks, handouts, and related course materials, including all required elements listed in §296.73 of this chapter for each initial and refresher training course to be offered; and

(i) if the applicant will provide the Asbestos Abatement Worker course in a language other than English, the training manuals and all related course materials must be submitted in each language in which the course will be offered; and

(ii) if the applicant will use an EPA-developed manual, the applicant may submit a statement attesting to its use in place of submitting the manual;

(D) a detailed course outline for each day that includes start and end times for each topic covered, scheduled break times, and specific hands-on training activities for each course;

_____ (E) a copy of each required examination that will be administered at the end of each course and if the applicant will provide the Asbestos Abatement Worker course in a language other than English, examinations must be submitted in each language in which the course will be offered;

_____ (F) the name of the approved asbestos instructor who will teach each additional course; and

_____ (G) the name of any guest speaker and the speaker's topics along with the completed asbestos guest speaker approval application form, as required in subsection (i) of this section.

_____ (2) DSHS will provide written notice to the licensed training provider whether DSHS grants approval of the additional course. Training providers must not add the additional training course to their schedule, advertise, accept payment for, or conduct the course without approval by DSHS.

(g) Training providers licensed before the effective date of this section. A training provider that is licensed before the effective date of this section must submit updated training material to DSHS and receive approval six months after the effective date of this section or with the license renewal application, whichever is later, in order to continue teaching the course.

(h) Asbestos training instructor approval, qualifications, responsibilities, and withdrawal of approval.

_____ (1) Asbestos training instructor approval and qualifications.

_____ (A) DSHS must approve an asbestos training instructor to teach an asbestos training course.

_____ (B) An asbestos training instructor must meet the following qualifications to teach an asbestos training course.

_____ (i) An asbestos training instructor must have one of the following combinations of education and work experience, as described in §296.41(b)(2) of this chapter (relating to License and Registration Requirements):

_____ (I) a bachelor's degree in a natural or physical science;

_____ (II) a bachelor's degree with at least six months of experience performing asbestos-related activities with any required license or accreditation;

_____ (III) an associate's degree or successful completion of 60 college credit hours with at least one year of experience performing asbestos-related activities; or

(IV) a high school diploma or equivalent with at least two years of experience performing asbestos-related activities with any required licensure or accreditation.

(ii) An asbestos training instructor must have the following teaching experience:

(I) at least three months of teaching experience at the secondary or post-secondary education level;

(II) at least three months of teaching adult learners at a vocational school, trade school, or equivalent formal educational or professional setting as approved by DSHS; or

(III) successful completion of a train-the-trainer course approved by DSHS.

(C) Acceptable documentation of the relevant education, work, and teaching experience, as described in subparagraph (B)(i) and (ii) of this paragraph must include each of the following or an equivalent alternative approved by DSHS:

(i) an official academic transcript or diploma that verifies the major;

(ii) a description of experience performing asbestos-related activities including:

(I) the project name and location;

(II) the start and end date;

(III) a description of duties performed; and

(IV) the name and contact information of the individual or office that can verify the experience;

(iii) a description of the applicant's teaching experience including:

(I) the course title and description;

(II) the start and end date;

(III) the location or institution; and

(IV) the name and contact information of the individual or office that can verify the teaching experience; and

(iv) proof of licensure or accreditation or both; and

(D) training certificates for the initial asbestos training courses and all subsequent refresher training courses to show current accreditation under §296.73 of this chapter for each course the instructor will teach, if applicable.

(2) Approved training instructor scope of practice.

(A) Approved training instructor practice and limitations.

(i) An asbestos training instructor must:

(I) teach only DSHS-approved asbestos training courses for which the instructor holds current MAP accreditation, for an Asbestos Air Monitoring Technician (AMT) course, holds a Texas AMT training certificate, or if only teaching the Texas Asbestos Law and Rules course, holds a Texas Asbestos Law and Rules training certificate;

(II) teach each DSHS-approved asbestos training course in accordance with the MAP and as required in this subchapter;

(III) be able to read, write, and communicate in the language that the course is taught; and

(IV) be employed by a licensed training provider.

(ii) An approved asbestos training instructor must not:

(I) teach a course for accreditation under the MAP or a course required for a license from DSHS if notification has not been submitted to DSHS, in accordance with subsection (c) of this section; or

(II) self-train in order to qualify to teach a training course or qualify for a license or accreditation.

(B) Approved asbestos training instructor responsibilities. An asbestos training instructor must:

(i) coordinate with the responsible person to verify that there is documented confirmation that:

(I) each trainee possesses current accreditation, or is within the 12-month grace period for accreditation renewal, before granting admission to a refresher training course;

(II) necessary training equipment is on-site and in good working order; and

(III) the number of trainees does not exceed the applicable trainee-to-instructor ratio, as required in §296.73(a)(8) of this chapter;

_____ (ii) confirm with each trainee that the training provider has informed the trainee of each required information item, as required in subsection (b)(2)(K) of this section;

_____ (iii) inform each trainee of the following:

_____ (I) for an initial training course, each trainee must achieve a score of at least 70% on the course examination to receive a training certificate;

_____ (II) if a trainee fails the course examination, a second examination will be administered; and

_____ (III) a trainee must retake the initial training course if the trainee does not achieve a score of at least 70% on the second examination;

_____ (iv) comply with requirements for training courses, as required in §296.73 of this chapter;

_____ (v) present all course materials as outlined in the syllabus and as presented to DSHS for approval;

_____ (vi) implement and enforce attendance and course completion requirements;

_____ (vii) take an attendance record at the beginning of each four-hour segment of course instruction;

_____ (viii) document a trainee's absence from the course on the attendance record;

_____ (ix) provide instructions for locating the registration form for the state licensing examination and examination schedule on DSHS's website;

_____ (x) provide a course review to improve and reinforce comprehension before administering the examination;

_____ (xi) administer a closed-book examination at the conclusion of each initial training course;

_____ (xii) administer one re-examination to each trainee who fails the first examination, as required under the policy and practices required under subsection (d)(1)(O) of this section;

_____ (xiii) record each trainee's examination score;

_____ (xiv) provide attendance records to the training provider upon completion of each course; and

_____ (xv) cooperate with DSHS personnel during inspections, audits, and investigations, as required in §296.271 of this chapter.

____ (3) Withdrawal of instructor approval. DSHS may withdraw instructor approval if the instructor does not meet the requirements in this subsection, does not provide training that meets the requirements of the MAP or this chapter, or no longer possesses valid or current qualifications.

____ (4) Instructors approved before the effective date of this section. An instructor who is approved to teach before the effective date of this section does not need to meet additional education, work experience, and teaching experience required under subsection (h)(1)(B) of this section that was not required when the instructor was approved. A certificate for the Texas Law and Rules course is not required to teach that course until six months after the effective date of this section. If, within six months after the effective date of this section, the instructor has not received a certificate for the Texas Law and Rules course, the instructor may not continue teaching under the instructor's prior approval. Any future instructor approval will be subject to the education, work experience, and teaching experience otherwise required under this section.

(i) Guest speaker approval and withdrawal of approval.

____ (1) Approval. Prior approval of a guest speaker is required. A guest speaker may be used to supplement and enhance learning objectives but must not present more than 15% of any course. A guest speaker must have knowledge based on education, research, or experience in a particular area of study related to the course content being taught. Training providers seeking approval for a guest speaker must submit a completed Asbestos Guest Speaker Approval Application Form and sufficient documentation to show the person's knowledge, experience, and expertise. Acceptable documentation may include:

____ (A) official copies of any applicable academic transcript or diploma specifying the guest speaker's major;

____ (B) technical experience;

____ (C) a verifiable resume; and

____ (D) relevant, verifiable work experience, as described in §296.41(b)(2) of this chapter (relating to License and Registration Requirements).

____ (2) Withdrawal of guest speaker approval. DSHS may withdraw guest speaker approval if the guest speaker is not providing training that meets the requirements of the MAP or this chapter or if the guest speaker's qualifications are no longer valid or current.

§296.73. Asbestos Training Courses.

(a) General training requirements.

(1) The MAP requires that each of the approved training disciplines be separate and distinct from the others. Training courses for all disciplines must be in accordance with the MAP, except the Asbestos Air Monitoring Technician and Texas Asbestos Law and Rules courses, which are specific to Texas.

(2) Each initial and refresher training course, including hands-on-training, must be specific to a single discipline and not combined with other training.

(3) The Asbestos Air Monitoring Technician and Texas Asbestos Law and Rules courses are DSHS-approved courses and not MAP courses. To be applied toward DSHS license requirements, each course must be conducted by a DSHS-licensed asbestos training provider.

(4) A training certificate expires one year after the date upon which the person successfully completed the course. A person whose training certificate has expired must not engage in an activity for which a current training certificate is required under the MAP or this chapter until the training certificate is renewed. Training must be renewed annually by completing the appropriate refresher training course. The initial training course must be repeated if the refresher training course is not completed within one year after the expiration date of the training certificate.

(5) Initial and refresher training courses must be conducted as follows:

(A) one day of training must equal eight hours and include:

(i) at least 6 hours and 40 minutes of classroom instruction, hands-on training, and field trips (excluding field trip travel time); and

(ii) a maximum of 80 minutes for breaks and lunch; no more than four hours of instruction may be given without at least a 30-minute break;

(B) one-half day of training must be a minimum of four hours and include:

(i) at least 3 hours and 40 minutes of classroom instruction; and

(ii) a maximum of 20 minutes for breaks;

(C) trainees must not attend more than eight hours of classroom instruction, hands-on training, and field trips in a 24-hour period;

(D) evening instruction must not exceed 4 hours in any single session; and

(E) the course must be completed within 14 calendar days after the first class.

(6) A trainee may not complete the course if the trainee misses more than 10% of a training course.

(7) During hands-on training, each trainee must physically perform simulated activities specific to the asbestos training discipline. The simulated activities must not be asbestos-related activities for which licensure is required. Demonstrations and audiovisuals are not substitutes for required hands-on training.

(8) The student to instructor ratio during each course must be as follows:

(A) for initial courses:

(i) hands-on training activities must not exceed 15 to 1;

(ii) worker training course sessions must not exceed 25 to 1; and

(iii) all other training course sessions must not exceed 40 to 1;

(B) for refresher courses, sessions must not exceed 40 to 1.

(9) Methods of instruction.

(A) At least 50% of the classroom instruction must be presented by the instructor. Instructors must direct and oversee 100% of the hands-on training.

(B) Audiovisual materials are not substitutes for the instructor-led portion of the class.

(10) All training courses must be taught in English, except the Asbestos Abatement Worker course. The Asbestos Abatement Worker course may be taught in another language, provided the instructor is able to speak, read, and write effectively in that language, and training materials and examinations are in that same language.

(b) Initial training course requirements.

(1) Asbestos Abatement Worker course. The Asbestos Abatement Worker course must be at least four training days. This course must include lectures, demonstrations, at least 14 hours of hands-on training, individual respirator fit-testing, course review, and a written examination of 50 multiple-choice questions. Successful completion of the course will require passing the examination with a score of at least 70%. The course must adequately address the following in accordance with the MAP:

(A) the physical characteristics of asbestos, ACBM, and other ACM;

(B) potential health effects related to asbestos exposure;

_____ (C) employee personal protective equipment;

_____ (D) state-of-the-art work practices;

_____ (E) personal hygiene;

_____ (F) additional safety hazards;

_____ (G) medical monitoring;

_____ (H) air monitoring;

_____ (I) relevant federal, Texas, and local regulatory requirements, procedures and standards;

_____ (J) establishment of respiratory protection programs and medical surveillance programs;

_____ (K) hands-on training that includes work area abatement preparation, decontamination chamber construction, cleaning and disposal, and respirator fit-testing and maintenance; and

_____ (L) course review.

_____ (2) Asbestos Contractor/Supervisor course. The Asbestos Contractor/Supervisor course must be at least five training days. The course must include lectures, demonstrations, at least 14 hours of hands-on training, individual respirator fit-testing, course review, and a written examination of 100 multiple-choice questions. Successful completion of the course will require passing the examination with a score of at least 70%. The course must adequately address the following in accordance with the MAP:

_____ (A) the physical characteristics of asbestos, ACBM, and other ACM;

_____ (B) potential health effects related to asbestos exposure;

_____ (C) employee personal protective equipment;

_____ (D) state-of-the-art work practices;

_____ (E) personal hygiene;

_____ (F) additional safety hazards;

_____ (G) medical monitoring;

_____ (H) air monitoring;

_____ (I) relevant federal, Texas, and local regulatory requirements and standards;

_____ (J) establishment of respiratory protection programs and medical surveillance programs;

_____ (K) hands-on training that includes work area abatement preparation, decontamination chamber construction, cleaning and disposal, and respirator fit-testing and maintenance;

_____ (L) insurance and liability issues;

_____ (M) recordkeeping for asbestos abatement projects;

_____ (N) supervisory techniques for asbestos abatement activities;

_____ (O) contract specifications; and

_____ (P) course review.

_____ (3) Asbestos Air Monitoring Technician course. The Asbestos Air Monitoring Technician course must be at least three training days. The course must include lectures, demonstrations, hands-on individual respirator fit-testing, course review, and a written examination consisting of 50 multiple-choice questions. Successful completion of the course will require passing the examination with a score of at least 70%. The course must adequately address the following:

_____ (A) the health effects of asbestos exposure including:

_____ (i) the nature of asbestos-related diseases;

_____ (ii) routes of exposure;

_____ (iii) no known safe exposure level;

_____ (iv) the synergistic effect between cigarette smoking and asbestos exposure;

_____ (v) the latency periods for asbestos-related diseases; and

_____ (vi) a discussion of the relationship of asbestos exposure to asbestosis, lung cancer, mesothelioma, and cancers of other organs;

_____ (B) the following OSHA regulations:

_____ (i) 29 CFR §1910.134 (relating to Respiratory protection);

_____ (ii) 29 CFR §1910.1001, Appendix A (relating to OSHA Reference Method-Mandatory);

_____ (iii) 29 CFR §1910.1001, Appendix B (relating to Detailed Procedure for Asbestos Sampling and Analysis--Non-mandatory);

_____ (iv) 29 CFR §1910.1200 (relating to Hazard communication); and

_____ (v) 29 CFR §1926.1101 (relating to Asbestos), OSHA's asbestos standard for the construction industry;

_____ (C) the following sections of this chapter:

_____ (i) §296.21 of this chapter (relating to Definitions);

_____ (ii) §296.54 of this chapter (relating to Asbestos Air Monitoring Technician);

_____ (iii) §296.211 of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building);

_____ (iv) §296.212 of this chapter (relating to Standard Asbestos Abatement Practices and Procedures in a Public Building);

_____ (v) §296.213 of this chapter (relating to Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building); and

_____ (vi) §296.291 of this chapter (relating to Recordkeeping);

_____ (D) 40 CFR Part 763, Subpart E, Appendix A (relating to Interim Transmission Electron Microscopy Analytical Methods--Mandatory and Nonmandatory--and Mandatory Section To Determine Completion of Response Actions), overview of AHERA air monitoring requirements and AHERA sampling;

_____ (E) asbestos air sampling methods, including:

_____ (i) calibration of air sampling pumps;

_____ (ii) air sample volume calculations;

_____ (iii) sampling strategies for clearance monitoring;

_____ (iv) types of air samples (personal breathing zone versus fixed-station area);

_____ (v) sampling location and objectives (pre-abatement, during abatement, and clearance monitoring);

_____ (vi) number of samples to collect;

_____ (vii) minimum and maximum air volumes in accordance with the NIOSH 7400 method;

_____ (viii) period of sampling;

_____ (ix) aggressive clearance sampling;

_____ (x) interpretations of sampling results;

_____ (xi) quality assurance methods (for example, Z-test); and

_____ (xii) special sampling problems (crawl spaces, unacceptable samples for laboratory analysis, sampling in occupied buildings);

_____ (F) evaluation methods, including:

_____ (i) transmission electron microscopy (analysis feedback affecting flow rates, EPA's recommended technique for analysis of final air clearance samples);

_____ (ii) phase contrast microscopy;

_____ (iii) AHERA's limits on the use of phase contrast microscopy;

_____ (iv) what each technique measures (phase contrast microscopy versus transmission electron microscopy);

_____ (v) analytical methodologies;

_____ (vi) AHERA transmission electron microscopy protocol;

_____ (vii) NIOSH 7400 method;

_____ (viii) OSHA reference method (non-clearance); and

_____ (ix) EPA recommendation for clearance (transmission electron microscopy);

_____ (G) sampling equipment, including:

_____ (i) sampling pumps (low volume versus high volume, battery versus plug-in);

_____ (ii) flow regulating devices;

_____ (iii) sampling media;

_____ (iv) types of filters;

- _____ (v) types of cassettes and how to prepare for each type of analysis;
- _____ (vi) filter orientation;
- _____ (vii) storage and shipment of filters;
- _____ (viii) calibration techniques;
- _____ (ix) primary and secondary calibration standards;
- _____ (x) temperature and pressure effects;
- _____ (xi) environmental conditions that prohibit analysis; and
- _____ (xii) frequency of calibration;
- _____ (H) calculating sampling times, including:
 - _____ (i) documenting start time and end time; and
 - _____ (ii) calculating total time;
- _____ (I) time weighted average (TWA) calculation including 8-hour TWA and TWA formula;
- _____ (J) calibration of air sampling pumps, including:
 - _____ (i) primary versus secondary calibration standards;
 - _____ (ii) soap film flowmeter;
 - _____ (iii) in-line and inlet rotameter positioning;
 - _____ (iv) rotameter calibration worksheet;
 - _____ (v) electronic calibrators;
 - _____ (vi) temperature and pressure correction and effects on sample integrity;
 - _____ (vii) high volume air sampling pumps and calibration; and
 - _____ (viii) critical orifices;
- _____ (K) air sampling logs and records, including:
 - _____ (i) data elements;

- _____ (ii) air sample labeling;
- _____ (iii) chain of custody forms;
- _____ (iv) shipping and handling methods;
- _____ (v) cassette labeling; and
- _____ (vi) recordkeeping and field work documentation;
- _____ (L) types of air sampling, including:
 - _____ (i) baseline;
 - _____ (ii) area;
 - _____ (iii) personal;
 - _____ (iv) clearance;
 - _____ (v) area sampling during glove bag operations; and
 - _____ (vi) upwind and downwind; and
- _____ (M) course review.

_____ (4) Asbestos Inspector course. The Asbestos Inspector course must be at least three training days. The course must include lectures, demonstrations, 4 hours of hands-on training, individual respirator fit-testing, course review, and a written examination consisting of 50 multiple choice questions. Successful completion of the course will require passing the examination with a score of at least 70%. The course must adequately address the following in accordance with the MAP:

- _____ (A) background information on asbestos;
- _____ (B) potential health effects related to asbestos exposure;
- _____ (C) functions/qualifications and role of inspectors;
- _____ (D) legal liabilities and defenses;
- _____ (E) understanding building systems;
- _____ (F) public/employee/building occupant relations;
- _____ (G) pre-survey planning, and review of previous survey records;
- _____ (H) inspecting for friable and nonfriable ACM;

- _____ (I) assessing the condition of friable ACM;
- _____ (J) bulk sampling/documentation of asbestos;
- _____ (K) respiratory protection;
- _____ (L) personal protective equipment;
- _____ (M) hands-on training that includes a pre-field-trip simulated asbestos survey with bulk sampling of non-ACBM, and respirator fit-testing and maintenance;
- _____ (N) recordkeeping and writing the asbestos survey report;
- _____ (O) federal, state, and local regulations;
- _____ (P) field trip that includes a building walk-through at a suitable location outside of the classroom; and
- _____ (Q) course review.

_____ (5) Asbestos Management Planner course. The Asbestos Management Planner course must be two training days. The prerequisite for admission to the course is to provide a copy of a current asbestos inspector training certificate. The course must include lectures, demonstration, course review, and a written examination consisting of 50 multiple choice questions. Successful completion of the course will require passing the examination with a score of at least 70%. The course must adequately address the following in accordance with the MAP:

- _____ (A) course overview;
- _____ (B) evaluation and interpretation of survey results;
- _____ (C) hazard assessment;
- _____ (D) legal implications;
- _____ (E) evaluation and selection of control options;
- _____ (F) role of other professionals;
- _____ (G) developing an operations and maintenance (O&M) plan;
- _____ (H) regulatory review;
- _____ (I) recordkeeping for the management planner;
- _____ (J) assembling and submitting the management plan;

_____ (K) financing abatement actions; and

_____ (L) course review.

_____ (6) Asbestos Project Designer course. The Asbestos Project Designer course must be at least three training days. This course must include lectures, demonstrations, a field trip, course review, and a written examination of 100 multiple-choice questions. Successful completion of the course will require passing the examination with a score of at least 70%. The course must adequately address the following, in accordance with the MAP:

_____ (A) background information on asbestos;

_____ (B) potential health effects related to asbestos exposure;

_____ (C) overview of abatement construction projects to include clearance of the project area;

_____ (D) safety system design specifications, including written sampling rationale for air clearance;

_____ (E) field trip;

_____ (F) employee personal protective equipment;

_____ (G) additional safety hazards;

_____ (H) fiber aerodynamics and control;

_____ (I) designing abatement solutions, including discussion of removal, encapsulation, and enclosure methods and asbestos waste disposal;

_____ (J) final clearance process, including discussion of the need for a written sampling rationale for aggressive final air clearance; requirements of a complete visual inspection; and the relationship of the visual inspection to final air clearance;

_____ (K) budgeting and cost estimating;

_____ (L) writing abatement specifications and plans;

_____ (M) preparing abatement drawings;

_____ (N) contract preparation and administration;

_____ (O) legal/liabilities/defenses;

_____ (P) replacement of asbestos with asbestos-free substitutes;

_____ (Q) role of other consultants;

_____ (R) occupied buildings, special design procedures required in occupied buildings, education of occupants, extra monitoring recommendations, staging of work to minimize occupant exposure, and scheduling of renovation to minimize exposure;

_____ (S) how to accomplish a complete visual inspection;

_____ (T) relevant federal, Texas, and local regulatory requirements; and

_____ (U) course review.

_____ (7) Texas Asbestos Law and Rules course. The Texas Asbestos Law and Rules course must be three hours. The course must adequately address the law and rules for the following:

_____ (A) asbestos management in public buildings;

_____ (B) notification requirements for public buildings;

_____ (C) operations and maintenance (O&M) requirements for public buildings;

_____ (D) abatement practices and procedures for public buildings;

_____ (E) asbestos licensing requirements;

_____ (F) recordkeeping requirements;

_____ (G) exemptions; and

_____ (H) conflicts of interest.

_____ (c) Refresher training course requirements.

_____ (1) An annual refresher training course is required for each discipline to maintain accreditation or licensure. Each refresher training course must adequately address the following:

_____ (A) federal, state, and local regulations;

_____ (B) developments in state-of-the-art procedures; and

_____ (C) key aspects of the initial training course.

_____ (2) A refresher training course must consist of at least the following amount of training, as specified for the applicable refresher training course:

- _____ (A) asbestos abatement worker--one day of training;
- _____ (B) asbestos contractor/supervisor--one day of training;
- _____ (C) asbestos inspector--one half-day of training;
- _____ (D) asbestos management planner--one half-day of training;
- _____ (E) asbestos project designer--one day of training; and
- _____ (F) asbestos air monitoring technician--one half-day of training.

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION
SUBCHAPTER F LICENSE AND REGISTRATION FEES

§296.91. Fees.

(a) All applicable fees must be paid to DSHS before DSHS issues a registration or license.

(b) For all initial and renewal applications, DSHS is authorized to collect subscription and convenience fees, in amounts determined by the Texas Department of Information Resources pursuant to Texas Government Code §2054.252 (relating to State Electronic Internet Portal Project), to recover costs associated with electronic application and renewal application processing.

(c) The fees, not including subscription and convenience fees, are as follows:

- (1) asbestos abatement contractor initial or renewal--\$1,070;
- (2) asbestos abatement supervisor initial or renewal--\$400;
- (3) asbestos abatement worker initial or renewal--\$65;
- (4) asbestos air monitoring technician initial or renewal--\$99;
- (5) asbestos air monitoring technician project monitor initial or renewal--\$400
- (6) asbestos consultant initial or renewal--\$645;
- (7) asbestos consultant agency initial or renewal--\$430;
- (8) asbestos inspector initial or renewal--\$130;
- (9) asbestos laboratory initial or renewal--\$430;
- (10) asbestos management planner initial or renewal--\$260;
- (11) asbestos management planner agency initial or renewal--\$430;
- (12) asbestos operations and maintenance contractor initial or renewal--\$260;
- (13) asbestos operations and maintenance supervisor initial or renewal--\$225;
- (14) asbestos project manager initial or renewal--\$320;
- (15) asbestos training provider initial or renewal--\$963;

- ___ (16) asbestos transporter initial or renewal--\$430;
- ___ (17) reimbursement processing for fee overpayment--\$50;
- ___ (18) approval of additional training course--\$100;
- ___ (19) examination--\$25;
- ___ (20) identification card replacement--\$20;
- ___ (21) license replacement--\$20;
- ___ (22) name change--\$20;
- ___ (23) returned check--\$30;
- ___ (24) special examination request--\$50;
- ___ (25) provisional asbestos abatement supervisor--\$185;
- ___ (26) provisional asbestos abatement worker--\$30;
- ___ (27) provisional asbestos inspector--\$60; and
- ___ (28) provisional asbestos management planner--\$120.

§296.92. Late Fees.

A person who does not submit a timely renewal application must pay the late fee, as required under paragraph (1) or (2) of this section, as applicable, if the person is eligible to renew the license under §296.42(e) of this chapter (relating to Initial and Renewal Applications). A renewal application is considered timely if the application, fee, and all required documents are received by DSHS or postmarked before the license expires. If the application, fee, or required documents are deficient and the deficiency is not resolved before the license expires, the renewal application is not timely and is subject to the following late fees:

___ (1) If a person's license has been expired for one to 90 days, the person's renewal application must be accompanied by a renewal fee that is equal to 1.5 times the normally required renewal fee.

___ (2) If a person's license has been expired for more than 90 days, but less than a year, the person's renewal application must be accompanied by a renewal fee that is equal to two times the normally required renewal fee.

§296.93. Dishonored Payment Device.

(a) An application is incomplete if an applicant submits the application fee by a payment device that is not honored by the issuing financial institution. No later than 30 days after the date of DSHS's notice of the dishonored payment, the applicant must submit to DSHS a money order or cashier's check in the amount of the dishonored payment device, plus the fee of \$30 for each dishonored payment device.

(b) If DSHS has issued a license obtained with a dishonored payment device and the person does not pay the full amount due by the 30-day payment deadline specified in DSHS's notice, the person is in violation of this chapter and subject to enforcement action, including license revocation and administrative penalties, as described in Subchapter Q of this chapter (relating to Compliance).

(c) If an applicant has taken an examination, DSHS must receive full payment of all applicable fees before releasing the examination score or approving the initial license.

§296.94. Reimbursement of Fees.

(a) Application fees paid to DSHS are not transferable and may be reimbursed only if:

____ (1) fee amounts are paid in excess of the required fee, including as a result of an error in the online payment system, and DSHS deducts an administrative fee, as specified in §296.91(c)(17) of this chapter (relating to Fees) and subscription and convenience fees, as specified in §296.91(b) of this chapter from an excess payment before issuing a refund; or

____ (2) an application is not processed within the time periods described in §296.42(b) of this chapter (relating to Initial and Renewal Applications).

_____ (A) In that event, the applicant has the right to request reimbursement of the application fee in writing.

_____ (B) A request for reimbursement may be denied if DSHS does not determine that the applicable time period has been exceeded or finds that there was good cause for exceeding the time period.

_____ (C) Good cause for exceeding the time period exists if:

_____ (i) the number of license applications to be processed exceeds the number of applications processed in the same calendar quarter of the preceding year by 15% or more;

_____ (ii) DSHS relies on another public or private entity to process all or part of the application process and that entity causes the delay; or

(iii) any other condition exists that gives DSHS good cause for exceeding the time period.

(b) If DSHS denies a request for reimbursement under subsection (a)(2) of this section, the applicant may appeal in writing to the commissioner. If the commissioner determines that DSHS exceeded the applicable processing time period without good cause, the applicant is entitled to reimbursement of all application fees paid after being notified in writing of the decision.

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION
SUBCHAPTER G STATE LICENSING EXAMINATION

§296.111. General Examination Provisions.

(a) Each license applicant, except an asbestos abatement worker applicant, must pass the examination for the license type for which the applicant is applying to qualify for a license as required in §296.46(b)(5) of this chapter (relating to Initial and Renewal Licensure Requirements for an Individual). The examination is provided in the English language and translation of the examination to another language is not allowed.

(b) A passing examination score may not be used to obtain more than one license, except as provided in §296.46(e) of this chapter.

(c) An applicant must submit all documents and fees necessary to complete the licensing process within three years after passing the required examination. If the applicant does not complete the licensing process within three years, the applicant must prepare and submit a new application with the application fee and retake the examination.

(d) DSHS approval to take an examination lapses and is no longer valid if an applicant:

 (1) fails to take a scheduled examination; or

 (2) does not take an examination within six months after submitting the application.

(e) An applicant who is a qualified person with a disability may request a reasonable testing accommodation under the Americans with Disabilities Act of 1990, 42 USC §12101 et seq. by submitting to the Asbestos program a "Reasonable Modification Request for Licensing or Certification Examinations" form and other required documentation, in accordance with the Health and Human Services System's Circular C-039, "Reasonable Modifications in the Licensing and Certification Examination Process". Applicants may contact DSHS for additional information.

§296.112. Examination Schedule.

DSHS publishes all scheduled examination dates and locations on its website. DSHS may cancel or reschedule examinations when necessary. A request to take an examination on a date not listed on the schedule must be submitted to DSHS in writing with the applicable fee for a special examination request, as required in §296.91 of this chapter (relating to Fees). DSHS may approve or deny the request at its discretion.

§296.113. Examination Qualifications.

(a) An individual must complete all required training courses from a DSHS-licensed training provider or a training provider approved by another state that administers training in accordance with the MAP, before applying to take an examination.

(b) An individual who has completed all required training in another state must meet the requirements in §296.44 of this chapter (relating to Out-of-State Applicants).

(c) A copy of all required initial and refresher training certificates proving current accreditation must be submitted with the examination application.

§296.114. Examination Registration and Confirmation.

(a) To apply to take an examination, an applicant must submit a completed examination application, the examination fee outlined in §296.91 of this chapter (relating to Fees), and documentation of all required training courses at least 15 calendar days before the desired examination date.

(b) Submission of an application does not guarantee approval or admission for a specific examination. If the applicant meets all requirements to take the applicable examination, DSHS will attempt to schedule the applicant for the requested date and location, but space limitations may require DSHS to offer an examination date and location other than the requested selection.

(c) Upon approval of an examination request, DSHS will email, fax, or mail an examination confirmation letter to the applicant with the date, location, and time of the examination.

§296.115. Examination Admittance and Conduct.

(a) To enter the test site, the examinee must present the examination confirmation letter from DSHS and a government-issued photo identification.

(b) If an examinee fails to follow the proctor's instructions regarding conduct, the proctor may terminate that individual's examination by collecting the examination materials and asking the individual to leave. The examination fee is not refundable. An examination that has been terminated as a result of an examinee's conduct counts as a failed examination attempt.

(c) If an examinee's conduct involves an act of dishonesty, DSHS may withdraw the examination confirmation letter, impose administrative penalties, revoke any license the examinee holds under this chapter, or deny the license application that applies to the examination.

§296.116. Grading Examinations and Reporting Scores.

(a) A grade of 70% must be achieved for an examinee to pass the examination.

(b) DSHS notification to the examinee of the examination result of an examination graded or reviewed by DSHS is sent to the examinee no later than 30 working days after the examination is administered.

(c) DSHS notification to the examinee of the examination result of an examination graded or reviewed by a testing service is sent to the examinee no later than 14 days after DSHS receives the result. If DSHS does not receive notice of the examination result from the testing service within 30 working days after the examination is administered, DSHS notification of the reason for the delay is sent to the examinee no later than 90 days after the examination is administered. DSHS may require a testing service to notify an examinee of the results directly.

(d) Instructions regarding re-examination accompany DSHS notice to the examinee of a failing grade.

§296.117. Re-examination.

An individual applying for re-examination must submit a new examination application and pay the required fee. An applicant may take a maximum of two re-examinations after failing the initial examination. Re-examination must occur within one year after the previous examination. An applicant who fails the state examination three times per license category must repeat the initial training course or courses, as applicable, for the intended license and submit a new examination application.

§296.118. Analysis of Examination Performance.

An examinee may obtain an analysis of the examinee's performance on a failed examination upon written request to DSHS. The request must be made within one year after the examination date.

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION
SUBCHAPTER H LICENSE AND REGISTRATION PROVISIONS RELATED TO
MILITARY SERVICE MEMBERS, MILITARY VETERANS, AND
MILITARY SPOUSES

§296.131. Military Service Members, Military Veterans, and Military Spouses.

(a) This subchapter establishes licensing procedures for military service members, military veterans, and military spouses, in accordance with Occupations Code, Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. A military spouse does not need to obtain a license under this chapter if the spouse meets the requirements of §1.81 of this title (relating to Recognition of Out-of-State License of Military Spouse) and receives a verification letter from DSHS. A military spouse that receives a verification letter must comply with all applicable requirements of this chapter and is subject to the revocation provisions of §1.81(h) of this title.

(b) An applicant under this section must provide documentation of the applicant's status as a military service member, military veteran, or military spouse, as those terms are defined in Occupations Code §55.001. Acceptable documentation includes a copy of official documents, such as an applicable military service order, marriage license, or military discharge record. The applicant who fails to provide appropriate documentation under this subchapter is not eligible to be processed under this subchapter and is subject to routine licensing requirements under Subchapter D of this chapter (relating to License and Registration).

(c) Upon request, an applicant must provide acceptable proof of current license issued by another jurisdiction and proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of Texas.

(d) A verified military service member or military veteran must receive credit towards licensing or apprenticeship requirements, except for an examination requirement, for verified military service, training, or education that is relevant to the license, unless the service member or veteran holds a restricted license issued by another jurisdiction.

(e) An applicant who is a military service member, military veteran, or military spouse, and who holds a current license issued by another jurisdiction that has substantially equivalent licensing requirements to the Texas license for which the applicant is applying must complete and submit an application form and fee.

(f) In accordance with Occupations Code, §55.004(c), DSHS may waive any prerequisite to obtaining a license after reviewing the credentials of an applicant who is eligible to apply under subsection (e) or (g) of this section. A DSHS license is issued as soon as practicable to any qualified applicant who applies under

subsection (e) or (g) of this section. Renewal of the license is subject to the requirements of subsection (h) of this section.

(g) A military service member, military veteran, or military spouse who, within the five years preceding the application date, held a Texas license that expired while the applicant lived in another state for at least six months, is qualified for the same license based on the previously held license if there are no unresolved complaints against the applicant and there is no other bar to licensure, such as noncompliance with a DSHS order. The applicant must prove current accreditation.

(h) If DSHS issues an initial license to an applicant who is a military service member, military veteran, or military spouse who applies under subsection (e) of this section, the applicant is also notified in writing or by electronic means whether the applicant has met all the licensing requirements of Texas by virtue of the current license issued by another jurisdiction, including any licensing requirements still required to be completed in order to renew the license. If the applicant has not met all licensing requirements of Texas for the applicable license type, the applicant must provide proof of completion before applying for license renewal. The license is not eligible for renewal unless the applicant provides proof of completion of all Texas licensing requirements for the applicable license.

(i) The term of a license issued under this subchapter is two years. The license expires on the second anniversary of the issue date. The term of a renewal license issued under this subchapter is two years after the previous expiration date.

(j) Examination and license application fees otherwise required to be paid to DSHS are waived for:

___ (1) a military service member or military veteran applicant whose military service, training, or education substantially meets all applicable requirements for the license under this chapter; or

___ (2) a military service member, military veteran, or military spouse applicant who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license under this subchapter.

(k) An individual who holds a license under this chapter is exempt from any increased fee or other penalty imposed for failing to renew the license in a timely manner if the individual establishes to DSHS's satisfaction that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

(l) A military service member who holds a license under this chapter is entitled to two years of additional time beyond the expiration date of the license to complete:

___ (1) any continuing education requirements; and

(2) any other requirement related to the renewal of the military service member's license.

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION
SUBCHAPTER I ACCREDITATION

§296.151. Accreditation for Asbestos-Related Activities in a Commercial Building.

(a) Activities. In a commercial building, a person must be appropriately accredited as an asbestos abatement worker, asbestos contractor/supervisor, asbestos project designer, asbestos project monitor, or asbestos inspector, in accordance with the MAP to engage in the activities for that accredited discipline, including:

(1) work, supervision, or design to carry out any of the following activities:

(A) a response action other than an SSSD activity;

(B) a maintenance activity that disturbs friable ACBM, other than an SSSD activity; or

(C) a response action for a major fiber release episode;

(2) conducting an asbestos survey; or

(3) project monitoring:

(A) to observe, on behalf of the commercial building owner, an abatement activity performed by an accredited asbestos contractor/supervisor; and

(B) to observe, evaluate, report, and document that abatement work is completed according to specifications and plans and in compliance with all relevant statutes and regulations.

(b) Accreditation course. A person receives accreditation by successfully completing the appropriate asbestos training course in accordance with the MAP. The applicable asbestos training course must:

(1) be approved by DSHS and offered by a DSHS-licensed asbestos training provider;

(2) be approved by another state that has the authority from EPA to approve courses; or

(3) be approved directly by EPA.

(c) Proof of accreditation. A person performing an asbestos-related activity must provide proof of current accreditation at the work site by having one of the following:

(1) a government-issued photo identification (ID) with either a Texas training course certificate from a Texas-licensed asbestos training provider or an accreditation certificate from another state; or

(2) a training ID card from a Texas-licensed asbestos training provider or an accreditation photo ID card from another state.

(d) Reaccreditation. Annual refresher training is required for reaccreditation. A person whose accreditation certificate has expired must not engage in an activity for which a current accreditation certificate is required under the MAP or this chapter unless the person has been reaccredited. An accredited person has a 12-month grace period after the expiration date of the accreditation certificate in which to complete a refresher training course for reaccreditation. After that grace period, initial training must be repeated to become reaccredited.

(e) Standards. Work practices and accreditation for any asbestos-related activity described in this section must meet or exceed applicable federal laws and regulations relating to the MAP and NESHAP.

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION
SUBCHAPTER J EXEMPTIONS

§296.171. Removal of Resilient Floor-Covering Material.

The license and registration requirements in this chapter do not apply to a person who is performing or supervising resilient floor-covering material removal in a public building using work practices for that activity published by the Resilient Floor Covering Institute (RFCI work practices) or other methods determined by the commissioner to provide public health protection from asbestos exposure and who otherwise complies with §1954.104 of the Act and §296.231 of this chapter (relating to Alternative Practices and Procedures for Removal of Asbestos-Containing Resilient Floor-Covering Material in a Public Building). This includes the removal of an asbestos-containing mastic that is adhered to non-asbestos-containing flooring material.

§296.172. Emergency Abatement.

In a catastrophic emergency affecting public health or safety that results from a sudden, unexpected event that requires unplanned emergency asbestos abatement, DSHS, upon receipt of oral or written notification of the emergency, as required in §296.251 of this chapter (relating to Notifications), may waive the requirement for a license for that emergency abatement.

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION
SUBCHAPTER K ASBESTOS MANAGEMENT IN A PUBLIC BUILDING, COMMERCIAL BUILDING, OR FACILITY

§296.191. Asbestos Management in a Public Building, Commercial Building, or Facility.

(a) Public building owner responsibilities.

(1) The public building owner is responsible for compliance with this chapter in relation to the presence, condition, disturbance, renovation, demolition, and disposal of any ACBM and ACWM that is encountered in the construction, operations, maintenance, or furnishing of that public building, including when the building is under management by others.

(2) Before operations and maintenance, renovation, or demolition, the public building owner is required to have an asbestos survey performed, identify the presence of asbestos, and have the ACBM abated, as required in this chapter.

(3) The public building owner or the building owner's authorized representative must inform anyone who performs any type of construction, maintenance, installation, repairs, custodial services, renovation, or demolition work in the owner's building of the presence and location of ACBM before the start of any asbestos-related activity.

(4) The building owner or the building owner's authorized representative may provide the information in writing or through documented oral communication.

(5) The building owner must also fulfill the following obligations, either personally or through the building owner's authorized representative, including when the building is under management by others:

(A) hire or otherwise permit only a person holding the required license to perform asbestos-related activity in the building;

(B) require each person described under paragraph (1) of this subsection to comply with all applicable requirements of this chapter;

(C) ensure compliance with this chapter during periods of vacancy;

(D) inform those who enter the building for purposes of construction, maintenance, installation, repairs, custodial services, renovation, or demolition work of the presence and location of ACBM that could be disturbed or dislodged by those activities and arrange for its proper handling; and

_____ (E) confirm that the regulated area meets the clearance level of 0.01 f/cc before reoccupancy of that area.

(b) Commercial building owner responsibilities. The commercial building owner is responsible for compliance with this chapter in relation to the presence, condition, disturbance, renovation, demolition, and disposal of any asbestos that is encountered in the construction, operations, maintenance, or furnishing of that commercial building, including when the building is under management by others. Before operations and maintenance, renovation, or demolition, the commercial building owner is required to have a thorough inspection performed, identify the presence of asbestos, and abate the RACM in accordance with NESHAP. The commercial building owner must also ensure compliance with this chapter during periods of building vacancy.

(c) Facility owner responsibilities. The facility owner is responsible for compliance with this chapter in relation to the presence, condition, disturbance, renovation, demolition, and disposal of any asbestos that is encountered in the construction, operations, maintenance, or furnishing of that facility, including when the facility is under management by others. Before operations and maintenance, renovation, or demolition, the facility owner is required to have a thorough inspection performed, identify the presence of asbestos, and abate RACM in accordance with NESHAP. The facility owner must also ensure compliance with NESHAP during periods of vacancy.

(d) Mandatory survey for ACBM before renovation or demolition.

_____ (1) Before any renovation or dismantling outside of or within a public building, commercial building, or facility, including preparations for partial or complete demolition, the owner must have an asbestos survey performed.

_____ (2) The work area and all immediately surrounding areas that could foreseeably be disturbed by the actions necessary to perform the project must be thoroughly surveyed and, as applicable, sampled before renovation or demolition.

_____ (3) A copy of the asbestos survey report that includes the contents described in §296.21(96) of this chapter (relating to Definitions), as applicable, must be produced upon request by DSHS within 10 working days after the request.

_____ (4) A building may be demolished with RACM in place if a state or local government orders the demolition because the building is structurally unsound and in danger of imminent collapse, as determined by a professional engineer or a city, county, or state government official who is qualified to make that decision.

_____ (A) The owner must maintain documentation of such order.

_____ (B) If an owner is unable to obtain a survey because the building is structurally unsound and unsafe to enter, and the owner is unable to obtain an order for demolition and has a letter from a professional engineer stating the building is structurally unsound and in danger of imminent collapse, the owner may

contact DSHS to request a waiver from the survey requirement. Documentation supporting the inability to obtain an order must be submitted with the request.

(C) If a survey cannot be performed before demolition starts due to the building being structurally unsound and unsafe to enter, all suspect material must be treated as RACM, in accordance with NESHAP requirements in 40 CFR §61.141 (relating to Definitions), §61.145(a)(3) and (c)(4)-(9) (relating to Standards for demolition and renovation), and §61.150(a)(3) (relating to Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations).

(5) Without otherwise limiting the scope of an asbestos survey, each survey for a public building must treat any building material listed in subsection (o)(2) of this section as suspect ACBM and include all such materials in the asbestos survey if the materials could foreseeably be disturbed during the renovation or demolition activities.

(6) In a public building, the mandatory survey requirement may be met in one of the following two ways.

(A) A person appropriately licensed as required in this chapter and the Act performs a survey which conforms to generally accepted industry standards, such as the AHERA requirements specified in 40 CFR Part 763, Subpart E (relating to Asbestos-Containing Materials in Schools), §§763.85 - 763.88, the required method for schools. The licensee must prepare a survey report that includes the contents described in §296.21(96) of this chapter. To demonstrate that there is no ACBM, the licensed individual must collect a minimum of three samples from each suspect homogeneous area.

(B) A Texas-registered architect or a Texas-licensed professional engineer certifies that the architect or engineer has compiled and reviewed the information from MSDSs and SDSs of the materials used in the original construction of the building and the renovations or alterations of all parts of the building affected by the planned renovation or demolition, matches the MSDSs and SDSs to materials on-site, reviews any asbestos survey reports of the building previously conducted as required at the time of the survey, and certifies that in the architect's or engineer's professional opinion, no part of the building, including the building materials, affected by the planned renovation or demolition contain asbestos. This certification must also clearly identify the name of the building, the street address and specific area of the building that applies to the certification, the survey report date of each previous asbestos survey report reviewed, whether the relevant work was new construction or renovation, and the specific dates of completion of all original construction and renovations or alterations that apply to the certification. A Texas-registered architect must prepare this certification in accordance with the rules of professional conduct in 22 TAC Chapter 1. A Texas-licensed professional engineer must prepare this certification in accordance with the rules of professional conduct in 22 TAC Chapter 137.

(7) In a commercial building, an accredited inspector who has completed the MAP inspector training may perform the asbestos survey.

(8) In a facility that is not a public or commercial building, the survey must conform to 40 CFR §61.145. OSHA regulations or other EPA regulations may apply.

(e) Asbestos survey.

(1) A limited asbestos survey may be performed to address a specific area of a building, such as an area identified for renovation. A limited asbestos survey may not be substituted for a thorough asbestos survey of the entire building.

(2) A comprehensive asbestos survey covering the entire building is required before demolition of a building.

(3) An asbestos survey report remains acceptable if the asbestos survey is done in compliance with the applicable law, including the Texas Asbestos Health Protection rules in effect at the time the asbestos survey is completed and the asbestos survey addresses and accurately represents ACM and ACBM, as applicable, for the building affected by the planned renovation, demolition, or O&M activity, including its location, type, and condition.

(4) An environmental assessment report may not be used as an asbestos survey report unless it is conducted by an appropriately accredited or licensed person and contains all of the required elements of an asbestos survey report, as applicable.

(f) Sampling for asbestos in a public building. A licensed asbestos inspector must perform an asbestos survey in accordance with generally accepted standards, such as the methods described in 40 CFR §§763.85 - 763.88. The survey and survey report must identify, including its location, type, and condition, all ACBM that is found to be ACM. To assess the presence of ACBM and determine the need for any O&M activity or abatement, the licensed asbestos inspector must collect a minimum of three samples from each homogeneous area. The samples must be evaluated by a licensed asbestos laboratory. If one sample from a homogeneous area is found to be ACM, the remaining samples from that homogeneous area do not have to be analyzed. Building materials that have not been surveyed as required in this subsection and are suspected of containing asbestos must be treated as ACBM.

(1) When conducting core sample analysis, each layer must be analyzed and reported separately. Core sample analysis in a public building must not be reported as an average or a composite result.

(2) A result of visual estimation by polarized light microscopy (PLM) analysis of 0% asbestos or no asbestos detected does not require further analysis for the detection of asbestos in friable or nonfriable suspect materials.

(3) Point counting may be used to analyze either a friable or nonfriable material. Nonfriable materials, such as mastics and floor tile where fibers are occluded by a

binding matrix must be processed using a technique that renders the material friable, such as acid washing and ashing outlined in EPA/600/R-93/116.

(4) A result of visual estimation by PLM analysis of greater than 0% and less than 10% asbestos may be demonstrated to be material that is not ACBM only if the material is further analyzed using other analysis based upon the hierarchy and terms of the following:

(A) The result of point counting by PLM analysis of a sample supersedes and replaces the initial result of visual estimation by PLM.

(B) The result of gravimetric preparation, followed by point counting or transmission electron microscopy (TEM) visual estimation analysis of a sample, supersedes and replaces the result of visual estimation by PLM and the result of point counting by PLM.

(g) Conditions requiring mandatory abatement. Before any renovation or dismantling of a public building, commercial building, or facility, including preparations for partial or complete demolition, the building owner must have ACBM abated, as required in this section.

(1) Demolition or renovation of a public building. Before performing any demolition in a public building, the building owner must ensure that all suspect ACBM is surveyed and RACM is abated in accordance with NESHAP and as required in this chapter. Before performing any renovation in a public building, the building owner must ensure that all suspect ACBM that could foreseeably be disturbed in the area to be renovated is surveyed and ACBM is abated, as required in this chapter.

(2) Demolition or renovation of a commercial building. Before performing any demolition, renovation, or O&M activity in a commercial building, the owner or operator must ensure that all suspect ACBM is surveyed and RACM is abated in accordance with NESHAP by a person accredited, as required §296.151 of this chapter (relating to Accreditation for Asbestos-Related Activities in a Commercial Building) and in accordance with the MAP.

(3) Demolition or renovation of a facility. Before performing any demolition, renovation, or O&M activity in a facility, the owner or operator must ensure that all suspect ACM is surveyed and RACM is abated in accordance with NESHAP. Any structure, installation, or building that was previously subject to NESHAP is not excluded, regardless of its current use or function.

(4) Demolition or renovation of a residential building that contains four or fewer dwelling units.

(A) Two or more residential buildings that contain four or fewer dwelling units are considered an installation and are subject to NESHAP if they are on the same site and under the control of the same owner or operator or owner or operator under common control as part of the same renovation or demolition

project. Residential buildings are considered to be on the same site if they are within 660 feet of each other. Demolitions planned at the same time or as part of the same planning or scheduling period, that is often a calendar year, fiscal year, or the term of a contract, are considered to be part of the same project. Each owner or operator of the residential buildings must ensure that all suspect ACM is surveyed and RACM is abated in accordance with NESHAP.

(B) A residential building that is being demolished together with any other type of building as part of a larger private or public project, such as an urban renewal, shopping mall, or highway construction project is subject to NESHAP and each owner or operator must ensure that all suspect ACM in the residential building, as well as in the other building types, is surveyed and RACM is abated in accordance with NESHAP. If one residential building that contains four or fewer dwelling units is the only building being demolished, NESHAP regulations do not apply.

(C) Any renovation or demolition of a residential building is subject to NESHAP if the residence contains greater than four dwelling units or if it meets the conditions described in subparagraphs (A) or (B) of this paragraph.

(h) Demolition with ACM left in place.

(1) Category I nonfriable ACM may be left in place if it is not in poor condition, has not become friable, and will not become RACM during demolition.

(2) Category II nonfriable ACM may be left in place if the probability is low that the material will become RACM, or be crumbled, pulverized, or reduced to a powder during demolition.

(3) RACM on a facility component that is encased in concrete or other similarly hard material and is adequately wet whenever exposed during demolition may be left in place.

(4) RACM that is not accessible for testing and is, therefore, not discovered until after demolition begins and, because of the demolition the material, cannot be safely removed may be left in place. If not removed for safety reasons, the exposed RACM and any asbestos-contaminated debris must be treated as ACWM and adequately wet at all times until disposed of.

(i) Mandatory asbestos abatement project design for friable ACBM in a public building. An asbestos abatement project design is required and must be conducted by a licensed asbestos consultant for a project that involves any of the following activities:

(1) a response action other than an SSSD activity;

(2) a maintenance activity that disturbs friable ACBM other than an SSSD activity or a small project or repetitive task described in §296.233 of this chapter

(relating to Alternative Asbestos Practices and Procedures for Small Projects and Repetitive Tasks in a Public Building); or

(3) a response action for a major fiber release episode.

(j) Asbestos abatement project design for friable ACM in a commercial building. An asbestos abatement project design for a response action in a commercial building must be conducted by a person appropriately accredited to conduct a project design in accordance with AHERA.

(k) Mandatory asbestos abatement project design for nonfriable ACBM in a public building.

(1) An asbestos abatement project design is required and must be conducted by a licensed asbestos consultant for an abatement project in a public building that has a combined amount of nonfriable ACBM to be removed in excess of 160 square feet of surface area, 260 linear feet of pipe length, or 35 cubic feet of material.

(2) Only individual amounts of nonfriable ACBM to be removed that are in the same unit of measurement require combination for purposes of determining whether a project design is required.

(3) An asbestos abatement project that has a combined amount of nonfriable ACBM to be removed equal to or less than 160 square feet of surface area, 260 linear feet of pipe length, or 35 cubic feet of material; and a project conducted as described in §296.231 of this chapter (relating to Alternative Practices and Procedures for Removal of Asbestos-Containing Resilient Floor-Covering Material in a Public Building); §296.232 of this chapter (relating to Alternative Asbestos Abatement Practices and Procedures for Certain Nonfriable Asbestos-Containing Building Material (ACBM) in a Public Building); §296.233 of this chapter; and §296.234 of this chapter (relating to Alternative Practices and Procedures for Removal of Whole Components of Intact Asbestos-Containing Material (ACM) in a Public Building) does not require an asbestos abatement project design.

(4) In a commercial building, nonfriable material does not require a project design, but must be treated in accordance with NESHAP.

(l) Asbestos control and abatement in a public building. The public building owner must manage the asbestos found in the owner's building in accordance with the following requirements.

(1) The building owner must hire a licensed asbestos consultant, licensed asbestos consultant agency, licensed asbestos management planner, or licensed asbestos management planner agency to perform an asbestos survey that may be used for O&M activities, renovation, or demolition.

(2) The building owner must hire a licensed asbestos abatement contractor to conduct:

_____ (A) asbestos abatement in accordance with §296.212 of this chapter (Standard Asbestos Abatement Practices and Procedures in a Public Building);

_____ (B) asbestos abatement of nonfriable ACM using the work practices described in §296.232 of this chapter, where applicable;

_____ (C) small projects or repetitive tasks involving the disturbance of friable ACM, under the conditions and using the work practices described in §296.233 of this chapter; and

_____ (D) an activity described and conducted in accordance with §296.234 of this chapter.

_____ (3) The building owner must hire or retain a licensed asbestos abatement contractor or a licensed asbestos O&M contractor to conduct an SSSD O&M activity or cleanup affecting asbestos, in accordance with in §296.213 of this chapter (relating to Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building). When utility work is to be performed, the building owner must either have the affected ACM removed before the work of a utility contractor or require the utility contractor to be licensed to handle ACM.

_____ (4) A building owner licensed as an asbestos abatement contractor, as required in §296.50 of this chapter (relating to Asbestos Abatement Contractor) or as an asbestos O&M contractor, as required in §296.52 of this chapter (relating to Asbestos Operations and Maintenance Contractor) may conduct the activities described in paragraphs (2) and (3) of this subsection, as applicable.

_____ (5) The building owner must hire a licensed asbestos management planner, licensed asbestos management planner agency, licensed asbestos consultant, or licensed asbestos consultant agency to develop a management plan to control ACM during O&M, renovation, and demolition, if applicable.

(m) Mandatory notification. Notification is required under §296.251 of this chapter (relating to Notifications) under the following conditions.

_____ (1) Notification is required for any demolition of a facility or public building, whether or not asbestos has been identified.

_____ (2) In a public building, a notification to abate any amount of ACM must be submitted to DSHS by the public building owner or operator or delegated agent.

_____ (3) In a facility, a notification to abate an amount of RACM described in NESHAP must be submitted to DSHS by the facility owner or operator.

(n) Requirement for survey and management plan. A building owner or the building owner's authorized representative, if required by certified letter from DSHS, must immediately obtain an asbestos survey report and asbestos management plan

completed by a licensed asbestos inspector, licensed asbestos management planner, or licensed asbestos consultant, if, in the opinion of DSHS following a site inspection of a public building, there appears to be a danger or potential danger from ACM in poor condition to the workers or occupants of the building or to the general public. A copy of the management plan must be submitted for review and approval to DSHS within 90 days after receipt of the certified letter. A copy of the plan must be on file with the owner or management agency and in the possession of the supervisor in charge of building operations and maintenance.

(o) Installation of new materials in a public building. Texas Health and Safety Code, Chapter 161, Subchapter Q (relating to Installation of Asbestos), requires the following:

(1) A person who installs a building material or replacement part designated in paragraph (2) of this subsection in a public building must obtain an MSDS or SDS before the installation. A person must not install a material or part designated in paragraph (2) of this subsection that requires an MSDS or SDS under this paragraph unless:

(A) the person obtains an MSDS or SDS for the material proposed to be installed showing that the material or replacement part is not ACM; or

(B) the material or replacement part, according to the MSDS or SDS, is ACM, but the building owner or contractor can demonstrate that there is no alternative material or part.

(2) A person must obtain an MSDS or SDS before installing the following building materials or replacement parts:

(A) surfacing materials:

(i) acoustical plaster;

(ii) decorative plaster/stucco;

(iii) textured paint/coating;

(iv) spray applied insulation;

(v) blown-in insulation;

(vi) fireproofing insulation;

(vii) joint compound; and

(viii) spackling compounds;

(B) TSI:

- _____ (i) taping compounds (thermal);
- _____ (ii) HVAC duct insulation;
- _____ (iii) boiler insulation;
- _____ (iv) breaching insulation;
- _____ (v) pipe insulation; and
- _____ (vi) thermal paper products;
- _____ (C) miscellaneous material:
 - _____ (i) cement pipes;
 - _____ (ii) cement wallboard/siding;
 - _____ (iii) asphalt/vinyl floor tile;
 - _____ (iv) vinyl sheet flooring/vinyl wall coverings;
 - _____ (v) floor backing;
 - _____ (vi) construction mastic;
 - _____ (vii) ceiling tiles/lay-in ceiling panels;
 - _____ (viii) packing materials;
 - _____ (ix) high temperature gaskets;
 - _____ (x) laboratory hoods/table tops;
 - _____ (xi) fire blankets/curtains;
 - _____ (xii) elevator equipment panels;
 - _____ (xiii) elevator brake shoes;
 - _____ (xiv) ductwork flexible fabric connections;
 - _____ (xv) cooling towers;
 - _____ (xvi) heating and electrical ducts;
 - _____ (xvii) electrical panel partitions;

_____ (xviii) electrical cloth/electrical wiring insulation;

_____ (xix) chalkboards;

_____ (xx) roofing shingles/tiles;

_____ (xxi) roofing felt;

_____ (xxii) base flashing;

_____ (xxiii) fire doors;

_____ (xxiv) caulking/putties;

_____ (xxv) adhesives/mastics;

_____ (xxvi) wallboard; and

_____ (xxvii) vermiculite.

(p) Application for exemption. An owner or licensee may apply to DSHS for an exemption of a demolition or renovation project from any rule under this chapter relating to demolition and renovation activities, that DSHS, in its sole discretion, may grant if the rule exemption is not inconsistent with the Act and it meets one of the following conditions:

_____ (1) the EPA has exempted the project from federal regulations; or

_____ (2) DSHS determines that:

_____ (A) the project will use a method for the abatement or removal of asbestos that provides protection for the public health and safety at least equivalent to the protection provided by the procedure required in this chapter for the abatement or removal of asbestos; and

_____ (B) the project does not violate federal law.

(q) Survey or certification required for municipal permit. A municipality that requires a person to obtain a permit before renovating or demolishing a public or commercial building must not issue the permit unless the applicant provides one of the following types of documentation:

_____ (1) written evidence acceptable to the municipality that an asbestos survey of all parts of the building affected by the planned renovation or demolition has been completed by a person licensed in accordance with the Act and this chapter (for a public building) or accredited under the MAP (for a nonpublic building) to perform a survey; or

_____ (2) written certification from a Texas-registered architect or Texas-licensed professional engineer that:

_____ (A) identifies the name of the building, the street address, and the specific area of the building that applies to the certification;

_____ (B) certifies that the Texas-registered architect or Texas-licensed professional engineer has compiled and reviewed the information from:

_____ (i) MSDSs and SDSs of the materials used in the original construction of the building and any renovations or alterations of all parts of the building affected by the planned renovation or demolition, has matched them by manufacturer to materials on-site in the construction; and

_____ (ii) any previous asbestos survey report of the building that is conducted as required at the time of the survey;

_____ (C) certifies based upon review of the information in subparagraph (B) of this paragraph that in the architect's or engineer's professional opinion, no part of the building, including the building materials, affected by the planned renovation or demolition contain asbestos;

_____ (D) specifies the dates of each asbestos survey report reviewed;

_____ (E) specifies whether the relevant work was new construction or renovation; and

_____ (F) specifies the dates of completion of all original construction and renovations or alterations that apply to the certification.

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION
SUBCHAPTER L GENERAL REQUIREMENTS, AND PRACTICES AND PROCEDURES
FOR ASBESTOS ABATEMENT IN A PUBLIC BUILDING

§296.211. General Requirements for Asbestos Abatement in a Public Building.

(a) Responsibility. The public building owner or the owner's delegated agent must engage persons licensed as required in this chapter to perform any asbestos-related activity.

(b) Project supervision and monitoring.

(1) Every asbestos abatement project undertaken by a licensed asbestos abatement contractor in a public building under this section must be supervised by at least one licensed asbestos abatement supervisor and monitored by a licensed asbestos consultant or the consultant's designated licensed project manager or licensed asbestos air monitoring technician project monitor (AMT/PM). Except as described in the following subparagraphs, these supervisory and monitoring requirements extend to all projects performed in a public building under Subchapter K of this chapter (relating to Asbestos Management in a Public Building, Commercial Building, or Facility), Subchapter L of this chapter (relating to General Requirements, and Practices and Procedures for Asbestos Abatement in a Public Building), and Subchapter M of this chapter (relating to Alternative Asbestos Practices and Procedures in a Public Building).

(A) A licensed asbestos consultant or a licensed project manager or licensed AMT/PM designated by the consultant is not required to monitor or assess an SSSD O&M activity conducted under §296.213 of this chapter (relating to Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building), except that, for a project involving the use of a mini-containment, visual clearance must be performed by a licensed asbestos consultant or a licensed project manager or licensed AMT/PM designated by the consultant and third-party air clearance monitoring must be performed by a licensed air monitoring technician (AMT), licensed AMT/PM, or a licensed asbestos consultant before the mini-containment is removed.

(B) An asbestos abatement supervisor, consultant, or designated project manager or AMT/PM licensed under this chapter is not required to supervise, monitor, or assess, as applicable, a project conducted in accordance with §296.231 of this chapter (relating to Alternative Practices and Procedures for Removal of Asbestos-Containing Resilient Floor-Covering Material in a Public Building).

(2) Except as otherwise provided under paragraph (1) of this subsection:

(A) A licensed asbestos abatement supervisor and a licensed asbestos consultant or the consultant's designated licensed asbestos project manager or

licensed AMT/PM must remain on-site and in immediate proximity to the abatement activity during all periods of that activity.

(B) A licensed asbestos abatement supervisor must supervise the asbestos abatement activity from inside the containment area during at least 25% of each day on which asbestos abatement activity occurs in a containment.

(C) A licensed asbestos consultant or the consultant's designated licensed asbestos project manager or licensed AMT/PM must enter and inspect the containment and monitor asbestos abatement activities, conducted as required in Subchapter L of this chapter and Subchapter M of this chapter, as applicable, every day of the asbestos abatement activity, before the start of asbestos abatement activity for the day, routinely throughout the day, for the duration of the project from the beginning of containment to the final visual inspection of the project site and loading of ACWM for transport, as applicable, to:

(i) monitor the asbestos abatement activity by observing, reporting, and documenting that the regulated area, containment, or both is in compliance with this chapter and the specifications and plans, as applicable;

(ii) identify and document any correction needed;

(iii) document correction of any identified issue of noncompliance with asbestos abatement activity in a regulated area, containment, or both, as applicable, before work proceeds; and

(iv) report any identified issue of noncompliance that was not corrected to DSHS, as required in §296.41(f) of this chapter (relating to License and Registration Requirements).

(D) At least one licensed asbestos O&M supervisor or licensed asbestos abatement supervisor must supervise every SSSD O&M activity performed as described in §296.213 of this chapter during all periods of asbestos abatement activity.

(c) Employees. If an employee or delegated agent of any licensee who is an employer must intentionally disturb, handle, or otherwise work with ACBM, or engage in an asbestos abatement project, asbestos SSSD O&M activity, or other asbestos-related activity, the employee must have an annual medical examination and respirator fit-test that meets the requirements stated in the asbestos regulations of the EPA or OSHA, as applicable, and be properly equipped, trained, and licensed as required in this chapter.

(d) Records. Project records for each asbestos-related activity in a public building must be kept for 30 years from the date of project completion and made available for inspection and review upon request from DSHS. Project records include all findings of violation and disciplinary action issued against a licensee by the EPA,

OSHA, or a state agency. The recordkeeping responsibilities for licensees are described in §296.291 of this chapter (relating to Recordkeeping).

(e) Inspections and investigations. Each licensee, RFCI contractor, and building owner must assist and cooperate with all properly identified representatives of DSHS in the conduct of an asbestos inspection or investigation, as described in §296.271 (relating to Inspections and Investigations) of this chapter at any reasonable time, with or without prior notice or permission.

(f) Respiratory protection program. Each employer with one or more employees who perform any asbestos-related activity must comply with the requirements in 29 CFR §1910.134 (relating to Respiratory protection) for establishing and following a written respiratory protection program, with worksite-specific procedures, and in accordance with 29 CFR §1926.1101(h)(2) (relating to Asbestos), 29 CFR §1910.1001(g)(2) (relating to Asbestos), and 40 CFR Part 763, Subpart G (relating to Asbestos Worker Protection), whichever is applicable. Each employer must maintain a current copy of the respiratory protection program at all project locations. Required respirators must be properly worn at all times in containment and as otherwise required during asbestos abatement activity.

(1) The employer must provide for personal air monitoring to determine airborne concentrations of asbestos exposure to its employees in compliance with 40 CFR Part 763, Subpart G (relating to Asbestos Worker Protection), or 29 CFR §1926.1101, whichever is applicable, unless the employer has obtained a negative exposure assessment in compliance with 29 CFR §1926.1101.

(2) The employer must maintain, in a safe working condition, a sufficient number of respirators of the types and styles approved by NIOSH to meet all requirements for the employees. The employer and any representative of the employer must not permit any person whose facial characteristics, hair, mustache, or beard preclude the tight fit of a negative-pressure respirator to enter the containment during any asbestos abatement activity. The employer must select and provide an appropriate respirator that correctly fits the employee, such as a positive pressure or supplied-air respirator designed for usage with facial hair.

(g) Suspect ACM found during the asbestos abatement project. A suspect building material found during an asbestos abatement project that has not been surveyed must be treated as ACM. The material may be proven to be non-asbestos-containing by laboratory analysis, as required in §296.191(f) of this chapter (relating to Asbestos Management in a Public Building, Commercial Building, or Facility).

(h) Project air monitoring, personal air monitoring, and project work practice monitoring. The licensed asbestos consultant for an abatement project in a public building must specify in writing the duties, responsibilities, and authority of the licensed project manager, air monitoring technician, and AMT/PM. When asbestos is abated under an alternative work practice established in Subchapter M of this chapter, the project monitoring requirements for the chosen work practice apply

and air sampling and analysis must comply with the NIOSH 7400 requirements outlined in paragraph (1) of this subsection, as applicable.

(1) Ambient air sampling. Air samples must be collected by a licensed asbestos air monitoring technician, AMT/PM, or asbestos consultant. The sample pumps must be monitored throughout the day during the sampling period by the person collecting the samples. For all projects, samples must be collected and analyzed using the NIOSH 7400 method, counting rules A, Phase-contrast Microscopy (PCM). Samples must be collected at a flow rate between 0.5 to 16 liters per minute on 0.8 micron mixed cellulose ester (MCE) filters in cassettes with electrically conductive extension cowls. Only one cassette may be placed on a pump at a time. PCM must be used in accordance with the NIOSH 7400 method to determine the fiber concentration present. Alternatively, the AHERA protocol may be used to determine volume and flow rate needed for transmission electron microscopy (TEM) analysis in accordance with the mandatory provisions of Appendix A (relating to Interim Transmission Electron Microscopy Analytical Methods--Mandatory and Nonmandatory--and Mandatory Section to Determine Completion of Response Actions) of AHERA.

(A) Baseline.

(i) Baseline air samples must be collected before the start of any asbestos abatement project that requires a design as described in §296.191(i) and (j) of this chapter. The samples must be collected from inside the space that will become the regulated area for the project before any asbestos abatement activity that disturbs ACM begins. A minimum of three samples must be collected on 0.8 micron (MCE) filters loaded in cassettes with electrically conductive extension cowls. The locations from which baseline air samples are collected must provide suitable data for comparison with indoor air monitoring samples collected after asbestos abatement activities begin. Sampling and, if any, analysis must conform to the NIOSH 7400 method, counting rules A. For each sample, a sample volume of at least 1,250 liters must be drawn. Only one cassette may be placed on a pump at a time.

(ii) Baseline air samples must be kept for no fewer than 30 days after clearance is achieved.

(B) Air sampling during the project.

(i) Ambient air samples must be collected continually during disturbance of ACM or when asbestos abatement is being conducted in a containment. Air samples must be analyzed in accordance with the NIOSH 7400 method, counting rules A and only one cassette may be placed on a pump at a time.

(ii) Ambient air samples must be collected:

(I) inside containment adjacent to the abatement activities;

(II) outside containment but inside the building, if applicable;

_____ (III) within 10 feet of the unobstructed exhaust from the negative air unit discharge, where feasible, but not directly in the airstream;

_____ (IV) immediately outside the entrance to the decontamination area used to enter the containment (representative of the air being drawn into the containment area) or in the case of a remote decontamination area, immediately outside the entrance to the containment;

_____ (V) immediately outside the entrance of the bag-out area, if applicable; and

_____ (VI) at any other location required by the specifications and plans.

_____ (C) Clearance.

_____ (i) Project clearance must consist of an initial visual inspection, followed by air clearance sampling, removal of containment, and a final visual inspection.

_____ (ii) Clearance air samples must be collected inside the containment, as specified by a licensed asbestos consultant, with a minimum of two samples per containment. Only one cassette may be placed on a pump at a time.

_____ (iii) All project activities, except an SSSD O&M activity performed as described in §296.213 of this chapter, must be cleared by using aggressive air sampling. For each sample, a sample volume of at least 1,250 liters must be drawn. All air sampling and analysis must comply with the NIOSH 7400 requirements. Clearance is achieved if no sample is reported greater than 0.01 f/cc by the analysis report from the licensed laboratory.

_____ (D) Air sample results. The licensed air monitoring technician, AMT/PM, or licensed asbestos consultant must record in writing the results of area, baseline, and clearance air samples that are analyzed and document that the results are provided to the asbestos abatement contractor verbally by the following time frames, unless the consultant designs a sampling strategy that deviates from these time frames, as described in paragraph (4) of this subsection:

_____ (i) the next working day after the date of sampling, for any air sample analyzed on-site; or

_____ (ii) for asbestos abatement of friable ACM, the third working day after the date of initial sampling, for any air sample analyzed in an asbestos laboratory off-site.

_____ (2) Personal air monitoring.

_____ (A) Unless a negative exposure assessment is made in compliance with 29 CFR §1926.1101(f)(2)(iii) (relating to Asbestos), personal air samples must be

collected, monitoring conducted, and employees informed of results, in compliance with 40 CFR Part 763, Subpart G (related to Asbestos Worker Protection) or 29 CFR §1926.1101 (relating to Asbestos), as applicable, and subsection (f) of this section.

(B) Without limiting the requirements of 40 CFR Part 763, Subpart G or 29 CFR §1926.1101, as applicable, a licensed air monitoring technician, AMT/PM, or asbestos consultant must record in writing the results of personal air samples that are analyzed and document that the results are provided to the asbestos abatement contractor in writing by the following time frames, unless the asbestos consultant designs a sampling strategy that deviates from these time frames, as described in paragraph (4) of this subsection:

(i) the next working day after the date of sampling, for any air sample analyzed on-site; or

(ii) for asbestos abatement of friable ACM, the third working day after the date of initial sampling for any air sample analyzed in an asbestos laboratory off-site.

(3) Other monitoring requirements.

(A) Initial visual inspection. The licensed asbestos abatement supervisor must perform an initial visual inspection of the abatement area to confirm that all specified ACM was removed, encapsulated, or enclosed. The asbestos abatement supervisor must ensure that all abatement-related items are removed from the containment, excluding negative air machines and equipment essential to maintain the containment and to perform the visual inspection. Once the asbestos abatement supervisor confirms that all specified ACM is addressed, a licensed asbestos consultant, or a licensed asbestos project manager or licensed AMT/PM whom the asbestos consultant has given written authorization to perform the visual inspection, must perform a visual inspection to determine that all specified ACM was removed, encapsulated, or enclosed. The initial visual inspection must be performed to ensure compliance with this chapter, the site-specific specifications and plans, AHERA, and NESHAP.

(B) Final visual inspection. A final visual inspection must be performed after the removal of containment and the initial visual inspection to determine if any ACM escaped the containment or any ACWM remains. This visual inspection must be conducted by a licensed asbestos consultant or the consultant's designated licensed asbestos project manager or licensed AMT/PM and as required in subsection (b)(1) of this section. The licensed asbestos abatement contractor must abate all ACM and remove any ACWM discovered by the final visual inspection, as required in this chapter.

(4) Deviations. A licensed asbestos consultant must design the air monitoring strategies and may deviate from this subsection or from the time frames required under §296.54(c)(4) of this chapter (relating to Asbestos Air Monitoring Technician) and paragraphs (1)(D) and (2)(B) of this subsection for reporting air sampling

results only if the consultant demonstrates in writing in the specifications and plans that the engineering controls are at least as protective of public health as the requirements of this subsection, or for deviations from the time frames, why the deviation is necessary and any additional controls put in place as a result of the deviation. The deviation must be documented on the notification form and described in the project specifications and plans. The asbestos consultant must, upon request by DSHS, provide documentation and justification to support any deviation and must be able to demonstrate that the design is as protective of public health as the requirements of this subsection, paragraphs (1)(D) and (2)(B) of this subsection, or §296.54(c)(4) of this chapter, as applicable.

(i) Posting documents. Each licensed asbestos abatement contractor, licensed O&M contractor, and RFCI contractor must post the following documents visible to the public at the entrance to the regulated area:

____ (1) the Violation Notification Procedure poster issued by DSHS; and

____ (2) a copy of any asbestos-related order issued by DSHS or any other order from a federal or state asbestos-regulating authority; each order must be posted for a period of 12 months after the effective date of the order or for a federal asbestos-related order, the period required by the federal asbestos-regulating authority.

§296.212. Standard Asbestos Abatement Practices and Procedures in a Public Building.

(a) General provisions. The general work practices in this section are minimum requirements for protection of public health for standard projects using full containment in a public building and do not constitute complete or sufficient specifications and plans for an asbestos abatement project. An asbestos abatement project may have specifications and plans for an asbestos abatement activity that are specific to the project and are more detailed or stringent than the requirements of this section so long as the work practices specified are as protective of the public health as the general requirements in this section. These specifications and plans, to the extent they do not conflict with other applicable federal and state law must be followed as a requirement of this chapter. Otherwise, the general work practices described in this section must be used for asbestos removal that does not meet the conditions required to use alternative methods described in Subchapter M (relating to Alternative Asbestos Practices and Procedures in a Public Building).

____ (1) Subject to the following conditions, and if otherwise consistent with other applicable federal and state law, a licensed asbestos consultant may specify work practices that vary from the requirements of this section as long as the work practices specified are as protective of public health.

____ (A) A licensed asbestos consultant who designs a project that includes dry removal or no negative air must submit a written request for approval to DSHS, including the project specifications and plans or a written description of the design.

The request must include the licensed asbestos consultant's certification that the design is as protective of public health as the work practices described in this section and the consultant's basis for that conclusion. The request must include documentation that a certified industrial hygienist or a professional engineer licensed in Texas approved the design. The consultant must not begin the project without written approval from DSHS. The licensee must clearly describe the approved variance on the notification form.

(B) A licensed asbestos consultant who designs a project with work practices other than dry removal or no negative air that differ from this section must document the variance on DSHS's notification form. The licensee must clearly describe on the notification form the work practices and demonstrate how the specific work practices are as protective of public health as the work practices in this section. DSHS may disapprove the proposed variation after receiving notice or documentation under this subparagraph or any other information related to the variation if DSHS does not or cannot determine that the work practice variance is as protective of public health as the work practices in this section.

(C) The asbestos consultant must, upon request by DSHS, provide additional documentation and justification to support any variance.

(2) A licensed asbestos contractor must follow the specifications and plans for a design that varies from the general work practices in compliance with this section.

(3) In addition to the requirements of this section, abatement practices must be carried out in accordance with federal standards for asbestos abatement and waste disposal in 40 CFR §61.145 (relating to Standard for demolition and renovation) and §61.150 (relating to Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations).

(4) ACBM must be removed, encapsulated, or enclosed within a regulated area that is demarcated. Except as provided in §296.213 of this chapter (relating to Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building), §296.231 of this chapter (relating to Alternative Practices and Procedures for Removal of Asbestos-Containing Resilient Floor-Covering Material in a Public Building), §296.232 of this chapter (relating to Alternative Asbestos Abatement Practices and Procedures for Certain Nonfriable Asbestos-Containing Building Material (ACBM) in a Public Building), and §296.234 of this chapter (relating to Alternative Practices and Procedures for Removal of Whole Components of Intact Asbestos-Containing Material (ACM) in a Public Building), or, after a clearance-level assessment is completed as required in §296.233 of this chapter (relating to Alternative Asbestos Practices and Procedures for Small Projects and Repetitive Tasks in a Public Building), removal of ACBM must take place within a containment.

(5) Except as otherwise provided in this paragraph or by other applicable law, access to the regulated area must be limited to:

_____ (A) licensees;

_____ (B) emergency responders;

_____ (C) licensed, registered, or accredited building professionals required for emergency situations, as determined by a licensed asbestos consultant;

_____ (D) appropriate governmental inspectors;

_____ (E) authorized personnel, in accordance with 29 CFR §1926.1101(e) (relating to Asbestos); and

_____ (F) a building owner or building owner's authorized representative, if authorized by the licensed asbestos abatement contractor, and may enter a containment if accompanied by the contractor, licensed asbestos abatement supervisor, licensed asbestos consultant, or the consultant's designated licensed asbestos project manager or licensed AMT/PM. A building owner or building owner's authorized representative who enters containment must wear at a minimum the personal protective equipment required for workers performing the asbestos-related activity and must follow the specified decontamination procedures when exiting the containment.

(b) Containment construction.

_____ (1) Plastic sheeting. When specified by a licensed asbestos consultant that fire retardant plastic sheeting must be used, it must be certified by the Underwriters Laboratory (UL) as being fire retardant.

_____ (2) Objects within containment. All uncontaminated movable objects must be removed from the containment before the start of asbestos abatement. Contaminated non-porous items that are to be salvaged or reused must be decontaminated. Porous items that are contaminated must be disposed of as ACWM. All non-movable objects that remain in the containment must be decontaminated and covered with a minimum of 4-mil thick plastic sheeting attached securely in place.

_____ (3) Critical barriers. A regulated area within which asbestos abatement is to be conducted must be separated from adjacent areas by a minimum of one impermeable barrier, such as plastic sheeting attached securely in place. Any opening between a containment and adjacent areas must be sealed, including a window, doorway, elevator opening, corridor entrance, ventilation opening, drain, duct, grill, grate, diffuser, skylight, and lay-in suspended ceiling grid system where the space above the grid is open to other rooms. The HVAC system must be isolated from the regulated area, as required in paragraph (9) of this subsection. A penetration of the sheeting that could permit air infiltration or an air leak through the barrier must be sealed, except the make-up air provision and the means of entry and exit. When a critical barrier is placed over a large opening, such as a corridor entrance or when isolating a portion of a hallway or a room, the critical

barrier becomes the containment wall and the plastic sheeting requirements in paragraphs (4) and (5) of this subsection apply in addition to the requirements of this paragraph.

(4) Floor abatement preparation. Floors must be sealed to prevent water leakage by performing the following floor abatement preparation. All floor surfaces must be completely covered by a minimum of two layers of 6-mil thick plastic sheeting. Floor sheeting must extend up sidewalls at least 12 inches and be sized to minimize the number of seams. Seams must not be located at wall-to-floor joints. When asbestos abatement includes wall removal, the asbestos consultant must specify how removal will occur and how the practice will be at least as protective of public health as the minimum requirements of this section.

(5) Wall abatement preparation. All wall surfaces must be completely covered by a minimum of two layers of 4-mil thick plastic sheeting. Wall sheeting must be installed so as to minimize seams and must extend beyond wall-to-floor joints at least 12 inches. The wall sheeting must overlap the floor sheeting. Seams must not be located at wall-to-wall joints. Where feasible, a viewing window must be included in the wall for each 260 linear feet or fraction of that distance that permits the viewing of at least 51% of the abatement work area. At least one viewing window must be included in the wall, unless a licensed asbestos consultant specifies that a viewing window is not feasible. The window must be constructed of a transparent, shatter-resistant panel, also called acrylic or acrylic glass, which measures approximately 18 inches by 18 inches. The window must be at a reasonable height for viewing.

(6) Bag-out area. A licensed asbestos consultant must specify when a bag-out area is required as part of containment. At a minimum, a bag-out area is a two-stage area connected to the containment, separated by airlocks, with a rinse station separated from the bagging-room. A bag-out area must not be used to decontaminate personnel.

(7) Prohibited activities in a regulated area. The asbestos abatement contractor and asbestos consultant must ensure that their employees do not eat, drink, smoke, chew tobacco or gum, or apply cosmetics in the regulated area. Food or drink containers, coolers, tobacco products, gum, and cosmetics are not permitted in the regulated area.

(8) Decontamination area. The containment must include an attached personnel decontamination area. The area must consist of a clean room, shower room, and equipment room. Each room must be at least 30 inches by 30 inches wide and 75 inches tall. Each room must be separated from the other and from the containment by airlocks so that air does not escape outside the containment and that air flows from the outside to the inside of containment through the decontamination area. The shower room must be provided with soap and water and, where feasible, hot and cold water where the temperature can be adjusted by the user. A licensed asbestos consultant must specify a remote decontamination area when it is not feasible to attach the decontamination area to the containment. The consultant

must specify procedures for minimizing the migration of fibers from the containment to the remote decontamination area. Except where remote decontamination area is specified, all persons must exit the containment through the shower before entering the clean room. An asbestos-contaminated individual or item must not enter the clean room. A licensed asbestos abatement supervisor must ensure that the decontamination area is fully operational before and during any asbestos abatement activity. Any person exiting containment must:

_____ (A) remove all gross contamination and debris from protective clothing before entering the equipment room;

_____ (B) remove protective clothing in the equipment room and deposit the clothing in impermeable plastic bags or containers labeled as required in subsection (c)(4) of this section;

_____ (C) not remove respirators in the equipment room;

_____ (D) shower before entering the clean room; and

_____ (E) enter the clean room before changing into street clothes.

_____ (9) HVAC equipment. The HVAC system must be isolated from the regulated area. Any supply and return opening and any seam in system components must be sealed with either impermeable plastic sheeting, tape, or both. An old filter must be disposed of as asbestos waste.

_____ (10) Warning signs. A warning sign that complies with 29 CFR §1926.1101, must be displayed at all entrances to regulated area, including an area requiring a critical barrier that can be used to gain entrance to the containment, such as a door, window, or hallway. To protect the public from accidental entry, a warning sign must be displayed, at minimum, in both Spanish and English at the same location. Asbestos caution tape must not be substituted for a warning sign.

_____ (11) Cleaning. Cleaning procedures must include wet methods and HEPA vacuuming. A HEPA vacuum designed and equipped with a HEPA filter must remain on-site during any asbestos abatement activity. HEPA vacuums must be operated and maintained in accordance with the manufacturer's instructions.

_____ (12) Containment-area ventilation. HEPA filtration units must be operated continuously from the time containment is established through the time acceptable final air clearance is achieved, maintaining negative pressure with a manometric reading of at least -0.02 inches inside the containment. There must be HEPA units in sufficient number to provide negative pressure within the containment relative to the non-containment area, as indicated by a water column differential that produces a manometric instrument reading of at least -0.02 inches. HEPA units must, in combination, provide a minimum of four containment air changes per hour. Units must be operated with unrestricted exhaust and must be in a location that draws air across the containment area so that asbestos fibers are captured and

minimizes areas without air movement. These units must exhaust filtered air to the outside of the building wherever feasible.

(c) Removal of ACBM.

(1) All ACBM must be adequately wetted using amended water before removal or other handling. A consultant may specify the use of water without surfactant if it is as protective of public health. The ACBM must then be placed in bags (or other suitable containers) that must be marked in accordance with applicable NESHAP and OSHA regulations and paragraph (4) of this subsection. All ACWM must be double-bagged into 6-mil thick plastic bags or placed into a leak-tight drum.

(2) A bag must not be filled to a level that tears or breaks the bag. Excess air in a bag must be removed before entering the bag-out area. The top of the bag must be twisted closed, folded over, and sealed with duct tape. The bag must be rinsed off or HEPA-vacuumed in the bag-out area to remove asbestos contamination and placed inside another bag or leak-tight drum. If an outer bag is used, excess air must be removed, and the bag must be closed and sealed in the same manner as the inner bag.

(3) If a bag leaks, the bag must be placed into a third bag and sealed as required in paragraphs (1) and (2) of this subsection. If a drum leaks, the drum must be wrapped in a minimum of one layer of 6-mil thick plastic sheeting and sealed.

(4) The exterior bag, wrapping, or leak-tight drum must have warning and generator labels applied as specified in 40 CFR §61.150(a)(1)(iv) and (v) (relating to Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations). Generator labels must be printed in letters of sufficient size and contrast to be readily visible and legible. All required labeling of ACWM containers must be done before removal from the regulated area. Any container or wrapped component labeled as asbestos must be containerized and labeled as ACWM before removal from the regulated area.

(5) A component covered with, coated with, or containing ACM that is going to be removed from the building may either, after being adequately wetted, be stripped in place, cleaned, and pass a visual inspection by the asbestos consultant, or the ACBM may be adequately wetted and the entire component wrapped in two layers of 6-mil thick plastic sheeting or equivalent, labeled, and sealed, provided that:

(A) any component, such as a section of metal lath, that cannot be safely lowered to the floor must, after being adequately wetted, be stripped in place;

(B) any component that cannot be lowered or handled without presenting an excessive fiber release or safety hazard must be stripped in place; and

(C) a sharp edge of any component must be protected to preclude tearing the plastic wrapping and causing injury.

(6) ACBM must be removed as a wrapped unit or in small sections and containerized while wet. Material must not be allowed to accumulate on the floor or become dry. Any structural component or piping must be adequately wetted before wrapping it in plastic sheeting for disposal.

(7) At the conclusion of the removal, the licensed asbestos abatement contractor must perform a visual inspection to confirm that all ACBM required to be removed was removed and containerized, in accordance with this section, and that the containment is free of all residual dust and debris.

(8) Temporary storage of ACWM must be provided (for example, a dedicated roll-off box, dumpster, or storage room lined with 6-mil thick plastic sheeting). All temporary storage must be sealed to prevent unauthorized access and safeguarded to keep the storage container sealed and leak tight. Final disposal of ACWM must be within 30 days after project completion, or when the receiving container is full, whichever is sooner.

(9) A vehicle used to transport ACWM must be marked in accordance with 40 CFR §61.149(d)(1)(i)-(iii), (relating to Standard for waste disposal for asbestos mills) and §61.150(c) during the loading and unloading of ACWM so that the signs are visible.

(10) ACWM transported by a licensed asbestos transporter off the asbestos abatement project site must be disposed of in accordance with 40 CFR §61.150(d).

(d) Requirements for the encapsulation of ACBM.

(1) Any product used for encapsulation must be clearly labeled or described in writing by the manufacturer as being designed for the particular asbestos-related activity. A product that is not clearly labeled or described as an asbestos encapsulant must be tested before use, and found to conform to ASTM E1494-12, if the intended use is to encapsulate ACBM.

(2) Any encapsulation must be performed within a containment.

(3) Loose and hanging ACBM must be removed before encapsulation. Filler material applied to any gap in existing material must contain no asbestos, adhere well to the substrate, and provide an adequate base for the encapsulating agent.

(4) Encapsulant must be applied using only airless spray equipment with the nozzle pressure and tip size set according to the manufacturer's recommendations.

(5) Any encapsulated material must be specifically designated by sign, label, color coding, or other mechanism to warn any individual who may in the future be required to disturb the material.

(e) Requirements for the enclosure of ACBM.

(1) Acceptable enclosure must be airtight and of permanent construction so that the material enclosed is inaccessible.

(2) Any area of ACBM that can be reasonably anticipated to be disturbed during the installation of a hanger, bracket, or any other portion of the enclosure must be wetted within containment before such activity.

(3) Before building the enclosure, loose and hanging ACBM that may be disturbed must be removed.

(4) Any enclosure for ACBM must be specifically designated by sign, label, color coding, or other mechanism to warn any individual who may in the future be required to disturb the material.

(f) Safety requirements and prohibitions. The following safety requirements must be in effect for an abatement project:

(1) Fire safety. A minimum of one fire extinguisher with a minimum National Fire Protection Association rating of 10BC (dry chemical) must be placed within each abatement project containment for every 3,000 square feet, or fraction thereof, of containment. One fire extinguisher must be placed at each entrance inside of the containment. Each fire extinguisher must be maintained in a fully charged and operable condition with a current annual inspection tag securely attached reflecting that maintenance was performed by an appropriately licensed individual. Where more than one fire extinguisher is required, they must be distributed proportionately throughout the containment and their locations clearly marked.

(2) Electrical safety. An active electrical service line within a regulated area and containment must be connected through ground-fault circuit interrupter devices (GFCI). An electrical appliance must not be plugged into an outlet unless equipped with a GFCI.

(3) Prohibitions. Use of any solvent with a flash point of 140 degrees Fahrenheit or below is prohibited.

§296.213. Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building.

(a) Restrictions. An O&M licensee is limited to performing the practices and procedures described in this section for O&M activities in a public building that involve friable and nonfriable ACBM and are SSSD activities. These activities are subject to the following conditions:

(1) the practices and procedures must be performed by individuals licensed or registered to perform the applicable activity and supervised by a licensed O&M supervisor or a licensed asbestos abatement supervisor;

(2) an asbestos O&M licensee may perform or supervise, as applicable, an SSSD O&M activity following the practices and procedures described in this section;

(3) if the practices and procedures are supervised by an O&M supervisor, the public building must be under the control of the O&M supervisor's employer who is a licensed asbestos O&M contractor or a licensed asbestos abatement contractor;

(4) a larger project must not be broken down into smaller projects or tasks in order to qualify under this section as an SSSD O&M project to circumvent the restricted applicability of this section or other applicable requirements of this chapter;

(5) an activity conducted under, or a licensee or public building owner acting under, this section remains subject to all applicable requirements of §296.191 of this chapter (relating to Asbestos Management in a Public Building, Commercial Building, or Facility), including, without limitation, the requirement of an asbestos survey performed by an individual licensed to conduct it and the requirement to provide DSHS with written notification, as required in §296.251 of this chapter (relating to Notifications) and §296.211 of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building); and

(6) the practices and procedures described in this section do not limit and must be used only to the extent that they are consistent with the requirements of any other applicable law, including 29 CFR §1926.1101 (relating to Asbestos).

(b) Work practices. Work practices under this section must comply with the following requirements.

(1) An employer must furnish and require the use of a respirator, protective clothing, HEPA vacuum machines, glove bags, and other necessary equipment for an employee who performs an SSSD O&M activity.

(2) A regulated area must be established where an SSSD O&M activity will be conducted and at minimum, asbestos caution tape must be used to demarcate the regulated area. Except as otherwise provided by other applicable law, access to the regulated area must be limited to:

(A) licensees;

(B) emergency responders;

(C) licensed, registered, or accredited building professionals required for emergency situations;

_____ (D) appropriate governmental inspectors;

_____ (E) authorized personnel, in accordance with 29 CFR §1926.1101(e) (relating to Asbestos); and

_____ (F) a building owner or building owner's authorized representative, if authorized by the O&M contractor and accompanied by a licensed O&M contractor, licensed asbestos abatement contractor, licensed O&M supervisor, licensed asbestos abatement supervisor, licensed asbestos consultant, or the consultant's designated licensed asbestos project manager or licensed asbestos air monitoring technician project monitor. A building owner or building owner's authorized representative who enters the regulated area must have at a minimum the personal protective equipment required for workers performing the SSSD O&M activity.

____ (3) A warning sign that complies with 29 CFR §1926.1101, must be displayed at all entrances to regulated area. To protect the public from accidental entry, a warning sign must be displayed, at minimum, in both Spanish and English at the same location. Asbestos caution tape must not be substituted for a warning sign.

____ (4) Before beginning the SSSD O&M activity, all uncontaminated movable objects must be removed from the regulated area or covered with 4-mil thick plastic sheeting. Any object that is already contaminated must:

_____ (A) be cleaned with a HEPA-filtered vacuum or wet-wiped before removal; or

_____ (B) be completely encased in two layers of 6-mil thick plastic sheeting and treated as ACWM.

____ (5) Asbestos material must be wetted with amended water or another wetting agent and remain wet throughout the work operation and until final disposal, unless wet methods are not feasible because the asbestos work is being performed on live electrical equipment or in other areas where water will seriously damage materials or equipment.

____ (6) A small amount of ACM may be removed by using a glove bag, removing the entire asbestos-covered pipe or structure, or constructing a mini-containment, as appropriate, in accordance with the following procedures for the method utilized.

_____ (A) Glove bags.

_____ (i) A glove bag made of transparent 6-mil thick plastic, and seamless at the bottom, must be installed so that it completely covers the pipe or other structure where asbestos work is to be done. The open edges must be folded together and securely sealed with tape. All openings in the glove bag must be sealed with duct tape or equivalent material and the integrity of the bag must be maintained at all times.

(ii) Respirator use and selection must comply with 29 CFR §1910.134 (relating to Respiratory protection) and it's required written respiratory protection program, in accordance with 29 CFR §1926.1101(h)(2), 29 CFR §1910.1001(g)(2) (relating to Asbestos), and 40 CFR Part 763, Subpart G (relating to Asbestos Worker Protection), whichever is applicable. An employee who performs asbestos removal with a glove bag or in close contact with the glove bag must properly wear required respirators at all times during SSSD O&M activity.

(iii) The ACM must be thoroughly wetted with amended water before it is removed from the pipe (applied with a sprayer through the precut port provided in most glove bags or applied through a small hole in the bag). A razor knife must be used to cut any painted canvas covering ACM and peel it away from the ACM. Nips, tin snips, or other appropriate tool must be used to cut and remove any wire mesh covering the ACM. If the ACM beneath the canvas or wire mesh is dry, it must be resprayed with a wetting agent, including any layer of dry material that is exposed beneath the mesh, the surface of the stripped underlying structure, and the inside of the glove bag.

(iv) Once the ACM is removed from the pipe it must be thoroughly wetted with amended water.

(v) After removal of the layer of ACM, the surface from which asbestos was removed must be thoroughly cleaned with a wire brush and wet-wiped with a wetting agent until no traces of the ACM are visible.

(vi) An asbestos-containing insulation edge that was exposed as a result of the removal or maintenance activity must be encapsulated with a bridging encapsulant that creates a membrane over the surface before the glove bag is removed.

(vii) When the asbestos removal and encapsulation is complete, the glove bag must be vacuumed with a HEPA-filtered vacuum by inserting the vacuum's hose into the glove bag through the port. Once the air has been removed from the bag, the bag, after being squeezed tightly as close to the top as possible and twisted, must be sealed with tape. Once the HEPA vacuum is then removed from the bag, the glove bag itself must be removed from the work area for proper disposal. A glove bag must only be used once and must not be moved.

(B) Mini-containments.

(i) A mini-containment must completely contain any disturbance or removal of ACM and must be constructed of 6-mil thick plastic sheeting by:

(I) affixing the plastic sheeting to the walls with spray adhesive and tape;

(II) covering the floor with plastic, and sealing that plastic floor covering to the plastic on the walls; and

_____ (III) sealing any penetration, such as pipes or electrical conduit, with tape; or

_____ (IV) using equivalent methods that effectively establish a leak-proof and puncture-resistant mini-containment; and

_____ (V) constructing a change room, contiguous to the mini-containment, made of 6-mil thick plastic sheeting, supported by 2-inch by 4-inch lumber, or equivalent, to which the plastic is attached with staples or spray adhesive and tape, or which otherwise complies with 29 CFR §1926.1101(j) and 40 CFR Part 763, Subpart G, whichever is applicable.

_____ (ii) Before use, the mini-containment must be checked for leaks and any leaks sealed.

_____ (iii) The mini-containment must be placed under negative pressure by means of a HEPA-filtered vacuum or similar ventilation unit.

_____ (iv) Appropriate protective clothing and respiratory protection must be worn within the mini-containment.

_____ (v) A visual inspection must be performed by a licensed O&M supervisor before removing a mini-containment.

_____ (vi) If the mini-containment will be reused, the interior must be completely washed with amended water and HEPA-vacuumed. Air clearance must be performed by a licensed asbestos consultant or the consultant's designated licensed AMT.

_____ (vii) If the mini-containment will not be reused, it must be removed by sealing the door, collapsing the containment using a HEPA-equipped vacuum and disposal as ACWM.

_____ (C) Removal of entire structures.

_____ (i) Before removing an asbestos-insulated pipe or an asbestos-containing or covered structure in its entirety, the structure must be wrapped with 6-mil thick plastic sheeting and securely sealed with duct tape or wrapped and sealed in a manner that provides equivalent protection.

_____ (ii) If the entire structure cannot be removed without disturbing ACM, but a small section can be stripped of the ACM to allow for cutting and removal of the entire structure at the stripped sections, the glove-bag method described in subparagraph (A) of this paragraph must be used to strip the small section of ACM to allow for removal of the entire structure.

(7) Enclosure of ACM must be performed in accordance with the following requirements.

(A) To enclose a structure with ACM, rather than removing the ACM, a solid structure with airtight walls and ceiling must be built around the asbestos-covered structure. A suspended ceiling with laid-in panels does not constitute an airtight ceiling for purposes of this paragraph.

(B) If enclosure is the control method used, electrical conduits, telephone lines, recessed lights, and pipes in the area to be enclosed must be moved before construction of the enclosure to ensure that the enclosure will not have to be re-opened.

(C) The enclosure must:

(i) be permanent;

(ii) be built of new construction materials;

(iii) be impact resistant; and

(iv) be airtight.

(D) Enclosure walls must be made of tongue-and-groove boards, boards with spine joints, or gypsum boards having taped seams. The underlying structure must be able to support the weight of the enclosure.

(E) All joints adjoining the walls and ceiling of the enclosure must be caulked.

(F) Tools used during the installation of the enclosure must be equipped with a HEPA-filtered vacuum.

(8) Asbestos exposed as a result of any spot repair must be properly enclosed or encapsulated.

(9) HEPA vacuuming, wet cleaning, or both must be used to decontaminate regulated areas and equipment until there is no visible debris.

(10) ACWM must be double-bagged into 6-mil thick plastic bags or sealed in leak-tight drums that must be marked in accordance with applicable NESHAP and OSHA regulations and paragraph (13) of this subsection and disposed of in accordance with NESHAP and as required in paragraphs (15)-(17) of this subsection.

(11) A bag must not be filled to a level that tears or breaks the bag. Excess air in a bag must be removed before exiting a mini-containment or removing a glove bag. The top of the bag must be twisted closed, folded over, and sealed with duct tape. The bag must be rinsed off or HEPA-vacuumed in the regulated area to

remove asbestos contamination and placed inside another bag or leak-tight drum. If an outer bag is used, excess air must be removed, and the bag must be closed and sealed in the same manner as the inner bag.

(12) If a bag leaks, the bag must be placed into a third bag and sealed as required in paragraphs (10) and (11) of this subsection. If a drum leaks, the drum must be wrapped in a minimum of one layer of 6-mil thick plastic sheeting and sealed.

(13) The exterior bag, wrapping, or leak-tight drum must have warning and generator labels applied as specified in 40 CFR §61.150(a)(1)(iv) and (v) (relating to Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations). Generator labels must be printed in letters of sufficient size and contrast to be readily visible and legible. All required labeling of ACWM containers must be done before removal from the regulated area. Any container or wrapped component labeled as asbestos must be containerized and labeled as ACWM before removal from the regulated area.

(14) ACBM must be removed as a wrapped unit or in small sections and containerized while wet. Material must not be allowed to accumulate on the floor or become dry. Any structural component or piping must be adequately wetted before wrapping it in plastic sheeting for disposal.

(15) Temporary storage of ACWM must be provided (for example, a dedicated roll-off box, dumpster, or storage room lined with 6-mil thick plastic sheeting). All temporary storage must be sealed to prevent unauthorized access and safeguarded to keep the storage container sealed and leak tight. Final disposal of ACWM must be within 30 days after project completion, or when the receiving container is full, whichever is sooner.

(16) A vehicle used to transport ACWM must be marked in accordance with 40 CFR §61.149(d)(1)(i)-(iii), (relating to Standard for waste disposal for asbestos mills) and §61.150(c) during the loading and unloading of ACWM so that the signs are visible.

(17) ACWM transported by a licensed asbestos transporter off the asbestos operations and maintenance abatement project site must be disposed of in accordance with 40 CFR §61.150(d).

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION
SUBCHAPTER M ALTERNATIVE ASBESTOS PRACTICES AND PROCEDURES IN A
PUBLIC BUILDING

§296.231. Alternative Practices and Procedures for Removal of Asbestos-Containing Resilient Floor-Covering Material in a Public Building.

(a) General provisions. As specified in §296.171 of this chapter (relating to Removal of Resilient Floor-Covering Material), the licensing and registration requirements of this chapter do not apply to a person who is performing or supervising the removal of resilient floor-covering material in a public building as required in this section. Such removal must:

 (1) be performed using work practices for that activity published by the Resilient Floor Covering Institute (RFCI work practices) at the time of the activity and supervised by an individual (RFCI supervisor) who meets the requirements of subsection (c) of this section who is responsible for ensuring that RFCI work practices and the requirements of this section are followed; or

 (2) be performed using other methods determined by the commissioner to provide public health protection from asbestos exposure, in accordance with §1954.104 of the Act.

(b) Scope and limitations.

 (1) The removal activity allowed under this exemption is strictly limited to intact resilient floor-covering material that is nonfriable; remains intact; and has not been sanded, ground, mechanically chipped, drilled, abraded, cut, or sawed. Shearing, slicing, or punching the flooring does not, by itself, make this section inapplicable to the flooring material. Asbestos-containing resilient floor-covering material that does not meet the limitations of this paragraph is subject to paragraph (3) of this subsection.

 (2) The removal activity must not become a response action.

 (3) If, either before or during the removal, any of the resilient floor-covering material does not meet the limitations of paragraph (1) of this subsection, then:

 (A) removal under RFCI work practices is prohibited and, if already begun, must immediately cease; and

 (B) the area must be prepared and abated as required in §296.191 of this chapter (relating to Asbestos Management in a Public Building, Commercial Building, or Facility) and §296.212 of this chapter (relating to Standard Asbestos Abatement Practices and Procedures in a Public Building).

(4) An RFCI contractor or RFCI supervisor who fails to stop the project under the circumstances referenced in paragraph (3) of this subsection and to abate as required in paragraph (3)(B) of this subsection violates this section, applicable licensing requirements, and the provisions of this chapter that are applicable to the continuing activity. Any such person, as well as the building owner, is subject to penalties as described in §296.318 of this chapter (relating to Administrative Penalty).

(5) A person who performs removal using RFCI work practices must:

(A) establish and maintain a regulated area with appropriate signage and demarcation to inform and protect the public from exposure as described in the RFCI work practices and in compliance with OSHA in 29 CFR §1926.1101(e) and (k)(7) (relating to Asbestos);

(B) keep a copy of the current RFCI work practices and other records applicable to the removal activity on-site for the duration of the project, as required in §296.291 of this chapter (relating to Recordkeeping);

(C) double bag and label ACWM, as required in §296.212(c) of this chapter;

(D) upon completion of the project, have an RFCI supervisor confirm that all ACBM required to be removed was removed and containerized as required in this chapter and the abatement work area is free of all residual dust and debris;

(E) provide proper temporary storage of ACWM (for example, a dedicated roll-off box, dumpster, or storage room lined with 6-mil thick plastic sheeting). All temporary storage must be sealed to prevent unauthorized access and safeguarded to keep the storage container sealed and leak tight. Final disposal of ACWM must be within 30 days after project completion or when the receiving container is full, whichever is sooner, as required in §296.212(c)(9) and (10) of this chapter; and

(F) provide DSHS with written notification, as required in §296.251 of this chapter (relating to Notifications).

(c) Training.

(1) An individual engaged in removal of resilient floor-covering material using the RFCI work practices must successfully complete an eight-hour RFCI training course and any required refresher course, in compliance with 29 CFR §1926.1101(k)(9), that covers the elements described in the RFCI work practices. The removal of resilient floor-covering material must be supervised by an RFCI supervisor who is a competent person, as defined under 29 CFR 1926.32(f) (relating to Definitions), and, except as provided in paragraph (3) of this subsection, has successfully completed an additional minimum four-hour training course, review and examination required to supervise the removal of resilient floor-covering material, that addresses the following topics:

_____ (A) prework activities and considerations, including determination of asbestos-containing materials, methods of identification, walk through survey and bulk sampling, common building materials containing asbestos, and review of OSHA, EPA, Department of Transportation, and state and local regulations;

_____ (B) assessment of the work area, including site preparation considerations, conducting a negative exposure assessment, isolating the work area, adjacent areas, regulated areas, and safety hazards;

_____ (C) notification, recordkeeping, and waste disposal, including recordkeeping requirements, notification requirements, warning signs, special equipment, and transport and disposal of asbestos waste; and

_____ (D) supervising workers, including establishing goals, providing clear instructions, establishing expectations, use of supervisory authority, and motivating workers.

____ (2) An individual employed by a school who elects to use the RFCI work practices must first complete the 16-hour custodial training required by AHERA, unless the individual is a registered asbestos abatement worker, licensed asbestos O&M supervisor, or licensed asbestos abatement supervisor.

____ (3) An individual licensed as an asbestos abatement supervisor or accredited as an asbestos contractor/supervisor under the MAP is not required to complete the additional four-hour training required under paragraph (1) of this subsection to supervise the removal of resilient floor-covering material.

§296.232. Alternative Asbestos Abatement Practices and Procedures for Certain Nonfriable Asbestos-Containing Building Material (ACBM) in a Public Building.

(a) Scope and limitations.

____ (1) The alternative work practices under subsection (b) of this section may be used for the removal of the following intact, nonfriable ACBM:

_____ (A) any packing;

_____ (B) any gaskets; and

_____ (C) any cements and mastics.

____ (2) The work practices described in subsection (b) of this section do not limit, and must be followed in their entirety to the extent that they are consistent with, the requirements of any other applicable law, including 29 CFR §1926.1101 (relating to Asbestos) and must not be used if the ACBM listed in paragraph (1) of this subsection becomes friable during the removal project. Unless those work practices are followed, or if the ACBM becomes friable or becomes RACM, all abatement activity must stop, and the area prepared and abated in accordance with

§296.213 of this chapter (relating to Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building), if applicable, or §296.212 of this chapter (relating to Standard Asbestos Abatement Practices and Procedures in a Public Building).

____ (3) Only a person who is a licensed asbestos abatement contractor, licensed asbestos abatement supervisor, or registered asbestos abatement worker may conduct asbestos abatement of nonfriable ACM using the work practices outlined in subsection (b) of this section. A licensed asbestos abatement supervisor must supervise any registered asbestos abatement worker. A licensed asbestos consultant or the consultant's designated licensed asbestos project manager or licensed asbestos air monitoring technician project monitor (AMT/PM) must monitor the project for compliance with the requirements of this section. A project design is not required for a project using this alternative method.

____ (4) Written notification must be provided, as required in §296.251 of this chapter (relating to Notifications).

(b) Work practices.

____ (1) A regulated area must be established where asbestos abatement will be conducted, and at minimum, asbestos caution tape must be used to demarcate the regulated area. Except as otherwise provided by other applicable law, access to the regulated area must be limited to:

____ (A) licensees;

____ (B) emergency responders;

____ (C) licensed, registered, or accredited building professionals required for emergency situations;

____ (D) appropriate governmental inspectors;

____ (E) authorized personnel, in accordance with 29 CFR §1926.1101(e) (relating to Asbestos); and

____ (F) a building owner or building owner's authorized representative, if authorized by the licensed asbestos abatement contractor and accompanied by the contractor, licensed asbestos abatement supervisor, licensed asbestos consultant, or the consultant's designated licensed asbestos project manager or licensed AMT/PM. A building owner or building owner's authorized representative who enters the regulated area must have at a minimum the personal protective equipment required for workers performing the asbestos-related activity.

____ (2) A warning sign that complies with 29 CFR §1926.1101, must be displayed at all entrances to regulated area. To protect the public from accidental entry, the

warning sign must be displayed, at minimum, in both Spanish and English at the same location. Asbestos caution tape must not be substituted for a warning sign.

(3) All HVAC equipment in or passing through the regulated area must be shut down, and preventative measures taken to prevent accidental start-ups. Supply and return openings and seams in system components must be sealed with at least 6-mil thick plastic sheeting, tape, or both.

(4) All active electrical service lines within the regulated area must be connected through ground-fault circuit interrupter devices (GFCI). An electrical appliance must not be plugged into an outlet unless equipped with a GFCI.

(5) ACBM must be wetted with amended water and remain wet throughout the abatement activity.

(6) Work practices must not include grinding, abrading, sanding, or pulverizing ACBM.

(7) HEPA vacuuming, wet cleaning, or both must be used to decontaminate the regulated area and equipment until there is no visible debris.

(8) ACWM must be double-bagged into 6-mil thick plastic bags or sealed in leak-tight drums as required in §296.212(c) of this chapter and disposed of as required in §296.212(c)(8)-(10) of this chapter.

(9) Ambient air must be monitored and analyzed on-site by a licensed asbestos consultant or the consultant's designated licensed asbestos air monitoring technician (AMT) or AMT/PM employed by a licensed asbestos laboratory and as required in §296.211(h)(1) of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building). Samples must be taken throughout the regulated area and adjacent to any active asbestos abatement activity and the asbestos consultant or the asbestos consultant's designated AMT or AMT/PM must provide the result of any ambient air analysis that exceeds a concentration of 0.01 f/cc (fibers per cubic centimeter) to the asbestos abatement supervisor. All asbestos abatement activity must be stopped and cleanup conducted as described in subsection (a)(2) of this section if at any time the result of ambient air analysis exceeds a concentration of 0.01 f/cc (fibers per cubic centimeter) for any sample, when measured by phase contrast microscopy using the NIOSH 7400 method.

(10) A licensed asbestos abatement supervisor must perform an initial visual inspection upon completion of the project to confirm that all ACBM required to be removed was removed and containerized as required in this chapter and that the abatement work area is free of all residual dust and debris. This paragraph does not affect otherwise applicable requirements for personal air monitoring.

(11) A licensed asbestos consultant or the consultant's designated licensed asbestos project manager or licensed AMT/PM must:

(A) monitor the project for compliance with the requirements of this section; and

(B) perform a final visual inspection upon completion of the project and the asbestos abatement contractor's initial visual inspection to observe and determine if all ACM required to be removed was removed and containerized as required in this chapter and the abatement work area is free of all residual dust and debris.

(12) The licensed asbestos abatement contractor must abate all ACM and remove any ACWM discovered by the final visual inspection as required in this chapter.

(13) Work practices must be performed in accordance with 29 CFR §1926.1101 (relating to Asbestos), as applicable.

§296.233. Alternative Asbestos Practices and Procedures for Small Projects and Repetitive Tasks in a Public Building.

(a) Purpose. The purpose of this section is to describe the requirements that must be met to permit a small project or repetitive task described under this section to be performed without containment in a public building.

(b) Scope and limitations.

(1) This section applies only to a maintenance or installation project or task:

(A) that is incident to another activity that has a primary purpose other than asbestos abatement;

(B) that disturbs 10 square feet or less of ACM for each small project or task; and

(C) that is the same task performed by licensees without deviation from a documented procedure as described in subsection (c) of this section, and with material containing the same type and similar content of asbestos.

(2) A small project or repetitive task, as described, and limited under this section, may be performed without using a negative pressure glove bag, glove box, or mini-containment only if all requirements of this section are met and a clearance-level assessment has been conducted as required in subsection (c) of this section showing that the work practices will not result in a concentration of asbestos fibers in excess of 0.01 f/cc at any time during the duration of the project.

(3) A larger project must not be broken down into smaller projects or tasks in order to fall within the scope of this section or to circumvent the restricted applicability of this section or other applicable requirements of this chapter.

(4) A registered asbestos abatement worker may perform a small project or repetitive task that disturbs ACBM, as described in paragraph (2) of this subsection, using the work practices outlined in subsection (d) of this section only when supervised by a licensed asbestos abatement supervisor who is employed by a licensed asbestos abatement contractor and a clearance-level assessment was done, as required in subsection (c) of this section showing that the work practices do not result in a concentration of fibers in excess of 0.01 f/cc at any time during the duration of the project.

(5) A licensed asbestos abatement supervisor employed by an asbestos abatement contractor may perform and supervise a small project or repetitive task that disturbs ACBM as described in paragraph (2) of this subsection using the work practices outlined in subsection (d) of this section.

(6) If a clearance-level assessment was done, as required in subsection (c) of this section, and the requirements and limitations of this section are otherwise met in performing a small project or repetitive task described in this section, a licensed consultant or the consultant's designated licensed project manager or licensed air monitoring technician project monitor (AMT/PM) is not required to design the small project or repetitive task.

(7) Written notification must be provided, as required in §296.251 of this chapter (relating to Notifications).

(c) Clearance-level assessment. A project or task may be performed under this section only if, within the previous 12-month period, an assessment has been conducted on-site using a method permitted under paragraph (3) of this subsection, that demonstrates that the work practices used to perform the project or task do not result in a concentration of asbestos fibers in excess of 0.01 f/cc at any time during the duration of the project. The assessment method and results must be documented and clearly indicated on, and submitted with, the notification for the small project or repetitive task planned to be performed as described in this section.

(1) The clearance-level assessment must be completed in a negative pressure enclosure or mini-containment that complies with §296.212 of this chapter (relating to Standard Asbestos Abatement Practices and Procedures in a Public Building) and §296.213 of this chapter (relating to Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building), as applicable, and by performing the project or task as it would be performed under this section.

(2) A person must hold the required license to conduct the components of the assessment.

(A) A licensed asbestos consultant must design the clearance-level assessment and directly observe the performance of the project or task being assessed and the assessment methods and activities conducted under this subsection.

_____ (B) During an assessment under this subsection, a licensed consultant or a licensed air monitoring technician or licensed AMT/PM must conduct air monitoring in accordance with §296.211 of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building).

____ (3) To establish, for purposes of this subsection, that clearance-level concentrations will be maintained throughout the project, the assessment method and results must be documented and submitted with the notification for the small project or repetitive task planned to be performed as described in this section. The documented assessment methods and results submitted must:

_____ (A) be consistent with procedures described:

_____ (i) for exposure assessments described under 29 CFR §1926.1101(f) (relating to Asbestos), including the engineering controls, work practices, and other safeguards described in connection with exposure assessments conducted under that subsection; or

_____ (ii) in ASTM D7886-14 Standard Practice for Asbestos Exposure Assessments for Repetitive Maintenance and Installation Tasks - ASTM International, www.astm.org; or

_____ (B) be equivalent to a procedure described in subparagraph (A)(i) and (ii) of this paragraph and capable of reliably determining whether clearance levels will be maintained throughout the project.

____ (4) A licensed asbestos abatement supervisor must be in the containment directly performing the task or monitoring the registered asbestos abatement worker for purposes of the clearance-level assessment.

(d) Work practices. Without limiting the restrictions of 29 CFR §1926.1101, work practices must include the following:

____ (1) A regulated area must be established where asbestos abatement will be conducted and at minimum, asbestos caution tape must be used to demarcate the regulated area. Except as otherwise provided by other applicable law, access to the regulated area must be limited to:

_____ (A) licensees;

_____ (B) emergency responders;

_____ (C) licensed, registered, or accredited building professionals required for emergency situations;

_____ (D) appropriate governmental inspectors;

(E) authorized personnel, in accordance with 29 CFR §1926.1101(e); and

(F) a building owner or building owner's authorized representative, if authorized by the licensed asbestos abatement contractor and accompanied by the contractor, licensed asbestos abatement supervisor, licensed asbestos consultant, or the consultant's designated project manager or AMT/PM. A building owner or building owner's authorized representative who enters the regulated area must have at a minimum the personal protective equipment required for workers performing the asbestos-related activity.

(2) A warning sign that complies with 29 CFR §1926.1101, must be displayed at all entrances to regulated area. To protect the public from accidental entry, a warning sign must be displayed, at minimum, in both Spanish and English at the same location. Asbestos caution tape must not be substituted for a warning sign.

(3) All HVAC equipment in or passing through the regulated area must be shut down and preventative measures taken to prevent accidental start-ups. Supply and return openings and any seam in system components must be sealed with at least 6-mil thick plastic sheeting, tape, or both.

(4) An active electrical service line within the regulated area must be connected through ground-fault circuit interrupter devices (GFCI). An electrical appliance must not be plugged into an outlet unless equipped with a GFCI.

(5) ACBM must be wetted with amended water or foam agents intended to control airborne fiber release and must remain wet throughout project.

(6) HEPA vacuuming, wet cleaning, or both must be used to decontaminate the regulated area and equipment until there is no visible debris.

(7) ACWM must be double-bagged into 6-mil thick plastic bags or sealed in leak-tight drums as required in §296.212(c) of this chapter and disposed of as required in §296.212(c)(8)-(10) of this chapter and NESHAP. Final disposal of ACWM must be within 30 days after project completion or when the receiving container is full, whichever is sooner.

(8) A licensed asbestos abatement supervisor must monitor the project or task and perform an initial visual inspection upon completion of the project or task to confirm that all ACBM required to be removed was removed and containerized as required in this chapter and AHERA, if applicable, and the regulated area is free of all residual dust and debris. This paragraph does not affect otherwise applicable requirements for personal air monitoring.

(9) A licensed asbestos consultant or the consultant's designated licensed asbestos project manager or licensed AMT/PM must:

(A) monitor the project or task for compliance with the requirements of this section and AHERA, if applicable; and

_____ (B) perform a final visual inspection upon completion of the project or task and the asbestos abatement supervisor's initial visual inspection to:

_____ (i) observe and determine if all ACBM required to be removed was removed and containerized as required in this chapter and AHERA, if applicable; and

_____ (ii) the regulated area is free of all residual dust and debris.

____ (10) The licensed asbestos abatement contractor must abate ACM and remove ACWM discovered by the final visual inspection, as required in this chapter.

§296.234. Alternative Practices and Procedures for Removal of Whole Components of Intact Asbestos-Containing Material (ACM) in a Public Building.

(a) Scope and limitations.

____ (1) Eligible activities. The alternative work practices described in the following subparagraphs may be used for the removal of the following intact ACM if the conditions of paragraph (2) of this subsection are met and the work practices required under subsection (b) of this section are followed. Other requirements of §296.212 of this chapter (relating to Standard Asbestos Abatement Practices and Procedures in a Public Building) are not mandatory for the following activities:

_____ (A) removal of an asbestos cement sheet or wall panel by unbolting or unscrewing and removing the whole sheet or panel intact;

_____ (B) removal of a lab-type asbestos cement desktop by either unbolting or unscrewing and removing the whole desktop intact;

_____ (C) removal of a nonfriable countertop or backsplash by completely removing the whole unit intact;

_____ (D) removal of a window unit with window glazing, if the window glazing is secured with tape or a similar material before removal, and the whole window unit with window glazing is removed intact;

_____ (E) picking up one or more loose floor tiles that have become completely disassociated from the floor and are either whole or slightly broken, but which are still intact and not RACM;

_____ (F) picking up a loose miscellaneous nonfriable item, such as a roll of linoleum, a loose gasket, or a loose shingle;

_____ (G) removal of a fire door with asbestos-containing insulation from its hinges by removing the whole door, including its hardware, intact;

_____ (H) removal of any other nonfriable building component by removing it as a whole component and keeping it intact; and

_____ (I) removal of any packings, gaskets and mastics by removing them whole and intact, if not otherwise removed using the alternate method described in §296.232 of this chapter (relating to Alternative Asbestos Abatement Practices and Procedures for Certain Nonfriable Asbestos-Containing Building Material (ACBM) in a Public Building).

____ (2) Restrictions. If the following conditions are met and the work practices required under subsection (b) of this section are followed, other requirements of §296.212 of this chapter are not mandatory for an activity described in paragraph (1) of this subsection.

_____ (A) ACM must be in good condition and removed as a whole component, keeping the component intact with no breakage or generation of dust during the removal or collection.

_____ (B) ACM must not be RACM.

_____ (C) If the ACM becomes RACM or cannot be removed as a whole component and kept intact, all abatement activities must be stopped, and the area must be prepared and abated as required in §296.213 of this chapter (relating to Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building) or §296.212 of this chapter, as applicable.

_____ (D) Only a licensed asbestos abatement contractor or licensed asbestos abatement supervisor employed by a licensed asbestos abatement contractor may perform an activity under this section. A registered asbestos abatement worker may perform an activity under this section only when supervised by a licensed asbestos abatement supervisor. A licensed consultant is not required to design a project that uses this alternative method and is conducted in accordance with the requirements and restrictions of this section.

_____ (E) Written notification must be provided, as required in §296.251 of this chapter (relating to Notifications).

(b) Work practices. Work practices must include the following:

____ (1) A regulated area must be established where asbestos abatement will be conducted and, at minimum, asbestos caution tape must be used to demarcate the regulated area. Except as otherwise provided by other applicable law, access to the regulated area must be limited to:

_____ (A) licensees;

_____ (B) emergency responders;

_____ (C) licensed, registered, or accredited building professionals required for emergency situations;

_____ (D) appropriate governmental inspectors;

_____ (E) authorized personnel, in accordance with 29 CFR §1926.1101(e) (relating to Asbestos); and

_____ (F) a building owner or building owner's authorized representative, if authorized by the licensed asbestos abatement contractor and accompanied by the contractor, licensed asbestos abatement supervisor, licensed asbestos consultant, or the consultant's designated licensed asbestos project manager or licensed air monitoring technician project monitor (AMT/PM). A building owner or building owner's authorized representative who enters the regulated area must have at a minimum the personal protective equipment required for workers performing the asbestos-related activity.

____ (2) A warning sign that complies with 29 CFR §1926.1101, must be displayed at all entrances to the regulated area. To protect the public from accidental entry, a warning sign must be displayed, at minimum, in both Spanish and English at the same location. Asbestos caution tape must not be substituted for a warning sign.

____ (3) Asbestos material must be kept wet during removal and disposal.

____ (4) Ambient air monitoring is not required.

____ (5) A licensed asbestos abatement supervisor must perform an initial visual inspection upon completion of the project to confirm that all ACBM required to be removed was removed and containerized as required in this chapter and AHERA, if applicable, and the regulated area is free of all residual dust and debris. This paragraph does not affect otherwise applicable requirements for personal air monitoring.

____ (6) A licensed asbestos consultant or the consultant's designated licensed asbestos project manager or AMT/PM must:

_____ (A) monitor the project for compliance with the requirements of this section; and

_____ (B) perform a final visual inspection upon completion of the project and the asbestos abatement supervisor's initial visual inspection to:

_____ (i) observe and determine if all ACBM required to be removed was removed and containerized as required in this chapter and AHERA, if applicable; and

_____ (ii) the regulated area is free of all residual dust and debris.

(7) The licensed asbestos abatement contractor must abate all ACM and remove any ACWM discovered by the final visual inspection as required in this chapter.

(8) ACWM must be double-wrapped in 6-mil thick plastic sheeting, double-bagged into 6-mil thick plastic bags, or sealed in leak-tight drums as required in §296.212(c) of this chapter and disposed of as required in §296.212(c)(8)-(10) of this chapter and in accordance with NESHAP.

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION
SUBCHAPTER N NOTIFICATIONS

§296.251. Notifications.

(a) General provisions. DSHS must be notified using DSHS's online asbestos notification system on its website or on a form specified by DSHS of any asbestos abatement or demolition, as required in paragraphs (1) and (2) of this subsection. Notification must be made to DSHS no fewer than 10 working days before commencement of the activity. Submitting the notification form online on DSHS's website or by hard copy meets the requirements for notification to DSHS under both NESHAP and this chapter. The notification form must be properly completed and submitted as required in this section.

(1) Public buildings. DSHS must be notified of any demolition of a public building whether or not asbestos has been identified. DSHS must be notified of any asbestos abatement within a public building. Notification must be submitted as required in this section.

(2) Facilities. For all facilities, including commercial buildings that are not otherwise subject to this chapter as public buildings, DSHS must be notified of any demolition of a facility, whether or not asbestos has been identified. DSHS must be notified of any renovation operation if the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed meets or exceeds the NESHAP threshold, in accordance with 40 CFR §61.145 (relating to Standard for demolition and renovation) of 160 square feet of surface area, 260 linear feet of pipe length, or 35 cubic feet off facility components where the length or area could not be measured. Notification must be submitted in accordance with NESHAP.

(b) Responsibility for proper notification.

(1) Public buildings. It is the responsibility of the public building owner and delegated agent (such as a licensed asbestos abatement contractor, asbestos consultant, or demolition contractor) to submit a notification to DSHS for each project. When the task to notify is delegated, the building owner's delegation and the name of the delegated agent must be specified on the notification form. The building owner and the delegated agent are responsible for the accuracy and timeliness of the notification and one or both may be found in violation for failing to accurately and timely notify DSHS of a project.

(2) Facilities. It is the responsibility of the facility owner or operator to submit a notification to DSHS for each project. The facility owner and operator are responsible for the accuracy and timeliness of the notification and one or both may be found in violation for failing to accurately and timely notify DSHS of a project.

(c) Completion of the notification form. The DSHS notification form must be fully and properly completed.

(1) No applicable form field as specified on the notification form and notification instructions may be left blank and form fields must contain accurate information. Form fields that are not applicable must be marked "NA." The fields on the form for the work site, building description, building owner, abatement and waste transportation companies, and start and stop dates and times must be filled in. Use of the designation "NA" for any of these fields does not comply with the requirements of this section or 40 CFR §61.145 (relating to Standard for demolition and renovation).

(2) The building owner or the delegated agent must submit an amendment to the notification for any changes. This includes changes to the start and stop dates, phased schedule form, amounts of asbestos to be removed, and cancellations. An amendment is not required if the amount of asbestos to be removed changes by less than 20%.

(3) A hard copy notification form must contain an original signature. DSHS does not accept a copied signature.

(d) Submission of the notification form and an amendment to the notification.

(1) The notification form and an amendment to the notification must:

(A) be submitted online on DSHS's website;

(B) be postmarked and delivered by the United States Postal Service (USPS);

(C) be date-stamped and delivered by commercial delivery service; or

(D) be delivered by hand during normal business hours.

(2) Printed notification forms must not be submitted by fax or email.

(e) Timeliness of an initial notification and an amendment to the notification.

(1) The initial notification of asbestos abatement or demolition must be submitted to DSHS at least 10 working days before the asbestos abatement or demolition start date. If the initial notification is for both asbestos abatement and demolition, the initial notification must be submitted 10 working days before either the asbestos abatement or demolition start date, whichever is earliest.

(2) If a project start date, stop date, phased project schedule, scheduled work day, or time changes from the current notified date, schedule, scheduled work day, or time, an amended notification must be submitted to DSHS, as required in subsections (f)-(j) and (q)(2) of this section.

(f) Start date change to an earlier date. When asbestos abatement or demolition will begin on a date earlier than the date in the notification:

(1) an amended notification must be submitted to DSHS at least 10 working days before the new start date, as required in subsection (d) of this section;

(2) the appropriate DSHS regional office must be provided with a fax or email copy of the amended notification at least 10 working days before the new start date; and

(3) for notifications not submitted online, the appropriate DSHS regional office must also be contacted by phone at least 10 working days before the new start date.

(g) Stop date change to an earlier date. An amendment is required for a stop date that changes to an earlier date unless the stop date changes by one working day for every seven calendar days of scheduled work in the notification but does not change by more than seven working days from the notified stop date. This provision does not grant an extension of time to amend the notification. When asbestos abatement or demolition ends on a date earlier than the date in the notification:

(1) an amended notification of the new stop date must be submitted as required in subsection (d) of this section to DSHS as soon as possible, but no later than the new stop date;

(2) the appropriate DSHS regional office must be provided with a fax or email copy of the amended notification as soon as possible, but no later than the new stop date; and

(3) for notification not submitted online, the appropriate DSHS regional office must also be contacted by phone of the new stop date as soon possible, but no later than the new stop date.

(h) Start date change to a later date. When asbestos abatement or demolition will begin later than the date in the notification:

(1) an amended notification with the new start date must be submitted as required in subsection (d) of this section to DSHS as soon as possible, but no later than the current notified start date;

(2) the appropriate DSHS regional office must be provided with a fax or email copy of the amended notice as soon as possible, but no later than the current notified start date; and

(3) for notification not submitted online, the appropriate DSHS regional office must also be contacted by phone of the new start date as soon as possible, but no later than the current notified start date.

(i) Stop date change to a later date. An amendment is required for a stop date that changes to a later date unless the stop date changes by one working day for every seven calendar days of scheduled work in the notification but does not change by more than seven working days from the notified stop date. This provision does not grant an extension of time to amend the notification. When asbestos abatement or demolition will end on a date later than the current notified stop date:

(1) an amended notification of the new stop date must be submitted as required in subsection (d) of this section to DSHS as soon as possible, but no later than the current notified stop date;

(2) the appropriate DSHS regional office must be provided with a fax or email copy of the amended notice as soon as possible, but no later than the current notified stop date; and

(3) for notification not submitted online, the appropriate DSHS regional office must also be contacted by phone of the new stop date as soon as possible, but no later than the current notified stop date.

(j) Cancellation.

(1) When asbestos abatement or demolition is cancelled, the building owner or the delegated agent must:

(A) submit a notice of the cancellation as required in subsection (d) of this section to DSHS as soon as possible, but no later than the current notified start date;

(B) the appropriate DSHS regional office must be provided with a fax or email copy of the notice of cancellation as soon as possible, but no later than the current notified start date; and

(C) the appropriate DSHS regional office must also be contacted by phone of the cancellation as soon as possible, but no later than the current notified start date.

(2) When asbestos abatement and demolition are both notified on the same notification, and either the abatement or demolition will not occur, an amendment must be submitted to remove the abatement or demolition activity that will not occur on or before the notified start date for that activity.

(k) Consolidated notification of nonscheduled asbestos O&M activities in a public building.

(1) Notification of a series of nonscheduled, separate O&M activities involving ACBM, each of which does not meet or exceed a threshold of 160 square feet of surface area, 260 linear feet of pipe length, or 35 cubic feet volume off facility

components where the length or area could not be measured previously, may be made annually. An individual project that meets or exceeds this threshold must be notified separately and must not be notified as part of the consolidated notification. The consolidated notification must include a prediction of the cumulative amount of asbestos to be removed, enclosed, or encapsulated from January 1 through December 31 of the calendar year for which consolidated notification is being given. Consolidated notifications must be submitted at least 10 working days before the calendar year for which notification is being given for a single building, or for a group of public buildings at one site under the control of one owner or operator. Consolidated notification must be submitted as required in subsection (d) of this section.

(2) The building owner or delegated agent must notify the appropriate DSHS regional office by fax or email before each O&M activity for which notification is given in a consolidated notification under this subsection.

(3) The building owner must keep records of the individual O&M activities. If, at any point during the calendar year for which consolidated notification was given, the amount of asbestos removed, enclosed, or encapsulated changes from the notified amount by 20% or more, an amendment must be submitted within 10 working days thereafter.

(l) Consolidated notification of nonscheduled renovation operations in a facility that is not a public building.

(1) A notification is required when the combined amount of RACM for planned renovation operations involving individual nonscheduled renovation operations, such as renovations resulting from equipment failure, meets or exceeds the NESHAP threshold of 160 square feet of surface area, 260 linear feet of pipe length, or 35 cubic feet off facility components where the length or area could not be measured. To determine whether notification is required, the facility owner or operator must predict the combined additive amount of RACM to be removed from January 1 to December 31 of the calendar year for which consolidated notification is being given. These operations may be notified on a single consolidated notification form for each facility for which a consolidated notification is required under this paragraph. Consolidated notifications must be submitted at least 10 working days before the calendar year for which notice is being given. Consolidated notification must be submitted as required in subsection (d) of this section.

(2) Upon request by DSHS, the facility owner or operator must be able to demonstrate that the amount of RACM stripped or removed did not change from the notified amount by 20% or more. If, at any point during the calendar year for which consolidated notification was given, the amount of RACM stripped or removed changes from the notified amount by 20% or more, an amendment must be submitted within 10 working days thereafter.

(3) If the facility owner or operator determines that the NESHAP threshold amount will be exceeded and a consolidated notification was not previously

submitted under this subsection, a notification must be submitted at least 10 working days before the start date of the activity that will exceed the threshold.

(m) Notification of emergency renovation operations.

(1) An emergency notification must be submitted when the need for an emergency renovation operation arises. A description of the sudden, unexpected event precipitating the emergency renovation operation must be documented on the form. Notification of an emergency renovation operation must be submitted as soon as possible, but no later than the first working day after the date of the incident that precipitates the emergency operation. Initial notification can be made by phone followed by written notification, as required in subsection (d) of this section.

(2) The building owner or the delegated agent or the facility owner or operator, as applicable, must also notify the appropriate DSHS regional office by phone and fax or email as soon as possible, but no later than the first working day after the date of the incident that precipitates the emergency renovation operation. The fax or email must include a description of the emergency and a copy of the notification form.

(n) Addition of asbestos abatement or demolition to an existing notification. If asbestos abatement or demolition is to be added to a notification and the notified abatement or demolition stop date has not passed, a notification amendment must be submitted to DSHS, as required in subsection (d) of this section to add the asbestos abatement or demolition no fewer than 10 working days before the start date of the added abatement or demolition.

(o) Notification of ordered demolitions for structurally unsound buildings.

(1) If the facility is being demolished under an order of a state or local government agency or a court-issued order because the facility is structurally unsound and in danger of imminent collapse, the DSHS notification must be submitted as soon as possible, but no later than the first working day after the start date of the demolition. The determination that a structure is in danger of imminent collapse or that it is unsafe for anyone to enter must be made by a professional engineer or government official reasonably qualified to make the decision. A copy of the order must be attached to the notification form. Notification must be made as required in subsection (d) of this section. If an owner is unable to obtain a demolition order from a city, county, or state government official and has a letter from a professional engineer stating that the building is structurally unsound and in danger of imminent collapse, the owner may contact DSHS to request a waiver from the 10 working day notification deadline. Documentation supporting the inability to obtain an order must be submitted with the waiver request.

(2) For structurally unsound buildings that are in danger of imminent collapse, the building owner or the delegated agent or the facility owner or operator must also notify the appropriate DSHS regional office by phone and fax or email as soon

as possible, but no later than the first working day after the start date of the demolition. The email must include a copy of the demolition order or letter from a professional engineer, as applicable, and the notification form.

(p) Notification of asbestos abatement and demolition. In a public building or a facility, including a commercial building, when asbestos abatement and demolition are notified on the same notification form and all asbestos abatement included in the notification concludes early, the demolition may start as early as the next calendar day when an amended notification is submitted, as required in the following paragraphs. It is the responsibility of the person that submits the notification to amend the abatement stop date and demolition start date.

(1) A statement must be included on the initial notification submitted that demolition will start early if abatement concludes early.

(2) An amended notification must be submitted, as required in subsection (d) of this section to DSHS as soon as possible, but no later than the new abatement stop date.

(3) The appropriate DSHS regional office must be provided with a fax or email copy of the amended notice as soon as possible, but no later than the new abatement stop date.

(4) The appropriate DSHS regional office must also be contacted by phone of the amended notice as soon as possible, but no later than the new abatement stop date and demolition start date.

(q) Notification of a phased project for asbestos abatement, demolition, or abatement and demolition in a public building or facility.

(1) To qualify as a phased project, the project must have planned periods of inactivity and all of the abatement and demolition work must be performed at one site. The site may contain more than one building, such as an office complex or university, if the buildings are under the control of one owner or operator. Notification of a phased project must not cover a period that exceeds 12 calendar months from the project start date. A completed Phased Project Schedule form must be submitted with each notification. The notification form must be submitted at least 10 working days before the start date of the first phase. The notification form must be submitted, as required in subsection (d) of this section.

(2) When there is a change to the phased project schedule, the building owner or the delegated agent or the facility owner or operator, as applicable, must:

(A) submit a notification amendment along with the revised Phased Project Schedule form to DSHS as soon as possible, but no later than the new proposed start date, stop date, or both of the phased project, whichever is earlier; and

_____ (B) also fax or email a revised Phased Project Schedule form to the appropriate DSHS regional inspector as soon as possible, but no later than the new proposed start date, stop date, or both of the phased project, whichever is earlier.

(r) Asbestos notification fees.

_____ (1) Applicability. The building owner or the delegated agent or the facility owner or operator, as applicable, must pay to DSHS an asbestos notification fee, as required in this subsection. The fee is based upon the amount of asbestos removed and includes a subscription fee in an amount determined by the Texas Department of Information Resources to recover costs associated with the development and maintenance of Texas.gov services. The subscription fee is 3% of the total notification fee. The minimum fee for notification or the cancellation of a notification is \$55.

_____ (2) Payment.

_____ (A) When a notification is submitted online, the user has the option to pay the notification fee at the time of submission or request to have an invoice mailed. DSHS mails an invoice to the building owner or the delegated agent or the facility owner or operator, as applicable, within 30 working days after the completion of the notified project. Payment must be received by DSHS within 60 calendar days after the invoice date.

_____ (B) When a notification is submitted by mail, DSHS mails an invoice to the building owner or the delegated agent, or the facility owner or operator, as applicable, within 30 working days after the completion of the notified project. Payment must be received by DSHS within 60 calendar days after the invoice date.

_____ (3) Notification fees.

_____ (A) Fees for asbestos abatement projects.

_____ (i) Notification fees for asbestos abatement are based on the total amount of the RACM or ACBM reported on the notification form to be abated, as required in §296.191 of this chapter (relating to Asbestos Management in a Public Building, Commercial Building, or Facility) and this section. Fees for abatement are required to be paid based upon a \$30 fee for each asbestos reporting unit (ARU).

_____ (ii) The minimum asbestos abatement notification fee per notification is \$55 and the maximum fee per notification is \$3,210 for abatement projects of 107 ARUs or more, except that the maximum fee per notification for a school building is \$320.

_____ (iii) Notification fees are calculated by measuring the amount of RACM or ACBM to be abated in square feet, linear feet, or cubic feet.

(I) ARU calculation for square feet. The number of ARUs is determined by measuring the total amount of RACM or ACBM to be abated in square feet, dividing that number by 160, and, if applicable, rounding that total down to a whole number.

(II) ARU calculation for linear feet. The number of ARUs is determined by measuring the total amount of RACM or ACBM to be abated from pipes in linear feet, dividing that number by 260, and, if applicable, rounding that number down to a whole number.

(III) ARU calculation for cubic feet. The number of ARUs is determined by measuring the total amount of RACM or ACBM to be abated from off facility components where the length or area could not be measured previously, dividing that number by 35, and, if applicable, rounding that number down to a whole number.

(IV) Notification fee calculation. The notification fee is calculated by adding the total number of ARUs for each category (square feet, linear feet, and cubic feet) and multiplying the total number of ARUs by \$30.

(B) Fees for demolition only projects. The fee per notification for demolition for which RACM or ACBM will not be abated or will be left in place is \$55.

(C) Fees for abatement and demolition projects. The fee per notification for abatement with demolition is based solely on the amount of RACM and ACBM removed during the abatement. If an abatement notification is amended to add demolition, no additional fee is required for adding the demolition to the notification.

(4) Reimbursement of notification fees. The building owner or the delegated agent or the facility owner or operator, as applicable, may submit a request for reimbursement based upon cancellation of the abatement or demolition or overestimation in calculating the number of ARUs of the amount of RACM or ACBM to be abated. If less than the reported amount will be removed, a notification amendment must be provided to DSHS with the reimbursement request. The written request must be received by DSHS within 10 working days after the notified project end date or its timely cancellation. DSHS deducts an administrative fee of \$57 from any reimbursement for an excess payment of a notification fee. The requestor is not entitled to reimbursement of a notification fee for \$62 or less.

(5) Nonpayment of fees. Failure to pay the required fee by the invoice due date is a violation under this chapter and may subject the building owner or the delegated agent or the facility owner or operator, as applicable, to an administrative penalty under §296.318 of this chapter (relating to Administrative Penalty).

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION
SUBCHAPTER O INSPECTIONS AND INVESTIGATIONS

§296.271. Inspections and Investigations.

(a) DSHS has the right to inspect or investigate the practices of any person involved with asbestos abatement or asbestos-related activity in a public building, commercial building, or facility.

(b) A DSHS representative is not required to provide advance notice of, or seek permission to conduct, any asbestos-related inspection or investigation.

(c) In order to inspect and investigate for compliance with this chapter, a DSHS representative, upon presenting a DSHS identification (ID) card, has the right to:

 (1) enter at all reasonable times:

 (A) any notified, actual, or former site of an asbestos-related activity;

 (B) if used to store records, the premises of a licensee under this chapter or the central location where asbestos records are maintained as required in §296.291 of this chapter (relating to Recordkeeping); or

 (C) any containment, facility or building, construction site, storage area, storage area of a transport vehicle, or office area;

 (2) review records and make copies;

 (3) interview any person;

 (4) locate, identify, and assess the condition of ACM;

 (5) take photographs; and

 (6) collect bulk samples, air samples, or both.

(d) A person must not interfere with, refuse, or delay an inspection or investigation conducted by a DSHS representative.

(e) DSHS is authorized to conduct any inspection or investigation to evaluate compliance under the Act and this chapter. A DSHS representative must not be impeded or denied entry to conduct official duties. A person must not threaten or attempt to bribe or intimidate a DSHS representative during the course of an inspection or investigation and is subject to applicable administrative, civil, and criminal sanctions for any violation.

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION
SUBCHAPTER P RECORDKEEPING

§296.291. Recordkeeping.

(a) Recordkeeping requirements. Without limiting any federal or state requirement to which a licensee or record may otherwise be subject, a person regulated by this chapter must maintain, retain, and make available to DSHS for inspection or produce, upon request, including for copying on or off-site, records and documents as required by this section and each applicable subsection. For purposes of this chapter, records that are required to be maintained at a central location are not required to be maintained at the licensee's principal place of business and may be located off-site if the records are readily accessible. A person that ceases to do business must notify DSHS in writing within 30 days after such event and must make appropriate arrangements for retention and maintenance of records, as required under this section. The person must provide DSHS with the details of such arrangement or comply with DSHS's alternative instructions within 60 days after ceasing to do business or receiving instructions from DSHS, whichever is later.

(b) Asbestos abatement contractors, asbestos O&M contractors, and RFCI contractors.

(1) Central location. A contractor described in this subsection must maintain the following records and documents for any project performed in a public building at a central location for a period of at least 30 years after the date of project completion:

(A) records and documents which comply with applicable recordkeeping requirements under 29 CFR Part 1910 (relating to Occupational Safety and Health Standards), 29 CFR §1926.1101 (relating to Asbestos), NESHAP, and AHERA;

(B) the name, address, and asbestos training certificate number of each employee, past and present, including dates of employment and a description of each employee's involvement in each asbestos project while employed by the contractor; records must include the name, physical address, and duration of each project;

(C) a copy of all regulatory agency correspondence, including each required asbestos abatement/demolition notification form, inspection form, letter, notice, and order;

(D) a copy of each waste shipment record (manifest), including a copy of the manifest, signed in accordance with 40 CFR §61.150(d)(5) (relating to Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations) by the owner or operator of the designated waste disposal site and each receipt and documentation of disposal of asbestos waste showing the date,

location, and amount of asbestos waste disposed and identifying each source of the asbestos waste and each transporter of the waste, including the company name or driver name, if the driver is an employee of the contractor;

(E) a copy of each laboratory report and sample analysis documenting required air monitoring for the project, including a copy of each consultant report provided to the contractor regarding project monitoring; and

(F) a copy of all contracts and project specifications and plans for each asbestos abatement project.

(2) On-site. Without limiting the retention requirements of paragraph (1) of this subsection, the records and documents described under this paragraph must be maintained on-site at the asbestos project location for the duration of the project. RFCI contractors and DSHS-licensed asbestos abatement and O&M contractors are responsible for their employees' documents to be on-site. The following records and documents, at a minimum, must be maintained on-site as required in this paragraph:

(A) each current applicable state-issued license or registration for every person conducting an asbestos-related activity for the contractor on the project site and a full-sized copy of each applicable training certificate, that must be current, for each person;

(B) a copy of the current license for the licensed asbestos abatement contractor or O&M contractor;

(C) a current copy of the contractor's standard operating procedures;

(D) a copy of the asbestos project specifications and plans, or if project specifications and plans are not required, a scope of work that outlines the location and describes operations and abatement procedures for the project;

(E) a listing of each employee working on the project by name and all applicable asbestos license or registration numbers and training certificate numbers for each employee;

(F) name and address of each contractor, project supervisor, consultant, project manager, air monitoring technician project monitor (AMT/PM), waste transporter, waste disposal site, and building owner for the asbestos project;

(G) a daily sign-in/sign-out log for the containment or the regulated area if no containment is present; sign-in/sign-out logs must identify each person by name and the length of time each spent in the containment or regulated area;

(H) results of personal air monitoring samples, as required in §296.211(h) of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building);

_____ (I) a written respiratory protection program that complies with 29 CFR §1910.134(c) (relating to Respiratory protection);

_____ (J) a description of personal safety practices;

_____ (K) a current copy of DSHS's Physician's Written Statement form and each respirator fit-test performed within the past 12 months for any individual who enters a regulated area;

_____ (L) a copy of the current asbestos abatement/demolition notification;

_____ (M) a copy of this chapter;

_____ (N) a copy of any federal regulation adopted by reference in §296.2 of this chapter (relating to Reference of Federal Standards) that applies to the asbestos-related activity that is being performed;

_____ (O) the EPA Publication for O&M activities entitled, "Managing Asbestos in Place: A Building Owner's Guide to Operations and Maintenance Programs" (also known as the EPA Green Book) if such activities are being performed;

_____ (P) a copy of the recommended work practices for resilient floor-covering removal published by the Resilient Floor Covering Institute if the project involves removal of resilient floor-covering materials using that method;

_____ (Q) the Violation Notification Procedure poster issued by DSHS, that must be posted and visible to the public at the entrance to the regulated area, as required in §296.211(i) of this chapter; and

_____ (R) a copy of any asbestos-related order issued by DSHS, EPA, or OSHA, that must be posted for 12 months or for a federal asbestos-related order, the period of time required by the federal asbestos-regulating authority from the date the order becomes effective and visible to the public at the entrance to the regulated area, as required in §296.211(i) of this chapter.

(c) Asbestos management planners. A licensed asbestos management planner who undertakes and performs an activity independent of an agency, must maintain each of the licensee's asbestos survey reports, bulk sampling results, and management plans for that activity for 30 years after the date of project completion. These records and documents must be maintained at a central location.

(d) Asbestos management planner agencies. A licensed asbestos management planner agency must maintain each of its asbestos survey reports, bulk sampling results, and management plans for 30 years from the date of project completion. These records and documents must be maintained at a central location.

(e) Asbestos consultants. A licensed asbestos consultant who undertakes and performs an activity independent of an agency, must maintain for that activity each of the licensee's asbestos survey reports, assessments, bulk sampling results, asbestos management plans, O&M plans, specifications and plans, air monitoring records, each written designation of a project manager or AMT/PM and the project manager's or AMT/PM's responsibilities and authority, and a copy of every other asbestos abatement project document for 30 years after the date of project completion. These records and documents must be maintained at a central location. While a project is in process and until final visual inspection has been completed, all asbestos abatement project documents for the project must be kept at the asbestos project site.

(f) Asbestos consultant agencies. A licensed asbestos consultant agency must maintain each of its asbestos survey reports, assessments, bulk sampling results, asbestos management plans, O&M plans, specifications and plans, air monitoring records, each written designation of a project manager or AMT/PM and the project manager's or AMT/PM's responsibilities and authority, and a copy of every other asbestos abatement project document for 30 years after the date of project completion. These records and documents must be maintained at a central location. While a project is in process and until final visual inspection has been completed, all asbestos abatement project documents for the project must be kept at the asbestos project site.

(g) Asbestos air monitoring technicians and asbestos air monitoring technician project monitors. A licensed air monitoring technician (AMT) or asbestos air monitoring technician project monitors (AMT/PM) who performs phase contrast microscopy (PCM) analysis in the field as an employee of a licensed asbestos laboratory must maintain on-site for the duration of the project:

____ (1) all analyzed slides, each labeled so that the AMT or AMT/PM can provide the project name, date, and time of sample collection and analysis, and sample location;

____ (2) documentation of the AMT's or AMT/PM's relative standard of deviation, in accordance with the NIOSH 7400 method; and

____ (3) a copy of:

____ (A) the AMT's or AMT/PM's NIOSH 582 or NIOSH 582 Equivalent training certificate and documentation of current participation in the American Industrial Hygiene Association (AIHA) Proficiency Analytical Testing Program; or

____ (B) documentation of current registration with the AIHA Asbestos Analyst Registry (AAR).

(h) Asbestos laboratories. A licensed asbestos laboratory must maintain a copy of all analyses performed and all other records and documents required by this

chapter for 30 years after the date of analysis, including the sample identification number and analytical results.

(1) An analyzing laboratory must keep all samples from a public building received for analysis for 30 days following completion of the analysis. Sample grids must be maintained for one year after the date of the analysis.

(2) An analyzing laboratory must maintain a copy of individual records for each analyst to document the individual analyst's relative standard of deviation in accordance with the NIOSH 7400 method for three years after the date the calculation was made. Records must be kept in the laboratory indicating which samples were used to meet the 10% quality-control analysis requirement.

(i) Asbestos training providers.

(1) Central location. The following records and documents must be maintained at a central location for a period of three years after the date of the course:

(A) Training course materials. A licensed training provider must retain a copy of each instructional material used in the delivery of a classroom training, such as student training manuals, instructor notebooks, and handouts. Each instructional material must be kept for three years after the last date of the most recent training for which it was used.

(B) Training courses. Records must indicate the name of the course, date of the course, each instructor who taught the course, and list the students who attended the course.

(C) Instructor qualifications. A licensed training provider must retain a copy of each instructor's resume and the documents approving each instructor issued by DSHS or EPA for three years after the conclusion of their last classroom training.

(D) Examinations. A licensed training provider must document that each person who receives an accreditation certificate for an initial training course has achieved a minimum passing score of 70% correct on the written examination, as required in §296.73(b) of this chapter (relating to Asbestos Training Courses). These records must include a copy of the exam and clearly indicate the date on which the exam was administered, the training course and discipline for which the exam was given, the name of the person who proctored the exam, and the name, examination answer sheet, and test score of each person taking the exam. All information from the training course and examination, including the topic and dates of the training course, must correspond to the information listed on each person's accreditation certificate. All records required to be maintained in accordance with this section must be maintained for three years after the date of the examination and immediately upon conclusion of the course and administration of the examination, must be made available for DSHS inspection.

(E) Accreditation certificates. A licensed training provider must maintain records that document the names of each individual who has been awarded one or more training certificate, the certificate number applicable to each certificate awarded to an individual, each discipline for which accreditation was conferred, each applicable training and expiration date, and the training location.

(2) Records access. A licensed training provider must allow DSHS reasonable access to all of the records required by the MAP and any other records required by DSHS for the approval of an asbestos training provider or the accreditation of an asbestos training course.

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION
SUBCHAPTER Q COMPLIANCE

§296.311. Disciplinary Action.

DSHS has the authority to enforce this chapter, the Act, and an order issued under the Act. DSHS may:

- ___ (1) suspend or revoke an accreditation;
- ___ (2) suspend an accreditation on an emergency basis;
- ___ (3) deny an application for license or registration;
- ___ (4) suspend or revoke a license or registration;
- ___ (5) reprimand a licensee or registrant;
- ___ (6) modify or refuse to renew a license or registration;
- ___ (7) suspend a license or registration on an emergency basis;
- ___ (8) place on probation a person whose license or registration is suspended;
- ___ (9) impose an administrative penalty on a person regulated under the Act;
- ___ (10) revoke or suspend approval of a training course;
- ___ (11) suspend approval of a training course; or
- ___ (12) suspend approval of a training course on an emergency basis.

§296.312. Action Against an Accreditation.

(a) DSHS must revoke an accredited person or suspend or revoke an accreditation for:

- ___ (1) performing work requiring accreditation on an asbestos project without being in physical possession of current accreditation certificates;
- ___ (2) possessing another person's duplicate accreditation certificate, permitting the duplication or use of one's own accreditation certificate by another, or failing to prevent duplication or unauthorized use of an accreditation certificate;
- ___ (3) performing work without the required accreditation;

____ (4) obtaining accreditation from a training provider that does not have approval to offer training for the particular accreditation type from EPA or from a state that has a contractor accreditation plan at least as stringent as the MAP; or

____ (5) failing to pay a required or assessed fee, as required in this chapter.

(b) DSHS must revoke an accreditation if DSHS finds, after notice and an opportunity for a hearing, as required in §296.320 of this chapter (relating to Notice and Violation), that a person:

____ (1) has obtained the accreditation through fraudulent representation of training or examination documents;

____ (2) has obtained training documentation through fraudulent means;

____ (3) has gained admission to and completed refresher training through fraudulent representation of initial or previous refresher training documentation; or

____ (4) has obtained accreditation through fraudulent representation of accreditation requirements, such as education, training, professional registration, or experience.

(c) DSHS may suspend or revoke an accreditation certificate, or suspend an accreditation certificate on an emergency basis if the accredited person violates this chapter, the Act, or an order issued under the Act.

(d) If an accreditation has been suspended, the person whose accreditation has been suspended is not eligible for reaccreditation to be granted before one year after the date of the order imposing the suspension.

(e) If an accreditation has been revoked, the person whose accreditation is revoked is not eligible for reaccreditation to be granted before three years after the date of the order imposing the revocation.

§296.313. Denial, Suspension, or Revocation of License or Reprimand of Licensee.

(a) DSHS may deny an application for a license or registration, modify a license or registration, reprimand a licensee or registrant, suspend or revoke a licensee or registration, or suspend a license or registration on an emergency basis if it finds that a person regulated under the Act:

____ (1) has obtained or attempted to obtain a license, registration, or contract to perform an asbestos-related activity by fraud, deception, submission of a false statement or material misrepresentation, or submission of invalid documentation;

____ (2) has falsified a record or submitted or allowed to be submitted, a falsified record required by a federal agency or by DSHS in connection with an asbestos-related activity or licensure, registration, or accreditation for such an activity;

___ (3) has refused to provide information requested by DSHS; or

___ (4) has been convicted within the past five years of a felony or misdemeanor arising from an asbestos-related activity;

___ (5) has violated a federal or state law, rule, standard or order regarding asbestos-related activities, including any violation of this chapter, the Act, or an order issued under the Act;

___ (6) has failed to maintain any record required by DSHS in connection with an asbestos-related activity;

___ (7) has failed at any time to meet the qualifications for a license or registration;

___ (8) has failed to comply with the requirements of a probation period imposed under this subchapter; or

___ (9) has failed to pay a required or assessed fee, as required in this chapter.

(b) A person whose license or registration application was denied or whose license or registration was suspended or revoked may reapply for a license or registration subject to the following conditions.

___ (1) A person who has had an application for a license or registration denied, or has had a license or registration suspended or revoked under subsection (a)(1)-(5), (8), or (9) of this section is ineligible to reapply for a license or registration before three years after the date of the denial, suspension, or revocation order.

___ (2) A person who has had an application for a license or registration denied or has had a license or registration suspended or revoked under subsection (a)(6) of this section may reapply for a license one year after the date of the denial, suspension, or revocation order.

___ (3) A person who has had an application for a license or registration denied or has had a license or registration suspended or revoked under subsection (a)(7) of this section may reapply for a license or registration after the person meets all qualifications for a license.

§296.314. Emergency Suspension.

(a) DSHS may suspend a license, registration, accreditation, or approval of an asbestos training course on an emergency basis if DSHS determines that the public health, interest, or welfare warrants immediate action.

(b) An emergency suspension is effective immediately.

(c) The person whose license, registration, accreditation, or approval of an asbestos training course is suspended under subsection (a) of this section is entitled to an

opportunity for a hearing no later than the 20th day after the date of the emergency suspension order and in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§296.315. Suspension of License under Texas Family Code Chapter 232.

(a) Every license or registration of a person who is a licensee or registrant under this chapter is subject to suspension based upon a final order of a court or the Office of the Attorney General, Child Support Division under Texas Family Code, Chapter 232 (relating to Suspension of License) directing DSHS to suspend the person's license or registration.

(b) If DSHS receives an order described in subsection (a) of this section, DSHS immediately determines if a license has been issued to the individual named on the order. If a license has been issued, DSHS:

_____ (1) records the suspension of the license in its records; and

_____ (2) reports and provides notice of the suspension, as applicable and appropriate, to:

_____ (A) the Office of the Attorney General, Child Support Division, or court from which it received the order suspending license;

_____ (B) the licensee; and

_____ (C) any current employer of the licensee or registrant, if known.

(c) DSHS implements any final order described in subsection (a) of this section without additional review or hearing. DSHS is without authority to modify, remand, reverse, vacate, or stay an order issued under Texas Family Code, Chapter 232, and may not review, vacate, or reconsider the terms of such a final order suspending license.

(d) A licensee or registrant whose license is suspended based upon a final order suspending license described in subsection (a) of this section:

_____ (1) is prohibited from engaging in any activity requiring a license and is subject to disciplinary action for violation of this prohibition;

_____ (2) must comply with normal renewal procedures to keep the license current; a renewed license remains subject to the suspension until the suspension is lifted under subsection (e) of this section; and

_____ (3) is not entitled to a refund for any fee paid to DSHS.

(e) Upon DSHS's receipt of an order vacating or staying an order suspending the license, DSHS will promptly issue the affected license to the individual if the

individual is otherwise qualified for and has met the prerequisites for the license under this chapter.

(f) DSHS may not grant any license or registration application or any renewal application if it receives notice from a child support agency, as defined in Family Code §101.004, concerning an applicant, licensee, or registrant who has failed to pay child support under a support order for six months or more, requesting that DSHS deny approval of any such application. DSHS may not grant any application with respect to which it has received such notice until the authority is notified by the child support agency that the applicable applicant has:

____ (1) paid all child support arrearages;

____ (2) made an immediate payment of not less than \$200 toward child support arrearages owed and established with the agency a satisfactory repayment schedule for the remainder or is in compliance with a court order for payment of the arrearages;

____ (3) been granted an exemption from this subsection as part of a court-supervised plan to improve the obligor's earnings and child support payments; or

____ (4) successfully contested the denial of issuance or renewal of license under Texas Family Code, Chapter 232.

(g) DSHS may charge a fee to an individual who is the subject of an order described under subsection (a) of this section or who is refused approval of an application under subsection (f) of this section in an amount sufficient to recover the administrative costs incurred by DSHS under Texas Family Code, Chapter 232.

§296.316. Probation.

DSHS may place on probation a person whose license or registration is suspended. If a suspension is probated, DSHS may require the person to:

____ (1) report regularly to DSHS on any matter that is the basis of the probation;

____ (2) limit practice to one or more areas prescribed by DSHS; or

____ (3) continue or review professional education until the person demonstrates that the person has attained a degree of skill satisfactory to DSHS in those areas that are the basis of the probation.

§296.317. Denial, Revocation, or Suspension of Approval of a Training Course.

DSHS may deny, revoke, or suspend approval for a training course offered or taught by a DSHS-licensed training provider or instructor if the training course does not meet the requirements of the MAP or this chapter, or if a training provider or instructor:

___ (1) makes a false statement, material misrepresentation, or is otherwise deceptive in connection with an application for course approval;

___ (2) makes a false statement or material misrepresentation of the extent of a training course's approval by DSHS, another state, or EPA;

___ (3) refuses to provide information requested by DSHS in connection with training or a training course;

___ (4) fails to submit required information or a required course notification in a timely manner;

___ (5) fails to maintain required records;

___ (6) falsifies any accreditation record, instructor qualification, or other accreditation information, or otherwise submits invalid documentation;

___ (7) fails to adhere to any training standard or requirement of the MAP or an applicable State Accreditation Program;

___ (8) fails to pay a required or assessed fee, as required under this chapter; or

___ (9) violates any provision of the Act or this chapter related to training or any training course, including any training duty or responsibility.

§296.318. Administrative Penalty.

(a) DSHS may impose an administrative penalty against a person who violates this chapter, the Act, or an order issued under the Act or this chapter.

(b) The maximum administrative penalty is \$10,000 per day, per violation. DSHS may consider each day that a violation continues as a separate violation for purposes of imposing a penalty.

(c) To determine the amount of the administrative penalty, DSHS considers:

___ (1) the person's history of previous violations;

___ (2) the seriousness of the violation;

___ (3) any hazard to the health and safety of the public;

___ (4) demonstrated good faith efforts to correct the violation and maintain compliance; and

___ (5) any other matter that justice may require for the violation.

(d) DSHS classifies a violation according to its level of severity.

(1) Severity Level I, critical violation. A critical violation has a direct negative impact on public health and safety.

(2) Severity Level II, serious violation. A serious violation could threaten public health and safety.

(3) Severity Level III, significant violation. A significant violation could lead to more serious consequences for public health and safety if uncorrected.

§296.319. Revocation of Asbestos Abatement Supervisor's License.

(a) This section applies to an asbestos abatement supervisor against whom DSHS has issued one or more final orders containing findings arising from three complaints that the supervisor has violated the Act or this chapter.

(b) The license of an asbestos abatement supervisor described in subsection (a) of this section is subject to revocation, as required in the Act and this chapter.

(c) When DSHS revokes a license as described in this section, DSHS issues a worker registration to the person that expires six months after the date of issuance.

(d) After the registration expires, the person may reapply for a license.

§296.320. Notice and Violation.

(a) Before DSHS takes final disciplinary action under §296.312 of this chapter (relating to Action against an Accreditation), §296.313 of this chapter (relating to Denial, Suspension, or Revocation of License or Reprimand of Licensee), §296.316 of this chapter (relating to Probation), §296.317 of the chapter (relating to Denial, Revocation, or Suspension of Approval of a Training Course), or assesses an administrative penalty under §296.318 of this chapter (relating to Administrative Penalty), DSHS will issue a notice of violation proposing a disciplinary action.

(b) A person may accept DSHS's proposal in writing or may request a hearing in writing no later than 30 days after the date the person receives the notice. If the person accepts DSHS's proposal, DSHS issues a final order imposing the disciplinary action or administrative penalty, or both. If the person requests a hearing, DSHS refers the matter to the State Office of Administrative Hearings for a contested case hearing.

(c) If the person named in a notice does not timely request a hearing on a notice assessing an administrative penalty, DSHS may find that the alleged conduct and violation occurred and issue a final order assessing an administrative penalty.

(d) A hearing held under this chapter is governed by and conducted under:

(1) the Administrative Procedure Act, Texas Government Code, Chapter 2001;

(2) the procedural rules of the State Office of Administrative Hearings in 1 TAC Chapter 155 (relating to Rules of Procedure); and

(3) Chapter 1, Subchapter B of this title (relating to Formal Hearing Procedures).