

Row	Section	Comment
154	Not a rule comment.	<p>General Comments:</p> <ol style="list-style-type: none"> 1. It is my understanding that this Draft of TAHPR has been in process for several years. Yet, the Draft of the rules was reportedly available on April 12 with a deadline of April 28 for review and comment. A common period for comments and is 30 days at the least, a professional courtesy. Additionally, the Draft Rules have not been available on the DSHS web site for several days. 2. This Draft is created with entirely new section number comprised of verbiage from the current version and new requirements. The resulting draft is approximately twice as many pages (~152 pages) as the current version of TAHPR (~73 pages). Determining the new and/or additional elements of this regulation requires significant time not feasible within the time frame provided. 3. Who were and are the individuals responsible for and participating in preparing this Draft? As an individual responding to this Draft, I am signing my name, but I am sending it to an un-named EHG Rules Coordinator. How do we know what influences went into creating this Draft? <p>This draft is a group effort and has no single author. We apologize for the short review time for the current draft. This is an informal comment period. Stakeholders will be provided with a 60-day formal comment period when the proposed rules are published in the <i>Texas Register</i>. The number of pages has increased because the font size is larger and the format is more open.</p>
155	???	<p>24. Add audits for mobile asbestos laboratories</p> <p>As an accredited laboratory, a laboratory that is mobile should be required to follow the same accreditation process in order to process samples as a non-mobile laboratory.</p> <p>The charges incurred are excessive and if a laboratory is mobile, they should not be exempt from the charges nor from the quality process that is audited. The audit process is very time consuming, and while valuable, is every bit as important to a mobile laboratory as a non-mobile laboratory.</p> <p>All laboratories are required, at a minimum, to follow the PAT rounds. The AIHA AAR registry requirement was removed and additional requirements added to the recordkeeping section for AMTs analyzing in the field (slides, certs). Additionally, language was added in the AMT section to require the AMT to be able to demonstrate their knowledge by setting up a microscope correctly.</p>
156	???	<p>ADDRESS THE FRADULENT WORKER REGISTRATIONS: There are about 3700 registered asbestos workers, and some think there may be as much as 2000-4000 fake "licenses" for workers. This is a big problem and a major mistake the department is making with public health. Those that possess "fake licenses" have not had training, medical, etc. They are not "victims", they are participants in the forgery process, but if they are victims, the failure of DSHS to address this problem state wide, makes the Department guilty of "aiding and abetting" that exploitation and victimization of these poor workers simply by standing aside and letting it happen. The Department is aware and does KNOW it is happening, so do the field inspectors, and it is out of control. This is not akin to "people buying drugs" and the people selling the drugs (license forgers) are the real criminals, as that is a specious argument and risks public health. This is also revenue loss, which I have now have made it "public comment". If 2000 are forged, that is a loss of \$120,000 in revenue to the Department every two years, and with 4000, that would be \$240,000 loss. Plus, as identified, these are people working with a carcinogen, being exploited, and exposing the public, all basically with tacit approval from the agency.</p> <p>* More about this in the public comment document pg. 10</p> <p>The department is stepping up enforcement of training providers; we have ruled against two in the last 2 years. The department has additionally created a license for each instructor.</p>

157	296.191	<p>I have two other issues that I would like the staff to consider addressing in these proposed rules. First is considering allowing an architect's affidavit of not specifying asbestos products, along with a general contractor's affidavit of not knowingly purchasing asbestos products, to suffice as an asbestos inspection on new construction for a set period of years (5?, 10?) after completion.</p> <p>We frequently get requests for inspections on buildings less than five years old that have had no major renovations. In the last 10 years, out of probably hundreds of these age inspections, I do not remember finding an asbestos building material inside these buildings. I am aware that asbestos building materials may yet be purchased, but the evidence indicates that they are not being installed in typical commercial construction. I am not suggesting that the building be forevermore declared asbestos-free, but a grace period after initial construction may be appropriate.</p> <p>An architect or engineer involved in the construction can declare a building asbestos free by signing a document stating that they have reviewed the MSDSs, and matched them with the materials present on-site or in the structure.</p>
158	296.191	<p>The second issue I would like staff to consider is allowing a letter from a consultant verifying that asbestos building products have been removed per the regulations to satisfy the inspection requirement with municipalities in the issuance of a building permit. We run into an issue where we perform an inspection and find asbestos. In turn, we are then retained to design and monitor the removal of those products prior to renovation or demolition activities. The general contractor or owner then must take the original inspection and all of our post-abatement documentation to about half of the building inspection departments in our service areas to procure the building permit.</p> <p>It is much more efficient, and requires fewer resources, if we are able to email or otherwise provide the cover letter from our final report stating that all asbestos products have been removed from the structure. Our letters are signed by the consultant with his license and clearly enumerates the structure in question. The regs could easily address this by explicitly stating a letter from a TDSHS consultant post abatement is acceptable as meeting the inspection requirement for municipalities. This would save the building owners time and additional expense state-wide.</p> <p>There may be a bit of a time burden, however, the close out documents provide excellent proof that the project was completed. A statement by a consultant would possibly require the municipality to confirm the asbestos abatement by requesting the close out documents, so no time or energy would be saved. It may also be a violation of the NESHAP.</p>
159	296.1	<p>296.1 General Provision: This chapter controls and minimizes Public exposure to air borne asbestos</p> <p>Comment: As stated, the chapter, is written to control and minimize public exposure to air borne asbestos.</p> <p>Revised to "The purpose of this chapter is to control and minimize..."</p>

<p>160</p>	<p>296.91 (current 295.55)</p>	<p>Current §295.55(e)(1) does not establish a minimum number for department-held meetings with training providers per year. The draft rules do not require training providers to attend meetings with the department. 295.11 (e) (1) "There will be no more than two such meeting per year". This is another "gross" misrepresentation by the Department. The former rule clearly implies there "needs to be meeting" for "the purpose of ensuring quality training courses in asbestos and related topics." And the no more than 2 per year DOES imply we ought to have at least annually, but "never" is NOT the response nor defensible. So we have not had one since 2004, and NOW you come up with a "license" for an instructor because the Department cannot communicate with the licensed trainers????? This is another intentional misrepresentation of the role and responsibility of the Department. The department MUST reach out and inform the industry. Communication with the licensees and registrants and stakeholders is almost nonexistent. In the Sunset Commission actions effecting the Mold Rules, upon movement into the Texas Department of Licensing and Regulation (TDLR), the first thing they do is "set up an advisory panel", and keep lines of communications open with the regulated community. The department is remiss in that responsibility. I petition the Department to work with training providers to "get the word" out, either by annual meetings or whatever. We have not met since 2004! Training providers are unique in the asbestos regulated community as we cross paths with not just consultants and contractors, but regulators, facility owners, bankers, workers, underwriters, association members, and such. The Department is missing out on an important information vector for dispensing information, and for insight and information of issues within the industry. Training providers meet with almost all of these people within a yearly training cycle; for the Department to ignore this input and insight is truly mind boggling. A question that needs to be answered is: "Why is the Department so reticent and resistant to communicating with the "regulated community?"</p> <p>The department plans to increase outreach. There is no statutory requirement for meetings.</p>
<p>161</p>	<p>296.21(1)</p>	<p>I like how you specified 1.0% rather than simply 1%. I am taking this to mean that no rounding down of point counts is allowed? This is practiced by some (i.e. 1.25% rounded to 1% = non ACM). I think it would be good to add the statement that "No rounding of point count results is allowed." This would increase consistency of results and also err on the side of safety for the public.</p> <p>This is not the intent. The department specifies following the EPA R93 method which does allow 1.25% to be rounded down to 1.0%.</p>
<p>162</p>	<p>296.21(3)</p>	<p>I like that the 1993 version of the EPA 600 method is specified rather than the outdated 1982 method. I also like that you make a point that an individual layer is an individual sample. I think this should be underscored with examples. As a lab we are asked to perform composite samples by Texas clients every day. They want base and skim coat plaster analyzed as one sample, they want wall board, tape and jt. compound analyzed as one sample, etc. There are two specific sample types that we currently accommodate as one sample. These are linoleum and sheetrock (wallboard) samples. Our clients would not even consider paying for separate analysis of the paper layers and gypsum layers. So rightly or wrongly we make a distinction that these materials were manufactured as layered materials and therefore analyze as one sample. - You mention both PLM and TEM in this section. If PLM is followed by TEM does TEM supersede the PLM result?</p> <p>Yes. TEM supercedes PLM result.</p>
<p>163</p>	<p>296.21(6)</p>	<p>The absence or presence of visual emissions is very difficult to discern with the naked eye.</p> <p>The presence of detectable visual emissions is a NESHAP criteria.</p>

164	296.21(13)	<p>is enclosure/encapsulation considered abatement since asbestos is not disturbed</p> <p>Under current statute, enclosure and encapsulation is considered an asbestos-related activity, and therefore may require training and/or licensure. Painting an asbestos pipe or asbestos-containing pipe wrap or other building material is not considered encapsulation and is not an asbestos-related activity, therefore it is not regulated.</p>
165	296.21(18)	<p>encapsulation or enclosure (see 41)</p> <p>The department declines to re-word the definition of asbestos-related activity as suggested. The current language is considered to be clear and easy to understand.</p>
166	296.21(19)	<p>removes ACBM vs takes away.</p> <p>The department declines to re-word the definition of asbestos removal. The current language is considered to be clear and easy to understand.</p>
167	296.21(23)	<p>In the definition for Cat 1 non-friable ACM you mention PLM or TEM. If PLM is followed by TEM does TEM supersede the PLM result?</p> <p>Yes. TEM supercedes the PLM result.</p>
168	296.21(30)	<p>of at least 4 changes.</p> <p>The department declines to re-word the definition of containment-area ventilation. The current language is considered to be clear and to understand.</p>
169	296.21(34)	<p>add NESHAP facility. What is a building is considered historical but moved to a new location?</p> <p>It's considered a demolition and would require a survey and demolition notification. If the material was not going to be disturbed, as determined by a consultant, then it would be okay.</p>
170	296.21(40)	<p>Must be certified to work in the US.</p> <p>That is the employer's responsibility.</p>
171	296.21(48)	<p>Federal owned - does not include lease spaces. To confirm, if the Federal Government leases a portion of a building or property this is not considered to allow for the Federal exemption for these rules to apply. The leased space would fall under these rules.</p> <p>The department clarified the definition: (48) 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.</p>

172	296.21(63)	<p>under negative pressure. Vague.</p> <p>This is described in 29 CFR §1926.1101(g)(5)(vi): "the structure will be placed under negative pressure by HEPA vacuum or other similar ventilation unit"</p>
173	296.21(48)	<p>Mini containment "no more than two people". We suggest that this should be changed as follows; "no more than two people, unless safety other extenuation circumstances require more people in this containment."</p> <p>The inspectors can use their discretion to determine that. Two gives clear guidance.</p>
174	296.21(83)(B)	<p>is this an abatement activity or is prep the abatement activity?</p> <p>Preparation is considered an asbestos abatement activity once the asbestos contractor has taken control of the space by creating the regulated area.</p>
175	296.21(86)	<p>Suggest defining (A) (B) (C) (D)</p> <p>Industrial/manufacturing facility (A) and federal-government-owned building are defined. The department thinks that the meanings of private residence (C) and an apartment building with no more than four dwelling units (D) are clear by context.</p>
176	296.21(97)	<p>SSSD need to be defined the first time it is used.</p> <p>The department agrees and will make the change in a subsequent version of the rule.</p>
177	296.21(101)	<p>more specific definition of survey is needed. A contractor should be able to bid off an asbestos survey. A consultant should be able to write abatement specs off an asbestos survey.</p> <p>This topic was addressed in the Summary of Stakeholder Recommendations Texas Asbestos Health Protection Rules April 2016 (Item 88). A consultant or contractor should be visiting the site to make a bid.</p>

178	296.21(102)	<p>change from by diagram to by scaled diagram</p> <p>The department thinks "diagram" is sufficient. This topic was addressed in the Summary of Stakeholder Recommendations Texas Asbestos Health Protection Rules April 2016 (Item 114).</p>
179	296.21(104)(B)	<p>The AHERA TEM method is designed to be used with aggressive air sampling which is inappropriate outside of a containment. Likewise the 70 structure rule was designed to clear a work area not for measuring ambient air levels. Perhaps TEM could be used to compare to the background samples? (provide they were taken as TEM and not PCM samples).</p> <p>The TPBEL has been eliminated. Aggressive air sampling is not required for projects without containment. Ambient air monitoring is required for the §296.197, Asbestos Abatement Practices and Procedures for Nonfriable Asbestos-Containing Building Material. The samples are required to be analyzed on site and the level of asbestos is not allowed to go above 0.01 f/cc or clearance. If it does, then full containment must be established.</p>
180	296.31	<p>This portion of the proposed law is not in the statute and the Department has no authority to implement a "Code of Ethics". This is cut and pasted from the Texas Mold Statute and is NOT in the Texas Asbestos Statute. Additionally, this particular proposed portion of the law is difficult to enforce from the actions of the Departments own admission from the Mold group, and few successful enforcement of NOV's under the Code of Ethics in the mold program shows this is a regulatory step in the wrong direction. This is another case of a "solutions looking for a problem". Again, it comes down to enforcing the regulation, time after time. This Code of Ethics is subjective on "what" those ethical standards are. It was necessary in the Mold Regulation where no "standards" or regulations exist, in asbestos we do have standards and regulations; additionally the licensing responsibilities already have codified the actions and responsibilities and "professional services" acceptability under sections 1-6. Therefore it is redundant and useless, not required or nor allowed by the statute. I recommend that the "Code of Ethics" Section be stricken from the Proposed Regulation as it does not advance any effort in "protecting public health" beyond what is already in the existing regulations and is redundant.</p> <p>The department is not prohibited by the Act from promoting ethical practices.</p>
181	296.31(b)(7)	<p>...not work if impaired by drugs, alcohol, or other conditions that may pose a risk to work place workplace safety or public health,</p> <p>This is a simple typo.</p> <p>The typo has been corrected.</p>
182	296.32(a)(1)	<p>Is this new? Personal monitoring. Making the abatement contractor unable to hire the PM to do air monitoring adds problems to the project. The Abatement contractor is the one that needs the information. Consider having the property owner receive the personal monitoring information.</p> <p>Yes, it is new. The contractor cannot hire the AMT, but can use information provided by the AMT. The intent is to break the fiduciary link. The owner will pay for the air monitoring.</p>
183	296.41(c)	<p>COMMENT: To what level does a person have to "be able to read, write, and speak English"? I have encountered supervisors that were difficult to communicate with since their command of English was so poor. I recommend a standard such as TOEFL to at least give some basis to the requirement.</p> <p>That level can be discerned by the trainer who tests the individual. Revised to "All individual licensees, except asbestos abatement workers, must be able to read, write, and communicate effectively in English."</p>

184	296.41(c)	<p>At least two English speaking people must be part of the abatement</p> <p>Only workers are allowed to not speak English. All workers are supervised at some level. Those persons speak English.</p>
185	296.41(g)	<p>What about fit test?</p> <p>Fit tests are required to be on-site in §296.200(b)(2)(K).</p>
186	296.42(j)	<p>States that a Physician's Written Statement Form must be on-site while performing asbestos-related activities. For abatement related work this makes sense, but is it really needed for surveys?</p> <p>Yes. Survey is an asbestos-related activity in a public building when samples are being collected.</p>
187	296.46(b)(1)(A)	<p>Recommended language: (A) An asbestos abatement worker may perform asbestos abatement activities or O&M activities only while supervised by a licensed asbestos abatement supervisor or licensed asbestos O&M supervisor. . An asbestos abatement worker may perform asbestos exposure assessment activities in accordance with §296.198 of this title (relating to Procedures for Small Projects and Repetitive Tasks in Public Buildings) only while supervised by a licensed asbestos abatement supervisor.</p> <p>The department declines to add the recommended language. Section 296.198(b)(3) states that registered asbestos abatement workers or unlicensed maintenance personnel may perform small projects and repetitive tasks that disturb friable ACM using the work practices outlined in §296.198(d) only when supervised by a licensed asbestos abatement supervisor or a licensed O&M supervisor.</p>
188	296.46(b)(1)(B)	<p>Says nothing about expired license.</p> <p>This is covered in §296.1(e).</p>

189	296.48	<p>So what should happen if a supervisor leaves the site to get gasoline for the generator?</p> <p>The inspector has discretion in those types of situations.</p>
190	296.48(b)(1)(Q)	<p>Does the supervisor need to be on-site at all times?</p> <p>Yes, during asbestos abatement activities.</p>
191	296.51(b)(1)(A)(i)	<p>In regards to: §296.51. Asbestos Air Monitoring Technician.</p> <p>(b)(1)(A)(i) obtain baseline, area, and clearance samples, if employed by an asbestos consultant agency or an asbestos laboratory;</p> <p>Is the Department saying an asbestos laboratory may be contracted to obtain baseline, area, and clearance samples and do not have to be an Asbestos Consultant Agency?</p> <p>They can collect them, but they must be employed by a laboratory to analyze.</p>
192	296.51(b)(1)(A)(ii)	<p>Seems to conflict with 296.32(a)(1). As a consultant are we required to notify the DSHS of surveys that don't meet standards described? I suggest the waste transporters of asbestos report where containers are to be delivered so they can be coordinated with notifications.</p> <p>1. The building owner is the one providing the payment for the personals. The same AMT can do both. 2. Yes--§296.41(f) 3. The transporter and the waste dump are on the notification.</p>
193	296.51(b)(1)(A)(iii)	<p>States that an AMT must be employed by a building owner. Can this section also state that it can be the building management company or General Contractor, who has been hired to manage the work activities for the building or renovation/demolition project on behalf of the Owner?</p> <p>That would be the owner or authorized representative that is referenced in §296.191(a). They are allowed to act on behalf of the owner.</p>
194	296.51(b)(1)(A)(ii) and (iii) and (B)(iii)	<p>296.51(1) (A) ii & iii - These would imply that an air monitoring technician can take personal samples on behalf of the contractor or owner. (B) iii seems to prohibit the tech from taking personal samples on behalf of the contractor on a project that he or she is also performing the baselines, area and finals. One seems to contradict the other. Which is it?</p> <p>They can collect them for the contractor if they are paid by the building owner.</p>

<p>195</p>	<p>296.51(b)(1)(B)(iii)</p>	<p>States that an AMT may not be employed by the contractor to collect OSHA on same project that he is working for consultant. Therefore, this state that the AMT cannot do OSHA samples unless paid by building owner (manager or General Contractor?), correct? Can the AMT who works for a Consultant Agency perform the OSHA Monitoring on a job, as well as perform the abatement monitoring activities as well? If only a third party AMT can perform OSHA monitoring, it will be a cost burden to the job that is not necessary. The conflict of interest concern would be accomplished as long as the AMT doesn't work for the contractor. This sections needs to be clarified.</p> <p>One AMT can still analyze the samples if the building owner pays the AMT instead of the contractor paying. (See #430 and #606) The goal is to eliminate the fiduciary relationship between the AMT and the man directly paying him for results about asbestos exposure to workers. A high exposure level may increase his cost (PPE, etc.).</p>
<p>196</p>	<p>296.51(b)(1)(B)(iii) and (iv)</p>	<p>In regards to: §296.51. Asbestos Air Monitoring Technician.</p> <p>(b)(1)(B) An AMT may not: (iii) be employed by an asbestos abatement contractor to collect personal air samples on the same project for which the AMT is collecting baseline, area, and clearance samples for the asbestos consultant agency; or and (iv) analyze airborne fibers in the field unless employed by a licensed asbestos laboratory and listed on the American Industrial Hygiene Association Asbestos Analyst Registry in accordance with §295.59 of this title (relating to Asbestos Laboratory. And (b)(2)(b)(B) collect personal air samples in accordance with 40 CFR Part 763, Subpart G or 29 CFR §1926.1101, and report results in writing to the asbestos abatement contractor no later than 24 hours after collection.</p> <p>How is this more protective of public health?</p> <p>This will have a great effect on the ability to notify employees of the results within 24-hours.</p> <p>Our field personnel will not be able to get to a laboratory before it closes and will have to pay for same day turn-around-time for the lab. The lab will then have to get the results to the Licensed Air Monitoring Technician who will have to have the capabilities of printing the report in the field so that it could be posted the same day.</p> <p>Why is the Department trying to increase costs for contractors getting the required professional personnel exposure monitoring results needed in a timely manor?</p> <p>Again, this will only benefit laboratories.</p> <p>This requirement has been removed.</p>

197	296.51(b)(1)(B)(iv)	<p>AIHA Analyst Registry..... Recommendation: leave the current requirements and eliminate this section from the new proposed rules Comment: This may fall the of many small businesses With 9 employees needing to be registered I am looking at about \$3,800 each employee per AIHA's calendar year. If the registration is started after AIHA's calendar year there will be addition cost that will need to be paid and several different hidden costs such as cost per samples. If this is implemented then I am looking at a cost of approx. \$34,200 per year. I insist that TDSHS show me and all the small business around Texas a cost analysis of how this will affect the small business, and how it will be an addition on protecting the lives and health of the public. Keep in mind that we are already paying about \$2,700 on PAT Rounds. On top of that a good QA/QC program ... (already approved by the NIST under the NVLAP) is in line with gathering proper Coefficient of Variations for our analysis. (NVLAP is for Bulk sampling however the strict QA/QC program reviewed by NIST is used on ... air analysis program.) This requirement has been removed.</p>
198	296.51(c)(1)(G)	<p>AMT Training that requires 15 days on a abatement site. What defines a day? Is it 1 hour per day, half a day or the entire work shift? The average work day is 8 hours. Added new §296.43(d): Work experience requirement. For the purpose of determining the work experience required for an initial license, eight hours of qualifying on-the-job work experience equals one day of the required experience</p>
199	296.51(c)(1)(G)	<p><u>COMMENT:</u> <u>Instead of 15 days (which could be on a single project), I recommend 5 separate projects. An AMT will learn very little about strategies for setting air sampling pumps by setting pumps in the same place for 15 days.</u> Revised to "...at least three asbestos abatement projects for a total of at least 15 days..."</p>
200	296.52(b)(2)(B)	<p>States asbestos inspector to sign date print name & license on cover page of asbestos survey report- can electronic format be used? The rule does not prohibit an electronic signature. No edits required.</p>
201	296.53(b)(2)(A-D)	<p><u>What is the definition of the word "ensure?" To what extent does a license have to "ensure each activity. Does this mean that a licensed Project Manager has legal law enforcement authority? Should licensed Project Managers be required to become licensed Texas Peace Officers to carry out this responsibility? If not, what authority is granted to licensed Project Managers to "ensure" each aspect of these sections are carried out?</u> They can report to the department if they are unable to do their job. They are responsible for what is listed as their job duties under the rule.</p>

202	296.53(c)(1)(G)(ii)	<p><u>Comments:</u> <u>The qualifying work experience required for an initial license prohibits my firm from employing a person with no prior asbestos experience. We quite often hire a recent college graduate and license them to be a Project Manager & Air Monitoring Technician.</u> <u>To obtain the 90 days of qualifying work experience, I understand that 30 of the days can be obtained by training on 5 abatement projects. However, there is no way for this person to obtain the other 60 days unless this person has prior asbestos experience. This limits my firm on hiring practices and will also drive up the pay demands of current licenses project managers, this causing me to have to increase my rates.</u></p> <p>The department revised the qualifying work experience to 45 days.</p>
203	296.53(c)(1)(G)(ii)(II)	<p>Experience with five projects is required for Project Manager licensure. This means a 30-day project covering multiple containments and ACBM types would count as one project, but 5, 1-day floor tile removal projects would be considered sufficient?</p> <p>Revised 30 days to 15 days: (II) experience as a licensed or trained asbestos air monitoring technician on at least five asbestos abatement projects. Experience must be gained after completion of appropriate training. No more than 15 days may be counted as qualifying experience for this category.</p>
204	296.56	<p>Suggest require professional registrations for having a consultant license.</p> <p>The reason we took out the pathway was because there was no consistency and difficulty verifying professional organizations. The organization had allowed the accreditation from a diploma mill. The department found there were multiple professional associations of dubious quality.</p>
205	296.56(b)(1)(B)(ii)	<p>For alternative practices who or what position is responsible for this approval?</p> <p>The department's engineer and/ or other experienced staff will review these requests.</p>
206	Addition to 296.56(b)(1)(A)	<p><u>(x) design and direct an exposure assessment in accordance with §296.198 of this title (relating to Procedures for Small Projects and Repetitive Tasks in Public Buildings).</u> <u>The recommended edit will affect public health and the regulated community as follows.</u> <u>Authorize the registered asbestos abatement worker and the licensed asbestos consultant to perform the duties required for an exposure assessment.</u> <u>Authorization is already included in §296.47 for the asbestos abatement supervisor.</u></p> <p>The department added the recommended list item.</p>

207	296.56(b)(2)(A)(vi)	<p>What is the definition of “progress records”? Please define in the Definitions section.</p> <p>A progress record is like a progress report. The department declines to add the term to the definitions section.</p>
208	296.56(b)(2)(A)(vii)	<p>Does this mean that an equipment trailers used to transport ACM to an off site container must be marked?</p> <p>Yes. It's required by NESHAP in 40 CFR §61.150.</p>
209	296.56(b)(2)(A)(vii)(III)	<p>COMMENT: This requirement places an unreasonable responsibility on the Consultant/Project Manager. It is not uncommon for the waste transporter of a dumpster to not arrive during working hours or possibly the day following the completion of abatement. There would not be a party onsite to receive a copy from the transporter. The abatement contractor always retains a copy, but it has not yet been signed by the waste transporter. There would still be a paper trail to check and confirm the ACWM was delivered to the landfill.</p> <p>This has been revised, a copy of the signed waste manifest must be obtained from the Asbestos Contractor. The language is also being reviewed for greater clarity.</p>
210	296.56(b)(2)(A)(vii)(III) and (IV)	<p>States that consultant is responsible to obtain a copy of the waste manifest. The manifest is between the abatement contractor, transporter and landfill and there is no consultant requirement at all on the manifest.</p> <p>This section also states that the consultant shall ensure that the building Owner receives the waste manifest from the landfill. The landfill send the document back to the Owner listed on the manifest and the Consultant cannot be responsible to make sure the Owner get the manifest.</p> <p>The department revised §296.56 so that the consultant obtains a copy of the signed manifest from the contractor. The language will be improved further.</p>

<p>211</p>	<p>296.56(b)(2)(A)(vii)(IV) 296.57</p>	<p>In regards to: §296.56. Asbestos Consultant. (b)(2)(vii)(IV) ensuring the building owner receives a manifest from the transporter, signed by the disposal site operator, for each load of ACWM abated from the buliding;and and (IV) ensuring the building owner receives a manifest from the transporter, signed by the disposal site operator, for each load of ACWM abated from the building; and (viii)(III) signed manifest from the transporter; and In regards to: §296.57. Asbestos Consultant Agency. (B)(2)(C) obtain a signed waste shipment record (manifest) from the licensed asbestos transporter on a form as described in 40 CFR §61.150(d); and (D) contact the waste site to determine the status of the waste shipment, if a copy of the manifest has not been received from the licensed asbestos transporter within 10 working days from the date the waste was accepted by the transporter; and (E) report in writing to the department in accordance with 40 CFR §61.150(d)(4), if a copy of the manifest has not been received from the licensed asbestos transporter by the 45th calendar day from the date the waste was accepted by the transporter;</p> <p>These are clearly a contractor's responsibility to the agreement between the contractor and the Owner that the contractor will remove the asbestos and properly dispose of in accordance with regulations. Due to the material probably being held for up to 30 days, a consultant would have to get with the contractor to find out when the material was sent should not wait a month or two to get the final report to the owner.</p> <p>May I suggest that the Department requires the waste landfill copy the Department on the disposal of the manifested waste?</p> <p>Revised §296.56 so that the consultant obtains a copy of the signed manifest from the contractor. Revised §296.57 so that the consultant agency obtains a signed waste shipment record (manifest) signed by the owner or operator of the designated disposal site from the licensed asbestos contractor.</p>
<p>212</p>	<p>296.56(b)(2)(C)(ii)(D) and (G)</p>	<p>Shouldn't this be clarified to state consultant or project manager?</p> <p>The project manager is working for the consultant.</p>
<p>213</p>	<p>296.56(b)(2)(D)</p>	<p>Under Responsibilities (Section 2 D) the rules state that a consultant is required to "inspect the containment every day of asbestos abatement activity, before the start of the asbestos abatement activity....."</p> <p>I am assuming that this can be delegated to the onsite licensed Project Manager? If not, it is not feasible for me to visit every project site to do this, especially when I have a project in Dallas and Houston.</p> <p>If this can be conducted by the onsite project manager, I recommend adding verbiage to this section stating so.</p> <p>The requested verbiage is located in (b)(1)(A)(ix) which allows a consultant to designate a project manager and delegate specific responsibilities and authority to the project manager in writing.</p>

214	296.56(b)(2)(D)	<p>In regards to: §296.56 Asbestos Consultant. (b)(2)(D) inspect the containment during every day of asbestos abatement activity, before the start of the asbestos abatement activity for the day and routinely throughout the day, to ensure the containment is in compliance with this chapter and the specifications and plans;</p> <p>The Department does not allow many individuals with tenure, only highly educated individuals to be a Licensed Asbestos Consultant. I do not see how the Department can be asking the Licensed Asbestos Consultant to inspect the containment during every day of asbestos abatement activity, before the start of the asbestos abatement activity for the day and routinely throughout the day. This is a Licensed Project Manager's responsibility.</p> <p>The responsibility can be delegated in accordance with §296.58(a)(9).</p>
215	296.56(b)(2)(D) and (G)	<p>COMMENT: The wording in these sections is referring to the consultant. These two sections should be requirements of the Project Manager in section 256.53 since the PM is the onsite representative of the Consultant.</p> <p>The responsibility can be delegated in accordance with §296.58(a)(9).</p>
216	296.56(b)(2)(D) and (G)	<p>If a consultant has several jobs being performed at the same time, it will be virtually impossible to meet these requirements. This is the reason we have an onsite project manager</p> <p>The responsibility can be delegated in accordance with §296.58(a)(9).</p>
217	296.56(b)(2)(D-G)	<p>These sections require the asbestos consultant to be on-site each day of abatement. As such, there is no practical need for a licensed Project Manager on an abatement project. If this is not the intent a statement that these activities can be delegated to a licensed project manager would provide some clarity.</p> <p>The responsibility can be delegated in accordance with §296.58(a)(9).</p>
218	296.56(c)(2)(C)	<p>Under the proposed rules as written, my dozen years of experience in the industry is superseded by the courses I took in college 20 years ago. I understand and agree with DSHS' intention to keep the public safe from the hazards of asbestos, but college coursework does not train someone to be prepared for the nuances of protecting public and worker safety from asbestos to the extent that experience can.</p> <p>I recommend that DSHS keep the pathway to Asbestos Consultant licensure that allows for applicants with significant levels of experience to couple that experience with membership in the AIHA or another nationally-recognized association to substitute for educational requirements. I would ask that DSHS review records to determine if violations occur more frequently under the watch of consultants that have become licensed under this pathway than those that obtained licenses by meeting the educational criteria. I would surmise that they do not.</p> <p>If DSHS will not consider keeping this pathway as is, I recommend at a minimum that DSHS allow for exceptions to be made for the licensure of candidates with significant levels of experience in the industry in lieu of meeting the educational requirements. If the new rules allow for the ability to grant an exception to the educational requirement, DSHS staff could look at candidates on a case by case basis and consider a combination of education, experience and track record in making their determination. Such a system would both protect public safety while at the same time help ensure an adequate and experienced Asbestos Consultant workforce in Texas.</p> <p>The department considered many pathway options. The membership in a organization pathway has been dropped because there are groups other than AIHA that a person can belong to that have no testing or other requirements.</p>

<p>219</p>	<p>296.56(c)(2)(C)</p>	<p>Recommendation: I don't think there should be a change in the language of the law.</p> <p>Comment: The education standard and experience are necessary to keep the public and environment safe. By lowering these standards, new licensees may have the potential of putting the public and/or environment in danger. Individual asbestos consultants are responsible for project designs, approval of asbestos abatement methods, project layouts, plans and specifications, and contract documents, just to name a few. These are very important responsibility in the asbestos industry. If these simple yet complicated tasks are not preformed properly the public and/or environment will end up paying for it. Moreover if the language of the law is changed then Texas will see an increase of individual asbestos consultants. This will force consultant agencies to lower their cost per projects or start to lay off employees. With small business looking to advance the request for individual asbestos consultant licenses within the firm may also force the firm to lay off good employees or risk having good employees look for other employment.</p> <p>Furthermore I demand that the TDSHS tell why is it that and an instructor has to now be licensed and to be able to obtain a license he/she must have at least a bachelor's degree (requires a higher education than an individual Asbestos Consultant), and an air monitor has to be registered with the AIHA which mandates other test and has to pass PAT Rounds (again still a higher education and qualifications). I also insist that the TDSHS tell me how lowering the educational requirements for an individual asbestos consultant but raising the qualifications for an air monitor to analyze sample out in the field, and requiring that an instructor must have at minimum a bachelor's degree to be able to obtain a license will protect the lives and health of the public and environment.</p> <p>I not only sacrificed my family and time but I also sacrificed my life fighting for this great nation to be able to get my education. I served on active duty in the US Army where I deployed to Afghanistan for 12 months so that I can receive my college money. I turned that into a bachelor's degree. I am also currently serving in the US Army Reserves where I am still getting my education paid so that I may obtain my master's degree as well. I feel if I can make these kinds of sacrifices at my age, holding down a full time job, and a full time family to obtain my degrees then I don't see where should get a hand out.</p> <p>The department considered many pathway options for consultant licensure. The membership in a organization pathway has been dropped because there are groups other than AIHA that a person can belong to that have no testing or other requirements. The organizations' testing and requirements for entry to the highest level were too variable. The department also removed the educational pathway of a degree in any field and now requires a degree in a physical or natural science.</p>
<p>220</p>	<p>296.57(c)(1)(B)</p>	<p>No longer available</p> <p>Evidence of tax status is available from the Texas Comptroller's website.</p>
<p>221</p>	<p>296.58</p>	<p>Suggest waste transporter report where containers are delivered.</p> <p>I think licenses and requirements should be at the last or first of the rules. Not in the middle.</p> <p>Trainers should be required to provide bound copies of initial or refresher courses every year.</p> <p>Waste transport follows the NESHAP requirements in 40 CFR §61.150.</p> <p>The licensing sections will remain in their current locations.</p> <p>Training providers are required to provide copies of their material if it is not a document published by EPA. If they have original documents, they only need to be submitted if changes have been made.</p>

<p>222</p>	<p>296.59(b)(1)(C)(i)</p>	<p>AIHA is the only listed accrediting agency. I think that others should be included if they follow ISO 17025. A2LA is one such.</p> <p>AIHA administers the PAT program. ISO 17025 is essentially a general method for laboratories. If they follow AIHA, they are 17025 compliant. AIHA specializes in our field, and they are recognized nationally. A person who hired another lab would also have to hire AIHA to get the proficiency tests etc.</p>
<p>223</p>	<p>296.59(b)(1)(C)(2)</p>	<p>in the field only if the individual analysts performing the analysis are licensed asbestos air monitoring technicians and listed on the AIHA AAR.</p> <p>How is this more protective or public health?</p> <p>The American Industrial Hygiene Association (AIHA) is a non profit organization of professional members dedicated to the anticipation, recognition, evaluation, and control of environmental factors.... The AIHA is not a regulation.</p> <p>We will not be able to get air sample results as quickly to be able to know if there is an issue with the containment or negative air pressure with machines, which is critical in our industry, the Owner and the safety of the workers.</p> <p>May I suggest that, when asked, we show proof of the individual's participation in the AIHA Proficiency Analytical Testing (PAT) program?</p> <p>Only laboratories will benefit this regulation change.</p> <p>Also see: In regards to: §296.200. Recordkeeping. below</p> <p>Furthermore, there is only one (1) AIHA, AAR in the state of Texas (see attached and highlighted).</p> <p>Also, we must remember, this industry has contract employment available when necessary in busy times, and contract employees will not be able to afford this expense.</p> <p>The draft requirement to be listed on the AIHA AAR was removed from the proposed rule text.</p>

<p>224</p>	<p>296.59(b)(1)(C)(i) and (ii)</p>	<p>STATUTE Sec. 1954.102.LICENSE CLASSIFICATIONS. (a) The executive commissioner shall determine and specify the scope, purpose, eligibility, qualifications, and compliance requirements for each class of license and any other license necessary for the executive commissioner and department to carry out their duties under this chapter.</p> <p>(c) A laboratory may be licensed as an asbestos laboratory only if the laboratory: (1) is accredited by the National Voluntary Laboratory and Analytical Proficiency Accreditation or is enrolled in the EPA Proficiency Analytical Testing rounds, as appropriate; or (2) has similar qualifications as required by the executive commissioner.</p> <p>From the Summary of Stakeholder Comments</p> <p>“112.Laboratories qualify for licensure through various methods that include accreditation and proficiency testing that establish high standards. The department does not prescribe specific equipment requirements because proof of proficiency and accreditation is sufficient to ensure quality data. Draft §296.59 does remove proficiency only through the AIHA PAT Program as a pathway to licensure. Additionally, draft §296.51 does not allow a licensed air monitoring technician to analyze airborne fibers in the field unless the air monitoring technician is on the AIHA Asbestos Analyst Registry.”</p> <p>In the Proposed Draft rules, the Laboratory is limited to AAR and AIHA Laboratory certification for licensing. This commenter believes that air monitoring and analysis fraud is widespread in our industry and that is the problem. Enforcement of the existing regulation is pretty much non-existent, and this change will have no effect either if not enforced. That failure is on the Department and the Department alone. Additionally, there was no economic analysis on the impact on the effect of this change. This proposal will shut down probably half the labs in the State of Texas as the overhead and cost of AIHA and AAR certification is not cheap, anywhere from \$2500 per year at the lowest for AAR certification to \$5000 or more for the lab certification for AIHA. That cost may not include the cost of time and material costs. If there are roughly 400 licensed labs in the State of Texas now, reducing them by half would be (200 x \$1,070) would result in a \$214,000 revenue loss per two year appropriations cycle or a 5% total reduction in fee funds. Additionally, it will increase prices for analysis for the consumers because of a reduction in the number of labs. This commenter actually agrees with the proposal of the AAR and the AIHA certification in theory and practice; however the Proficiency Analytical Program is still listed in the Statute and was not changed with the 2015 updates to the statute. The department therefore has no authority to disregard or disallow this pathway to license as specifically stated in the statute. The problem of fraud with air monitoring and sample analysis will only be addressed through enhanced sophisticated and targeted enforcement and license revocations of the “bad labs”. There are ways to do this without additional regulation and the current TAHPR 295 would address the fraud problem if enforced. However, it has not been properly enforced. How many PCM laboratories has the DSHS audited in the last 5 years? There is the problem, lack of enforcement, again, and that would not be solved with certifications or this particular rule change.</p> <p>The draft requirement for an AMT to be listed on the AIHA AAR in order to analyze fibers in the field was removed from the proposed rule text.</p>
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225	296.59(b)(1)(C)(ii)	<p>it states that PCM air samples can be analyzed in the field only "if the individual analysts performing the analysis are licensed asbestos air monitoring technicians and listed on the AIHA AAR."</p> <p>to require AIHA AAR for our air monitoring technicians is a cost that is burdensome. We also rely upon contract air monitoring technicians that are NIOSH 582 and PAT Round approved when we have projects we cannot man with in-house personnel. The requirement for AIHA AAR will make contract workers unusable for air monitoring projects since they cannot analyze samples on site.</p> <p>If the new rules will required AIHA AAR, it takes quite some time to get analysts on the AAR so please consider providing a grace period to do so.</p> <p>The draft requirement for an AMT to be listed on the AIHA AAR in order to analyze fibers in the field was removed from the proposed rule text.</p>
226	296.59(b)(1)(C)(ii)	<p>We strongly disagree with the requirement for (ii) "in the field that only AIHA AAR listed analysts can perform analysis". Below are our concerns:</p> <p>a. How is it more safe to public health that the State require a field analysis to be obtained by an AAR registered analyst?</p> <p>b. This basically would require all samples to be analyzed at a lab that specializes in asbestos analysis. The labs would not be able to handle the sample loads. We would not be able to get sample results quick enough, especially on small or weekend jobs where we need to clear a space before occupancy. Being able to get the results done quickly onsite is essential to our serving the needs of our clients. Also, how would we handle emergency response cleanup sampling that has to have results immediately. This would be an extreme burden to the building owners and really could not be accomplished.</p> <p>c. Whether an analyst is AAR registered doesn't mean the samples are being analyzed correctly. A field review of the analyst and their work, etc. by the State inspectors is the only way to monitor that the PCM samples are being read correctly with the correct equipment.</p> <p>d. There is currently only one AAR listed technician in the State of Texas. Cost in 2015 for base AAR fees is \$1400 organization fee, \$200 per analyst (so if you have 5 technicians that would cost the organization \$1000 = total of \$2400 annually.</p> <p>e. We would suggest that a reasonable requirement for field technicians would be for them to show proof of that individual's participation in the AIHA Proficiency Analytical (PAT) program.</p> <p>The draft requirement for an AMT to be listed on the AIHA AAR in order to analyze fibers in the field was removed from the proposed rule text. (related to comments #224 and #225)</p>
227	296.59(b)(2)(A)	<p>We would request that this requirement be applied only to a laboratory that only does lab analysis as a business and not the consultants who only have field laboratories. The field laboratories once again can show proof of PAT proficiency.</p> <p>The eligibility pathway of proficiency according to the standards of the AIHA Proficiency Analytical Testing (PAT) Program, which includes quarterly proficiency testing for airborne fibers by PCM and a quality assurance/quality control program as required by the NIOSH 7400 method if the laboratory is applying for a PCM air analysis license, was added back in the proposed rule text.</p>
228	296.59(c)(1)(A)(i) and (c)(2)(A)(ii)	<p>NVLAP does not specifically accredit for TEM bulk analysis nor does it provide PT samples</p> <p>The department removed the reference to bulk analysis.</p>

229	296.71	<p>Is notifications still required?</p> <p>Yes.</p>
230	296.91(b)(2)(C)(v), (b)(2)(F), and (d)(1)(L)(ii) and (iii)	<p>All of these changes are “administrative” in nature and have very little impact on the purpose of this regulation which is: “to prevent exposure to the public” in public buildings. None of those above changes in the proposed rule have any significant impact on that, and are just “busy body” suggestions, or a “solution seeking a problem”. I have been in the training industry since 1993 and have instructed in 3 foreign countries and 30 some states. I train abatement personnel, consultants, Industrial Hygienists, nuclear power plant workers and safety staff, am an OSHA Outreach trainer, developed a mold training program, developed a HVAC continuing education program, and advocated for the ESH industry, served on the board of the National EIA, was a peer reviewer for the new “Purple Book” for asbestos, and have been training asbestos, lead, hazmat courses for 23 years. The company I work for, GEBCO Associates has been training asbestos courses since 1987. The main problem with asbestos training in the State of Texas is no auditing of the courses and that results in training providers “cutting classes” by not doing the full regulated amount of time, or being outright certificate sellers, by just printing a certificate; or the class is just a “bitch session” or a long diatribe of “war stories”. None of that is training, and none of the above changes will make a difference over existing law, because based on experience with the DSHS, there is no auditing, and therefore even under the old rules, changing to these is an immaterial change. At GEBCO, you miss time; you make up time, period. Missing 10% of the class or getting out 15 minutes early is not the problem; the problem is getting out at noon for an all day class or only attending 2 hours, which is what some of our competitors are doing right now in the DFW area. Saturday and Sunday classes should be 100% audited, because they do not do the time, because the trainers know DSHS is will not audit a class on Saturday or Sunday, and nobody wants to take a training class on a Sunday! Do you really think they stay all day on weekends? I recommend the department strike the 5% and change it to 10% to be consistent with past TAHPR and the MAP. I also recommend that the “verification” be consistent with the map for the MP only. The “licensees” must keep their training in force or it is a violation, correct? These are ADULTS, let them make the determination, and if they miss, then it is on the licensee, AND a regulatory responsibility of the licensee. Offloading this responsibility onto training providers creates problems in the attendance especially with out of state certificates, and is misguided and misses the mark, as it is still a responsibility of the certificate holder to know the laws; STOP dumbing this down! The new regulation does not address anything the online training and verification on that and the Department does need to clearly and unambiguously address that issue. The proposed “instructor license” requires the applicant to send in “initial and refresher certificates” for license. This problem can be taken care of by putting in ALL license applications of the 2 annual certificates and to send in to the department the “new refresher course certificate” as a condition of license; which was NOT put into the license application for those that PRACTICE and DELIVER such services that does have a direct effect on “exposure to asbestos”.</p> <p>Training providers do NOT have a direct effect on public “exposure to asbestos”. Regulate elsewhere where there is an actual problem, and AUDIT COURSES.</p> <p>Allow the trainee to take two re-examinations, which is consistent with the Mold regulation, the Lead regulation and OSHA courses. This departure is arbitrary and capricious, and there is no need for that change.</p> <p>The department plans to increase audits. The proposed rule text retains the current language that a trainee may miss up to 10% of a training course. A trainee is not eligible to complete the course if a trainee misses more time than is allowed. The department declines to change the number of allowable re-examinations.</p>

<p>231</p>	<p>296.92(a) and (b)(1)(B)(ii) and (ii)</p>	<p>Statute: Sec. 1954.101. LICENSE REQUIRED FOR CERTAIN ACTIVITIES. (a) Unless a person is licensed under this chapter, the person may not: (10) sponsor or certify an initial or refresher training course required for licensing or registration under this chapter.</p> <p>Sec. 1954.102.LICENSE CLASSIFICATIONS. (a) The executive commissioner shall determine and specify the scope, purpose, eligibility, qualifications, and compliance requirements for each class of license and any other license necessary for the executive commissioner and department to carry out their duties under this chapter. (8) a training sponsor, if the person sponsors or certifies an asbestos training or refresher course.</p> <p>In a regulation change like this, the Department must state what problem is addressed with such a change. The real problem with training courses is enforcement and auditing, to make sure the course is even held, or the time requirements met. Courses held on Saturday's and Sunday's are suspect and are NEVER audited. The department would be better served by auditing courses on a more regular basis and concentrating on the Saturday and Sunday course rather than an arbitrary license. Auditing the "non compliant" courses and training providers and revocation of bad training provider licenses is the answer. That would have a positive impact on the "quality" of the training courses. Our doors are always open to DSHS; other training providers should be as well. The Statute is clear and the regulatory precedence is also clear historically, established from then TDH through current TDSHS rulemaking sessions: the "Sponsor" license was a business entity and not an individual license, and that is the precedent set by the Department. Yes, the statute DOES state "person" but in Texas law, "person" is an agency, or an individual, where the previous rulemaking this department established the "person" as a "business entity", not an individual. To depart from a previous "settled law" standing (established by the Department in earlier rulemaking actions) and to charge a fee for a license conjured out of thin air not in the statute and not consistent with historical precedent of the department is arbitrary and capricious. It is also a "regulatory overreach" and not legal. The Draft rule has exceeded the department's authority granted under the statute. Additionally within the statute the "licensed instructor" is NOT a "sponsor" under the statute and therefore CANNOT under the statute present MAP or non MAP classes such as the Air Monitoring course and the Texas Law course. That would also make an enforcement and regulatory conundrum, as the proposed "individual instructor license" would be required to "become a sponsor" i.e., a training provider, not just simply "teach" the courses. They must be "certified" as a Training Provider or "sponsor". Again, settled law established by the Department itself in previous rulemaking actions, and this is a significant departure from established law and rulemaking. Therefore, in accordance with provisions in the Texas Administrative Procedures Act, the "Asbestos Training Instructor" license and all associated language shall be stricken from the proposed regulation.</p> <p>The training classes have no "direct" effect on health and public asbestos exposure, therefore this proposal is unwarranted and even if legal and implemented, would have negligible effect compared with current law. I request the department remove all of 296.92 the "Asbestos Training Instructor" license from the draft rule and the language in 296.92 (b) (i), (ii) allowing the instructor to teach courses illegally because it is not in compliance with, nor consistent with the TAHPA. This is a "solution looking for a problem" and the Department just needs to audit classes, i.e., enforcement is needed, especially Saturday and Sunday classes.</p> <p>The instructor license gives the training providers flexibility because they do not have to submit anything to the department to prove someone is fit to teach. A licensed instructor must work for a licensed training provider or hold both a training provider and instructor license.</p>
<p>232</p>	<p>296.171</p>	<p>Can RFCI also apply to carpet with asbestos mastic beneath?</p> <p>Mastic not from RFCI can be removed using the methods in §296.197</p>
<p>233</p>	<p>296.172</p>	<p>Add "Once conditions immediately dangerous to life and health are mitigated, the remaining provisions of this chapter apply" or have staff provide language here to prevent a short-term emergency resulting in long-term abatement work being performed by non licensed personnel in a non regulated manner.</p> <p>The department may waive the requirement for notification or licensure in an emergency. The word "catastrophic" was added to the proposed rule to make it clear that the situations in which it would apply are clearly extraordinary.</p>

<p>234</p>	<p>296.173</p>	<p>Add "providing the architect or engineer was part of the original design team, or part of the team designing the planned improvements." This will prevent "rubber stamping" certifications by unqualified and un-invested individuals.</p> <p>Having been through this process as an engineer reviewing documents, it is rare to find complete sets of MSDS/SDS. Even with the MSDS, access to as-built drawings, and a working knowledge of the construction/facility, providing a reliable certification is technically challenging.</p> <p>In my opinion, trying to accomplish this task based only on an MSDS review is unprofessional. My experience has been engineers in other disciplines and architects may not always have an appreciation of the hazards associated with asbestos and the implications of an invalid certification.</p> <p>Section 296.191 adds language to make rubber stamping more difficult. Materials must be matched to the MSDSs used on site during the construction. Certifications must include the specific area and address.</p>
<p>235</p>	<p>296.174</p>	<p>Add "Workers shall have a minimum of 4 hours initial awareness training." Add "The exemption does not apply to ceiling surfacing material."</p> <p>Is there a training requirement for workers for these activities in other sections? If not, some level of training is appropriate for these personnel.</p> <p>In my experience reviewing multiple personal air monitoring sampling events, I know that some small scale short duration activities do produce exposures over the PEL. The activity most likely to result in unacceptable exposures is the removal of asbestos-containing surfacing materials from ceilings. Typical activities include installing anchors for ceiling tile hangers, cutting in HVAC ducts, and attaching other improvements to the ceilings. Debris is difficult to collect. Hard edges are difficult to establish and stabilize. Most importantly, the worker is very close to, and directly below, the immediate work area. Based on our experience, the exemption for "small projects and repetitive tasks" should be removed for ceiling surfacing material.</p> <p>If that is occurring as part of SSSD activities in a public building, it would have to be contained and use licensed people. The requirements are further explained in 296.198. An exposure assessment would need to be performed by a licensed person showing the activity does not exceed 0.01 f/cc which is the clearance level. A licensed asbestos supervisor will train unlicensed persons on the particular task they are actually performing. This section applies only to maintenance or installation projects and tasks that are not primarily asbestos abatement activities. Under §296.198, if maintenance or installation projects and tasks that are not primarily asbestos abatement activities will disturb less than 10 square feet of ACBM for each occurrence,</p>

<p>236</p>	<p>296.174</p>	<p>Sec. 1954.002. DEFINITIONS. In this chapter:</p> <p>(2) "Asbestos" means: (A) an asbestiform variety of chrysotile, amosite, crocidolite, tremolite, anthophyllite, or actinolite; or (B) a material that contains one percent or more of a substance described by Paragraph A.</p> <p>(4) "Asbestos-related activity" means:</p> <p>(A) the removal, encapsulation, or enclosure of asbestos;</p> <p>(E) the performance of another activity for which a license is required under this chapter.</p> <p>(5) "Asbestos removal" means an action that disturbs, dislodges, strips, or otherwise takes away asbestos fibers.</p> <p>Sec. 1954.101. LICENSE REQUIRED FOR CERTAIN ACTIVITIES. (a) Unless a person is licensed under this chapter, the person may not: (1) remove asbestos from or encapsulate or enclose asbestos in a public building or supervise that removal, encapsulation, or enclosure;</p> <p>Sec. 1954.103. REGISTRATION REQUIRED FOR CERTAIN ACTIVITIES. An individual must be registered as an asbestos abatement worker if the individual: (1) removes, encapsulates, encloses, loads, or unloads asbestos in the scope of employment; or (2) performs maintenance, repair, installation, renovation, or cleaning activities that may dislodge, break, cut, abrade, or impinge on asbestos-containing materials.</p> <p>The Statute is CLEAR that a worker cannot do anything with asbestos, maintenance, abatement, cleaning, repetitive tasks that even "impinge" on asbestos or even "dislodging it. "Disturbance" definition in the regulation is NOT in the statute, and must conform to the statute and not the other way around. The worker registration is the "Achilles' heel", of the exemptions and the regulatory threshold, because it is "any" amount and the statute does NOT discriminate between "friable" or "nonfriable" and that is consistent with past Department finding and establishment of administrative regulations. This rule is a large departure from past consistent TDH through TDSHS interpretation and application of the 1954 asbestos statute. The statute only allows exemption from license ONLY for RFCI (and that is ALL of RFCI Floor buffer with pad or Terrazzo stones and wet sand) and an emergency. Those are the only two exemptions that the Department is allowed to have under the Statute for any licensee or registrant. I simply cannot believe this proposed draft regulation had a "General Counsel" review; it truly is astonishing the departure from black letter statute law. This particular law can be "invalidated" very easily, and the General Counsel of DSHS may want to check into that.</p> <p>I recommend this be stricken from the proposed regulation as it is neither legal nor consistent with the Statute. The Department could define an "O&M" licensing path with a 16 hour AHERA equivalent class, overseen by a certified Full Supervisor course, and operating under an O&M restricted license. Why was that particular route not explored and the Department just jumped to "exemptions"?</p> <p>The statute allows for processes that are equally health protective. Equally protective is established by an exposure assessment on smaller repetitive tasks. It is highly unlikely that the removal of less than three square feet of nonfriable material per occurrence is not going to exceed the PEL of 0.1/f/cc nor the clearance level of 0.01 f/cc if the activity does not make the material friable.</p>
<p>237</p>	<p>296.175</p>	<p>The language in this item does not read correctly. It states that individuals are exempt...if their projects or tasks are not asbestos abatement activities that disturb less than 3SF or 3LF (RACM, CatI, II). Shouldn't the work "not" need to be removed from this sentence? Now if that is the case we are saying that no licensing, notifications or compliance with these regulations are required if abating less than 3sf or 3lf?</p> <p>The department corrected the wording to "Persons are exempt from license, registration, and notification requirements if their operations and maintenance project or installation project is not solely for the purpose of asbestos abatement and does not disturb more than" The purpose is not to abate a building three square feet at a time but to let persons install or maintain something while disturbing three or less feet of asbestos.</p>

<p>238</p>	<p>296.191(d)</p>	<p>States "A copy of the asbestos survey report must be produced upon request by the department within ten working days." It appears to me this is a change from previous iterations. I believe this sentence should be omitted. If the inspection report is not required on site, but only required eventually when requested by a regulator, the net effect will be that there will rarely be copies of the inspection report on site. Having a copy of the inspection on site leads to greater compliance and lessens the potential for exposure. As such, every effort should be made to insure the survey is on site at all times.</p> <p>The asbestos surveys are often on-site. Building owners will be cited for no survey during the inspection if one is not provided. However, often many trades are on site coming and going. The purpose of the 10 day period is twofold. It creates a deadline (none currently exists in rule) and still allows time for compliance without beginning the next step in the enforcement process when in most cases, a survey exists.</p>
<p>239</p>	<p>296.191(e)</p>	<p>Recommendation: Change the working from "survey" to "inspection".</p> <ul style="list-style-type: none"> i. Definition of survey is "To take a general or comprehensive view for appraise, as a situation, are of study. <ul style="list-style-type: none"> 1. Example; to conduct a survey on TV viewers ii. Definition of Inspection is the act of inspecting, especially carefully or critically. <ul style="list-style-type: none"> 1. Example; the inspection of all luggage on the air plane for a possible bomb. <p>Comment: As you can see the word survey is not as detailed as inspection. This may lower the standards of inspections putting the public and environment at risk. Surveys are something you take to get a general idea, were as inspection requires you to thoroughly look through the building looking for ACBM in the building. If inspections are not taken thoroughly, some RACM/ACBM may be overlooked when renovations or demolitions are scheduled. Further more in TDSHS's use of the word survey does comply with the language used in EPA's and AHERA's regulations.</p> <p>To avoid confusion between "inspection" and "survey", the department removed "inspection" as a defined term. The word now has its common meaning when used in the rules. Survey has the detailed meaning that is described in the definitions section.</p>

<p>240</p>	<p>296.191(e)(1) and (2)</p>	<p>There is no “limited survey” allowed, nor is there a “limited survey” in NESHAP. This particular “definition” or description in the draft rules will only open the door to difficulty and confusion in enforcement actions. The “limited survey” is codified in a “report” section. In would not be in the interest of the building owners, the general public for public safety for DSHS to wade into what “is” and “is not” a survey, as it would create a regulatory quandary. The required asbestos survey is “performance based” activity, and not a “titled document”. This change is however in the interest of inspectors, management planners, and consultants in a limitation of liability, and the definition would serve no other purpose, but it would undermine enforcement down the road. It would provide cover in a “failure to provide professional services” situation, and lower the NOV burden of the scofflaw inspector or consultant merely by the title of a document as an unintended consequence of this proposed change. It would further muddy the waters on enforcement, as the definition does not address “number of samples” for instance. The Asbestos NESHAP is clear, it is a “thorough” survey, not “limited”, and not “comprehensive”; the department would be wise to keep to the original definition, and not risk public health impacts because of substandard surveys. If the inspector missed some material or a section of the building, it is on the inspector or consultant that is their prime responsibility under AHERA processes. Keep the responsibility for that on the licensee; do NOT transfer the burden onto the Department to have to “prove” the survey was done properly. That is the purpose of licensing and qualifications for professionals. The Department should not be providing cover for these liabilities by making a “loophole” you can drive a truck through, which in turn would have “significant” impact on public health and risk public exposure to asbestos. This may seem like a rhetorical argument, but to “redefine” NESHAP is an enforcement step in the wrong direction, and could lead to NOV’s in the future to be overturned. Stick with the proven regulatory language, established by previous rulemaking efforts by the department and keep it consistent. I therefore recommend that the above language of a “limited survey” or “limited inspection” be stricken from the proposed draft rule and replace it with the NESHAP definition, consistent with the previous TAHPR 295, and the Memorandum of Agreement between EPA and the State of Texas under the NESHAP delegation and the State Implementation Plan, remain intact. This change could possibly require the State of Texas to reapply for the SEP for asbestos and lose the entire state program. If it ain’t broke, don’t “fix”.</p> <p>Limited survey is a term commonly used in asbestos inspections. They are often limited to time, space, and material sampled. The requirement is that the survey cover the areas and materials disturbed.</p>
<p>241</p>	<p>296.191(e)(3)</p>	<p>Asbestos Surveys remain in acceptable if the asbestos survey.....</p> <p>Recommendation: Out date old surveys done prior to 1985 and set add a expiration date to surveys (3-5yrs)</p> <p>Comment: These surveys do not meet the standard of today's regulations because TDSHS and AHERA were not established in those days. Sample quantities were not met and some material may have been over looked. With the vast amounts of construction, renovations, and demolitions taking place in the building here in Texas it hard to say what has been removed and/or replaced, and what materials are being used. Here in El Paso we have a newly constructed outlet mall (built no more than 8-9 yrs ago) where an inspection reveled the presents of ACM (joint compound) in the store inspected. If regulations have placed a stop on the use and installation of ACBM in building how did it get there, what dangers does this pose to the public and how can we determine that exposures to the public and environment are not present during newly construction of the unit. By not allow re-inspections of building we do not know the true materials in the building and may pose a danger to the public, environment, and business owners and occupants when new construction is done within buildings.</p> <p>Surveys can be adequate regardless of age provided it accurately reflects the location, quantity, and condition of the asbestos. If the survey is not adequate, the department will require it to be updated.</p>

242	296.191(f)	<p>What test supercedes DSHS analysis by PLM?</p> <p>DSHS analysis by point counting by PLM which could be superceded by TEM analysis of the sample obtained by the inspector.</p>
243	296.191(f)(2), (3) and (4)	<p>This states that samples (friable and non-friable) first found to be less than 10% by PLM MUST be point counted. Most types of non-friable material cannot be effectively/accurately point counted, laboratories can confirm this statement. If we wanted to assume the material to be ACM, even if results are less than 10%, should be the option for the consultant to determine. It should not be a regulatory requirement to point count, no matter what.</p> <p>You can always assume provided that is noted in the asbestos survey provided to the building owner. The information in (f) has been restructured to delete (f)(4) and re-worded for clarification.</p> <p>(f)(2) Results of visual estimation by polarized light microscopy (PLM) analysis of 0% asbestos or no asbestos detected (NAD) do not require further analysis for the detection of asbestos in friable or nonfriable suspect materials.</p> <p>(f)(3) Results of visual estimation by PLM analysis of more than 0% and less than 10% asbestos must be further analyzed to demonstrate the material is not ACM using other analysis using the hierarchy and guidance in subparagraphs (A)-(C) of this paragraph.</p> <p>(A) Results of point counting by PLM analysis of samples supersede and replace the initial results of visual estimation by PLM.</p> <p>(B) Results of gravimetric preparation followed by point counting or transmission electron microscopy (TEM) visual estimation analysis of samples supersede and replace results of visual estimation by PLM and results of point counting by PLM.</p> <p>(C) Point counting may be used to analyze both friable and nonfriable materials. Nonfriable materials such as mastics and floor tile where fibers are occluded by a binding matrix will be processed using techniques such as acid washing and ashing outlined in EPA/600/R-93/116, July 1993, "Method for the Determination of Asbestos in Bulk Building Materials."</p>
244	296.191(f)(3)	<p>In regards to: §296.191. Asbestos Management in Public Buildings, Commercial Buildings, and Facilities.</p> <p>(f)(3) Each sample analyzed by visual estimation by PLM to contain any asbestos is regarded as ACM. Point counting or TEM analysis of the same sample may be used to demonstrate that the sample contains 1.0% or less asbestos. Point counting may be used to analyze both friable and nonfriable materials.</p> <p>Point count analysis can only be performed on friable materials.</p> <p>Gravimetric Chatfield is the analysis used for non-friable organically bound samples.</p> <p>This information can be found at a national laboratory's site http://emsl.com/Services.aspx?action=show&TopServiceCategoryID=3&serviceid=1110</p> <p>Furthermore, if you attempt to analyze a material such as vinyl floor tile by point count analysis there is almost a 100% chance no asbestos will be found.</p> <p>The department has clarified the intent of (f) to be that nonfriable material point counting must use a processing technique that is described in (f)(3)(A)-(C). See response to #243.</p>

245	296.191(f)(3)	<p>This states that samples (friable and non-friable) first found to be less than 10% by PLM MUST be point counted. Most types of non-friable material cannot be effectively/accurately point counted, laboratories can confirm this statement. If we wanted to assume the material to be ACM, even if results are less than 10%, should be the option for the consultant to determine. It should not be a regulatory requirement to point count, no matter what.</p> <p>See responses to #243 and #244.</p>
246	296.191(f)(3)	<p>Category 1 non friable materials should never be point counted without gravimetric reduction prior. This should be made clear. There is an EPA guidance document/letter on this.</p> <p>See responses to #243 and #244. This has been made clear.</p>
247	296.191(f)(4)	<p>The last sentence opens the door for ambiguity. Better to say “materials found to be >10% asbestos by PLM should not be subjected to point count analysis to attempt to demonstrate the material is non ACBM.”</p> <p>I don’t necessarily agree with that either since TEM may be better able to identify the mineral fiber. For example maybe what was called Tremolite by PLM is actually Winchite, a non-regulated amphibole, a distinction made possible by TEM analysis.</p> <p>See responses to #243 and #244.</p>
248	296.191(f)(4)	<p>It is currently worded in this manner:</p> <p>"To demonstrate there is no asbestos in friable and nonfriable material, each sample determined to be less than 10% asbestos by PLM visual determination must be point counted"</p> <p>Comment: This is stating that if the lab finds a sample to "not contain asbestos" by PLM, then it must be point counted. Due to the fact that "no asbestos" is less than 10% asbestos.</p> <p>Recommendation: I recommend it be worded in this manner:</p> <p>"To demonstrate that a friable and nonfriable material contains 1% or less asbestos, each sample determined to be contain >1% asbestos but less than 10% asbestos by PLM visual determination can be point counted"</p> <p>See responses to #243 and #244.</p>

<p>249</p>	<p>296.191(f)(4)</p>	<p>In regards to: §293.191. Asbestos Management in Public Buildings, Commercial Buildings, and Facilities (f)(4) To demonstrate that there is no asbestos in friable or nonfriable material, each sample determined to be less than 10% asbestos by PLM visual estimation must be point counted. Samples containing 10% or more asbestos by visual estimation are considered ACBM. Once a sample is considered to be ACBM, point counting may not be used to try to demonstrate that the sample is not ACBM.</p> <p>Are you saying that an asbestos material less than 10% by PLM visual estimation must be point counted?</p> <p>I can see no rational or reasoning to requiring an Owner to further prove a material is asbestos. Furthermore, the Owner should have the choice for additional analysis.</p> <p>This will only benefit laboratories with this regulation change.</p> <p>Same comments above in regards to §296.191(f)(3) for the point count analysis.</p> <p>No. See responses to #243 and #244.</p>
<p>250</p>	<p>296.191(g)</p>	<p>“The building owner must abate ACBM in accordance with this section prior to renovation or demolition. “ The term “abate is not defined. Does this section mean that any identified ACBM has to be removed prior to renovation? Or does this mean that any renovation must be planned and conducted in a manner as to avoid physical disturbance of identified ACBM? Please clarify.</p> <p>The language has been clarified in 296.191(g)(1) with " materials that could foreseeably be disturbed". ACBM not impacted by renovation does not have to be abated. If it will be disturbed it must be abated prior to demolition or renovation in accordance with the TAHPR and the NESHAP. RACM over the NESHAP threshold must be abated prior to demolition in a public building. Asbestos abatement is defined in §296.21(13) as The removal, encapsulation, or enclosure of ACBM.</p>
<p>251</p>	<p>296.191(g)</p>	<p>In regard to: §296.191. Asbestos Management in Public Buildings, Commercial Buildings, and Facilities. (g) Conditions requiring mandatory abatement. The building owner must abate ACBM in accordance with this section prior to any renovation or demolition.</p> <p>This statement appears to be requiring the Owner to remove the asbestos, whether it is going to be impacted by the renovation or not?</p> <p>No. The language in (g) has been clarified: (g) Conditions requiring mandatory abatement. Before any renovation or dismantling outside of or within a public building, commercial building, or facility, including preparations for partial or complete demolition, the building owner must have ACBM abated in accordance with this section. (g) (1) ..materials that could foreseeably be disturbed..</p>
<p>252</p>	<p>296.191(h)(1),(2), and (3)</p>	<p>These address leaving category I and category II in place during demolition. In the past, if we did this, then the entire building had to be disposed of as asbestos contaminated waste. Particularly applied to roofs. Will this still be the case?</p> <p>No, it has never been the case. This was added for clarification. Nonfriable materials can be left in place if they will not become RACM, that is not become friable during the demolition. The waste is considered non-regulated if it is not RACM.</p>

253	296.191(l)(2)	<p>In regards to: §196.191. Asbestos Management in Public Buildings, Commercial Buildings, and Facilities. (l)(2) In a public building, a notification to abate any amount of asbestos must be submitted to the department by the public building owner and/or operator.</p> <p>The Department needs to state "...a notification to abate any amount of asbestos must be submitted except as specified in §296.175", or "...a notification to abate any amount of asbestos must be submitted, the only exception is where tasks are not asbestos abatement activities that disturb three square or linear feet or less of nonfriable material per occurrence."</p> <p>Section 296.191(l) requires notification in accordance with §296.211, Notifications. The department added clarifying language to §296.211: "...The department must be notified of any asbestos abatement within a public building except for projects described in §296.175 of this title (relating to Regulatory Threshold for Nonfriable Material in a Public Building)...."</p>
254	296.191(n)	<p>In regards to: §196.191. Asbestos Management in Public Buildings, Commercial Buildings, and Facilities. (n) Installation of new materials. A person may not install building materials or replacement parts in a public building unless:</p> <p>I still do not see how the Department can require Owner's or Builders to use non-asbestos-containing products while the State and Country still allows asbestos products to be manufactured, sold and used. Did you know early on the manufacture product labels stated asbestos, and later on Chrysotile, or other form of asbestos, since most do not now what the common names for asbestos are, and more recently the labels say mineral fiber.</p> <p>I assume the Department knows that since this rule took place in 2006 virtually no Owner, Builder or general contractor knows they can not use asbestos. I've even spoken with many architects that do not know this. Most people think asbestos was banned a long time ago.</p> <p>The department declines to edit the proposed rule text. Prior to 2001 there was no prohibition on the installation of asbestos containing building materials. This language is a reflection of the state law as a result of House Bill 1927 of the 77th Legislature.</p>
255	296.192(b)(2)	<p>COMMENT: substitute the word "contact" for "proximity". "Immediate contact" is more easily enforced, than "proximity". It defines an action that is measurable, rather than a vague geographic distance. In other words, the onsite PM can easily discern whether the supervisor is within immediate contact of his workers.</p> <p>The department declines to substitute "contact" for "proximity" but changed the proposed rule text to: (2) Asbestos abatement supervisors and the consultant or the consultant's project manager shall remain on-site and in immediate proximity during all periods of asbestos abatement activity.</p>
256	296.192(b)(2)	<p>States that consultant or project manager must be on-site and in immediate proximity". Need clear definition of "immediate proximity".</p> <p>The department declines to define "immediate proximity." The inspector would not cite a violation unless they were unable to locate the consultant or project manager.</p>
257	296.192(d)	<p>What to do if holder of records retires or dies?</p> <p>Notify the department, and we may request them in accordance with §296.200(a).</p>

258	296.192(f)(1)	<p>Who can employ personal monitoring needs to be restated</p> <p>This topic is addressed in §296.51, Asbestos Air Monitoring Technician, and §296.32, Conflict of Interest.</p>
259	296.192(h)	<p>This section states that "Levels of asbestos fibers outside the regulated area must not exceed the TPBEL (0.01 fibers/cc).</p> <p>My concern is that quite often abatement projects are conducted on floors of public buildings where non-asbestos work is being performed, such as demolition of non asbestos walls, pulling up of carpet, etc... This causes the fiber levels of PCM air samples to increase. If the inside air sample is <0.01 fibers/cc and the samples outside the regulated area are over 0.01 fibers/cc, one can presume the increase is due to the non asbestos work activities.</p> <p>Many times we have no option but to collect baseline samples when non asbestos demolition is being performed.....maybe the Rules should consider the f/cc of ambient air samples that do not exceed the f/cc of baseline/background air samples as acceptable????</p> <p>Also, for Clearance Air Samples...it states that the minimum air volume for PCM air samples is 3000 liters. I believe it is meant to say "maximum"</p> <p>The department changed the minimum air volume back to 1,250 liters, so "minimum" is correct. In 296(h)(1)(a) the draft rule has been revised to allow for the existence of poor air quality that may be found in the situation you describe. This should only be a problem in a job that would not require containment and in that case the baselines could be used for clearance. If the abatement method being followed requires containment, then the clearance should be 0.01 f/cc.</p>
260		<p>The draft regulation states that the minimum volume for PCM clearance air samples is 3000 liters. I believed this to be a mistype yesterday and commented that it should read "maximum" and not minimum. I spoke with an asbestos training provider yesterday and he clarified that the draft regulations are actually considering having 3000 liters being the Minimum air volume.</p> <p>The issue with this is that many abatement projects are conducted in occupied public buildings where the containment prep cannot start until 7 pm when occupants have left, and the abatement, visual, clearance air sampling, and containment removal must be completed by 5 a.m., prior to the return of building occupants. If the minimum sample volume is now 3000 liters, the amount of time to run PCM clearance air samples has increased by approximately 2 hours. This will kill projects like this and will make it impossible to conduct night shift abatement during the week. Doing so is not "real world" abatement. It will delay projects, increase costs, cause poor abatement practices, and stall renovation and construction projects.</p> <p>My recommendation is to leave the minimum PCM clearance sample volume at 1250 liters. F/cc results for clearance samples with a volume of 1250 liters are quite often .002 or .003 fibers/cc, which is well below the required level of 0.01 f/cc.</p> <p>See #259 The minimum volume has changed to 1250 liters.</p>

261	296.192(h)(1) (A)(ii)	<p>Baselines must be analyzed, so why keep samples 30 days? Clearances conform to closure. I have never needed or used baselines. Why do they need to be analyzed unless clearances fail? Why say 1250 liters and then clearances 3000 liters?</p> <p>Baseline samples must be analyzed if clearance cannot be achieved. The department changed the minimum air volume back to 1,250 liters.</p>
262	296.192(h)(1) (B)(i)	<p>In regards to: §296.192. General Requirements for Asbestos Abatement in Public Buildings. (h)(1)(B)(i) Ambient air samples must be collected continuously during asbestos abatement activity and analyzed in accordance with the latest edition of NIOSH 7400 method, counting rules A.</p> <p>May I suggest that if a project is one 8-hour shift or more, one sample must be collected at the beginning of each day to document that no breaches in the enclosure or negative air filtration has occurred. Collection a sample all day and finding out there was an issue after the shift or the next day is not regarding safety to public health.</p> <p>This is another example why we should not utilize the AIHA, AAR. We must be able to obtain air sample results in a timely manner, most often the same or next day.</p> <p>The department removed the requirement for AMTs to be listed on the AIHA AAR in order to analyze fibers in the field. Samples can be analyzed promptly in the field. The consultant or project manager should be working with the AMT and or contractor to make sure the containment is in good shape. Sample pump volumes can be adjusted by the consultant and AMT to monitor the project. These volumes can be adjusted between 0.5 and 16 liters per minute.</p>
263	296.192(h)(1) (B)(ii)	<p>COMMENT: It is not always possible to place the negative air sample at the discharge. For example, any exhaust that discharge from the 2nd floor or higher is usually not accessible. A better wording would be, "at the negative air unit discharge, but not directly in the airstream, whenever feasible". Note: similar wording is used on page 123 (g) when referring to the negative air exhaust.</p> <p>If a sample cannot be taken at the negative unit discharge due to a situation like the one described, then the consultant can specify another location.</p>
264	296.192(h)(1) (C)(i) and (ii)	<p>296.192 C. Clearance (1.) Project Clearance must be consisting of an initial visual inspection, followed by air clearance sampling removal of containment and a final visual inspection. (ii) The minimum sample volume for PCM air sample clearance is 3000 liters of air. Comment: This is going to extend the time frame to run PCM clearance samples to at least five hours. This is again going to be a costly regulatory requirement which will be passed on to the public. Is there a large benefit by increasing the volume?</p> <p>The minimum sample volume has been changed back to 1,250 liters.</p>

<p>265</p>	<p>296.192(h)(1)(C)) (ii)</p>	<p>Recommended language: (ii) All project activities, except O&M, must be cleared by using aggressive air sampling. Clearance samples must be collected by an asbestos air monitoring technician or an asbestos consultant. The sample pumps must be monitored during the sampling period by the person collecting the samples. For all projects, samples must be collected and analyzed using NIOSH 7400 method, counting rules A, Phase-contrast Microscopy (PCM). Clearance samples must be collected at a flow rate between 0.5 to 16 liters per minute on 0.8 micron MCE filters in cassettes with electronically electrically conductive cowls. Only one cassette may be placed on a pump at a time. The asbestos consultant shall determine and specify the air volume to be collected for the clearance samples. Minimum sample volume will be sufficient to meet the limit of quantification of airborne fibers by adjusting the sampling volume to produce a fiber density of 100 to 1,300 fibers/mm². Clearance is achieved if no sample is reported greater than 0.01 f/cc by the analysis report from the licensed laboratory. The laboratory must report the number of fibers counted on the MCE filters. PCM must be used in accordance with the NIOSH 7400 method to determine the amount of fibers present. The minimum sample volume for PCM is 3,000 liters of air. Alternatively, the AHERA protocol may be used to determine volume and flow rate needed for TEM analysis in accordance with 40 CFR Part 763, Subpart E, Appendix A, Interim Transmission Electron Microscopy Analytical Methods—Mandatory and Nonmandatory—and Mandatory Section to Determine Completion of Response Actions. The minimum sample volume for TEM is 1,200 liters of air. * Recommended edit explanation is lengthy. See correspondence for this recommended edit.</p> <p>The minimum sample volume has been changed back to 1,250 liters.</p>
<p>266</p>	<p>296.192(h)(1)(C)) (ii)</p>	<p>What is an electronically conductive cowl? 3000 liters add 2-1/2 times to the current requirements. If current flow rate of 15.5 l/min is used it takes about 90 minutes to collect clearance samples. Now you want clearance sampling to be around 4 hours. This is outrageous. I don't care what Dana thinks. Why is 1250 good for baselines? You are adding another 1-1/2 hour to a job.</p> <p>Changed to electrically conductive cowl, which is defined in the NIOSH 7400 method. It reduces static electricity that may impact fibers. The minimum sample volume was changed back to 1,250 liters.</p>
<p>267</p>	<p>296.192(h)(1)(C)) (ii)</p>	<p>Though the method states this target fiber density (100-1300), this was written for dirty occupational settings. To reach 100 fibers per mm squared you would need around 80 fibers in 100 field analyzed. At 1250 Liters that results in a concentration of around 0.07 f/cc. You would need to have pulled 8000 Liters to get that density below 0.01 f/cc</p> <p>This method is the EPA-approved method.</p>
<p>268</p>	<p>296.192(h)(1)(C)) (ii)</p>	<p>The requirement for 3000 liters for PCM clearance samples will obscure most air cassettes and the lab analysis may be invalid. Too much airborne dust/dirt entering the containment from the negative air effect will be an issue in several renovations/constructions projects.</p> <p>The minimum sample volume was changed back to 1,250 liters.</p>

269	296.192(h)(1)(C)) (ii)	<p>In regards to: §296.192. General Requirements for Asbestos Abatement in Public Buildings. (H)(1)(C)(2)(ii) The minimum sample volume for PCM is 3,000 liters of air. ...</p> <p>This should be changed to ≥1250 to 3,000 liters of air. Occasionally the higher volume obscures the sample and a second collection set of clearance sampling is necessary.</p> <p>The minimum sample volume was changed back to 1,250 liters.</p>
270	296.192(h)(2)(B)) (B) Final Visual Inspection	<p>296.192 (2) Other Monitoring requirements (B) Final Visual Inspection A final visual inspection must be conducted by a licensed Asbestos Consultant or Project Manager.</p> <p>Comment: This is an inspection, which is already being performed by the abatement contractors. It is not required but is being performed by most contractors. If a contractor leaves a project unfinished he is liable. Again this will increase the Consultants time on the project site and will thus cost the Public more money. It is felt this responsibility should be placed on the contractors' shoulders. Conscientious contractors are already performing this inspection.</p> <p>Summary: It is felt that the Asbestos rules should ensure that Human Public Health should be protected. When you modify the rules to allow untrained personnel to handle asbestos it is creating a very dangerous situation where human health is not protected. The present TAHAPA rule has been in effect for some time now. Please ensure that we are trying to protect human health as we proceed with the passing of these new rules.</p> <p>This is the same as current rule. The consultant is the building owner's agent, not the contractor. It's a check to make sure the abatement was done correctly.</p>
271	296.193(a)(4)	<p>States that Owner's representative may enter the containment for 30 mins. With minimum half face? What about fit test and physician's release to wear a respirator? Training on proper exit? These are liability issues that should be clearly noted and that these people must comply with all OSHA requirements.</p> <p>This is an OSHA requirement in 29 CFR §1926.1101(f)(3)(6)(i) and (ii). The employer shall provide affected employees or their designated representative an opportunity to observe.. (ii) ppe will be provided.. Proposed rules require that the owner or owner's representative must be accompanied by a licensed asbestos abatement supervisor or consultant. Abatement companies are free to develop their own policy to have release of liability form signed by the owner/representative before entry into containment.</p>
272	296.193(a)(4)	<p>The building owner or his representative would be unable to enter the containment under any circumstance unless they had an appropriate OSHA physical and had been fit tested for a half-face respirator.</p> <p>This is an OSHA requirement. The department is adopting 29 CFR §1926.1101(f)(3)(6)(i)and (ii). The employer shall provide affected employees or their designated representative an opportunity to observe..(ii) ppe will be provided..</p>

<p>273</p>	<p>296.193(a)(4)</p>	<p>States "The building owner or the owner's representative is allowed entry into the containment when accompanied by a licensed asbestos supervisor or licensed asbestos consultant." There may be practical examples of why this provision is proposed. However, we have not experienced the need for this, other than maybe two or three times over our 27 years of monitoring abatement jobs.</p> <p>The net effect of this will be more unprotected personnel in the containment, resulting in exposures. I would also note there are significant differences between the education and training requirements for supervisors and for consultants. I question if the average contractor's supervisor has the capacity to evaluate health risks and owner liabilities, versus actual needs. I also question if the average supervisor has the wherewithal to refuse a request from the owner to enter the containment. In short, I am concerned about an owner's maintenance worker talking an abatement supervisor into allowing him to enter the containment, perhaps without the owner's or management's knowledge.</p> <p>If we must allow a provision of this sort, I recommend that it that only an asbestos consultant be authorized to allow/accompany the owner/owner's representative into the containment.</p> <p>This is allowed under OSHA- see previous explanation 271 and 272.</p>
<p>274</p>	<p>296.193(a)(4)</p>	<p>In regards to: §296.193. Abatement Practices and Procedures for Full Containment in Public Buildings.</p> <p>(a)(4) Only licensees, emergency responders as defined in §296.21(39) of this title (relating to Definitions), or appropriate government inspectors are allowed to enter the regulated area. The building owner or the owner's representative is allowed entry into the containment when accompanied by a licensed asbestos abatement supervisor or licensed asbestos consultant. Owners or representatives entering containment must wear at minimum a half-face respirator and a full-body suit and may remain in the containment for no more than 30 minutes. Owners or representatives must follow the specified decontamination procedures when exiting the containment.</p> <p>Owners or representatives entering containment should also have awareness training, fit test, and physician's release.</p> <p>See comments 271 and 272.</p>
<p>275</p>	<p>296.193 (b)</p>	<p>The definition of Critical Barriers includes "lay in suspended ceiling systems". Is this required for the removal of asbestos floor tile and mastic? Also, are splash guard containments still acceptable? A splash guard containment is one layer of 6-mil poly on walls a minimum of 4' from floor level, critical barriers, negative pressure HEPA filtration, and a decontamination unit.</p> <p>Yes, for full containment. Splash guards are not in the rules. Walls are supposed to be covered in a containment.</p> <p>Section 296.193(a)(5) All surfaces that are not being abated must be covered during asbestos abatement activities, except for O&M, RFCI, or projects designed by a licensed asbestos consultant in accordance with paragraph (2) of this subsection.</p> <p>(b)(6) Ceiling preparation. All ceilings must be completely covered with one layer of 4-mil thick plastic sheeting that extends beyond the ceiling-to-wall joint at least 6 inches, unless a licensed asbestos consultant determines that the ceiling is impermeable and specifies the ceiling can be cleaned and does not need to be covered. Proposed rules allow the consultant to specify alternate work practices in the project design as long as they are equally protective of public health and the variance is documented in the notification form. (§296.193(a)(2)(B))</p>

<p>276</p>	<p>296.193 (b)(3)</p>	<p>296.193 Abatement Practices & Procedures for Full Containment in Public Buildings (B) Containment Requirements (3) Critical Barriers All openings between containments and adjacent areas including but not limited to, windows, doorways, Elevator opening, corridor entrances, ventilation openings, drain ducts, grilles, grates, diffusers, skylights, and lay in suspended ceiling grids ceilings must be sealed. Comment: We are in agreement with all the above with exception of placing plastic covering on a lay in suspended ceiling grid ceilings. If Category I Non-friable floor tile is being removed and a negative pressure of at least 0.02 inches of water column differential can be achieved as indicated by an onsite Manometer, then this requirement would be overkill. Making abatement contractors place all floor tile projects in an inverted containment will increase the time and cost to the public for abatement. The fiber release of floor tile in a negative pressure containment utilizing wet methods is very minute if any. We have performed hundreds of floor tile abatements with almost no fiber counts. If you are using RFCI, then you don't have to do this. If a consultant says it's not needed during project that includes full containment, then the reasons for this can be documented on the notification form.</p>
<p>277</p>	<p>296.193(b)(3)</p>	<p>States that critical barriers are to be applied to lay-in suspended ceiling systems. For non-friable ACM abatement this has not been a requirement in the past and we would consider this materials to be cleanable. As long as there is sufficient negative pressure in place for the containment there is no way logically for airborne fibers to penetrate the ceiling tiles and not be cleanable. The State has also issued a clarification letter from many years ago stating that for floor tile/mastic removal only splashguards are required for the containment, besides critical barriers. This requirement for these ceiling systems to have critical barriers installed should be removed. The referenced clarification was not published or moved into rule. The consultant can specify in the specifications that the ceiling does not need to be covered. If a consultant says it's not needed during project that includes full containment, then the reasons for this can be documented on the notification form.</p>

<p>278</p>	<p>296.193(b)(3)</p>	<p>In regards to: §296.193. Abatement Practices and Procedures for Full Containment in Public Buildings.</p> <p>(b)(3) Critical barriers. Regulated areas 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. All openings between containments and adjacent areas, including but not limited to, windows, doorways, elevator openings, corridor entrances, ventilation openings, drains, ducts, grills, grates, diffusers, skylights, and lay-in suspended ceiling grid systems must be sealed. HVAC systems must be isolated from the regulated area by sealing with a double layer of 6-mil thick plastic sheeting or the equivalent. All penetrations that could permit air infiltration or air leaks through the barrier must be sealed, with exceptions of the make-up air provisions and the means of entry and exit.</p> <p>Applying weight may produce dangerous conditions to a suspended ceiling system in some instances.</p> <p>To believe that air and asbestos fibers could pass through a suspended ceiling panel with differential pressure of 0.02 inches of water and four air changes per hour is inconceivable.</p> <p>The Department trying to have the industry critical a suspended ceiling is not a correct judgement to have as a rule. I know consultants who have sampled above ceiling panels with all less than the detection limit results.</p> <p>OSHA states "Critical barrier means one or more layers of plastic sealed over all openings into a work area or any similarly placed physical barrier sufficient to prevent airborne asbestos in a work area from migrating to an adjacent area."</p> <p>Our current Rules do not have a definition of critical barrier. However current Rules state: §295.60(b) Critical barriers. Regulated areas within which asbestos abatement is to be conducted shall be separated from adjacent areas by impermeable barriers such as plastic sheeting attached securely in place. All openings between containment areas and adjacent areas, including but not limited to window, doorways, elevator openings, corridor entrances, ventilation openings, drains ducts, grills, grates, diffusers, and skylights, shall be sealed. All penetrations that could permit air infiltration or air leaks through the barrier shall be sealed, with exceptions of the make-up air provisions and the means of entry and exit.</p> <p>Our current Rules are correct, by stating "All openings between containment areas and adjacent areas..." and "with exceptions of the make-up air provisions and the means of entry and exit."</p> <p>See comments 277 and 278.</p>
<p>279</p>	<p>296.193(b)(4)</p>	<p>COMMENT:</p> <p>Anyone who is allowed entry into a containment would have to be fit tested and have an OSHA physical showing they are physically capable of wearing a respirator. To do otherwise is negligent and possibly exposes individuals to unsafe conditions. It should also be noted that there are times when a half face respirator will not offer sufficient protection from high levels of fibers, even during a 30 minute excursion.</p> <p>See comment 271 and 272</p>
<p>280</p>	<p>296.193(b)(4)</p>	<p>If you are removing walls what do you expect people to do if there is plastic 12" above the floor? Can we leave 12" of wall surfacing?</p> <p>If this in an issue, please consult the project consultant. If an inspector has questions, the inspector will consult the consultant as well.</p>

281	296.193(b)(4-6)	<p>These sections require floors walls and ceilings be covered with plastic sheeting prior to abatement. This literally means that prior to removing ACBM floor tile, 2 layers of plastic sheeting must first be installed over the floor. Same logic applies to walls and ceilings. How would these ACBMs be removed if covered in plastic sheeting? If this is not the intent, this section needs some clarification. A simple statement that removal surfaces do not require being covered with plastic sheeting would provide some much needed clarity.</p> <p>If this in an issue, please consult the project consultant. If an inspector has questions, the inspector will consult the consultant as well.</p>
282	296.193(b)(7)	<p>COMMENT: Recommend inserting the words from the "bag out area" definition in section 296.21(21) to make clear what is required for a bag out.</p> <p>The rule style does not define terms outside of the definitions section.</p>
283	296.193(h)(7)	<p>States "Temporary storage of ACWM must be provided (for example, a roll-off box, dumpster, or storage room lined with 6 mil thick plastic sheeting). All temporary storage must be sealed and secured to prevent unauthorized access." I recommend this be clarified to allow the use of open topped dumpsters, provided the dumpster is covered with a tarp or sheet plastic.</p> <p>This is purely an economic and supply concern. Commercially there are not as many closed topped dumpsters available, and they cost significantly more than open topped dumpsters. I have specified completely enclosed dumpsters before, and have gotten significant push back from bidders/contractors on availability and pricing concerns. If staff is committed to the concept of a closed topped dumpster, would a compromise for requiring them only on friable materials be considered?</p> <p>Add Tarp? Or interpret as- a secure site= secured. A tarp is ok then...</p> <p>(7) Temporary storage of ACWM must be provided (for example, a roll-off box, dumpster, or storage room lined with 6-mil thick plastic sheeting). All temporary storage must be sealed and secured to prevent unauthorized access. Final disposal of ACWM must be within 30 days of project completion or when receiving container is full, whichever is sooner.</p> <p>The department removed "and secured" from the proposed rule text.</p>
284	296.193(k)(2)	<p>states "...plugged into electrical source outside containment." Our firm allows the use of interior receptacles on floor tile and certain non friable removal projects only providing: (1) GFI protection is supplied, (2) the contractor can demonstrate adequate protection of the receptacles from water, and (3) if other shock hazards can be eliminated. Traditionally these types of projects require limited amounts of water which is narrowly applied.</p> <p>In my opinion the decision as to electrical source suitability should be left up to the design consultant. Receptacles on circuits in other parts of the building may not always be available. In those cases, most municipalities require a licensed electrician to install the contractor's circuit board/GFI panel. The additional coordination required between the electrician and the abatement contractor creates inefficiency and the cost of the electrician increases overall project costs. This provision is most burdensome on a small one- to two-day project.</p> <p>Revised (k)(2) to: Electrical safety. All active electrical service lines within the regulated areas and containments must be connected through ground-fault circuit interrupter (GFCI) devices.</p>

<p>285</p>	<p>296.195(a) and (b)(1)</p>	<p>This is not allowed in the accordance with the TOC 1954.002 Definitions:</p> <p>“(2) "Asbestos" means :(A) an asbestiform variety of chrysotile, amosite, crocidolite, tremolite, anthophyllite, or actinolite; or (B) a material that contains one percent or more of a substance described by Paragraph A.</p> <p>(3) "Asbestos abatement" means a removal, encapsulation, or enclosure of asbestos to reduce or eliminate or that has the effect of reducing or eliminating :(A) a concentration of asbestos fibers; or (B) an asbestos-containing material.</p> <p>(4) "Asbestos-related activity" means:(A) the removal, encapsulation, or enclosure of asbestos;</p> <p>(5) "Asbestos removal" means an action that disturbs, dislodges, strips, or otherwise takes away asbestos fibers.”</p> <p>Past rulemaking and settled law executed and enforced by the Department was interpreted as “any amount” as being consistent with the statute. To exempt “all” small scale short duration projects under the proposed threshold, with NO oversight and no license would constitute a large public asbestos exposure risk and health risk all across a State the size of Texas with a population of 26 million plus. The above also invalidates the “repetitive task, and small projects” in the Subchapter J: Exemptions. The only exemptions identified in the statute is RFCI (the full RFCI including floor buffers and terrazzo stones and wet sand methods which do render the material to RACM under a 2004 EPA Applicability Determination Index finding in 2004 but is still allowed in the statute and the NEA), so the Department does not have the authority to make this significant departure from the Statue AND their past consistency with this proposed regulation. The Repetitive tasks, non friable, and disassembly work practices, will be addressed in a following section. Therefore, the “Regulatory Threshold in a Public Building” should be stricken from the proposed rule as it is not legal under the statute and the Department must show standing for such a departure from the statute and previous Department settled rulemaking. The Department could define an “O&M” licensing path with a 16 hour AHERA equivalent class, overseen by a certified Full Supervisor course, and operating under an O&M restricted license. Why was that particular route not explored and the Department just jumped to “exemptions”?</p> <p>This section is for materials that are non friable. A survey is still required.</p>
<p>286</p>	<p>296.195(a) and (b)(1) and (2)</p>	<p>296.195 Regulatory Threshold in a Public Building</p> <p>(A.) Establish Regulatory Threshold of less than 3 Square Feet.</p> <p>(B.) 1. Less than three Square or Linear feet of Non-friable Asbestos</p> <p>2. Projects and task that are below the threshold specified in paragraph (1) of the subsection is Exempt from the Licensing, Registration and notification Requirements.</p> <p>Comment:</p> <p>With no licensing, training or regulation requirements does this minimize the air borne exposure of asbestos to the public as stated in Chapter 1. General Provision. How many asbestos fibers can be released from three square feet of mishandled asbestos material?</p> <p>This threshold is based on the AHERA threshold for friable material for a minor fiber release episode that can be handled with minimal training. We are proposing the same threshold for non-friable material.</p>

<p>287</p>	<p>296.195, 296.197, 296.198, 296.199</p>	<p>I applaud the Department and commenters in the effort to address dealing with “non friable” material abatements, and the SSSD, and maintenance operations in a more reasonable way addressed by “risk” posed by certain small scale activities and mostly non friable materials. The above sections are very good in content, and would have an effect of reducing public exposure to asbestos, however some aspects are problematic in the proposed rulemaking, and some are not in compliance with the TAHPA. In my opinion, to “save” this work and contributions to this effort, which I support, there does need to be changes to get consistent with the statute. First, in the Proposed section for §296.194 Operations and Maintenance (O&M) Requirements for Public Buildings add: “(d) Alternative compliance, any building owner may use building staff properly licensed for SSSD, repetitive tasks, intact materials, etc., IF: (1) The building owner has a survey and active management plan with an O&M Program, (2) The building owner has a licensed Asbestos Consultant, or management Planner sign off on verifying the conditions and extent of the task covered, (3) Exposure assessments are conducted, (4) The management plan in updated with the O&M task, (5) The building owner has a “consolidated annual notification”. Any building owner with the above may employ any of the listed procedures verified by the consultant or MP, listed in Appendix A to the TAHPR.”</p> <p>With the current wording on the proposed rule, the building owners will have an illegal exemption from the statute, and they can “repetitive task” or “SSD” the heck out of a building until the entire amount of floor tile, or other materials are all gone, and there is NOTHING DSHS could do to enforce. The proposed rule has a built in “loophole” to circumvent the statute and this proposed regulation. The way it is worded, the building owners could do “abatement” with no oversight at all, just on the word of the “supervisor” going through the motions of “O&M” or “repetitive tasks”. This makes a clear problem with no oversight or verification and is a significant public health risk to the unsuspecting public to asbestos exposure. This also violates the “purpose and scope” of the TAHPR, to “prevent public exposure to asbestos”. The above proposal is consistent with EPA recommendations that “an active and proactive management plan” is the key to prevent exposure to asbestos in buildings. Additionally, this proposal does follow the “enforcement philosophy” on the DSHS webpage.</p> <p>It gives a “carrot and stick approach”, by investing the building owners proactively in the asbestos processes and then getting a credit by allowing in house workers under certain conditions. This configuration gives the Department a hand in enforcement by identifying a “responsible person”, the IAC or MP, to make sure they are not “abating the building” by repetitive tasks, and allows independent operations to take care of small immediate asbestos hazards. The Proposed “operations” would all be moved to TAHPR Appendix A, alternate work practices and operations granted under O&M or SSSD activities. The same could be done for the “abatement of non friable” materials in an appendix for abatement. Schools would benefit most because they already have an inspection and management plan and would add no additional cost.</p> <p>The proposed threshold is for work "not intended for asbestos abatement." If this were the case, an inspector would require notification, and cite no licensed personnel.</p>
<p>288</p>	<p>296.196(a)(1)</p>	<p>In regards to: §296.196. Resilient Floor Covering Removal in Public Buildings. (a)(1) work practices published in the current edition of the Resilient Floor Covering Institute's "Recommended Work Practices for Removal of Resilient Floor Coverings" (RFCI work practices); or (2) other methods determined by the department to provide public health protection from asbestos exposure, in accordance with §1954.104 of the Act.</p> <p>This section does not give rules for flooring removal, other than RFCI or "other methods determined by the department..."</p> <p>The rule calls for RFCI or essentially the other methods cited. A consultant may propose a new method. Changed "determined" to "approved."</p>

289	296.196(b)(1)	<p>COMMENT: “cut” is not allowed since it creates RACM, but in the next sentence “slicing” does not create RACM. How is “slicing” any different than “cutting”?</p> <p>Slicing is a continuous single movement with a blade, while cutting is a kind of shredding up and down movement. OSHA and RFCI guidance specifies the method.</p>
290	296.196(b)(1) and (3)	<p>296.196: Resilient Floor Covering removal in Public Buildings (b) Scope and Limitations (1) Shearing, Slicing, or punching the flooring does not render the Flooring Material RACM. (3) The PEL must not be exceeded during the removal activity. Comment: (1) How is Shearing, Slicing or punching different from the prohibited method of Mechanically Chipping the tile? (3) How is one to determine if the PEL is exceeded as no air monitoring is required under the current regulations during an RFCI removal project. As stated in the General provision, this chapter is written to minimize the exposure of air borne asbestos to the public. What precautions are being utilized in the RFCI method to protect human health?</p> <p>Slicing is a continuous single movement with a blade, while cutting is a kind of shredding up and down movement. This is from OSHA and RFCI guidance RFCI is valid under an exposure assessment done by the industry showing the PEL is not exceeded.</p>
291	296.198(b)(1) and (3)	<p>296.198: Procedures for Small projects and Repetitive Task in Public Buildings (b.) Scope and Limitations (1.) Abatement Activities that disturb less than 10 square feet of ACBM. (3.) Registered asbestos abatement workers or unlicensed maintenance personnel may perform small projects and repetitive task that disturb friable asbestos using the work practices outlined in subsection (d) of this section only when supervised by a licensed asbestos abatement supervisor or O & M supervisor. Comment: (1.) How many fibers can be released by the mishandling of 10 square feet of ACBM? Does this meet the General Provision of Chapter 1 which states the purpose of minimizing the public’s exposure to air borne Asbestos? (2.) Unlicensed, untrained maintenance personnel should not be working with friable asbestos. They have no knowledge of how to protect themselves or the public health. What about the OSHA rules for medical surveillance and respiratory training?</p> <p>Yes, it meets the provision under §1954.060(c) of the Act. The work is being done under supervision and with an exposure assessment. The PEL (0.1 f/cc) is not being exceeded, and the required exposure assessment does not allow a fiber count higher than 0.01f/cc or clearance level.</p>

<p>292</p>	<p>296.198(b)(3) *See 296.198(b)(5) for explanation</p>	<p>Recommended language: (3) Registered asbestos abatement workers may perform small projects and repetitive tasks that disturb ACBM using the work practices outlined in subsection (d) of this section only when supervised by a licensed asbestos abatement supervisor or a licensed O&M supervisor. Licensed asbestos abatement supervisors or licensed O&M supervisors may perform and may supervise small projects and repetitive tasks that disturb friable ACBM using the work practices outlined in subsection (d) of this section.</p> <p>The department declines to make the suggested edits.</p>
<p>293</p>	<p>296.198(b)(4) *See 296.198(b)(5) for explanation</p>	<p>Recommended language: (4) Maintenance and installation personnel who are exempt from licensing per §296.174. Small Projects and Repetitive Tasks in a Public Building may perform small projects and repetitive tasks using the work practices on which they have been trained, including (e)(1) - (e)(5), only when supervised by a competent person as defined in 29 CFR 1926.1101 (b). Unlicensed personnel are exempt from the training requirements of Subchapter F but are required to be trained in accordance with 29 CFR 1926.1101 for the tasks they will perform, including (e)(1) - (e)(5).</p> <p>The department declines to make the recommended edit. An asbestos supervisor is a competent person. The 29 CFR §1926.1101(e)(1)-(5) is for situations where the PEL is exceeded or it is likely to be exceeded. Since the exposure assessment is for 0.01 fibers/cc, the PEL is not likely to be exceeded.</p>
<p>294</p>	<p>296.198(b)(5)</p>	<p>Recommended language: (5) The licensed or unlicensed supervisor shall identify the tasks to be performed under this section for purposes of defining training and exposure assessment requirements.</p> <p>The recommended edit will affect public health and the regulated community as follows.</p> <ol style="list-style-type: none"> 1. §296.198. (a)(1) would prohibit removing or moving more than one 2 ft x 4 ft asbestos-containing ceiling tile by unlicensed personnel. Because these tiles are friable, I agree that the work should be done by licensed personnel under abatement conditions. 2. The requirements for unlicensed work and personnel need to be separated from those for registered and licensed persons. §296.198 (b)(4) places training requirements on the unlicensed worker that would qualify him to perform his assigned task as well as the work in (e), and also on his unlicensed supervisor (they may be the same person). If Subchapter F is modified to include these requirements it should be referenced here. 3. Delete "friable." This section applies to non-friable asbestos-containing materials as well, not all of which are "intact" and subject to §296.199. <p>The department declines to make the recommended edit. This section is for exposure assessments that do not exceed clearance level or 0.01 fibers/cc.</p>

<p>295</p>	<p>296.198(c)</p>	<p>Recommended language: (c) Exposure assessments. In order to perform a small project or repetitive task in compliance with this chapter without using a negative pressure glove bag, glove box, or mini-containment, an exposure assessment must be on-site showing that the worker exposure work practices will not exceed the Permissible Exposure Limit as defined in 29 CFR §1926.1101(c). TPBEL of 0.01 f/cc. Exposure assessments for compliance must be completed in accordance with 29 CFR §1926.1101(f) must be performed according to or an equivalent procedure such as the current edition of ASTM D7886, Standard Practice for Asbestos Exposure Assessments for Repetitive Maintenance and Installation Tasks. Only appropriately registered and licensed persons may conduct an exposure assessment. Only appropriately licensed persons may conduct an exposure assessment. A licensed asbestos consultant must supervise the testing. A licensed asbestos supervisor or project manager must be in the containment directly monitoring the registered asbestos abatement worker performing the task. A licensed asbestos consultant must design and direct the exposure assessment. A licensed asbestos supervisor or project manager must directly monitor the registered asbestos abatement worker performing the exposure assessment. Air monitoring shall be conducted for compliance with the TPBEL of 0.01 fibers/cc outside the containment during the exposure assessment and inside the containment prior to tear-down. The recommended edit will affect public health and the regulated community as follows. 1. The TPBEL applies to exposure "outside of the asbestos regulated area" per §296.21(104). The work covered by this section is performed in a regulated area per §296.198(d)(1) and (e)(1) where the exposure limit is the OSHA Permissible Exposure Limit of 0.1 fiber/cc. Personal sampling per 29 CFR §1926.1101 and ASTM D7886 is conducted for compliance with the OSHA PEL and is not capable of demonstrating compliance with a 0.01 fiber/cc exposure limit. 2. 29 CFR §1926.1101(f) does not contain a procedure for performing an exposure assessment. The only procedure that has undergone consensus review is ASTM D7886. 3. It is not necessary for the licensed asbestos supervisor to be inside the containment while the exposure assessment is being performed. The licensed asbestos consultant will direct the activities of the registered asbestos abatement worker inside the containment. The licensed asbestos supervisor or project manager is needed to set up and operate the negative pressure enclosure. 4. Monitoring fiber levels outside the containment while the exposure assessment is in progress, and performing clearance sampling after the task is completed, is required by ASTM D7886 The department declines to make the suggested edit. The exposure assessment is for work that will not exceed clearance levels of 0.01 f/cc.</p>
<p>296</p>	<p>296.198(d)</p>	<p>Draft section §296.198 (d) needs to be modified to apply only to licensed persons and §296.198 (e) added for unlicensed persons, as the work they perform, their capabilities and training will differ. the added §296.198 (e) is more consistent with the work practice requirements for unlicensed persons. Recommended language: (d) Work practices. Work practices for work performed by registered workers and licensed supervisors must include the following: The department declines to make the recommended edit. Unlicensed persons will be trained for the particular task by their licensed supervisor, and the task and work practices will not exceed 0.01 f/cc.</p>
<p>297</p>	<p>296.198(d)(3)</p>	<p>Recommended language: (3) HVAC equipment in or passing through the regulated area must be shut down, and preventative measures taken to prevent accidental start-ups, by the building owner. All supply and return openings and any seams in system components must be sealed with at least 6-mil thick plastic sheeting and/or tape. All old filters must be disposed of as asbestos waste. The recommended edit will affect public health and the regulated community as follows. 1. The edited (d)(3) requires the building owner, not the asbestos-licensed person, to shut down and lock-out the HVAC as the licensed person is not qualified to do this. If the return openings are sealed there should be no need to replace filters. The department incorporated the recommended edit.</p>

298	296.198(d)(4)	<p>Recommended language: (4) All active electrical service lines electrical equipment used for the work within the regulated area must be connected through ground-fault circuit interrupter devices. The recommended edit will affect public health and the regulated community as follows. 2. De-activating electrical service lines in draft section §296.198 (d)(4) is beyond the capabilities of the asbestos-licensed person who will perform the work, as they will not be qualified to operate the electrical equipment in the building. The emphasis has to be on protecting the worker from electrical hazards associated with the equipment he is using to perform the task</p> <p>The department declines to make the suggested edit. The ground fault interrupter is the interface with the electrical line.</p>
299	296.198(d)(7)	<p>Recommended language: (7) ACWM must be double-bagged into 6-mil thick plastic bags, plastic bags that meet the dart impact test as specified in §296.193 of this title (relating to Abatement Practices and Procedures for Full Containment in Public Buildings), or sealed in leak-tight drums, and must be disposed of in accordance with §296.193 and 40 CFR Part 61, Subpart M. 4 (7) Asbestos-containing waste material must be placed and sealed in 6-mil thick plastic bags. The bags must be double-bagged or placed and sealed in leak-tight drums. Bags and drums must be disposed of within 30 days of project or task completion or when the receiving container is full, whichever is sooner. The recommended edit will affect public health and the regulated community as follows. 3. §296.198 (d)(7) is sufficiently explained without the references.</p> <p>The department added to (d)(7): "Final disposal of ACWM must be within 30 days of project completion or when the receiving container is full, whichever is sooner."</p>
300	296.198(d)(8)	<p>Recommended language: (8) A licensed asbestos abatement supervisor or licensed O&M supervisor shall perform a visual inspection upon completion of the project or task to ensure all ACBM required to be removed has been removed and containerized in accordance with this chapter, and the regulated area is free of all residual dust and debris.</p> <p>The department incorporated the recommended edit.</p>

<p>301</p>	<p>Addition 296.198(e)</p>	<p>Recommended addition: (e) Work practices for work performed by unlicensed persons must include the following: (1) Access to the regulated area in which the work is performed must be limited to authorized personnel. At a minimum, caution tape must be used to demarcate the regulated area. (2) Warning signs must be displayed in English and Spanish at all entrances to the regulated area. (3) All electrical equipment used for the work within the regulated area must be connected through ground-fault circuit interrupter devices. (4) ACBM must be wetted with amended water or foam agents intended to control airborne fiber release and remain wet throughout the task. (5) HEPA vacuuming and/or wet cleaning must be used to decontaminate the regulated area and equipment until there is no visible debris. (6) Asbestos-containing waste material must be placed and sealed in 6-mil thick plastic bags. The bags must be double-bagged or placed and sealed in leak-tight drums. Bags and drums must be disposed of within 30 days of project or task completion or when the receiving container is full, whichever is sooner. (7) The unlicensed supervisor shall perform a visual inspection upon completion of the task to ensure all ACBM required to be removed has been removed and containerized in accordance with this chapter, and the regulated area is free of all residual dust and debris. The recommended edit will affect public health and the regulated community as follows. 4. The reference to 29 CFR §1926.1101 has been deleted from (e)(1) and (2) because of the confusion it would cause for the unlicensed person to thread his way through the multiple provisions of the OSHA regulations. Most would give up and ignore these provisions, or be discouraged from taking advantage of this section. Elaboration of the requirements in (e)(1) and (2) can, and should, be covered in a brief training course. 5. For the same reasons as stated for (d)(3), unlicensed persons should not operate the building HVAC system, nor is there a need to replace air filters. 6. §296.198 (e)(6) removes the references to §296.193 and 40 CFR Part 61, Subpart M as these provisions are beyond the comprehension of most unlicensed persons who will perform work under this section and would not clarify this requirement. They are another example of regulatory verbiage that many would ignore or see as a reason not to pursue the available exemption. Many tasks will not involve removal of ACBM and the waste will consist of small amounts of debris and contaminated materials. In most cases arrangements will be made with the building owner for storage and disposal of the ACWM. The department declined to make the recommended edit. The citations included in (d) give specific guidance, and an unlicensed person who is performing these tasks will be supervised by a licensed person and trained.</p>
<p>302</p>	<p>296.200(b)(2)(H))</p>	<p>In regards to: §296.200. Recordkeeping. (a)(b)(2)(H) air monitoring results, which must be posted within 48 hours from the time samples are collected; This is another example why we should not utilize the AIHA, AAR. Our field personnel will not be able to get to a laboratory before it closes and will have to pay for same day turn-around-time for the lab. The lab will then have to get the results to the Licensed Air Monitoring Technician who will have to have the capabilities of printing the report in the field so that it could be posted the same day. The department declines to incorporate the suggested edit. The requirement for AMTs to be listed on the AAR has been removed from the proposed rule text.</p>

303	296.211(f)	<p>In regards to: §296.211. Notifications. (f) Start date change (1) an amended notification must be submitted to the department at least 10 working days before the new start date in accordance with subsection (d) of this section; and (2) the appropriate regional office must be contacted by phone at least 10 working days before the new start date; and (3) for notification not submitted online, the appropriate regional office must be provided with a fax or email copy of the amended notice at least 10 working days before the new start date.</p> <p>This needs to be re-written. An amended start date can not be submitted to the Department 10 working days before the new start date. Unless the Department is stating that any amendments require a new 10 day notification time period?</p> <p>Example: If a project was to start on the 15th and the Notification was submitted on the 1st and a new start date was determined to be changed on the 13th for a new start date one day later, on the 16th, this would only be a three day notice of the amended new start date. The department declines to make the recommended edit. The example given would not be a violation. This subsection is for when the start date changes to a date earlier than the notified date. The 10-working-day due date is in current rule. This section is not discussing start date change to later start date. That is in covered (h) of this section.</p>
304	296.211(g)	<p>“Stop date changed to an earlier date. When asbestos abatement or demolition ends on a date earlier than the date contained in the notification:” I recommend changing it to read “Stop date changed to an earlier date. When asbestos abatement or demolition ends on a date more than one calendar day earlier than the date contained in the notification:” We recommend this change solely for the convenience of the consultant/contractor who filed the original notification.</p> <p>I estimate approximately 30-50% of state wide abatement projects notified will be for projects of five days or less. We allow the contractor to complete the project early if they are able to do so. Even so, we rarely miss the completion date by more than one day, especially on three- to seven-day projects. Currently, we call and email our local regulator when a job will finish a day early, and will continue to do so regardless of language changes. However, it would be tedious to have to follow up with amended notifications for the numerous jobs that finish a day early.</p> <p>I would ask staff to please consider adding a one-day grace period to the amended notification requirement on projects which end within one day of the original end date.</p> <p>The department declines to add a one-day grace period because of the availability of the easier, online notification option. A notification can be amended before and including the day of the new stop date online and notifying the regional office by phone.</p>
305	296.192(i)(2)	<p>Where are asbestos-related orders issued by the department to be posted? Who is responsible for posting the orders? Must the orders be visible and if so, to whom?</p> <p>Licensed asbestos abatement contractors, licensed O&M contractors, and RFCI contractors shall post the asbestos-related orders issued by the department visible to the public at the entrance to the regulated area in accordance with §296.192(i).</p>
306	296.200(b)(2)(H)	<p>Where are air monitoring results to be posted? Who is responsible for posting the results? Must the results be visible and if so, to whom?</p> <p>The air monitoring results should be posted and visible to the public at the entrance to the regulated area along with the Violation Notification Procedure poster and copies of any asbestos-related orders issued by the department.</p>
307	296.48(b)(2)(T)(i)	<p>The DOT training requirement to sign manifests for transport of asbestos is a federal requirement. U.S. Department of Transportation requirements are stated in 49 CFR 171 and 172 concerning hazardous materials shipping requirements applicability and training, respectively. This is an oversight by the rules authors. Asbestos waste manifests cannot be signed by anyone without proper training.</p> <p>Training is provided by the employer.</p>

308	296.21(6)	<p>Propose new language (6) 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 has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet. Define "Sufficiently mixed or penetrated with liquid" as it relates to non-friable material, i.e.: Floor tile is wetted on all surfaces.</p> <p>The department declines to further clarify "sufficiently mixed or penetrated with liquid." The department thinks the definition sufficiently describes that if no particulates are released, the material is adequately wet.</p>
309	296.21(10)	<p>Propose new language (10) Air monitoring--The collection of air samples for the counting of fibers.</p> <p>The department declines to make the requested edit. "Analysis" is consistent with the terminology used throughout the chapter.</p>
310	296.21(11)	<p>Propose new language (11) Amended water--Water to which a surfactant (wetting agent) has been added.</p> <p>The department declines to use the recommended definition because the proposed definition is more descriptive.</p>
311	296.21(16)	<p>(16) Asbestos abatement project design- the evaluation and selection of appropriate asbestos abatement methods; the project layout; the preparation of specifications and plans and contract documents. Redundant to the definition.</p> <p>The department declines the recommendation to shorten the definition.</p>
312	296.21(23)	<p>Remove definition (23) Category I nonfriable ACM--Asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1.0% asbestos as determined using polarized light microscopy or transmission electron microscopy.</p> <p>The department declines the request to remove the definition. This definition is a big part of understanding asbestos regulation.</p>
313	296.21(24)	<p>Remove definition (24) Category II nonfriable ACM--Any material, excluding Category I nonfriable ACM, containing more than 1.0% asbestos as determined using polarized light microscopy or transmission electron microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure. Redundant, adequately defined in the NESHAP, not germane to the TACHPA Rule.</p> <p>The department declines the request to remove the definition. This definition is a big part of understanding asbestos regulation.</p>

314	296.21(26)	<p>Remove definition (26) Commercial building--The interior space of any building that is not a public building. Interior space includes exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space. The term includes, but is not limited to, industrial buildings, federal-government-owned buildings, warehouses, and factories. The term does not include detached single private residences. Interior space should be defined elsewhere</p> <p>The department declines to make the requested edit. The department thinks the description of interior space adds clarity. The interior space language is also used in the definition of public building.</p>
315	296.21(30)	<p>Remove definition (30) Containment-area ventilation--Ventilation of the regulated CONTAINMENT area to move contaminated air away from the breathing zone of employees and toward a filtration or collection device equipped with a HEPA filter and in sufficient number to provide negative pressure of at least 0.02 inches of water column differential between the containment work space and outside, and a minimum of four containment air changes per hour.</p> <p>The department incorporated the recommended edit.</p>
316	296.21(33)	<p>Remove definition (33) Decontamination area--An enclosed area consisting of an equipment room, shower room, and clean room that is used for the decontamination of workers, materials, and equipment that are contaminated with asbestos. This area is adjacent to, and where feasible, connected to the regulated area.</p> <p>The department declines to make the requested edit.</p>
317	296.21(34)	<p>Remove definition (34) 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 re-support of the structure is considered renovation, not demolition. Moving a building from its foundation is considered demolition.</p> <p>The department declines to make the requested edit.</p>
318	296.21(45)	<p>Remove definition (45) Exposure assessment--A determination of the level of exposure as defined by OSHA. 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.</p> <p>There are many kinds of exposure assessments. The department is defining the particular one used for TAHPR. The department declines to make the requested edit.</p>

319	296.21(46)	<p>Remove definition (46) 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 disposal site. Any structure, installation, or building that was is previously subject to 40 CFR Part 61, Subpart M is not excluded, regardless of its current use or function. A project involving a single private residence or a single apartment building with no more than four dwelling units is excluded from coverage by this chapter. When there are two or more of these buildings on the same site that are controlled by the same owner or operator, the buildings are considered an installation under NESHAP, and NESHAP regulations apply.</p> <p>The department declines to remove the definition. The definition is in NESHAP.</p>
320	296.21(48)	<p>Remove definition (48) 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.</p> <p>Revised definition to include commenter's suggested language.</p>
321	296.21(52)	<p>(52) Independent third-party air monitor--A person retained to collect air samples to be analyzed for the owner of the building or facility being abated.</p> <p>The department declines to make the requested edit. The air samples are to be analyzed.</p>
322	296.21(53)	<p>(53) Industrial/manufacturing facility--Any facility where industrial or manufacturing operations or processes are conducted and to which access is limited principally to employees and contractors of the facility operator or to invited guests under controlled conditions because of (due to) processes or functions that are hazardous to human safety or health.</p> <p>The department declines to make the suggested edit.</p>
323	296.21(57)	<p>Remove definition (57) LEA--Local education agency. An LEA includes: Facilities as defined by the AHERA (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 for 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 or governing authority of any nonpublic, nonprofit elementary or secondary school building.</p> <p>The department declines the request to remove the definition. This definition is a big part of understanding AHERA and asbestos regulation.</p>

324	296.21(60)	<p>(60) 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 3 square or linear feet of friable ACBM. – Not part of any work practice governed by this rule</p> <p>The department declined to remove the definition. It is in current rule, and schools are public buildings. Also, there is a three square feet or three linear feet threshold now for nonfriable materials in a public building.</p>
325	296.21(62)	<p>(62) <i>MAP-- (EPA) Asbestos Model Accreditation Plan. The MAP is an EPA plan that provides standards for initial training, examinations, refresher training courses, applicant qualifications, decertification, and reciprocity, as described in 40 CFR Part 763, Subpart E, Appendix C. - redundant</i></p> <p>The department declines to make the recommended edit.</p>
326	296.21(64)	<p>(64) Minor fiber release episode--Any uncontrolled or unintentional disturbance of ACBM, resulting in a visible emission, which involves the falling or dislodging of 3 square or linear feet or less of friable ACBM. – Not part of any work practice governed by this rule</p> <p>The department declines to make the recommended edit.</p>
327	296.21(65)	<p>(65) Miscellaneous material--Interior building material that is found on structural components, structural members, or fixtures, such as floor and ceiling tiles, and does not include surfacing material or TSI.</p> <p>The department declines to make the recommended edit. This definition is in the MAP training and it has been improved.</p>
328	296.21(68)	<p>(68) Negative exposure assessment--Air monitoring investigations that determine potential exposure to asbestos by asbestos professionals. It is a demonstration by the employer that complies with the criteria in 29 CFR §1926.1101(f) that employee exposure during an operation is expected to be consistently below the PEL.</p> <p>The department declines to make the recommended edit. The language helps explain the exposure assessment strategy.</p>
329	296.21(73)	<p>(73) Nuisance residence demolition--Single (private) family residences that are demolished by municipalities for reasons of public health, welfare, or safety.</p> <p>The department declines to make the suggested edit because the definition mirrors the language used in statute.</p>
330	296.21(78)	<p>(78) Owner or operator of a demolition or renovation activity—(As defined by NESHAP)Any person who owns, leases, operates, controls, or supervises a commercial building or facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation or both.</p> <p>The department declines to make the recommended edit.</p>

331	296.21(82)	<p>(82) Planned renovation operation--A renovation operation, or a number of such operations, in which some (R)ACM will be removed or stripped within a given period of time and that can be predicted. Individual nonscheduled operations are included if a number of such operations can be predicted to occur during a given period of time based on operating experience.</p> <p>The department declines to make the recommended edit. ACM includes RACM.</p>
332	296.21(84)	<p>(84) Public building--The interior space of a building used or to be used for purposes that provide for public access or occupancy, including but not limited to, schools, hospitals, prisons and similar buildings. 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 prior to actual demolition. The term does not include:</p> <p>(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;</p> <p>(B) a federal-government-owned building or installation (civilian or military);</p> <p>(C) a (private single family) residence;</p> <p>(D) an apartment building with no more than four dwelling units;</p> <p>(E) a manufacturing facility or building that is part of a facility to which access is limited to workers and invited guests under controlled conditions because of processes or functions that are hazardous to human safety or health;</p> <p>(F) a building, facility, or any portion of which, prior to 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</p> <p>(G) the portion of a building that has become structurally unsound due to demolition.</p> <p>The department declines to make the recommended edit. "Private" is terminology used in statute</p>
333	296.21(86)	<p>Remove definition</p> <p>(86) RACM--Regulated asbestos-containing material. RACM means:</p> <p>(A) friable asbestos material;</p> <p>(B) Category I nonfriable ACM that has become friable;</p> <p>(C) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading; or</p> <p>(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 the demolition or renovation operations regulated by 40 CFR Part 61, Subpart M. – not a term used in this rule, redundant with the NESHAP</p> <p>The department declines to remove the definition. The term is used in §296.191(h).</p>
334	296.21(89)	<p>(89) Response action--A method, including removal, encapsulation, enclosure, repair, and operations and maintenance that protects human health and the environment from friable ACBM. – not a term used in this rule, redundant with the AHERA</p> <p>The department declines to remove the definition. The defined term is used throughout the rule.</p>

335	296.21(94)	<p>(94) School building--Any structure suitable for use as a classroom, including a school facility such as a laboratory, library, school eating facility, or facility used for the preparation of food. Any gymnasium or other facility that is specially designed for athletic or recreational activities for an academic course in physical education. Any other facility used for the instruction or housing of students or for the administration of educational or research programs. Any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in this definition of "school building." Any portico or covered exterior hallway or walkway. Any exterior portion of a mechanical system used to condition interior space.</p> <p>The department corrected the typo.</p>
336	296.21(97)	<p>(97) SSSD activities--Tasks such as, but not limited to, 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 may be further defined as the following:</p> <p>(A) removal of small quantities of ACM only if required in the performance of another maintenance activity not intended as asbestos abatement;</p> <p>(B) removal of asbestos-containing TSI on pipes not to exceed amounts greater than those that can be contained in a single, standard (60 inches by 60 inches) glove bag;</p> <p>(C) minor repairs to damaged TSI that do not require removal;</p> <p>(D) repairs to a piece of asbestos-containing wallboard; and</p> <p>(E) repairs, involving encapsulation, enclosure, or removal, to small amounts of friable 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.</p> <p>The department declines to make the suggested edit relating to mini-containment. A mini-containment does not have to be prefabricated. The department declines to make the suggested edit with regard to the word "friable." SSSD activities involve both friable and nonfriable ACM</p>
337	296.21(104)	<p>(104) TPBEL--Texas public building exposure limit. The maximum level of asbestos exposure that a person may be exposed to outside of the asbestos regulated area and inside a public building. That level is:</p> <p>(A) 0.01 f/cc (fibers per cubic centimeter) when measured by phase contrast microscopy using the NIOSH 7400 method, entitled, "Fibers," published in the NIOSH Manual of Analytical Methods, 3rd Edition, Second Supplement, August 1987; or</p> <p>(B) 70 s/mm² (structures per square millimeter) when measured by transmission electron microscopy using 40 CFR Part 763, Subpart E, Appendix A, Interim Transmission Electron Microscopy Analytical Methods--Mandatory and No mandatory--and Mandatory Section to Determine Completion of Response Actions. -- does not apply to the regulated area in a school building</p> <p>The department removed the definition of TPBEL.</p>
338	296.21(105)	<p>(105) TSI--Thermal system insulation. TSI is material applied to pipes, fittings, boilers, breeching, tanks, ducts, or other interior structural components to prevent heat loss, or gain, or for other purposes.</p> <p>The department declines to make the suggested edit. TSI may be applied to both interior and exterior components.</p>

339	296.42(f)(1)(B)	<p>(B) pays the required fee;</p> <p>The department thinks the proposed text is worded correctly.</p>
340	296.42(h)(2)(B)	<p>(2) an unaltered, 2-inch by 3-inch, (one-inch by one-inch) color photograph of the face (without sun glasses, hats, bandanas, or other articles that may obscure the head and face) with a white background on photo quality paper that was taken (issued by the training provider) within the past 12 months; and common language for all licenses.</p> <p>The department declines to incorporate the suggested edits. The 2-inch by 3-inch photograph is a standard size, and photographs can be submitted in a digital format with applications that are submitted electronically. It has always been the license applicant's responsibility to submit a photograph, and applicant's have never been required to submit the photo issued by the training provider. This language is common to all licenses requiring a photo.</p>
341	296.46(b)(1)(A)	<p>(A) An asbestos abatement worker may perform asbestos abatement activities or O&M activities only while supervised by (under the direct supervision of) a licensed asbestos abatement supervisor or licensed asbestos O&M supervisor.</p> <p>The department declines to incorporate the suggested edit. The suggested language is not substantively different from the proposed language.</p>
342	296.46(b)(2)(C)	<p>(C) comply with the work practices described in §296.193 of this title (relating to Abatement Practices and Procedures for Full Containment in Public Buildings); (Comply with requirements and work practices of the abatement specification)</p> <p>The department declines to make the suggested edit. It is explained in §296.193(a) that if an asbestos abatement project has specifications and plans that contain asbestos abatement activities that are more detailed than are found in that section or which are specific to that project, the detailed asbestos abatement activities in the specifications and plans are required for that particular project and must be met to maintain compliance with TAHPR.</p>
343	296.46(c)(1)(D)	<p>(D) an unaltered, 2-inch by 3-inch, (1-inch by 1-inch), color photograph of the face (without glasses, hats, bandanas, or other articles that may obscure the head and face) with a white background on photo quality paper that was taken within the past 12 months.</p> <p>The department declines to incorporate the suggested edits. The 2-inch by 3-inch photograph is a standard size, and photographs can be submitted in a digital format with applications that are submitted electronically.</p>
344	296.47(b)(1)(B)	<p>(B) An asbestos abatement supervisor may perform the duties of an asbestos abatement worker on any project. (Comply with work practices and requirements of the Consultant's specification)</p> <p>The department declines to make the suggested edit. The asbestos abatement supervisor is responsible to comply with the work practices in §296.193. It is explained in §296.193(a) that if an asbestos abatement project has specifications and plans that contain asbestos abatement activities that are more detailed than are found in that section or which are specific to that project, the detailed asbestos abatement activities in the specifications and plans are required for that particular project and must be met to maintain compliance with TAHPR.</p>

345	296.47(b)(2)	<p>(2) Responsibilities. An asbestos abatement supervisor shall: (Follow the consultants project specifications)</p> <p>The department declines to make the suggested edit. The asbestos abatement supervisor is responsible to comply with the work practices in §296.193. It is explained in §296.193(a) that if an asbestos abatement project has specifications and plans that contain asbestos abatement activities that are more detailed than are found in that section or which are specific to that project, the detailed asbestos abatement activities in the specifications and plans are required for that particular project and must be met to maintain compliance with TAHPR.</p>
346	296.48(a)	<p>(a) License required. A person must be licensed as an asbestos abatement contractor to conduct asbestos abatement in a public building. A person must be licensed as an asbestos abatement contractor to (offer) asbestos abatement services in a public building.</p> <p>The department declines to make the suggested edit.</p>
347	296.48(b)(1)(A)	<p>(A) Asbestos abatement contractors shall employ licensed asbestos abatement supervisors and registered asbestos abatement workers to perform asbestos abatement activities, licensed (Air Monitoring Technician for the purpose of developing exposure assessment as required by OSHA)</p> <p>The department declines to incorporate the suggested edit. The AMT must not be employed or subcontracted by the asbestos abatement contractor hired to conduct the asbestos abatement project in accordance with §296.32, Conflict of Interest.</p>
348	296.48(b)(2)(G)	<p>(G) comply with the work practices described in §296.197 of this title (relating to Asbestos Abatement Practices and Procedures for Nonfriable Asbestos-Containing Building Material);</p> <p>This language is in the proposed rule text.</p>
349	296.48(b)(2)(R)(i)(ii)(iii)(iv)(v)	<p>(R) at no cost to the employee, comply with personal protective equipment (PPE) requirements in accordance with 29 CFR §1910.132(h) and §1926.1101(h) and (i) for employees who perform asbestos-related activities by:</p> <ul style="list-style-type: none"> (i) providing and maintaining PPE for employees; (ii) training employees on the proper use, care, and inspection of PPE; (iii) documenting training of the proper use, care, and inspection of PPE; (iv) inspecting respirators every six months and documenting the inspections; and (v) ensuring compliance with the use of PPE; <p>- redundant</p> <p>The department declines to remove the OSHA language. The department thinks having the language in the rules will be helpful to the reader.</p>
350	296.48(b)(2)(T)(i)(ii)	<ul style="list-style-type: none"> (ii) contact the waste site if a copy of the manifest has not been received within 35 calendar days from the date the waste was accepted by the transporter; (ii) report in writing to the department in accordance with 40 CFR §61.150(d)(4) if a copy is not obtained by the 45th calendar day from the date the waste was accepted by the transporter; and <p>- redundant with NESHAP</p> <p>The department declines to remove the NESHAP language. The department thinks having the language in the rules will be helpful to the reader.</p>

<p>351</p>	<p>296.50(b)(2)(O)(i)(ii)(iii)(iv)</p>	<p>(i) complete and provide a waste shipment record (manifest) for the asbestos transporter before the transporter departs with the waste; (ii) contact the waste site if a copy of the manifest has not been received within 35 calendar days from the date the waste was accepted by the transporter; (iii) report in writing to the department in accordance with 40 CFR §61.150(d)(4) if a copy is not obtained by the 45th calendar day from the date the waste was accepted by the transporter; and (iv) maintain records in accordance with 40 CFR §61.150(d)(5). - Redundant</p> <p>The department declines to remove the NESHAP language. The department thinks having the language in the rules will be helpful to the reader.</p>
<p>352</p>	<p>296.51(b)(1)(A)(i)(ii)</p>	<p>(i) obtain (collect) baseline, area, and clearance samples, if employed by an asbestos consultant agency or an asbestos laboratory; (ii) obtain (collect) personal samples, if employed by an asbestos abatement contractor or asbestos operations and maintenance (O&M) contractor, for compliance with 29 CFR §1926.1101; and</p> <p>The department incorporated the suggested edits into the proposed rule text.</p>
<p>353</p>	<p>296.51(c)(1)(G)</p>	<p>(G) proof of work experience performing air monitoring on asbestos abatement projects for 15 ten days (for the purposes of this experience requirement, a day shall be a minimum of six hours) under the direct supervision of a licensed air monitoring technician working for a licensed asbestos laboratory, asbestos abatement contractor, or asbestos consultant agency. Experience must be gained after completion of appropriate training.</p> <p>The department reduced the work experience performing air monitoring on asbestos abatement projects from 30 days to performing air monitoring on at least three asbestos abatement projects for a total of at least 15 days. The department also added subsection (d) to §296.43 that establishes for the purpose of determining the work experience required for an initial license, eight hours of qualifying on-the-job work experience equals one day of the required experience .</p>
<p>354</p>	<p>296.51(c)(1)(G)</p>	<p>(G) proof of work experience that includes participation(in variety) of at least five asbestos surveys in Public Buildings for a minimum of 80 hours performed under the direct supervision of a licensed management planner, licensed asbestos inspector, or licensed asbestos consultant. Experience must be gained after completion of appropriate training</p> <p>The department declines to incorporate the suggested edit.</p>
<p>355</p>	<p>296.53(c)(1)(I)(II)</p>	<p>(I) experience as a licensed asbestos consultant, project manager, asbestos abatement supervisor, or asbestos abatement worker or experience as an accredited asbestos project designer, asbestos project monitor, asbestos abatement supervisor, or asbestos abatement worker in Texas or another state. Experience must have been gained while accreditation was current as required in the MAP; and (II) experience as a licensed or trained asbestos air monitoring technician on at least five asbestos abatement projects. Experience must be gained after completion of appropriate training. No more than 30 days may be counted (apply) as qualifying experience for this category.</p> <p>The department declines to incorporate the suggested edit. The suggested language is not substantively different from the proposed language.</p>

356	296.56(c)(2)(C) through (II)(-c-)	<p>(C) completion of 60 college credit hours, which include 30 credit hours in engineering or natural or physical science and 9 credit hours in mathematics, from an accredited college or university, combined with the following work experience;</p> <p>(i) 3 years of experience in an environmental field or in occupational health, and</p> <p>(ii) at least 250 days of experience performing asbestos-related activities in public buildings, in accordance with this chapter, and gained within the past four years. The asbestos-related experience:</p> <p>(I) must include the following:</p> <p>(-a-) developing at least six specifications and plans under the direct supervision of a licensed asbestos consultant;</p> <p>(-b-) conducting at least three asbestos surveys that includes collecting bulk samples as a licensed asbestos inspector or licensed asbestos management planner or under the direct supervision of a licensed asbestos inspector, licensed asbestos management planner, or licensed asbestos consultant;</p> <p>(-c-) performing the duties of an asbestos project manager for at least ten days under the direct supervision of a licensed asbestos project manager or consultant; and</p> <p>(-d-) performing air monitoring for ten days under the direct supervision of a licensed air monitoring technician or a licensed asbestos consultant; and</p> <p>(II) may include the following:</p> <p>(-a-) developing management plans under the direct supervision of a licensed asbestos management planner or licensed asbestos consultant;</p> <p>(-b-) work experience as a licensed asbestos abatement supervisor; and</p> <p>(-c-) work experience as a registered asbestos abatement worker, limited to no more than 30 days.</p> <p>Inappropriate qualification, not in compliance with the enabling legislation.</p> <p>The department declines to incorporate the suggested edit.</p>
357	296.57(c)(2)(C)	<p>(C) a copy of the assumed name certificate issued by the Secretary of State if the applicant conducts business under an assumed name (commonly referred to as a DBA or “doing business as”);</p> <p>The department declines to incorporate the suggested edit. The parenthetical information is additional guidance.</p>
358	296.58(c)(1)(B)	<p>(B) a copy of the assumed name certificate issued by the Secretary of State if the applicant conducts business under an assumed name (commonly referred to as a DBA or “doing business as”);</p> <p>The department declines to incorporate the suggested edit. The parenthetical information is additional guidance.</p>
359	296.91(a)	<p>(a) License required. A person licensed as an asbestos training provider may offer training to an individual who seeks MAP accreditation or a department license or qualifying certification for RFCI RWP .</p> <p>The department declines to incorporate the suggested edit. The department does not regulate this training.</p>
360	296.91(b)(1)(B)(i)	<p>(i) allow instructors to self-train in order to qualify for a license or accreditation</p> <p>The department declines to incorporate the suggested edit. The suggested language is not substantively different from the proposed language.</p>
361	296.91(b)(2)(C)(v)	<p>(v) in the event of an emergency, a A trainee may miss up to 5% 10% of an initial training course, but no more than 1 hour per training day, and up to 10% of a refresher training course. A trainee is not eligible to complete the course if a trainee misses more time than is allowed;</p> <p>The department changed the proposed rule text to allow an trainee to "miss up to 10% of a training course."</p>

362	296.91(b)(2)(E)(ii)	(ii) provide a course review to improve comprehension before administering the course examination; and The department declines to incorporate the suggested edit. The language in the proposed rule text is more descriptive.
363	296.91(b)(2)(F)	(F) confirm that trainees possess current and valid accreditation, or are within the 12-month grace period, before issuance of an accreditation certificate granting admission to a refresher training course; The department declines to incorporate the suggested edit. The language in the proposed rule text is more descriptive.
364	296.91(b)(2)(G)	(G) ensure that training is provided in an environment that is conducive to learning and without any external distractions. - Redundant The department declines to incorporate the suggested edit. The department wishes to emphasize what is an acceptable training environment.
365	296.91(b)(2)(J)	(J) comply with requirements for asbestos training courses in accordance with §296.93, including ensuring the instructor-to-trainee ratio is not exceeded and that a trainee who has not met attendance standards or who has not passed the required final examination is not issued a training certificate; - Redundant The department declines to incorporate the suggested edit. The department wishes to emphasize these requirements.
366	296.91(b)(2)(Q)	(Q) issue wallet-size photograph identification (ID) cards that meet the requirements in subsection (d)(1)(O) of this section at the conclusion of each training course to trainees who have completed the course and passed the required final examination; The department declines to incorporate the suggested edit. The suggested language is not substantively different from the proposed language.
367	296.91(b)(2)(S)(i)(ii)	(i) the name and one inch by one inch photograph of each trainee; (ii) the unique identifier of each trainee; The department declines to incorporate the suggested edit. The suggested language is not substantively different from the proposed language.
368	296.91(b)(2)(S)(iv)	(iv) a color group photograph, of trainees who successfully completed the course, taken at the end of the during training course; and The department declines to incorporate the suggested edit. The department intends for the photograph to be taken at the end of the training course so that the trainees stay in the class.
369	296.91(c)(2)	(2) Amendments. Notified courses may be amended by notifying the department by email or fax at least 5 one working days before the start date of the course. The department declines to incorporate the suggested edit. Department staff need more than one day to review the amended material. This paragraph is not merely referring to an amended start date, which the commenter may be thinking.

370	296.91(c)(2)(A)(i) (ii)	<p>(i) name of training course; or (ii) language of the course. – Inappropriate requirement, The department is already notified of the class activity, the auditor who might attend will still audit a course.</p> <p>The department declines to incorporate the suggested edit. When the name of the training course or the language of the course changes, the result is a new course that requires approval.</p>
371	296.91(c)(2)(C)(3)	<p>(C) Notified courses may not be amended less than 5 one business days before the start date. The course must be cancelled and notified as an emergency variance request.</p> <p>(3) Emergency variance notifications. A training provider may request emergency variance approval of a course if unforeseen circumstances prevent the training provider from meeting the 10-business-day notification requirement. The emergency variance notification must be submitted to the department by email or fax and must include a justification of why the 10-business-day notification requirement could not be met and the information listed in subsection (c)(1)(A)-(F) of this section. The emergency variance notification must be submitted at least 3 one business days prior to the start date of the course. The training provider must receive written approval from the department before conducting the course.</p> <p>The department declines to incorporate the suggested edit. The department prefers the term "emergency" because it describes a suddenly emergent condition that requires a quick action.</p>
372	296.91(b)(2)(C)(v)	<p>in the event of an emergency, a trainee may miss up to 5% of an initial training course, but no more than 1 hour per training day, and up to 10% of a refresher training course. A trainee is not eligible to complete the course if a trainee misses more time than is allowed;</p> <p>Comments: I recommend keeping the original wording. “A trainee is not eligible to complete a given course if more than 10% of the session has been missed, and the qualifying exam shall not be offered in such instances. The 10% includes being absent from the course at all times other than allotted break periods. The records of that session shall be marked by the instructor to this effect.” At GEBCO, we require students to make up time regardless of how much time is missed in the event something happens after lunch or another day during the course that would prevent them from meeting the requirements. We have the requirements posted on the wall as they come in. Allowing 5% in an initial versus 10% in a refresher is just confusing and for consistency’s sake, I propose it stay the same.</p> <p>The department changed the proposed rule text to allow an trainee to "miss up to 10% of a training course."</p>
373	296.91(b)(2)(F)	<p>confirm that trainees possess current and valid accreditation, or are within the 12-month grace period, before granting admission to a refresher training course;</p> <p>Comments: I recommend the following wording: confirm that trainees possess current and valid accreditation, or are within the 12-month grace period “to the best of the training provider’s ability”, before granting admission to a refresher training course; At GEBCO, many students are repeat students and we verify their qualifications within the first two hours of class. However, we do sometimes have individuals that are sent here from other areas and they do not always come with any supporting papers. We explain the requirements for licensing and ask that they follow-up with a copy of their certificate or ID card for our records. I feel it would be of great disservice to the licensees to turn them away simply because they do not have the documentation on hand.</p> <p>The department declines to incorporate the suggested edit. The MAP recommends that training providers confirm that students possess valid accreditation before granting admission to refresher training courses.</p>

<p>374</p>	<p>296.91(b)(2)(S) ii)</p>	<p>– pg. 81 submit a training course roster to the department within 10 working days of the completion date of each course. The course roster shall include:</p> <ul style="list-style-type: none"> (i) the name of each trainee; (ii) the unique identifier of each trainee; (iii) indication of successful or unsuccessful course completion for each trainee; and <p>Comments: I am unclear of what the department would like to see us use as a unique identifier and I believe this could lead to more areas of fraud. In the original regulation, it stated “(3) submit the names, social security numbers (or other identifiers if the student does not wish to provide his/her social security number)”. I understand that licensees would prefer not to have the SSN displayed on the training ID and I agree with this but I see major complications with a vague “unique identifier”. Does the Training Provider issue this unique identifier? And if so, if the licensee decides to take their training with a different provider the next year, do they get a new unique identifier? How do these numbers correlate with the SSN’s that you already have in your system, meaning how will you match the individual up to your system without the SSN? We have many students that have the same name (ex. Jose Garcia). Does the Department issue the unique identifier? And again, would another training provider and/or the trainee be aware of the unique identifier if a student should come to them after already attending somewhere else? If it doesn’t conflict with HIPPA regulations, I would propose continuing to require the SSN as the unique identifier or have the Department issue the unique identifier. By removing the requirement to have this on the ID card, this should satisfy the licensee’s privacy concerns. Perhaps this could be further brainstormed with Training Providers to come up with a good solution.</p> <p>The department declines to incorporate the suggested edit. The unique identifier is for the training records held by the trainer. The department added language to clarify that the unique identifier is determined by the training provider.</p>
<p>375</p>	<p>296.91(c)(1)(B)</p>	<p>name, license number, and contact phone number of instructor;</p> <p>Comments: Should the individual license be removed, then the license number would also need to be removed from the course notification requirements.</p> <p>The department is moving forward with licensing training instructors, so no edit is required.</p>
<p>376</p>	<p>296.91(e)(1)(F)</p>	<p>the name and license number of the licensed asbestos instructor who will teach the additional course; and</p> <p>Comments: Should the individual license be removed, then the license number would also need to be removed from the training course approval process.</p> <p>The department is moving forward with licensing training instructors, so no edit is required.</p>
<p>377</p>	<p>296.92(a)</p>	<p>License required. A person must be licensed as an asbestos training instructor to teach asbestos training courses for a licensed asbestos training provider, except as provided by subsection (d) of this section.</p> <p>Comments: I recommend striking the Instructor License requirement all together. There is no justification for adding this new license within the original stakeholder’s recommendations and it would seem that there needs to be a justification for adding another license fee on top of our current fees. I also don’t believe the Statue allows for new licensing.</p> <p>Section 1954.102 of the Act allows the department to create new licenses.</p>

378	296.92(b)(B)	<p>An asbestos training instructor may:</p> <ul style="list-style-type: none"> (i) teach the Asbestos Air Monitoring Technician course, in accordance with §296.93 of this title (relating to Asbestos Training Courses); and (ii) teach the Texas Asbestos Law and Rules course, in accordance with §296.93. <p>Comments: This wording is confusing leading one to believe that an Individual Instructor could teach this independently of a licensed training provider. I suggest adding (ii) Asbestos Air Monitoring Technician and Texas Asbestos Law and Rules courses must be department approved and conducted by a licensed training provider in order to apply toward license requirements.</p> <p>The department declines to make the suggested edit because §296.92(a) clearly states that an asbestos training instructor must work for a training provider.</p>
379	296.92(b)(O)	<p>provide the trainee with a copy of the examination application for the department’s licensing examination and instructions for locating the examination schedule on the department’s website.</p> <p>Comments: This wording conflicts with the wording under §296.91(b)(2)(N) “provide instructions for locating the registration form for the state licensing examination and examination schedule on the department’s website;” Are we to provide a copy of the exam application or provide instructions on how to locate it?</p> <p>The department removed the requirement for the training provider to provide the trainee with a copy of the examination application for the department’s licensing examination and instructions for locating the examination schedule on the department’s website.</p>
380	296.92(c)(1)(A)	<p>(i) a bachelor’s degree in a natural or physical science with at least [6 months of experience performing asbestos-related activities] and at [least three months of teaching experience at the secondary education level, post-secondary education level, or teaching adult learners at a vocational school, a trade school, or] other similar setting approved by the department; Completion of the course you will teach(add to all experience scenarios), course work on teaching, EPA course and the completion of at least one teaching course on vocational etc teaching</p> <p>bachelor’s degree in a natural or physical science with at least and at least three months training experience similar setting approved by the department; Completion of the course you will teach (add to all experience scenarios), course work on teaching, EPA course and the completion of at least one teaching education course on vocational etc teaching</p> <p>In (c)(1)(A)(i), the department removed "at least two years of experience performing asbestos-related activities" with a science degree. In (c)(1)(A)(ii), the department reduced the work experience from 1 year to 6 months with any bachelor's degree. The department also added the eligibility pathway of an associate’s degree or successful completion of 60 college credit hours and one year of experience performing asbestos-related activities and at least three months of teaching experience.</p> <p>In §296.92(c)(1)(b)(B), the department added: " Applicants may take a train-the-trainer course approved by the department to meet the three months of teaching experience required under subparagraph (A) of this paragraph."</p>

381	296.93(a)(4)	<p>The training certificate expires one year after the date upon which the person successfully completed the course. 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 of the expiration date of the training certificate.</p> <p>Comments: This wording conflicts with the wording in §296.91(b)(2)(C)(iv) – (pg79). This seems to indicate that the initial course must be repeated if a refresher is not completed within one year of the expiration date of the training. I suggest that the wording mirror the wording in §296.91(b)(2)(C)(iv).</p> <p>The department disagrees that §296.93(a) and §296.91(b)(2)(C)(iv) contain inconsistent language.</p>
382	296.93(a)(7)	<p>In the event of an emergency, a trainee may miss up to 5% of an initial training course but no more than one hour per training day and up to 10% of a refresher training course. A trainee is not eligible to complete the course if a trainee misses more time than allowed.</p> <p>Comments: As mentioned in the earlier reference on pg. 79, I recommend keeping the original wording. “A trainee is not eligible to complete a given course if more than 10% of the session has been missed, and the qualifying exam shall not be offered in such instances. The 10% includes being absent from the course at all times other than allotted break periods. The records of that session shall be marked by the instructor to this effect.” At GEBCO, we require students to make up time regardless of how much time is missed in the event something happens after lunch or another day during the week that would prevent them from meeting the requirements. We have the requirements posted on the wall as they come in. Allowing 5% in an initial versus 10% in a refresher is just confusing and for consistency’s sake, I propose it stay the same.</p> <p>The department changed the proposed rule text to allow an trainee to "miss up to 10% of a training course."</p>
383	296.93(a)(9)(B)	<p>all other training course sessions must not exceed 25 to 1.</p> <p>Comments: I propose this mirror the original requirement of 40 to 1 as in §295.55(d)(6) “Maximum trainee-instructor ratio. The maximum number of trainees in a lecture session shall be 40. Hands-on training groups shall have no more than 15 trainees and must be so arranged that each trainee is given individual attention.”</p> <p>The department declines to make the suggested edit. The trainee-instructor ratio was reduced for a improved learning experience.</p>
384		<p>General Comment – every place where “must” and “will” and other words are used to denote a requirement, replace with “shall”.</p> <p>The department reserves "shall" for rules that impose a duty.</p>

385	296.21	<p>(104) – TPBEL – the definition needs to address the air concentration outside the regulated area during an abatement activity. This and a clearance level are the only exposure limit the Department is allowed to set per the TAHPA, Sec. 1954.052.</p> <p>The following language is proposed: (104) TPBEL--Texas public building exposure limit. The maximum concentration of asbestos fibers allowed outside of the regulated area during an abatement activity in a public building. level of asbestos exposure that a person may be exposed to outside of the asbestos regulated area and inside a public building. That level is:</p> <p>(A) 0.01 f/cc (fibers per cubic centimeter) when measured by phase contrast microscopy using the latest edition of NIOSH 7400 method counting rules A; or the NIOSH 7400 method, entitled, "Fibers," published in the NIOSH Manual of Analytical Methods, 3rd Edition, Second Supplement, August 1987; or</p> <p>(B) 70 s/mm2 (structures per square millimeter) when measured by transmission electron microscopy using 40 CFR Part 763, Subpart E, Appendix A, Interim Transmission Electron Microscopy Analytical Methods--Mandatory and No mandatory--and Mandatory Section to Determine Completion of Response Actions.</p> <p>The department removed the definition of TPBEL.</p>
386	296.32(b)	<p>appears to not allow the contractor to hire a third party to perform their OSHA compliance sampling even if it's not the same third party as the one the building owner hired. There doesn't seem to be any value to preventing the contractor from hiring someone competent to perform their personal monitoring. If the intent was to prevent the contractor from hiring the same 3rd party then say that.</p> <p>The intent is to better protect worker health by preventing a conflict of interest where the contractor is paying the person who is testing the air and based on that level adjust the level of PPE.</p>
387	296.41(g)	<p>consider adding the italicized or similar wording to make it clear that once a licensee renews a qualification that has expired (medical, training) that their license is valid again. Also, the last two sentences about altered licenses would be clearer if in their own sub paragraph.</p> <p>(g) Prohibitions.</p> <p>(1) Performing asbestos-related activities with a lapsed or invalid license or registration is prohibited. A license becomes invalid if the licensee allows qualifications (such as accreditations, the department's Physician's Written Statement form, or insurance requirements) to expire. When the licensee brings the expired qualifications current, the license is valid again.</p> <p>(2) A license or registration issued in accordance with this chapter may not be altered, sold, assigned, or transferred. Any license or registration that has been altered, sold, assigned, or transferred is invalid.</p> <p>The department declines to make the suggested edits which would be nonsubstantive.</p>
388	296.42	<p>Initial and Renewal Applications, and throughout regulations</p> <p>The requirement for a 2" x 3" photo will be burdensome to individuals without access to cameras and printers. I suggest the requirement (if it must be bigger than the current 1 x 1) be for the 2" x 2" passport photo readily available at any Walgreens or CVS. However, I'm not sure what the value of a larger photo is, since it will likely just contain more neck and shoulders like a passport photo does. And if it's good enough for a passport photo, then it should be good enough for your pseudo photo id.</p> <p>The department declines to make the suggested edit as 2" by 3" is a standard photograph size. The photograph may be submitted in a digital format with applications that are submitted electronically.</p>

389	296.48(b)(2)(R)	<p>references a non-existent OSHA regulation, 29 CFR 1910.132(h). I suspect you meant to reference the respiratory protection standard, 1910.134, but paragraph h, Maintenance and Care of Respirators, doesn't seem to apply.</p> <p>The department purposefully references 29 CFR §1910.132(h) which is a real standard and references the requirement that an employer provide PPE as opposed to just requiring it.</p>
390	296.48(b)(T)	<p>the contractor should only be responsible for making sure the waste manifest is received back from the waste disposal site if that responsibility has been delegated to him by the building owner. While the NESHAP talks about the owner/operator, the building owner is the owner of the asbestos, the generator of the waste and ultimately responsible for the disposition of the waste. If you do keep this as a contractor responsibility then they should also be required to provide a copy of the manifest they receive back from the disposal site to the building owner. These requirements more properly reside with the asbestos consulting agency or asbestos consultant as they are acting as the building owner's agent.</p> <p>Both can be responsible. The text has been edited to read that the contractor is required in 296.48(b)(T)(iv) to provide a copy of the manifest to the consultant or the building owner if there is not a consultant on the project.</p>
391	296.54(c)(3)(E) 296.56(c)(1)(G)	<p>both requirements for professional liability insurance do not agree. The wording in (c)(1)(G) has the correct wording.</p> <p>The department agrees and revises §296.54(c)(3)(E) to: (E) proof of professional liability insurance coverage for errors and omissions if performing work for hire, or coverage under the applicant's employer's policy, in accordance with §1954.105(c) of the Act and §296.45 of this title.</p>
392	296.57(b)(2)(D)	<p>the requirement to contact the waste disposal site within 10 working days of when the waste was shipped if a manifest hasn't been received back doesn't agree with similar requirements elsewhere in these regs and in the NESHAP. The usual date is 35 calendar days from shipment.</p> <p>The department revised the language to: "... contact the asbestos abatement contractor and/or the owner or operator of the designated disposal site to determine the status of the waste shipment, if a copy of the manifest has not been received from the contractor within 35 days from the date the waste was accepted by the transporter...."</p>

<p>393</p>	<p>296.58(b)(2)(I)</p>	<p>it is not the responsibility of the waste transporter to provide copies of disposal site signed waste manifests to the building owner under the NESHAP; it's the responsibility of the waste disposal site. Having the transporter have to do the same thing is creating unnecessary paperwork.</p> <p>WASTE MANIFESTS: At this point in the proposed regulations you have two different entities needing copies (contractor and consultant), two different people (contractor and consultant) responsible for contacting the disposal site for a missing manifest, and one person (transporter) responsible for providing the signed copy, but to either the consultant or building owner. Which means the transporter could supply it to the building owner and both consultant and contractor would be required to contact the disposal site, etc., when the correct person already had the copy, albeit not from the entity required by the NEHSAP to provide it (the disposal site). Additionally, §296.191 makes the building owner the only person responsible for disposal of ACBM and ACWM so they should be the receiver of all records, not the contractor. The NESHAP hasn't changed in over 20 years, why are you messing with it? If a portion of the regulated community isn't complying, then go enforce existing rules.</p> <p>Regarding the responsibilities of the asbestos abatement contractor:</p> <p>The department revised the language in §296.48(b)(2)(T) to:</p> <p>(T) provide for disposal of ACWM, in accordance with 40 CFR §61.150:</p> <ul style="list-style-type: none"> (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 waste disposal site has not been received within 35 days from the date the waste was accepted by the disposal site; (iii) report in writing to the department in accordance with 40 CFR §61.150(d)(4) if a copy of the manifest signed by the disposal site is not obtained by the 45th day from the date the waste was accepted by the disposal site; (iv) provide a copy of the manifest signed by the disposal site to the project consultant, or the building owner if there is no consultant; and (v)(iv) maintain records in accordance with 40 CFR §61.150(d)(5) and §296.200 of this title (relating to Recordkeeping). <p>Regarding the responsibilities of the consultant:</p> <p>The department revised the language in §296.57(b)(2)(C) to: obtain a waste shipment record (manifest) signed by the owner or operator of the designated disposal site from the licensed asbestos contractor on a form as described in 40 CFR §61.150(d);</p> <p>The department revised the language in §296.57(b)(2)(D) to: contact the asbestos abatement contractor and/or the owner or operator of the designated disposal site to determine the status of the waste shipment, if a copy of the manifest has not been received from the contractor within 35 days from the date the waste was accepted by the transporter;</p> <p>Regarding the responsibilities of the transporter:</p> <p>The department revised the language in §296.58(b)(2)(H) to: 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. If transporting out-of-state, the asbestos transporter shall follow the regulations of the receiving state;</p> <p>The department revised the language in §296.58(b)(2)(I) to: provide copies of manifests signed by the owner or operator of the designated disposal site to the asbestos abatement contractor and/or the building owner within 14 days from the date the ACWM was accepted for disposal; and</p>
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<p>394</p>	<p>296.91(c)</p>	<p>Regarding course notification amendments, we propose that a change in instructor not require an amendment as long as the new instructor is approved to teach the class and is an employee or contractor of the training provider. Either that or that changes to instructor can be made at any time. Changing the instructor can't affect either the department's ability to audit the class or whether or not the records are filed correctly, etc., so there is no reason to restrict when that individual can be changed. Restricting the replacement of one approved instructor with another by a training provider unnecessarily restricts their ability to manage their staff and commitments as they see fit.</p> <p>Proposed language:</p> <p>(c) Course notification requirements</p> <p>(2) Amendments. Notified courses may be amended by notifying the department by email or fax at least 5 working days before the start date of the course. Changes in instructors do not require an amendment as long as the instructor is approved by TDSHS to teach the class and is either an employee or contractor of the training provider.</p> <p>(A) Amendments are accepted for the following changes:</p> <ul style="list-style-type: none"> (i) instructor; (ii) location; (iii) times; and (iv) dates. <p>(B) Amendments are not accepted for the following changes:</p> <ul style="list-style-type: none"> (i) name of training course; or (ii) language of the course. <p>The department is reviewing this suggested edit.</p>
<p>395</p>	<p>296.92</p>	<p>The TAHPA does not allow for the licensing of asbestos training instructors, but only the training sponsor, which would be the entity offering the course, not the individual teaching the course (assuming they are not one and the same person.) Section 296.92 should be deleted in its entirety.</p> <p>(a) License required. A person must be licensed as an asbestos training instructor to teach asbestos training courses for a licensed asbestos training provider, except as provided by subsection (d) of this section.</p> <p>I will only make one other comment regarding training instructors, and that is that increasing the experience requirements to require teaching experience at the secondary school level or above will not provide for quality training instruction for adult learners, unless secondary and above includes training adults in the workplace. Adults do not learn in the same ways as children and the techniques used to teach earth science to seven graders will not translate into good teaching skills for construction workers, the skilled trades, etc. Experience spent training or teaching adults outside of the public school and university systems should also qualify you as an asbestos trainer. If you would like to improve the quality of training, try auditing some training courses. What gets measured gets done. If you would like to make training more effective, and worthwhile, lobby the EPA to update their training requirements to allow for less frequent or shorter refreshers. With the exception of minor changes to state regulations which rarely impinge on actual workers nothing has changed in this industry for decades.</p> <p>Section 1954.102 of the Act allows the department to create new licenses.</p> <p>In §296.92(c)(1)(A)(i), the department removed "at least two years of experience performing asbestos-related activities" with a science degree. In (c)(1)(A)(ii), the department reduced the work experience from 1 year to 6 months with any bachelor's degree. The department also added the eligibility pathway of an associate's degree or successful completion of 60 college credit hours and one year of experience performing asbestos-related activities and at least three months of teaching experience.</p> <p>In §296.92(c)(1)(b)(B), the department added: " Applicants may take a train-the-trainer course approved by the department to meet the three months of teaching experience required under subparagraph (A) of this paragraph."</p>

396	296.175	<p>Regulatory Threshold in a Public Building. The word “not” should be removed from this sentence as the proposed wording actually exempts activities that disturb more than 3 linear / 3 square feet of nonfriable material. Individuals are exempt from license, registration, and notification requirements if their projects and tasks are not asbestos abatement activities that disturb three square or linear feet or less of nonfriable material per occurrence.</p> <p>The department corrected the wording to "Persons are exempt from license, registration, and notification requirements if their operations and maintenance project or installation project is not solely for the purpose of asbestos abatement and does not disturb more than" The purpose is not to abate a building three square feet at a time but to let persons install or maintain something while disturbing three or less feet of asbestos.</p>
397	296.191(f)	<p>Sampling for Asbestos The first sentence of this paragraph appears to require a licensed inspector to collect samples in accordance with TDSHS requirements even when they are not in a public building. The intent to only require TDSHS requirements in a public building would be clearer if the phrase “in a public building” was added to the first sentence.</p> <p>The department changed the topic of (f) to "Sampling for asbestos in a public building."</p>
398	296.191(f)(1) – (4)	<p>Are sections §296.191(f) (1) – (4) meant to apply only to public buildings or to commercial buildings and NESHAP facilities as well? If so, the phrase ACM should be used as well, since not all ACM that is regulated by the NESHAP is also ACBM.</p> <p>Yes. They are interchangeable and use the same analysis methods. The department declines to make the suggested edit because some ACM is not regulated under NESHAP.</p>
399	296.191(f) (3) & (4)	<p>Sections §296.191(f) (3) & (4) address the same issue. (4) should be deleted as (3) covers all situations. And, if I want to waste my money point counting a sample that was reported as greater than 10% asbestos, who is TDSHS to say I can't?</p> <p>The information in (f) has been restructured to delete (f)(4) and re-worded for clarification. (f)(2) Results of visual estimation by polarized light microscopy (PLM) analysis of 0% asbestos or no asbestos detected (NAD) do not require further analysis for the detection of asbestos in friable or nonfriable suspect materials. (f)(3) Results of visual estimation by PLM analysis of more than 0% and less than 10% asbestos must be further analyzed to demonstrate the material is not ACBM using other analysis using the hierarchy and guidance in subparagraphs (A)-(C) of this paragraph. (A) Results of point counting by PLM analysis of samples supersede and replace the initial results of visual estimation by PLM. (B) Results of gravimetric preparation followed by point counting or transmission electron microscopy (TEM) visual estimation analysis of samples supersede and replace results of visual estimation by PLM and results of point counting by PLM. (C) Point counting may be used to analyze both friable and nonfriable materials. Nonfriable materials such as mastics and floor tile where fibers are occluded by a binding matrix will be processed using techniques such as acid washing and ashing outlined in EPA/600/R-93/116, July 1993, “Method for the Determination of Asbestos in Bulk Building Materials.”</p>
400	296.191(g)	<p>Conditions requirement mandatory abatement. Paragraphs (2) and (3) include O&M activities, while Paragraph (1) about public buildings only addresses renovation and demolition. Is this wording difference intentional and is it of any significance?</p> <p>Yes. One is MAP trained, and the other does not require it.</p>

401	296.191(h)	<p>§296.191(h) If §296.191(g)(1) requires abatement of any amount of ACBM that may be disturbed by a renovation in a public building, why is it acceptable to demolish a public building containing an unlimited amount of nonfriable material and a limited amount of RACM. The threat to the public health is at least as large from demolishing a building containing 259 linear feet of ACM pipe insulation containing 80% amosite asbestos as cutting a hole in wallboard that has 2% chrysotile joint compound over the tape and bed joints.</p> <p>A demolished building will not be reoccupied. The entire site is controlled.</p>
402	296.191(l)(1) –	<p>commercial buildings should be added to the requirements for notification to be consistent with other places in the rule where they are listed separately even though the requirements are the same as for facilities. Or say in the definitions that all commercial buildings are also facilities (just in case that's not obvious to someone).</p> <p>The department declines to make the requested change a commercial building is included in the definition of facility.</p>
403	296.192(b)(2)	<p>who is considered to be under the supervision of the asbestos consultant or project manager? Just the AMT, if they are not also the PM? Or are you implying that the contractor's employees are "under the supervision" of the asbestos consultant? If so, that needs to change. The asbestos consultant/project manager/consulting agency cannot supervise the contractor's employees.</p> <p>The department removed "to those under their supervision" from the proposed rule text.</p>
404	296.192(g)	<p>Does the individual collecting the sample of the newly found material for analysis need to enter the containment or regulated area and collect a sample or can they just accept a bagged sample from the contractor or project manager? Does the person collecting or accepting the sample need to be a licensed inspector?</p> <p>The person who is responsible for the sample needs to take the sample or supervise the person taking the sample if someone is training under them. In a public building, the individual taking a sample to comply with this subchapter should be licensed.</p>
405	296.192(h)(1)(A)	<p>Baseline samples The collection of baseline samples before a project serves no purpose. Under the current regulations, at least we don't need to analyze them. To require analysis only adds to the building owner's financial burden without providing any data useful to the abatement process. All of §296.192(h)(1)(A) should be deleted. If you don't delete the section then the phrase "conducting cassettes" in the second sentence of (1)(A)(i) should be changed to "conductive cassettes."</p> <p>The department declines to delete §296.192(h)(1)(A). The requirement to analyze them has been removed. The department changed "conducting" to "conductive."</p>

406	296.192(h)(1)(C)) (ii)	<p>Remove the word “electronically” from the fourth sentence, or replace it with “electrically”.</p> <p>If you assume that the airborne fiber concentration is 0.01 f/cc, the minimum sample volume to get a fiber loading of 100 f/mm² is 3850 liters, making the statement that the minimum volume is 3000 liters incorrect. When NIOSH makes the statement in 7400 “use larger sample volumes (3000 to 10000 L) to achieve quantifiable loadings”, they didn’t specify that the 3000 L volume would meet 0.01 f/cc, just that it was appropriate for a targeted fiber concentration much less than 0.1 f/cc.</p> <p>The department changed "electronically" to "electrically." The minimum sample volume has been changed back to 1,250 liters.</p>
407	296.193(b)(4)	<p>The second sentence reads that 6 mil thick plastic meeting the listed specifications or 6 mil plastic must be used. Assuming you meant the same thing as when you specify the plastic for waste bags, it would be clearer if it read “two layers of at least 6 mil thick plastic sheeting with at least... grams. Or if you want it to be true 6 mil or meet the requirements say “two layers of true 6 mil thick plastic sheeting or plastic sheeting with at least ... grams.”</p> <p>The department declines to make the suggested edits. Some thinner bags are as strong as thicker bags. The rules retain the option to use the equivalent of 6-mil thick plastic because some contractors report that they cannot find true 6-mil thick plastic. See #79.</p>
408	296.193(f)	<p>add in the requirement that the HEPA vacuum work. “A working HEPA vacuum...” or “An operable HEPA vacuum...”</p> <p>The department thinks the suggested clarification is unnecessary. The rules that reference a HEPA vacuum require the use of the vacuum.</p>
409	296.193(h)(1)	<p>The second sentence should read “All ACWM must be double-contained by placing into 6 mil thick plastic bags or placing in a bag and fiberboard, plastic or metal drum or double-wrapped in 6-mil plastic sheeting. The bags and/or plastic sheeting must have a tear resistance....”</p> <p>The department declines to make the suggested edit. See #410</p>
410	296.193(h)(2) and (4)	<p>allow the use of metal or plastic drums as well as fiberboard. More than likely people won’t use metal or plastic drums when abating in a public building, but there’s no reason to prevent them from doing so.</p> <p>The department declines to make the suggested edit. Fiberboard is the standard, but an inspector is not going to fault a correctly sealed metal or plastic drum used for waste.</p>
411	296.194(b)(4)	<p>If I must construct a mini-containment, but I may use a glovebag for pipes, does that mean I must build a mini-containment when I’m going to use a glovebag?</p> <p>No, that would not be required.</p>

412	296.195	<p>Regulatory Threshold in a Public Building – throughout this section reference is made to an exemption from licensing, registration and notification. However, elsewhere it appears that this work would also be exempt from project designs, third party oversight, etc., effectively making it exempt from the entire rule. If that is the intent it should be stated. If that’s not the intent, it should be stated what parts of the rule the work is not exempt from.</p> <p>There are materials that don’t lend themselves to measurement in linear or square feet, such as packings. How will the amount of packing that’s under the regulatory threshold be determined, but the length of the valve the packing is contained in?</p> <p>Yes, it is the intent for projects performed in accordance with §296.195 to be exempt from the TAHPR. The department clarifies the threshold further in 296.175. The amount could be calculated by taking the circumference of the packing and treating it as linear feet. If the circumference is less than 3 linear feet and the material is non friable, it would not be regulated.</p>
413	296.197 (a)(1)(C)	<p>request that you add caulks to the materials listed</p> <p>The department declines to make the suggested edit.</p>
414	296.197(b)(9)	<p>reference to ambient air monitoring should be §296.192(h)(1)(B)(i) as no other part of (h) can apply. The sampling locations listed in (h)(1)(B)(ii) are not appropriate for the work addressed in §296.197.</p> <p>The type of work addressed in this section is typically very short and will be completed before a single set of ambient samples is collected and analyzed. It appears the regulated area will be released to general occupancy based solely on the visual inspection by the abatement supervisor. Did you consider a requirement to keep the area regulated until the results of the ambient air monitoring are known? This would mean the ambient samples might need to continue to run after the work is completed to get the necessary 3850 liter sample size for PCM analysis if you want to consider them “clearance” samples.</p> <p>If the section is followed, the project would not exceed clearance. Samples will be analyzed on-site.</p>
415	296.198(b)(1)	<p>was the exclusion of a linear feet measurement deliberate or an oversight?</p> <p>I’m also not sure what this section is going to accomplish, other than letting untrained maintenance workers, though they will have OSHA Class III training, perform work on friable asbestos materials with no project monitoring or third party oversight.</p> <p>Most of the small repetitive jobs (drilling through floor tiles, drilling in walls, cutting holes in walls, pulling cable) are done safely throughout the country in public and industrial buildings alike with minimal precautions. I certainly don’t need to put up critical barriers etc. to drill a hole through asbestos floor tile as long as I’m using a method that prevents dust (HEPA filtered drill, shaving foam, etc.).</p> <p>No. The tasks described would require mini-containment or glove bag under the current rule.</p>

<p>416</p>	<p>296.211(d) and (e).</p>	<p>Submission of the notification form is defined in (d)(1)(B) as postmarked and delivered by the USPS. (e) says the notification “must be submitted ... at least 10 working days...” If submittal includes delivery, then the requirement would be before delivery to TDSHS at least 10 working days before We request you change the language of (e) as shown below to make it clear that it’s the postmark date that matters, not the delivery date.</p> <p>(e) Timeliness of notification.</p> <p>(1) The initial notification of asbestos abatement or demolition must be <u>submitted</u> post-marked, date-stamped by a commercial delivery service, delivered by hand, or submitted on the department website <u>to the department</u> at least 10 working days before the asbestos abatement or demolition start date.</p> <p>Submittal methods and timeliness of submittals are described in two different subsections. The department does not think the suggested language would make the requirement clearer.</p>
<p>417</p>	<p>296.211(g)(1)</p>	<p>allows the amended notification on an earlier stop date to be submitted to the department no later than the old stop date, but (g)(3) requires the amendment to be faxed or emailed to the regional office no later than the new stop date. There doesn’t appear to be a reason for this discrepancy. The two submittal requirements should be the same.</p> <p>The language in (g)(1) and (3) now consistently requires "...no later than the new stop date."</p>
<p>418</p>	<p>296.211(k)(2)</p>	<p>Because all activities, even those below the regulatory threshold must be included in determining whether a consolidated notification is required (k)(2) as written requires notification by email of O&M projects below the regulatory threshold. The following language is proposed instead:</p> <p>(k) Consolidated notification of nonscheduled asbestos O&M activities in a public building.</p> <p>(2) The building owner or delegated agent or the facility owner or operator must notify the appropriate regional office by email before each O&M activity which exceeds the regulatory threshold for a public building.</p> <p>The department placed the clarification in §296.211(a)(2) instead: "...The department 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, as described in 40 CFR §61.145, of 160 square feet of surface area, 260 linear feet of pipe length, or 35 cubic feet of facility components where the length or area could not be measured...."</p>
<p>419</p>	<p>296.211(l)(1)</p>	<p>as worded only allows for nonscheduled operations that resulted from equipment failure. This is much more stringent than current practice or the NESHAP. Proposed wording to restore the current meaning is below:</p> <p>(l) Consolidated notification of nonscheduled operations in a facility that is not a public building.</p> <p>(1) A notification is required when planned renovation operations of individual nonscheduled operations, including those resulting from equipment failure, that when combined the RACM exceeds 260 linear feet of pipe length, or 160 square feet on other facility components, or 35 cubic feet of off-facility components where the length or area could not be measured. ...</p> <p>The department removed "including those" to mirror the language in NESHAP. Remember that you do not have to notify for anything under the threshold. What this rule says is when you break things, estimate the amount. The department is correcting the language from "RACM exceeds" to "RACM meets or exceeds."</p>

420	296.211(m)	<p>The requirement to notify of emergencies by phone has been omitted. Since this must be done to get the emergency number needed to complete the written notification, the phone notification requirement should be put back into the regulations.</p> <p>A number is not required for an emergency notification under current rule or proposed rule.</p>
421	296.211(r)(3)(A)	<p>Notification fees will be based on a tiered system in accordance with Figure 25 TAC §296.211(r)(3)(A) identified in this subparagraph. Fees for asbestos removal amounts in square feet, linear feet, and cubic feet will be determined separately. The sum of these separate fees is the total notification fee owed.</p> <p>Adding the fees for the three types of removal amounts together will cause a person removing 80 SF and 130 LF of material to pay twice as much as a person who is removing 260 LF of material, even though both jobs have just met the NESHAP threshold. This is penalizing the person removing two types of material. Since individuals do not need to calculate the notification fee themselves, it seems like you could write a formula that would fairly deal with adding together different types of material, like you currently do when you calculate ARUs.</p> <p>Yes, they will pay more in that very limited scenario for a very small mixed job. However, there is a significant savings for anything larger, and the initial cost for everybody has gone down. Currently the fee is \$55 for the first ARU and \$30 for each thereafter. The proposed rule lowers the cost to \$50 for the first five ARUs. A project will be able to be paid for in advance as well, simplifying the notification process and saving time.</p>
422	296.253	<p>We suggest adding the italicized language below to make it clear that the temporary failure to meet license requirements because of expired medical or training, is not cause for denial, suspension or revocation as long as no activities were performed that required the license.</p> <p>(a) The department may take enforcement action if the department finds that a person regulated under the Act:</p> <p>(7) failed at any time to meet the qualifications for a license <i>while performing activities requiring that license</i> ;</p> <p>The department declines to make the suggested edit. The need for a license only exists when a person is performing an asbestos related activity.</p>
423	296.257	<p>As a training provider I don't understand the requirement in (a)(7) below . I cannot find a Unit V.B of the revised MAP anywhere. Is this a correct citation, and what is a self-certification?</p> <p>(a) The grounds for denial, withdrawal, or suspension of approval for training courses taught by department-licensed training providers and instructors include but are not limited to the following:</p> <p>(7) submittal of false information as a part of the self-certification required under Unit V.B. of the revised MAP.</p> <p>This list item was deleted. Unit V.B. was removed from the revised MAP.</p>

424	296.21(40)	<p>Employee- Comment- the definition of employee is very weak and not protective of public health and safety. The individual should be a true employee. Recommendation A person who is hired, paid a salary, wag, or remuneration by an entity for services performed and has a relationship with the entity that would result in the entity being liable for that persons actions or judgments. An individual is not considered an employee if the services provided to the entity are paid to the individual as an independent contractor or contract labor.</p> <p>The department declines to make the suggested edit.</p>
425	296.21(87)	<p>Regulated area TPBEL Comment TDSHS should further study the term Texas Public Building Exposure Limit. When using air ventilation machines they draw air into the building. The dust will go to containment from doors that are being opened and some dust and debris comes from the HVAC. NIOSH7400 counts all fibers not just asbestos and it would be easy to be slightly above 0.01 F/cc. the level of 0.01 F/cc would be compromised.</p> <p>The TPBEL has been removed from the proposed rule text.</p>
426	296.21(90)	<p>Responsible person The definition needs to be more detailed. The responsible person should be a employee of the with the company to ensure the rules are being followed. Add person should be either principle or full time employee who has responsibility for the organizations asbestos activities. the responsible person should have the authority in decision authority with the company.</p> <p>That is up to the employer to determine.</p>
427	296.51(b)(1)(B)(iii)	<p>Re-install the work inspections and delete survey TDSHS is dictating who we can work for and who we cant. If an AMT is on site they should be able to gather personal samples and submit them to a licensed lab for analysis. Owners are going to spend more on the air monitoring with an additional AMT on site. Recommendation remove this item</p> <p>An AMT can do this. They cannot be paid by the asbestos contractor, they can be paid by the building owner.</p>
428	296.51(b)(1)(B)(iv)	<p>Delete proposed section. The cost of</p> <p>The department declines to delete the proposed text and instead adds NIOSH 582 and NIOSH 582 Equivalent training and participation in the AIHA Proficiency Analytical Testing (PAT) Programs as alternate qualifiers for analyzing fibers in the field.</p>

429	296.192(h)(1)(C) (ii)	<p>requiring 3000 liters of air for clearance samples would result in an inordinate number of overloaded cassettes. The choice then becomes does an owner approve TEM analyses or the collection of an additional set of PCM clearance samples. As the saying goes time is money and thus the obvious choice would be to have the samples analyzed by TEM on an expedited turnaround time. This would be extremely expensive. All this additional expense to prove a negative because in the case of removing mirror mastic, the mirror and drywall are removed as one whole intact component. The asbestos mastic is never impacted in the first place. Clearly the 3000 liters fails to provide any increase in protections in any manner at all. This holds true for all non-friable abatement projects where nonabrasive removal methods are employed.</p> <p>The minimum sample volume has been changed back to 1,250 liters.</p>
430	296.51(b)(B)(iv)	<p>Projects costs are increased by having to hire a second entity to analyze samples or by having the laboratory become a sub to the consultant and paying a higher profit and overhead charge on the samples and by requiring additional contractor shifts.</p> <p>The department disagrees with this comment. One AMT can still analyze the samples if the building owner pays the AMT instead of the contractor paying.</p>
431		<p>In regards to ACM/ACBM – EPA in 40 CRF Part 763 defines ACM and ACBM as materials containing greater than 1% asbestos. There are several sections in these proposed rules that refer to the regulated amounts of asbestos as “more than” 1%. This may seem insignificant, however, EPA has issued a response in reference to the definition of greater than 1%. In an EPA response letter, Control Number A070006 (attached), EPA defines greater than 1% as being 2%. This letter also allows the rounding of the percent to the nearest whole number and defines the rules for rounding.</p> <p>Change the terminology from “more than” to “greater than” in regards to the presence of 1% asbestos in a material and reference the EPA definition, or Clarify the definition of “more than” in reference to the presence of asbestos in a material</p> <p>The department agrees with the comment and has changed references to "more than" one percent asbestos to "greater than."</p>
432	296.198(c)	<p>The new definition of Texas Public Building Exposure Limit (TPBEL) – Setting the levels for regulated areas at .01 f/cc and/or 70 s/mm2 is a BIG DEAL! Current federal asbestos regulations (EPA/AHERA) set the air clearance level after abatement in a controlled setting at .01 f/cc when analyzing samples by PCM and 70 s/mm2 when using TEM. TPBEL as defined and referred to thought these draft rules require stakeholders (licensees) to maintain the air levels at the clearance air level thought the asbestos abatement project the project in uncontrolled settings. In an uncontrolled setting where neg-air and other control methods are not required, such as outside the containment area, there may be other contributing factors such as renovations of NON-ACM materials that will affect the air quality and PCM analysis in Section 296.198(c) in regards to exposure assessments. The department states that an exposure assessment shall not exceed the TPBEL (.01 f/cc) then states that the assessment must be performed in accordance to OSHA. Typically, exposure assessments are based on OSHA’s Permissible Exposure Limit currently set forth at .1 f/cc. The department should consider removing this definition and its references in the proposed rule.</p> <p>The department removed the definition of TPBEL.</p>

433	296.191(n)	<p>In regards to installation of new materials Section 296.191(n). This rule is found in reference to the operations of asbestos management in public buildings, moreover, to the management of public building from building owners. This is outside the scope of the department as defined in Section 296.1(b). This rule effects the design and construction of new buildings and renovations on buildings where no ACM may be identified. I would like more clarification on how the department will enforce this rule.</p> <p>o The department should consider: moving this section to a NEW section for the design of buildings and reference designers and general contractors, or removing this proposed rule</p> <p>The department declines to relocate this rule to a different section. This is clarification and proposal of an option to sample the new material to make sure it's clean.</p>
434	296.51(b)(1)(B)(iv)	<p>The department should keep the current AIHA PAT round proficiency program. The department already had in place an effective proficiency program. How will the substitution of the current AIHA PAT round proficiency testing for the new proposed AIHA Asbestos Analysis Registry (AAR) decrease public exposure. With this new requirement, the laboratory and individual analyst will incur additional fees of approx. \$5,000 per person. This additional costs can severely hurt small businesses like Sun City Analytical, Inc.</p> <p>The proposed rules retain participation in the AIHA PAT round proficiency program as an eligibility pathway to licensure as an asbestos laboratory.</p>
435	296.92(c)(1)(A)	<p>In regards to licensed trainer requirements Section 296.92(c)(1)(A). A high school diploma should not be a sufficient requirement alone for training licensure. In regards to “teaching experience at the secondary education level or higher” in the above mentioned section. Please clarify what is required to prove this experience? Prior to becoming an approved instructor I was required to complete college courses for adult vocation teaching and complete an OSHA train-the-trainer course.</p> <p>In addition to the high school diploma or equivalent, the training instructor must have at least two years of experience performing asbestos-related activities and at least three months of teaching experience at the secondary education level, post-secondary education level, or teaching adult learners at a vocational school, a trade school, or other similar setting approved by the department. A train-the-trainer course approved by the department to meets the requirement for three months of teaching experience.</p>
436	296.92	<p>Section 296.92 Asbestos Trainer License. This is a new license requirement from the department. There are several changes being proposed by the department, including proposing that trainers be licensed. These changes will increase course cost. Specifically requiring that instructors be licensed. Has the department performed cost analysis of how these new fees will decrease public exposure to asbestos?</p> <p>Education can decrease public exposure to asbestos. This will allow the department to regulate a person who is involved in teaching the fundamentals of asbestos handling and exposure, not just an company. The training instructor license fee costs \$100 every two years. The cost per student per course is expected to be less than \$1.</p>

<p>437</p>		<p>In regards to the new definition of Texas Public Building Exposure Limit (TPBEL) – Setting the levels for regulated areas at .01 f/cc and/or 70 s/mm2 is a BIG DEAL! Current federal asbestos regulations (EPA/AHERA) set the air clearance level after abatement in a controlled setting at .01 f/cc when analyzing samples by PCM and 70 s/mm2 when using TEM. TPBEL as defined and referred to thought these draft rules require stakeholders (licensees) to maintain the air levels at the clearance air level thought the asbestos abatement project the project in uncontrolled settings. In an uncontrolled setting where neg-air and other control methods are not required, such as outside the containment area, there may be other contributing factors such as renovations of NON-ACM materials that will affect the air quality and PCM analysis in Section 296.198(c) in regards to exposure assessments. The department states that an exposure assessment shall not exceed the TPBEL (.01 f/cc) then states that the assessment must be performed in accordance to OSHA. Typically, exposure assessments are based on OSHA’s Permissible Exposure Limit currently set forth at .1 f/cc. The department should consider removing this definition and its references in the proposed rule.</p> <p>The department has removed the definition of TPBEL.</p>
<p>438</p>	<p>296.191(f)(4).</p>	<p>In regards to point counting in Section 296.191(f)(4). This section mandates that laboratories reanalyze bulk samples using point count procedures on PLM results where asbestos was identified at less than 10%. Point count analysis is an additional method that may be used to confirm, quantify, or override the original PLM analysis. This rule also states that if a material is found to contain 10% or more asbestos by a laboratory, that materials shall be considered ACM and point counting cannot be used to determine that the material sample is Non-ACM. Point counting should be an option for the building owner or representative (consultant). The department should allow the building owner and the representative the option of using approved alternative analysis methods to identify and quantify asbestos in building materials.</p> <p>The information in (f) has been restructured to delete (f)(4) and re-worded for clarification.</p> <p>(f)(2) Results of visual estimation by polarized light microscopy (PLM) analysis of 0% asbestos or no asbestos detected (NAD) do not require further analysis for the detection of asbestos in friable or nonfriable suspect materials.</p> <p>(f)(3) Results of visual estimation by PLM analysis of more than 0% and less than 10% asbestos must be further analyzed to demonstrate the material is not ACBM using other analysis using the hierarchy and guidance in subparagraphs (A)-(C) of this paragraph.</p> <p>(A) Results of point counting by PLM analysis of samples supersede and replace the initial results of visual estimation by PLM.</p> <p>(B) Results of gravimetric preparation followed by point counting or transmission electron microscopy (TEM) visual estimation analysis of samples supersede and replace results of visual estimation by PLM and results of point counting by PLM.</p> <p>(C) Point counting may be used to analyze both friable and nonfriable materials. Nonfriable materials such as mastics and floor tile where fibers are occluded by a binding matrix will be processed using techniques such as acid washing and ashing outlined in EPA/600/R-93/116, July 1993, “Method for the Determination of Asbestos in Bulk Building Materials.”</p> <p>(See #243)</p>
<p>439</p>		<p>In regards to installation of new materials Section 296.191(n). This rule is found in reference to the operations of asbestos management in public buildings, moreover, to the management of public building from building owners. This is outside the scope of the department as defined in Section 296.1(b). This rule effects the design and construction of new buildings and renovations on buildings where no ACM may be identified. I would like more clarification on how the department will enforce this rule. The department should consider: moving this section to a NEW section for the design of buildings and reference designers and general contractors, or removing this proposed rule</p> <p>The department declines to relocate this rule to a different section. This is clarification and proposal of an option to sample the new material to make sure it's clean.</p>

440	296.21(97)	<p>By simplifying the definition of SSSD, the department would better inform public building owners about limitations on the use of restricted licensed O & M Contractors and restricted licensed O & M Supervisors. The EPA's AHERA Rules imply that the three square feet and three linear feet limit for SSSD is appropriate when it states that air sampling for clearance is not required for SSSD response actions in the school. These stated limits are also used to define when accreditation for individuals designing and carrying out response actions for major fiber release episodes is mandated indicating that individuals with less training could be expected to adequately perform SSSD asbestos work.</p> <p>The department declines to make the suggested edit because the definition comes from the MAP.</p>
441	296.41(f)	<p>(f) Responsibility to report violations. Licensees who become aware of violations of this chapter must report these violations by the next business day to the department if the violations are not immediately corrected by the responsible party.</p> <p>This change in language is in line with a change that was made some years ago to the same paragraph in the Texas Mold Assessment and Remediation Rules because employees of the department do not work on the weekends.</p> <p>The department thinks 24-hour notification of violations is necessary to protect public health. Inspectors do work weekends, and they often they receive calls from stakeholders. The departments url is on the poster as well, stakeholders can go to our website and file a complaint or call the 1 800 number. Stakeholders can also leave messages on personnels direct lines.</p>
442	296.46	<p>Add O&M worker to language</p> <p>(b) Registration requirement. Individuals must be registered in compliance with these sections as asbestos operations and maintenance (O&M) workers (restricted) to perform small-scale, short duration (SSSD) asbestos work or asbestos abatement workers to perform asbestos abatement work in a public building.</p> <p>(b) Scope of practice.</p> <p>(1) Practice and limitations</p> <p>(A) <u>Asbestos O&M workers</u> and asbestos abatement workers may perform asbestos abatement or <u>O&M activities</u> only while supervised by a licensed asbestos abatement supervisor or licensed O&M supervisor.</p> <p>(B) <u>Asbestos O&M workers</u> and asbestos abatement workers may not:</p> <p>The department declines to create a new license type with restricted duties which requires the same training and license fee as the unrestricted asbestos abatement worker license. (See #125)</p>
443	296.46	<p>(2) Responsibilities. A registered asbestos <u>O&M worker</u> (restricted) or asbestos abatement worker shall:</p> <p>(c) Initial and renewal registration requirements</p> <p>(1) Initial requirements. An applicant for an initial registration shall submit the following:</p> <p>(C) <u>Asbestos O&M workers</u> (restricted) -16-hour custodial training or the annual refresher training course as required by federal regulations adopted under authority of the Asbestos Hazard Emergency Response Act of 1986 (AHERA).</p> <p>(2) Renewal requirements. An applicant renewing a registration shall submit the following:</p> <p>(B) a current training certificate for the Asbestos Abatement Worker Refresher course or the Contractor/Supervisor Refresher course, if the Contractor/Supervisor course was used to meet requirements for the initial asbestos abatement worker registration, in accordance with §296.93 and for the Asbestos <u>O&M Worker Refresher</u> course for a restricted registration;</p> <p>The department declines to create a new license type with restricted duties which requires the same training and license fee as the unrestricted asbestos abatement worker license. (See #125)</p>

444	296.49(b)(1)(B)	<p>(B) An asbestos O&M supervisor may perform the duties of an as an asbestos abatement worker or <u>asbestos O&M worker</u> on any project.</p> <p>The department declines to create a new license type with restricted duties which requires the same training and license fee as the unrestricted asbestos abatement worker license. (See #125)</p>
445	296.50(b)(1)(B)	<p>(B) The asbestos O&M contractor's employees who perform asbestos O&M activities must be registered as <u>asbestos O&M workers</u> or asbestos abatement workers, licensed O&M supervisors or licensed asbestos abatement supervisors.</p> <p>The department declines to create a new license type with restricted duties which requires the same training and license fee as the unrestricted asbestos abatement worker license. (See #125)</p>
446	296.91(b)(1)(A)	<p>(A) <u>An asbestos training provider may advertise, schedule, and conduct:</u></p> <p>The department edited to: (A) A licensed asbestos training provider, after receiving course approvals from the department, may offer, schedule, and conduct:</p>
447	296.91(b)(1)(B)(vi)	<p>(vi) allow a guest speaker to present more than <u>25%</u> of a course;</p> <p>The department declines to make the suggested edit. The proposed rules limit a guest speaker to 15%, and the department thinks this is adequate.</p>
448	296.91(b)(2)(C)(v)	<p>(v) in the event of an emergency, a trainee may miss up to <u>10%</u> of a initial training course and up to 10% of a refresher training course. A trainee is not eligible to complete the course if a trainee misses more time than is allowed.</p> <p>The proposed rule text retains the current language that a trainee may miss up to 10% of a training course. A trainee is not eligible to complete the course if a trainee misses more time than is allowed.</p>
449	296.91(b)(2)(G)	<p>(G) ensure that training is provided in an environment that is conducive to learning and without external distractions.</p> <p>This is what is written in the draft rule.</p>
450	296.91(c)(2)	<p>(2) Amendments. Notified courses may be amended by notifying the department by email or fax at least <u>3 working days</u> before the start of the course.</p> <p>The department declines to make the suggested edit. The department needs at least 5 working days to schedule appropriate personnel for auditing purposes.</p>
451	296.91(c)(2)(A)(v)	<p>add (v) language of the course</p> <p>The department declines to make the suggested edit. When the name of the training course or the language of the course changes, the result is a new course that requires approval.</p>

452	296.91(c)(2)(C)	<p>(C) Notified courses may not be amended less than <u>3 working days</u> before the start date. The course must be cancelled and notified as an emergency request.</p> <p>The department declines to make the suggested edit. The department needs at least 5 working days to schedule appropriate personnel for auditing purposes.</p>
453	296.91(c)(3)	<p>(3) Emergency notifications. A training provider may request emergency approval of a course if unforeseen circumstances prevent the training provider from meeting the 10-business-day notification requirement. The emergency notification must be submitted to the notification requirement could not be met and the information listed in subsection (c)(1)(A)-(F) of this section. The emergency notification must be submitted at least <u>1 business day</u> prior to the start date of the course. The training provider must receive written approval from the department before conducting the course.</p> <p>The department declines to make the suggested edit. The department thinks that 3 working days is adequate.</p>
454	296.21(2)	<p>Accredited person – Delete “... approved by another state that has the authority from EPA to approve courses,” or that has been approved directly by EPA. Justification: Under these circumstances, the accredited person does not understand the TAHPR and certainly not about air monitoring.</p> <p>The department declines to make the suggested edit. Accredited persons may work on NESHAP-only projects, which are not regulated under TAHPR.</p>
455	296.21(6)	<p>Adequately wet – Add “... wetted. If water is used, it must contain be amended water to ensure adequate wetting occurs. However,” Justification: The abatement contractor argues that they do not have to use a surfactant because the rules do not require such and that the water does an adequate job of wetting. It then becomes subjective.</p> <p>The department declines to make the suggested edit to the definition of "adequately wet".</p>
456	296.21(7)	<p>Aggressive air sampling - Delete “... blower that has at least one horsepower engine” Justification: The newer blowers do not list horsepower and the manuals do not even list the hp.</p> <p>The department declines to make the suggested edit based on AHERA Pt. 763, Subpt. E, App. A (Unit III.B.7.d.), which states in (d)(iii): iii. Prior to air monitoring, floors, ceiling and walls shall be swept with the exhaust of a minimum one (1) horsepower leaf blower. The department edited the definition to: (7) Aggressive air sampling--Collecting air samples after walls, ceilings, and floors are swept with <u>the exhaust of</u> an unaltered leaf blower that has at least a one horsepower engine, is operated as it comes from the factory, and is directed at all surfaces to cause loose asbestos fibers to become airborne.</p>
457	296.21(16)	<p>Asbestos abatement project design – Change to read: “...The design will include the results of the inspection of public buildings for ACM,” Justification: The way it currently reads is that doing an inspection is a project design.</p> <p>The department edited the definition of "asbestos abatement project design" to "Includes the survey report of public buildings for..."</p>

458	296.21(29) 296.21(30)	<p>Containment and (30) Containment-area ventilation – Change to read: “... a commercial negative air machine equipped with a HEPA filter ...”</p> <p>Justification: Abatement companies are using blowers with “HEPA and Micro” filters taped to the intake side of the blowers. This change clarifies the intended device.</p> <p>The department edited the definition of containment (29) to "A portion of the regulated area that has been sealed and placed under negative air pressure using negative air machines with HEPA filters.</p> <p>The department edited the definition of containment-area ventilation (30) to "Ventilation of the containment to move contaminated air away from the breathing zone of employees and toward a negative air machine equipped with a HEPA filter and in sufficient number to provide negative pressure of at least 0.02 inches of water column differential between the containment work space and outside, and a minimum of four containment air changes per hour.</p>
459	296.21(38)	<p>Emergency renovation operation – Add: “...equipment <u>or systems</u> (water, steam, electrical, etc.).</p> <p>Justification: System failures are more common occurrence requiring the breaking into a wall, etc., that may disturb asbestos than failure of a piece of equipment.</p> <p>The department agrees and edited the definition to "...equipment <u>or systems, such as water, steam, and electrical systems.</u></p>
460	296.21(63)	<p>Mini-containment – Add: “...29 CFR 1926.1101(g)(5)(vi) <u>and meets the requirements of ASTM F 1977-04, Standard Test Method for Determining Initial, Fractional, Filtration Efficiency of a Vacuum Cleaner System.</u></p> <p>The department declines to make the suggested edit. The OSHA definition of mini-containment does not include ASTM standard.</p>
461	296.21(102)	<p>Survey Report – Delete: “...<u>by diagram and narrative the sample locations and the boundaries of the homogeneous areas</u>...”</p> <p>Justification: The owners, as with lead, say “Oh, you sampled here but not on this wall; therefore, this wall does not have asbestos.” If your survey report says this room or all rooms on the x floor, the owners nor the abatement contractors get into an argument but once you show them the diagram, the debate begins.</p> <p>The department edited the definition of survey report (103) to: "A at a minimum report that clearly shows by ..." The department edited §296.191(f) to add: If one sample from a homogenous area is found to be greater than 1.0% asbestos, the remaining samples from that homogeneous area do not have to be analyzed.</p>
462	296.21(104)	<p>TPBEL – Delete entire paragraph.</p> <p>Justification: This will lead to poor science. You cannot extrapolate information collected on one day back to another date. It is a point in time. If the sample is above the TPBEL what happens? Do you monitor the individuals for the rest of the lives at the employer or building owners’ expense? Has there been an exposure? Also, if you are below, you have no idea what it was the day before. Do you say the tenants are safe? This is not good Industrial Hygiene Practice.</p> <p>The department removed the definition of TPBEL.</p>

463	296.32(a)	<p>Independent third-party air monitoring – Add at the end: <u>“This applies to all asbestos monitoring within the State of Texas to include federal facilities.”</u></p> <p>Justification: Currently, federal facilities to include military bases have the abatement contractor hire the air monitoring firm. They hire ones that will give them the results they want. This is not independent and jeopardizes the health of the citizens of Texas. Just because they are on a federal facility, they should still have the same protection. The same wording as with municipalities should apply.</p> <p>The department declines to make the suggested edit. The department cannot enforce TAHPR in a federal facility. Such facilities are covered by NESHAP.</p>
464	296.41(g)	<p>Prohibition. Add at the end: <u>“This applies to companies, as appropriate, operating in the asbestos industry to include being in good standing for franchise tax in the State of Texas.”</u></p> <p>Justification: For a company to obtain a license in Texas, they must prove they are in good standing for franchise tax. This should continue in for as long as the company operates in Texas. Currently, I personally know of two companies that aren’t in good standing. When reported to the local TDSHS inspector, they said it wasn’t in TAPHR.</p> <p>The department declines to make the suggested edit. The proposed rule requires good standing at application for initial and renewed licenses. In addition, another section requires credentials for licensure to be maintained while licensed. Under §296.253(a)(7) the department may take enforcement action if the department finds that a person regulated under the Act fails at any time to meet the qualifications for a license.</p>
465	296.41(b)	<p>Processing applications. Add: <u>“Proof of completion of the application worker registration to include training and passing of medical clearance, the worker can perform asbestos abatement for up to 30 days.”</u></p> <p>The department declines to make the suggested edit.</p>
466	296.41(h)(2)	<p>and all other locations where photographs are mentioned. Change to read: “...face (without tinted glasses,”</p> <p>Justification: Pictures with normal corrective lenses gives a true depiction of the individual.</p> <p>The department agrees and makes the suggested edit. Non-tinted prescription glasses are allowed under passport photograph requirements.</p>
467	296.41(j)	<p>Physician’s written statement. Change to read: “A copyStatement, <u>indicating the ability to wear respiratory protection, must”</u></p> <p>Justification: Currently, you do not have to pass the physical or have the ability to wear respiratory protection. You just have to have been seen by the physician and have the statement. This is placing individuals in the asbestos industry in a potential health risk.</p> <p>Justification: When the supervisor is not in containment, the workers take off PPE, shut off pumps, roll down coveralls, drink and eat inside containment. The supervisors sit in their vehicle and either sleep, watch video, or play games. This requirement is a must to ensure protection of the workers and building occupants. It is covered later under requirements for removal; however, it needs to be under supervisors’ responsibilities.</p> <p>The department is implementing an OSHA requirement and it does not require that they pass the physical.</p>

468	296.47	<p>Asbestos Abatement Supervisor. Add new paragraph (O): <u>“Must be in containment at a minimum of 25% of the time to properly supervise the removal, wearing of PPE, and compliance with all rules and regulations.”</u></p> <p>Asbestos Abatement Supervisor. Add new paragraph (O): “Must be in containment at a minimum of 25% of the time to properly supervise the removal, wearing of PPE, and compliance with all rules and regulations.”</p> <p>The department declines to make the suggested edit. The 25% in containment is included under §296.192 work practices.</p>
469	296.48(R)(iv)	<p>Delete. This is ludicrous.</p> <p>Justification: The OSHA standard requires continuous inspections of all PPE. The supervisor is not qualified to act as the Respiratory Protection Program Administrator. A copy of the RPP should be on site and spell out the requirements for respirator inspection.</p> <p>The department declines to make the suggested edit. This is in the asbestos abatement contractor licensing section, not the supervisor.</p>
470	296.49	<p>Asbestos Operation and Maintenance Supervisor. Comment: There is no requirement for air monitoring of the O&M workers. At least require exposure assessments IAW OSHA 29 CFR 1926.1101(f)(2) Initial Exposure Assessment.</p> <p>The department declines to make the suggested edit. The proposed rule includes the requirement for monitoring workers under the supervisor's responsibilities in §296.49(b)(2)(B): "comply with 29 CFR §1926.1101(g)(9) (relating to Work Practices and Engineering Controls for Class III Asbestos Work);"</p>
471	296.59	<p>Asbestos Laboratory. Comment: Participation in Industrial Hygiene Proficiency Analytical Testing (PAT) rounds does not give AIHA Certification. The way it was written in the old rules was correct.</p> <p>This paragraph must be changed to allow</p> <p style="padding-left: 40px;">Proficiency according to the standards of AIHA PAT Program. This includes quarterly proficiency testing for airborne fibers by PCM and a quality assurance control program as required by NIOSH method 7400, issue 2, August 1994.</p> <p>Note: The above was extracted from the March 2003 TAPHR:</p> <p>The department restored the AIHA PAT Program option.</p>
472	296.191(f)	<p>Add to (1) at the end of the paragraph: <u>“...building unless it will be totally demolished.”</u></p> <p>Justification: OSHA says you don't have to sample for float mud and EPA says you can do core sampling. This is only for building demolition and not renovation. If you demolish it by keeping it wet, even if asbestos was present, no visible emissions would be present and hence not exposure.</p> <p>The department declines to make the suggested edit. In a public building, composite sampling is not allowed. (Composite sampling is allowed under NESHAP, but until the demolition starts, it is still a public building.)</p>

473	296.193 (a) (2) (B)(ii)	<p>Clearance Samples – Change line 13 to read: “for PCM is <u>1200</u> to 3000 liters of air”</p> <p>Justification: The table in NIOSH 7400 allows a clearance to be from 1200 to 3000 liters of air.</p> <p>The minimum sample volume has been changed back to 1,250 liters.</p>
474	296.196(b)	<p>Add new paragraph (3): “If the supervisor is a TDSHS licensed supervisor, the additional 4 hours of supervisor training is not required.”</p> <p>Justification: The supervisor must take the 8-hour class and a licensed TDSHS licensed supervisor already has asbestos abatement supervision training.</p> <p>The department agrees with the comment and added (3): An individual licensed as an asbestos abatement supervisor is not required to complete the four-hour competent person training .</p>
475	296.200	<p>Record Keeping. Delete paragraph (b)(2)(O).</p> <p>Justification: The EPA Green Book is no longer available.</p> <p>The book is available at the EPA website.</p>
476	296.1(c)	<p>Exclusions. Military and federal buildings are not listed here. Does this mean they will now have to follow Texas State regulations?</p> <p>This exclusion is meant to specify that a single residential facility is not covered under TAHPR or NESHAP. However, NESHAP does regulate in some instances (two single family residences renovated within a calendar year on the same city block by the same owner operator). Changed to: (c) Exclusions. This chapter does not apply to a single private residence or a single apartment building with no more than four dwelling units, <u>except as provided under NESHAP for structures defined as installations.</u></p>
477	296.2(a)(2)	<p>Please write out Asbestos Hazard Emergency Response Act (AHERA). Trust me, they don’t understand it if you don’t spell it out.</p> <p>The department edited (a)(2) to: 40 CFR Part 763, Asbestos, Subpart E, Asbestos-Containing Materials in Schools, and Appendices A, C, D, and E, promulgated under the Asbestos Hazard Emergency Response Act (AHERA).</p>

478	296.3(a)	<p>you have a double §§.</p> <p>The "§§" is the symbol for "sections", which is correct.</p>
479	296.21(6)	<p>Definitions. (6) Adequately wet, Sufficiently mixed with surfactant</p> <p>The department declines to make the suggested edit to the definition of "adequately wet". However the department edited §296.193(h)(1) to: All ACBM must be adequately wetted before removal or other handling using water to which a surfactant has been added (amended water). A consultant may specify the use of water without surfactant if it is at least equally protective of public health. The ACBM must then be placed in clear bags (or other suitable containers) that must be marked in accordance with the applicable OSHA and NESHAP regulations.</p>
480	296.21(53)	<p>Industrial/manufacturing facility could also include (53) Industrial/manufacturing facility/limited access property</p> <p>The department declines to make the suggested edit. Some public buildings have limited access (banks for example).</p>
481	296.21(77)	<p>§1926.59 (See §1910.1200 HAZCOM) If you look up §1926.59 it just refers you to §1910.1200</p> <p>The department agrees with the comment and updated §1926.59 to §1910.1200 throughout the rule.</p>
482	296.42(2)	<p>an unaltered, 2-inch by 3-inch, color photograph of the face (without glasses, hats, bandanas, or other articles that may obscure the head and face) with a white background on photo quality paper that was taken within the past 12 months; and</p> <p>My question, without glasses, is that sun glasses or does that include prescription glasses?</p> <p>The department edited the proposed rule to specify "without <u>tinted</u> glasses." Non-tinted prescription glasses are allowed under passport photograph requirements.</p>
483	296.42(j)	<p>Physician's written statement. A copy of the department's completed 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) or 40 CFR §763.122. A current copy of the individual's Physician's Written Statement form must be on-site while performing asbestos-related activities.</p> <p>It doesn't mention anything about having to pass the physical. Would it not be a great idea to include a statement to that effect?</p> <p>The proposed rules do not require that all parts of the medical examination be passed because passing all parts is not required by OSHA regulations (See #8 and #50).</p>
484	296.191(d)(2)	<p>In a commercial building, only an accredited inspector who has completed the MAP inspector training may perform the asbestos survey. This accredited inspector does not need to be licensed to perform the asbestos survey.</p> <p>Should be written</p> <p>In a commercial building, only an accredited inspector, <u>management planner or individual asbestos consultant</u> who has completed the MAP inspector training may perform the asbestos survey. This accredited inspector does not need to be licensed to perform the asbestos survey.</p> <p>Not only can an inspector do the inspection, but also management planner or individual asbestos consultant.</p> <p>The department declines to make the suggested edit. Inspector accreditation is part of the management planner or asbestos consultant license requirement.</p>

485	296.191(f)	<p>Sampling for asbestos. A licensed asbestos inspector must perform an asbestos survey in accordance with 40 CFR §§763.85-763.88. To demonstrate that there is no ACM and therefore no need for O&M activities 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. Building materials that have not been surveyed as required in this subsection and which are suspected of containing asbestos must be treated as ACM.</p> <p>(1)(2)(3)(4) Somewhere in this you should include that you can do first positive stop. If the first sample in a series is positive, then you can assume that the remainder samples are positive. This would incorporate the ARC 8, question number 3.</p> <p>Also it would nice if you mentioned that if all three samples (or however many they have taken) are No Asbestos Detected (NAD) then you can assume that there is no asbestos.</p> <p>The department edited §296.191(f) to add: If one sample from a homogenous area is found to be greater than 1.0% asbestos, the remaining samples from that homogeneous area do not have to be analyzed. (See #461)</p>
486	296.192h1Aii	<p>Baseline air samples must be collected before the start of any asbestos abatement project that requires a design in accordance with §296.191(i) and (j). A minimum of three samples must be collected on 0.8 micron mixed cellulose ester (MCE) filters loaded in conducting cassettes with extension cowls. Sampling and analysis must conform to the latest edition of NIOSH 7400 method, counting rules A. The minimum sample volume will be 1,250 liters. Only one cassette may be placed on a pump at a time.</p> <p>The department added that the samples must be collected from inside the space that will become the regulated area for the project before asbestos abatement activities begin, including area preparation; the locations selected for baseline air sample collection must provide suitable data for comparison with indoor air monitoring samples collected after asbestos abatement activities begin; and if it is suspected that the clearance level cannot be achieved due to existing poor air quality in a public building, the baseline level may be used as the clearance level.</p>
487	296.192h1Cii	<p>All project activities, except O&M, must be cleared by using aggressive air sampling. Clearance samples must be collected by an asbestos air monitoring technician or an asbestos consultant. The sample pumps must be monitored during the sampling period by the person collecting the samples. For all projects, samples must be collected and analyzed using NIOSH 7400 method, counting rules A, Phase-contrast Microscopy (PCM). Clearance samples must be collected at a flow rate between 0.5 to liters per minute on 0.8 micron MCE filters in cassettes with electronically conductive cowls. Only one cassette may be placed on a pump at a time. Minimum sample volume will be sufficient to meet the limit of quantification of airborne fibers by adjusting the sampling volume to produce a fiber density of 100 to 1,300 fibers/mm². Clearance is achieved if no sample is reported greater than 0.01 f/cc by the analysis report from the licensed laboratory. PCM must be used in accordance with the NIOSH 7400 method to determine the amount of fibers present. <u>The minimum sample volume for PCM is 3,000 liters of air.</u> Alternatively, the AHERA protocol may be used to determine volume and flow rate needed for TEM analysis in accordance with 40 CFR Part 763, Subpart E, Appendix A, Interim Transmission Electron Microscopy Analytical Methods–Mandatory and Non-mandatory–and Mandatory Section to Determine Completion of Response Actions. The minimum sample volume for TEM is 1,200 liters of air.</p> <p>The minimum sample volume for PCM is 3,000 liters. When I see 3,000 liters that means you are using a 37 mm cassette and not a 25 mm cassette. Usually with a 25 mm cassette you try not to go over 2,000 liters. In the training books they list for 37 mm collection rate at 3,000 to 4,000 liters. The reason you only need 1,250 liters for a 25 mm cassette is that it's a smaller area. If you go to the NIOSH 7400 method page 10, the double graph you see there. If you back calculate the minimum collection volume would be 1,250 liters. That's why in your baseline section (i) they list 1,250 liters. My recommendation is that they do the same for clearance level as in the old regulation. If not, no more than 2,000 liters.</p> <p>The department changed the minimum air volume back to 1,250 liters</p>

488	296.193(h)(8)	<p>The asbestos abatement contractor and asbestos consultant shall ensure that their employees do not eat, drink, smoke, chew tobacco or gum, or apply cosmetics in the regulated area.</p> <p>Where is states regulated area, should that may state containment area. Because the regulated area extends beyond the containment.</p> <p>The department declines to make the suggested edit. Some regulated areas do not have containment. RFCI for example.</p>
489	296.193(c)	<p>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 78 inches tall. Each room must be separated from the other and from the containment by airlocks so that air does not</p> <p>Should airlock be defined or in parentheses a poly or plastic opening with a slit entry and poly covering. This is why you had to create ARC 012. Where you explain we do not have to build a 5 stage decon, as was required in the San Antonio region. Not required in Houston or Dallas area.</p> <p>The department declines to make the suggested edit. Airlock is defined in §296.21.</p>
490	296.193(d)	<p>HVAC equipment. All HVAC equipment in or passing through the regulated area must be shut down, and preventative measures taken to prevent accidental start-ups. All supply and return openings and any seams in system components must be sealed with at least a double layer of 6-mil thick plastic sheeting and/or tape. All old filters must be disposed of as asbestos waste.</p> <p>In OSHA regulation 29 CFR 1926.1101(g)(4)(iii) For all Class I jobs, HVAC systems shall be isolated in the regulated area by sealing with a double layer of 6 mil plastic or equivalent;</p> <p>The department edited (d) to: HVAC equipment. All HVAC systems, including all supply and return openings and any seams in system components must be sealed with at least a double layer of 6-mil thick plastic sheeting and/or tape. All old filters must be disposed of as asbestos waste .</p>
491	296.211(a)	<p>Notifications.</p> <p>General provisions. The department must be notified online on the department's website or on a form specified by the department of any asbestos abatement or demolition as indicated in paragraphs (1) and (2) of this subsection. Notification must be made to the department no fewer than 10 working days before commencement of the activity. Submitting the notification form online on the department's website or by hard copy will meet the notification requirements under both the NESHAP and TAHP. The notification form must be properly completed and submitted in accordance with this section. Additional information related to this section is located on the department's website at dshs.state.tx.us. A copied signature is not acceptable. The department will send an invoice for the required fee for notifications to the facility or building owner.</p> <p>Since asbestos allows for filling out the notification on line. how else can you get the signature. Doesn't this defeat the purpose of doing it on-line?</p> <p>The department removed "A copied signature is not acceptable."</p>
492	296.51(b)(1)(B)(iv)	<p>regarding the AIHA Asbestos Analysts requirement for on-site readings...</p> <p>This is downright unacceptable, especially for projects that occur during the late night hours due to client needs. I do not know any other state that has a requirement similar to this. You are basically requiring an AMT to have the same level of education as a consultant... which is insane. The current requirement of being employed with the lab and participate in the PAT rounds is more than enough.</p> <p>This requirement will also raise the cost of abatement work in general, due to the cost of having to have someone who meets the drafted requirement. Please reconsider this rule and leave it as it stands...</p> <p>The draft requirement to be listed on the AIHA AAR was removed from the proposed rule text.</p>

493	296.53(c)(1)(g)	<p>This requirement of 90 of qualifying work experience is a killer for asbestos consulting companies hiring new employees. 90 days equates to 4.5 months of experience in the field. This requirement that they would have to work under a licensed project manager for this time frame is unreasonable. During this time the licensee will have to be on-site with a licensed APM. Most of our projects do not run for 90 consecutive days. In fact most of our projects last from one to five days total duration. IHST has had only one project in the last two years that ran for over 90 days. It would take six to nine months for IHST to get one employee the experience to qualify. This is a financial hardship which will hurt the industry and drive up costs substantially to the building Owner without substantially increasing the protection of public health. May I suggest that the work experience under a project manager take 15 working days (three weeks) or the same as an air monitoring technician. The MAP training should be sufficient to train a project manager in what is required and 15 days of on-site work experience should be reasonable under the direction of a licensed project manager or asbestos consultant.</p> <p>The department changed 90 days of qualifying work experience to 45 days.</p>
494	296.93(c)(2)(C)(D)(E)&(F)	<p>Please consider a 1 day Consultant Refresher class. As it currently stands, all consultants are required to attend 4 separate refreshers. There are many of the same topics covered in each of the classes. I believe there is a strong consensus among my peers that all of the subject matter could be covered in a single 8 hour refresher.</p> <p>The department declines to make the suggested edit. The length of the course is a MAP requirement.</p>
495	296.191(d)(1)(B)	<p>Replace with ‘all products’ which may potentially contain asbestos used in the building’s construction.</p> <p>The department retained the terminology used in the Act and revised (d)(1)(B) as follows: (B) A Texas-registered architect or a Texas-licensed professional engineer may compile the information from MSDSs and SDSs of <u>the materials</u> used in the construction of the building and, finding no asbestos in any of those <u>materials</u>, prepare a signed written certification that he or she has reviewed the MSDSs and SDSs for all products used in the building’s construction, and that none of those products contain ACBM.... 7/13/16 Legal replaced all instances of "products" with "materials."</p>
496	296.193(j)(4)	<p>Clarify which individual(s) are to be warned and define ‘in the future’, i.e. clarify the duration of the signage.</p> <p>The department declines to make the suggested edits. The text has not changed from current rule.</p>
497	296.211(r)(3)(B)	<p>Delete this fee requirement. It is inappropriate to require payment of a fee where there is no asbestos present and no asbestos to be disturbed.</p> <p>The department declines to remove the fee. The minimum notification fee for abatement is \$50.</p>
498	296.31(b)	<p>Code of Ethics for Licensees (b) The person described in subsection (a) of this section who perform asbestos-related activities shall: <u>Addition (1) not have been convicted or plead guilty to a felony or misprision of a felony involving fraud, embezzlement, misappropriation of funds or other larcenous crimes within the previous 7 years or be under any probation or deferred adjudication for similar activities.</u></p> <p>The department declines to make the suggested edit. Proposed rule in §296.253, Denial, Suspension, or Revocation of License or Reprimand of Licensee, already allows the department to suspend, revoke, etc. a license if the licensee has been convicted within the past five years of a felony or misdemeanor arising from an asbestos-related activity.</p>

499	296.52(c)	<p>(c) Initial and renewal license requirements. To receive or renew a license in accordance with this section, all applicants shall: <u>addition (1) not have been convicted or plead guilty to a felony or misprision of a felony involving fraud, embezzlement, misappropriation of funds or other larcenous crimes within the previous 7 years or be under any probation or deferred adjudication for similar activities.</u></p> <p>The department declines to make the suggested edit. Proposed rule in §296.253, Denial, Suspension, or Revocation of License or Reprimand of Licensee, already allows the department to suspend, revoke, etc. a license if the licensee has been convicted within the past five years of a felony or misdemeanor arising from an asbestos-related activity.</p>
500	296.51(c)	<p>(c) Initial and renewal license requirements. To receive or renew a license in accordance with this section, all applicants shall: <u>addition (1) not have been convicted or plead guilty to a felony or misprision of a felony involving fraud, embezzlement, misappropriation of funds or other larcenous crimes within the previous 7 years or be under any probation or deferred adjudication for similar activities.</u></p> <p>The department declines to make the suggested edit. Proposed rule in §296.253, Denial, Suspension, or Revocation of License or Reprimand of Licensee, already allows the department to suspend, revoke, etc. a license if the licensee has been convicted within the past five years of a felony or misdemeanor arising from an asbestos-related activity.</p>
501	296.52(c)	<p>(c) Initial and renewal license requirements. To receive or renew a license in accordance with this section, all applicants shall: <u>addition (1) not have been convicted or plead guilty to a felony or misprision of a felony involving fraud, embezzlement, misappropriation of funds or other larcenous crimes within the previous 7 years or be under any probation or deferred adjudication for similar activities.</u></p> <p>The department declines to make the suggested edit. Proposed rule in §296.253, Denial, Suspension, or Revocation of License or Reprimand of Licensee, already allows the department to suspend, revoke, etc. a license if the licensee has been convicted within the past five years of a felony or misdemeanor arising from an asbestos-related activity.</p>
502	296.53(c)	<p>(c) Initial and renewal license requirements. To receive or renew a license in accordance with this section, all applicants shall: <u>addition (1) not have been convicted or plead guilty to a felony or misprision of a felony involving fraud, embezzlement, misappropriation of funds or other larcenous crimes within the previous 7 years or be under any probation or deferred adjudication for similar activities.</u></p> <p>The department declines to make the suggested edit. Proposed rule in §296.253, Denial, Suspension, or Revocation of License or Reprimand of Licensee, already allows the department to suspend, revoke, etc. a license if the licensee has been convicted within the past five years of a felony or misdemeanor arising from an asbestos-related activity.</p>
503	296.54(c)	<p>(c) Initial and renewal license requirements. To receive or renew a license in accordance with this section, all applicants shall: <u>addition (1) not have been convicted or plead guilty to a felony or misprision of a felony involving fraud, embezzlement, misappropriation of funds or other larcenous crimes within the previous 7 years or be under any probation or deferred adjudication for similar activities.</u></p> <p>The department declines to make the suggested edit. Proposed rule in §296.253, Denial, Suspension, or Revocation of License or Reprimand of Licensee, already allows the department to suspend, revoke, etc. a license if the licensee has been convicted within the past five years of a felony or misdemeanor arising from an asbestos-related activity.</p>

504	296.55(c)	<p>(c) Initial and renewal license requirements. To receive or renew a license in accordance with this section, all applicants shall: addition (1) <u>not have been convicted or plead guilty to a felony or misprision of a felony involving fraud, embezzlement, misappropriation of funds or other larcenous crimes within the previous 7 years or be under any probation or deferred adjudication for similar activities.</u></p> <p>The department declines to make the suggested edit. Proposed rule in §296.253, Denial, Suspension, or Revocation of License or Reprimand of Licensee, already allows the department to suspend, revoke, etc. a license if the licensee has been convicted within the past five years of a felony or misdemeanor arising from an asbestos-related activity.</p>
505	296.56(c)	<p>(c) Initial and renewal license requirements. To receive or renew a license in accordance with this section, all applicants shall: addition (1) <u>not have been convicted or plead guilty to a felony or misprision of a felony involving fraud, embezzlement, misappropriation of funds or other larcenous crimes within the previous 7 years or be under any probation or deferred adjudication for similar activities.</u></p> <p>The department declines to make the suggested edit. Proposed rule in §296.253, Denial, Suspension, or Revocation of License or Reprimand of Licensee, already allows the department to suspend, revoke, etc. a license if the licensee has been convicted within the past five years of a felony or misdemeanor arising from an asbestos-related activity.</p>
506	296.57(c)	<p>(c) Initial and renewal license requirements. To receive or renew a license in accordance with this section, all applicants shall: addition (1) <u>not have been convicted or plead guilty to a felony or misprision of a felony involving fraud, embezzlement, misappropriation of funds or other larcenous crimes within the previous 7 years or be under any probation or deferred adjudication for similar activities.</u></p> <p>The department declines to make the suggested edit. Proposed rule in §296.253, Denial, Suspension, or Revocation of License or Reprimand of Licensee, already allows the department to suspend, revoke, etc. a license if the licensee has been convicted within the past five years of a felony or misdemeanor arising from an asbestos-related activity.</p>
507	296.59(c)	<p>(c) Initial and renewal license requirements. To receive or renew a license in accordance with this section, all applicants shall: addition (1) <u>not have been convicted or plead guilty to a felony or misprision of a felony involving fraud, embezzlement, misappropriation of funds or other larcenous crimes within the previous 7 years or be under any probation or deferred adjudication for similar activities.</u></p> <p>The department declines to make the suggested edit. Proposed rule in §296.253, Denial, Suspension, or Revocation of License or Reprimand of Licensee, already allows the department to suspend, revoke, etc. a license if the licensee has been convicted within the past five years of a felony or misdemeanor arising from an asbestos-related activity.</p>
508	296.131(a)	<p>(a) Purpose. This subchapter establishes licensing procedures for Military Service Members, Military Veterans, and Military Spouses in accordance with Chapter 55 of the Texas Occupations Code, “Licensing of <u>M</u>ilitary <u>S</u>ervice <u>M</u>embers, <u>M</u>ilitary <u>V</u>eterans, and <u>M</u>ilitary <u>S</u>pouses.” Reason: 1. Stylistic changes to provide coherent guidance and appropriate citations.</p> <p>The department declines to make the suggested edits. The citation is styled consistently with those in other sections.</p>

509	296.131(b)	<p><u>(b) Required Documentation.</u> Reason: 1. Re-styled to provide section for requirements general applicable to all three classifications of populations under the current draft 25 Tex. Admin. Code §296.131(b). Restyling will provide ease of comprehension to regulated population and reduce TDSHS’s burden of issuing subsequent explanatory guidance after publication of the revised TAHPR</p> <p>The department declines to make the suggested edits. The suggested language is not substantively different from the proposed language.</p>
510	296.131(b)	<p>Proposed: (b)(1) <u>Generally.</u> An applicant shall provide documentation of the applicant’s <u>military affiliation according to Tex. Occ. Code §55.001(4)-(6).</u> Acceptable documentation includes, but is not limited to: <u>(i) copies of official documents (such as military service orders), (ii) marriage licenses, (iii) military discharge records, or (iv) a combination of (i)-(iii).</u> Reason:</p> <p>1. Re-styled to provide section for requirements general applicable to all three classifications of populations under the current draft 25 Tex. Admin. Code §296.131(b). Restyling will provide ease of comprehension to regulated population and reduce TDSHS’s burden of issuing subsequent explanatory guidance after publication of the revised TAHPR.</p> <p>2. A title of “Generally” was added to provide ease of recognition for the regulated population.</p> <p>3. Stylistic changes to provide coherent guidance and citation to the appropriate provisions within the Texas Occupations Code.</p> <p>4. List formatting was added for clarity to examples of acceptable documents.</p> <p>5. “a combination of (i)-(iii)” was added to help the regulated population understand that a combination of multiple documents may be required to adequately prove military affiliation</p> <p>The department declines to make the suggested edits. The suggested language is not substantively different from the proposed language.</p>
511	296.131(b)(2)	<p>Proposed: (b)(2) <u>Reciprocal Proof.</u> Upon request, an applicant shall: <u>(i) provide acceptable proof of current license issued by another jurisdiction, (ii) proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of Texas if no reciprocal licensing acknowledgement exists for the licensing jurisdiction, or (iii) both.</u></p> <p>Reason:</p> <p>1. Re-styled to provide section for requirements general applicable to all three classifications of populations under the current draft 25 Tex. Admin. Code §296.131(b). Restyling will provide ease of comprehension to regulated population and reduce TDSHS’s burden of issuing subsequent explanatory guidance after publication of the revised TAHPR.</p> <p>2. A title of “Reciprocal Proof” was added to provide ease of recognition for the regulated population.</p> <p>3. List formatting was added for clarity to examples of acceptable documents.</p> <p>4. “if no reciprocal licensing acknowledgement exists for the licensing jurisdiction” was added to reduce both the burden on TDSHS and the regulated population. Upon recognition that individual licenses from a jurisdiction have been deemed “substantially equivalent to the licensing requirements of Texas” applications with licenses from that same jurisdiction should be treated the same. This would ensure consistent during application over a sustained period of time.</p> <p>5. The word “and” was replaced by adding “or both” to allow TDSHS to reduce paperwork burdens on both the regulating agency and the regulated population and only require documentation where needed. Current language would likely create an unintended consequence of inundating TDSHS with more paperwork than expected.</p> <p>The department declines to make the suggested edits. The suggested language is not substantively different from the proposed language.</p>

512	296.131(c)	<p>Proposed: (c) Military Service Members and Military Veterans. A verified Military Service Member or Military Veteran shall 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.</p> <p>Reason:</p> <ol style="list-style-type: none"> 1. Re-styled to provide section for applicability Military Service Members and Military Veterans. Re-styling will provide ease of comprehension to regulated population and reduce TDSHS's burden of issuing subsequent explanatory guidance after publication of the revised TAHPR. 2. A title of "Reciprocal Proof" was added to provide ease of recognition for the regulated population. 3. Stylistic changes were made to provide consistency throughout regulation and ease of comprehension. <p>The department declines to make the suggested edits. The suggested language is not substantively different from the proposed language.</p>
513	296.131(d)	<p>Proposed: (d) <u>Military Spouses</u>.</p> <p>Reason: 1. Re-styled to provide section for applicability Military Spouses. Re-styling will provide ease of comprehension to regulated population and reduce TDSHS's burden of issuing subsequent explanatory guidance after publication of the revised TAHPR.</p> <p>The department declines to make the suggested edits. The suggested language is not substantively different from the proposed language.</p>
514	296.131(e)	<p>Proposed: (d)(1) An applicant who is a Military Spouse who holds a current license issued by another jurisdiction that has substantially equivalent licensing requirements shall complete and submit an application form and fee. The Department will issue a license to a qualified applicant who holds such a license as soon as possible, and the renewal of the license will be in accordance with subsection (d)(3) of this section. Reason:</p> <ol style="list-style-type: none"> 1. Re-styled to provide section for applicability Military Spouses. Re-styling will provide ease of comprehension to regulated population and reduce TDSHS's burden of issuing subsequent explanatory guidance after publication of the revised TAHPR. 2. Possible grammatical typo for subject-verb agreement on who is being issued the license (application or the applicant). 3. Adjusted citation of subsection (h) to (d)(3) to match restyling references. 4. Stylistic changes were made to provide consistency throughout regulation and ease of comprehension. <p>The department declines to make the suggested edits. The suggested language is not substantively different from the proposed language.</p>
515	296.131(f)	<p>Proposed: (b)(3) In accordance with Tex. Occ. Code §55.004(c), the Department may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining that the applicant holds a license issued by a jurisdiction with licensing requirements substantially equivalent to those of Texas.</p> <p>Reason:</p> <ol style="list-style-type: none"> 1. Re-styled to provide section for requirements general applicable to all three classifications of populations under the current draft of 25 Tex. Admin. Code §296.131(b). Re-styling will provide ease of comprehension to regulated population and reduce TDSHS's burden of issuing subsequent explanatory guidance after publication of the revised TAHPR. 2. Adjusted citation to the Texas Occupations Code. 3. Stylistic changes were made to provide consistency throughout regulation and ease of comprehension. <p>The department declines to make the suggested edits. The recommendations are not substantive.</p>

516	296.131(g)	<p>Proposed: (d)(3) A Military Spouse who, within the five years preceding the application date, held the Texas license that expired while the applicant lived in another state for at least six months is qualified for a license based on the previously held license if: (i) the applicant can prove current accreditation, (ii) there are no unresolved complaints against the applicant, and (iii) there is no other bar to licensure (such as noncompliance with a Department order).</p> <p>Reason: 1. Re-styled to provide section for applicability Military Spouses. Re-styling will provide ease of comprehension to regulated population and reduce TDSHS's burden of issuing subsequent explanatory guidance after publication of the revised TAHPR. 2. List formatting was added for clarity to examples of acceptable documents. 3. Moved "the applicant can prove current accreditation" to the front of the requirements for revival of an expired licenses since that appears to be a threshold issue when submitting such an application. 4. Stylistic changes were made to provide consistency throughout regulation and ease of comprehension.</p> <p>The department declines to make the suggested edits. The suggested language is not substantively different from the proposed language.</p>
517	296.131(h)	<p>Proposed: (d)(2) If the department issues an initial license to an applicant who is a <u>Military Spouse</u> in accordance with subsection (d)(1) of this section, the Department will assess whether the applicant has met all the licensing requirements of Texas by virtue of the current license issued by another jurisdiction. The Department will provide this assessment in writing to the applicant at the time the license is issued. If the applicant has not met all licensing requirements of Texas, the applicant must provide proof of completion before applying for license renewal. A license will not be renewed if the applicant does not provide proof of completion of the requirements.</p> <p>Reason: 1. Re-styled to provide section for applicability Military Spouses. Re-styling will provide ease of comprehension to regulated population and reduce TDSHS's burden of issuing subsequent explanatory guidance after publication of the revised TAHPR. 2. Adjusted citation of subsection (e) to (d)(1) to match restyling references. 3. Stylistic changes were made to provide consistency throughout regulation and ease of comprehension.</p> <p>The department declines to make the suggested edits. The suggested language is not substantively different from the proposed language.</p>
518	296.131(i)	<p>Proposed: (b)(4) <u>The licenses application and examination fees paid to the State shall be waived for Military Service Members, Military Veterans, and Military Spouses that meet one or both of the following conditions: (i) possession of military service, training, or education substantially meeting all requirements for the license or (ii) possession of a current licenses issued by another jurisdiction that has licensing requirements substantially equivalent to those required in Texas.</u></p> <p>Reason: 1. Re-styled to provide section for applicability Military Spouses. Re-styling will provide ease of comprehension to regulated population and reduce TDSHS's burden of issuing subsequent explanatory guidance after publication of the revised TAHPR. 2. Adjusted statement in regulatory language to provide clarity to the regulated population on what specific circumstances would allow for a fee waiver per Tex. Occ. Code §55.009. This will alleviate confusion and frustration for both TDSHS and the regulated population. 3. Stylistic changes were made to provide consistency throughout regulation and ease of comprehension.</p> <p>The department declines to make the suggested edits. The suggested language is not substantively different from the proposed language.</p>
519	296.91(d)(1)(K)	<p>(K) training manuals and related course materials that include all required elements listed in §296.93 for each initial and refresher training course to be offered. 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 <i>submitted in that language</i>. If the applicant will use an EPA-developed manual, Submit a copy of that manual the applicant may submit a statement attesting to its use in place of submitting the manual;</p> <p>The department declines to make the suggested edits. The department does not see a reason to require the submission of an EPA-developed manual.</p>

520	296.91(d)(1)(L)(i)	(ii) one <u>Three</u> multiple-choice re-examination is allowed per trainee for each course; The department declines to change the number of allowable re-examinations. The department thinks that one re-examination is sufficient. (See #438)
521	296.91(d)(1)(L)(ii)	(iii) <u>no more than 75%</u> of the questions from the original examination will not may be used for the re-examination; The department declines to make the suggested edit. Trainees should be able to demonstrate course content knowledge. Repeating test questions would allow trainees to learn the test, and not course content.
522	296.91(d)(1)(L)(v)	(iv) if a trainee fails the re-examination <u>on three separate occasions</u> , the trainee shall repeat the course and pass a new examination before issuance of the training certificate; and The department declines to make the suggested edit. Trainees should be able to demonstrate course content knowledge. Repeating test questions would allow trainees to learn the test, and not course content.
523	296.91(d)(1)(L)(v)	(v) a trainee shall read the examination and mark the answers on a score sheet unless the trainee requests a reasonable accommodation under the Americans with Disabilities Act and is a qualified individual with a disability; - <u>No oral examination is allowed for persons who do not read and write.</u> The department declines to make the suggested edit. If the trainee can demonstrate the need for a reasonable accommodation (example: dyslexia) then the training provider should comply with the ADA (Americans with Disabilities Act)
524	296.91(d)(2)(B)	(B) a copy of the assumed name certificate issued by the Secretary of State if the applicant conducts business under an assumed name (commonly referred to as a DBA or “doing business as”); - <i>Redundant</i> The department declines to make the suggested edit. The department thinks the clarification is helpful.
525	296.91(e)(1)(C)	(C) training manuals and related course materials that include all required elements listed in §296.93 for each initial and refresher training course to be offered. 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 that language. If the applicant will use an EPA-developed manual, the applicant may submit a statement attesting to its use in place of submitting submit a copy of that manual; The department declines to make the suggested edit. The department does not see a reason to require the submission of an EPA-developed manual.
526	296.91(f)(1)	1) Approval. Prior approval of a guest speaker is required. A guest speaker may be used to supplement and enhance learning objectives. A guest speaker shall have extensive 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: The department deleted "extensive" from the proposed rule text.
527	296.92(b)(2)(A)	(A) confirm with each trainee that the training provider has informed the trainee of the requirements in §296.91(b)(2)(C); - <i>irrelevant, as an agent of the training provider, this is the instructor’s duty as an employee.</i> The department declines to make the suggested edit. The department thinks this information is necessary.

<p>528</p>	<p>296.92(b)(2)(A) through (O)</p>	<p>(B) inform each trainee of the following: (i) for an initial training course each trainee shall achieve at least 70% on the course examination; (ii) if a trainee fails the course examination, a second examination will may be administered; and (iii) a trainee must retake the initial training course if the trainee does not achieve 70% on the second examination; (C) coordinate with the responsible person to ensure that: (i) each trainee possesses valid accreditation, or is within the 12-month grace period, before granting admission to a refresher training course; (ii) necessary training equipment is on-site and in good working order; and (iii) the required instructor-to-trainee ratio is not exceeded, in accordance with §296.93; (D) take an attendance record at the beginning of each four-hour segment of course instruction; (E) document a trainee's absence from the course on the attendance record; (F) provide attendance records to the training provider upon completion of each course; (G) ensure attendance and course completion standards are met; (H) administer a closed-book examination at the conclusion of each initial training course; (I) administer a second examination to each trainee who fails the first examination, in accordance with §296.91(d)(1)(L); (J) record each trainee's examination score; (K) comply with requirements for training courses in §296.93; (L) present all course materials as outlined in the syllabus and as presented to the department for approval; (M) provide a course review to improve comprehension before administering the examination; (N) cooperate with department personnel during inspections, audits, and investigations, in accordance with §296.231 of this title (relating to Inspections and Investigations); and (O) provide the trainee with a copy of the examination application for the department's licensing examination and instructions for locating the examination schedule on the department's website. Delete The department declines to make the suggested edit. The department thinks this information is necessary.</p>
<p>529</p>	<p>296.92(C)(1)(a)(i),(ii),(iii)</p>	<p>(i) a bachelor's degree in a natural or physical science with at least three months of teaching experience at the secondary education level or higher; (ii) a bachelor's degree with at least one year of experience performing asbestos-related activities and at least three months of teaching experience at the secondary education level or higher; or . - inappropriate (iii) a high school diploma or equivalent with at least two years of experience performing asbestos-related activities and at least three months of teaching experience at the secondary education level or higher. - inappropriate In (c)(1)(A)(i), the department removed "at least two years of experience performing asbestos-related activities" with a science degree. In (c)(1)(A)(ii), the department reduced the work experience from 1 year to 6 months with any bachelor's degree. The department also added the eligibility pathway of an associate's degree or successful completion of 60 college credit hours and one year of experience performing asbestos-related activities and at least three months of teaching experience. In addition to the high school diploma or equivalent, the training instructor must have at least two years of experience performing asbestos-related activities and at least three months of teaching experience at the secondary education level, post-secondary education level, or teaching adult learners at a vocational school, a trade school, or other similar setting approved by the department. A train-the-trainer course approved by the department to meets the requirement for three months of teaching experience.</p>

530	296.92(C)(2)(d)	<p>(d) Instructors approved before the effective date of this section. An instructor who has been approved to teach a department-approved training course on the effective date of this section may continue to teach the course for up to six months from the effective date without a license. By the end of the six-month period, the instructor must have applied for and received an initial license to continue teaching. An instructor who was approved to teach before the effective date of this section <u>needs to qualify as a license renewal</u> does not need to meet the education, work experience, and teaching experience required in accordance with subsection (c) of this section. An instructor seeking a license under this subsection must show proof of current accreditation for the courses he or she will teach. If the instructor has not applied for and received a license by the end of the six-month period, the instructor may not continue teaching.</p> <p>The department declines to make the suggested edit. The department thinks it is standard practice to allow for grandfather provisions when implementing a new license type.</p>
531	296.93(a)(5)(A)(ii)	<p>(ii) 80 minutes for breaks and lunch. No more than four hours of instruction may be given without at least a 30-minute break; - Redundant</p> <p>The department declines to make the suggested edit. The department does not believe this is redundant.</p>
532	296.93(a)(5)(C)	<p>(C) evening instruction must not exceed 4 hours in any single session; and — <i>inappropriate, night crews work the night shift need their training on their own shift.</i></p> <p>The department declines to make the suggested edit. This language is derived from an EPA clarification dated 4/18/90.</p>
533	296.93(a)(6)(A)(ii)	<p>(ii) 80 minutes for breaks and lunch; - redundant</p> <p>The department declines to make the suggested edit. The department does not agree this is redundant.</p>
534	296.93(a)(6)(B)(ii)	<p>ii) 20 minutes for breaks. ; - redundant</p> <p>The department declines to make the suggested edit. The department does not agree this is redundant.</p>
535	296.93(a)(7)	<p>(7) In the event of an emergency, a <u>At he discretion of the instructor,</u> a trainee may miss up to 5%_10% of an initial training course <u>as determined by the instructor</u> but no more than one hour per training day and up to 10% of a refresher training course. A trainee is not eligible to complete the course if a trainee misses more time than allowed.</p> <p>The department changed the proposed rule text to allow an trainee to "miss up to 10% of a training course."</p>
536	296.93(a)(8)	<p>(8) During hands-on training, each trainee must participate in gain experience by physically performing activities specific to the asbestos training discipline. Demonstrations and audiovisuals are not substitutes for required hands-on training.</p> <p>The department revised the language in (8) to: During hands-on training, each trainee must physically perform activities specific to the asbestos training discipline. Demonstrations and audiovisuals are not substitutes for required hands-on training.</p>
537	296.93(a)(10)(A)	<p>(A) At least 50% of the classroom instruction must be conducted <u>with instructors presenting the material.</u> and 100% of the hands-on training must be conducted with instructors directed. presenting the material.</p> <p>The department revised (A) to: At least 50% of the classroom instruction must be presented by the instructor. Instructors must direct and oversee 100% of the hands-on training.</p>

538	296.93(a)(10)(B)	<p>(B) Audio/visual materials are not substitutes for the instructor-led portion of the class or the required hands-on training.</p> <p>The department declines to make the suggested edit. The department thinks audio visual materials are not a substitute for the instructor led portion of the class due to limited class interaction and trainee participation.</p>
539	296.93(b)(1)(A) through (H)	<p>(A) physical characteristics of asbestos and ACBM; (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; - redundant</p> <p>The department declines to make the suggested edit. These are course elements required by the EPA MAP.</p>
540	296.93(b)(1)(K)	<p>(K) hands-on training that includes work area preparation, decontamination chamber construction, cleaning and disposal, and respirator fit-testing and maintenance; and</p> <p>The department declines to make the suggested edit. These are course elements required by the EPA MAP.</p>
541	296.93(b)(2)(A) through (H)	<p>(A) physical characteristics of asbestos and ACBM; (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; - redundant</p> <p>The department declines to make the suggested edit. These are course elements required by the EPA MAP.</p>
542	296.93(b)(2)(J) through (L)	<p>(J) establishment of respiratory protection programs and medical surveillance programs; (K) hands-on training that includes work area preparation, decontamination chamber construction, cleaning and disposal, and respirator fit-testing and maintenance; (L) insurance and liability issues; - redundant</p> <p>The department declines to make the suggested edit. These are course elements required by the EPA MAP.</p>
543	296.93(b)(2)(O)	<p>(O) contract specifications; and</p> <p>The department declines to make the suggested edit. These are course elements required by the EPA MAP.</p>

544	296.93(b)(3)(d)	<p>(D) 40 CFR Part 763, Subpart E, Appendix A, Interim Transmission Electron Microscopy Analytical Methods–Mandatory and No mandatory–and Mandatory Section to Determine Completion of Response Actions (overview of AHERA air monitoring requirements and AHERA sampling); - does not apply</p> <p>The department declines to make the suggested edit. This AHERA training requirement does apply because AMTs will also be licensed to perform air monitoring in schools.</p>
545	296.93(b)(4)(A) through (L)	<p>(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; - redundant</p> <p>The department declines to make the suggested edit. These are course elements required by the EPA MAP.</p>
546	296.93(b)(4)(M)	<p>(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;</p> <p>The department declines to make the suggested edit. These are course elements required by the EPA MAP.</p>
547	296.93(b)(4)(N)	<p>(N) recordkeeping and writing the asbestos survey report;</p> <p>The department declines to make the suggested edit. These are course elements required by the EPA MAP.</p>
548	296.93(b)(5)(A) through (K)	<p>(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 - redundant</p> <p>The department declines to make the suggested edit. These are course elements required by the EPA MAP.</p>

549	296.93(b)(6)(A) through (Q)	<p>(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 to include removal, encapsulation, and enclosure methods; (J) final clearance process to include 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;- <i>redundant</i></p> <p>The department declines to make the suggested edit. These are course elements required by the EPA MAP.</p>
550	296.118	<p>The department will furnish an analysis of the examinee's performance on a failed examination if requested in writing by the examinee <u>or his representative</u>. The request must be made within one year of the examination date.</p> <p>The department declines to make the suggested edit. The department will only provide the analysis to the examinee.</p>
551	296.151(a)(1)(A)	<p>(A) a response action other than an SSSD activity;</p> <p>The department declines to make the suggested edit. These are course elements required by the EPA MAP.</p>
552	296.151(a)(1)(B)	<p>(B) a maintenance activity that disturbs friable ACBM other than an SSSD activity; or</p> <p>The department declines to make the suggested edit. These are course elements required by the EPA MAP.</p>
553	296.151(b)	<p>(b) Accreditation course. Persons receive accreditation by successfully completing the appropriate asbestos training course as described in the MAP, approved by the department and offered by a department-licensed asbestos training provider, approved by another state that has the authority from EPA to approve courses, or approved directly by EPA.</p> <p>The department edited (b) to: Accreditation course. Persons receive accreditation by successfully completing the appropriate asbestos training course as described in the MAP, and:</p> <p>(1) approved by the department and offered by a department-licensed asbestos training provider; (2) approved by another state that has the authority from EPA to approve courses; or (3) approved directly by EPA.</p>

554	296.151(c)(1)	<p>(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</p> <p>The department declines to make the suggested edit. The use of (ID) is a widely used abbreviation.</p>
555	296.171	<p>Removal of Resilient Floor Covering.</p> <p>The department exempts persons from the license and registration requirements in this chapter when they <u>are certified to use</u> the performing resilient floor covering removal in public buildings using the work practices published in the current edition of the Resilient Floor Covering Institute’s “Recommended Work Practices for Removal of Resilient Floor Coverings” (RFCI work practices) or other methods determined by the department to provide public health protection from asbestos exposure, in accordance with §1954.104 of the Act. This includes the removal of asbestos-containing mastics adhered to non-asbestos-containing flooring material.</p> <p>The department declines to make the suggested edit. The department can approve methods equally health protective. This requires communication with technical staff and approval.</p>
556	296.174	<p>Small Projects and Repetitive Tasks in a Public Building.</p> <p>Persons who perform small projects and repetitive tasks in accordance with §296.198 of this title (relating to Procedures for Small Projects and Repetitive Tasks in Public Buildings) are exempt from the licensing and registration requirements of this chapter.</p> <p>The department declines to make the suggested edit.</p>
557	296.175	<p>Regulatory Threshold in a Public Building.</p> <p>Individuals are exempt from license, registration, and notification requirements if their projects and tasks are not asbestos abatement activities that disturb three square or linear feet or less of nonfriable material per occurrence</p> <p>The department declines to make the suggested edit. The exemption includes licensure and registration for the removal of these materials. It does not exempt people from a survey.</p>
558	296.191(d)(1)(B)	<p>(B) A Texas-registered architect or a Texas-licensed professional engineer may compile the information from MSDSs and SDSs of all products used in the construction of the building and, finding no asbestos in any of those products, prepare a signed written certification that he or she has reviewed the MSDSs and SDSs for all products used in the building’s construction, and that none of those products contain ACBM. This certification, together with copies of the MSDSs, SDSs, and any previous asbestos survey reports, meets the mandatory survey requirement. This certification must also clearly identify the name of the building, the street address and specific area of the building to which the statement applies, and specific dates for when the work was completed.</p> <p>The department declines to make the suggested edit. The language clarifies existing rule.</p>
559	296.191(e)(1)	<p>(1) Limited asbestos surveys are 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.</p> <p>The department declines to make the suggested edit. The language clarifies existing rule and incorporates the department's existing Asbestos Regulatory Clarifications (ARCs).</p>

560	296.191(f)	<p>(f) Sampling for asbestos. A licensed asbestos inspector must perform an asbestos survey in accordance with 40 CFR §§763.85-763.88. To demonstrate that there is no ACM and therefore no need for O&M activities 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. Building materials that have not been surveyed as required in this subsection and which are suspected of containing asbestos must be treated as ACM.</p> <p>The department declines to make the suggested edit. The language clarifies existing rule.</p>
561	296.191(g)(4)(A)	<p>(A) Residential buildings <u>Single family dwelling units</u> are not exempt from the NESHAP if they are on the same site, under the control of the same owner or operator as part of the same project. Residential buildings are considered to be on the same site if they are within 660 feet of each other. EPA considers demolitions planned at the same time or as part of the same planning or scheduling period to be part of the same project. In the case of municipalities, a scheduling period is often a calendar year or fiscal year or the term of a contract. Owners or operators shall ensure that all suspect ACM is surveyed and RACM is abated in accordance with 40 CFR Part 61, Subpart M.</p> <p>The department declines to make the suggested edit. The department prefers the term "Residential building" as it has been clarified to mean four or fewer dwelling units in 296.191(g). The distance of 660 feet has been added to incorporate the department's existing Asbestos Regulatory Clarification on this subject.</p>
562	296.191(g)(4)(B)	<p>(B) <u>Single family dwelling units</u> 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 the NESHAP, and owners or operators shall ensure that all suspect ACM is surveyed and RACM is abated in accordance with 40 CFR Part 61, Subpart M. If one residential building is the only building being demolished, NESHAP regulations do not apply.</p> <p>The department declines to make the suggested edit. The department prefers the term "Residential building" as it has been clarified to mean four or fewer dwelling units in 296.191(g). The language concerning NESHAP applicability is needed to provide guidance.</p>
563	296.191(h)	<p>(h) Demolition with ACM left in place. – <u>Comply with the NESHAP</u></p> <p>The department declines to make the suggested edit. The language is needed to clarify existing rule and aid in compliance.</p>
564	296.191(h)(1)	<p>(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 friable during demolition.</p> <p>The department declines to make the suggested edit. The language is needed to clarify existing rule and incorporate the NESHAP language to aid in compliance.</p>
565	296.191(h)(2)	<p>(2) Category II nonfriable ACM may be left in place if the probability is low that the material will become crumbled, pulverized, or reduced to a powder during demolition.</p> <p>The department declines to make the suggested edit. The language is needed to clarify existing rule and incorporate the NESHAP language to aid in compliance.</p>
566	296.191(h)(3)	<p>(3) RACM may be left in place if the total amount of RACM is under the NESHAP threshold as described in 40 CFR §61.145. All RACM must be removed before demolition if the NESHAP threshold is met or exceeded.</p> <p>The department declines to make the suggested edit. The language is needed to clarify existing rule and incorporate the NESHAP language to aid in compliance.</p>

567	296.191(i)	<p>(3) a response action for a major fiber release episode.</p> <p>The department declines to make the suggested edit. The language is needed to clarify existing rule and incorporate the NESHAP language to aid in compliance.</p>
568	296.191(k)(3)(B)	<p>(B) exempted activities described in §296.199 of this title (relating to Exemptions for the Removal of Intact Asbestos-Containing Materials in a Public Building).</p> <p>The department declines to make the suggested edit. The language is needed to clarify existing rule and incorporate the NESHAP language to aid in compliance.</p>
569	296.191(p)(1)	<p>(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 commercial building) to perform a survey; or</p> <p>The department declines to make the suggested edit. The term "nonpublic" is used instead of the term "commercial" because the requirement applies to all buildings defined as a "facility", including commercial buildings, that are not public buildings.</p>
570	296.192(f)(2)	<p>(2) The employer must maintain in safe working condition a sufficient number of respirators of the types and styles approved by NIOSH to meet all requirements for the licensee's employees. Any person whose facial characteristics, hair, mustache, or beard preclude a tight fit of a negative-pressure respirator shall not be allowed to enter the containment during any asbestos abatement activity unless equipped with a positive pressure or supplied air respirator designed for usage with facial hair. Redundant with the OSHA</p> <p>The department declines to make the suggested edit. The language is needed to clarify existing rule and incorporate the OSHA language to aid in compliance.</p>
571	296.192(h)(1)(B) (i)	<p>(i) Ambient air samples must be collected continuously daily during asbestos abatement activity and analyzed in accordance with the latest edition of NIOSH 7400 method, counting rules A.</p> <p>The department declines to make the suggested edit. The language is needed to clarify existing rule. See#262.</p>
572	296.192(h)(1)(C) (ii)	<p>(ii) All project activities, except O&M, must be cleared by using aggressive <i>(where appropriate as determined by the consultant)</i> air sampling. Clearance samples must be collected by an asbestos air monitoring technician or an asbestos consultant. The sample pumps must be monitored during the sampling period by the person collecting the samples. For all projects, samples must be collected and analyzed using NIOSH 7400 method, counting rules A, Phase-contrast Microscopy (PCM). Clearance samples must be collected at a flow rate between 0.5 to 16 10 liters per minute on 0.8 micron MCE filters in cassettes with electronically conductive cowls. Only one cassette may be placed on a pump at a time. Minimum sample volume will be sufficient to meet the limit of quantification of airborne fibers by adjusting the sampling volume to produce a fiber density of 100 to 1,300 fibers/mm2. redundant - Clearance is achieved if no sample is reported greater than 0.01 f/cc by the analysis report from the licensed laboratory. PCM must be used in accordance with the NIOSH 7400 method to determine the amount of fibers present. The minimum sample volume for PCM is 3,000 liters of air. Alternatively, the AHERA protocol may be used to determine volume and flow rate needed for TEM analysis in accordance with 40 CFR Part 763, Subpart E, Appendix A, Interim Transmission Electron Microscopy Analytical Methods–Mandatory and Nonmandatory–and Mandatory Section to Determine Completion of Response Actions. The minimum sample volume for TEM is 1,200 liters of</p> <p>The department declines to make the suggested edits. The use of aggressive air sampling is currently required in the rules. A flow rate of 0.5 to 16 is consistent with NIOSH 7400.</p>
573	296.193(a)(2)(B) (5)	<p>(5) All surfaces that are not being abated must be covered during asbestos abatement activities as determined by the consultant, except for O&M, RFCI, or projects designed by a licensed asbestos consultant in accordance with paragraph (2) of this subsection.</p> <p>The department declines to make the suggested edits. The purpose of this language is to give the consultant the latitude to adjust to real world situations such as a impermeable solid ceiling that can be wiped easily.</p>

574	296.193(c)	<p>(c) 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 <u>must be appropriate in size</u> at least 30 inches by 30 inches wide and 78 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 hot and cold water where the temperature can be adjusted by the user. Waste water must be filtered using a 2-stage filtration system with a 50 micron and a 5 micron filter. A licensed asbestos consultant shall specify a remote decontamination area when it is not feasible to attach the decontamination area to the containment. The consultant must determine procedures for minimizing the migration of fibers from the containment to the remote decontamination area. All persons must exit the containment through the shower before entering the clean room. No asbestos-contaminated individuals or items may enter the clean room. The asbestos abatement supervisor shall ensure that the decontamination area is fully operational before and during asbestos abatement activities. All persons exiting containment shall:</p> <p>The department declines to make the suggested edit. The department thinks that a minimum size must be specified.</p>
575	296.194(b)(4)	<p>(4) A negative pressure mini-containment must may be constructed for containment of asbestos fibers. A glove bag or negative pressure glove box may be used for removal or repair of ACM on pipes as described in 29 CFR §1926.1101(g)(5) and 40 CFR Part 763, Subpart E, Appendix C.</p> <p>The department declines to make the suggested edit. Current rules include this requirement and the department does not see a need to change it to an option.</p>
576	296.195(b)(1)	<p>(1) This section applies only to maintenance or installation projects and tasks that are not asbestos abatement activities and that disturb 3 square or linear feet or less of nonfriable material for each occurrence. If the materials become RACM, then:</p> <p>The department declines to make the suggested edit. The language is needed to specify the types of projects that be performed under the requirements of this section .</p>
577	296.195(b)(2)	<p>(2) Projects and tasks that are below the threshold specified in paragraph (1) of this subsection are exempt from the licensing, registration, and notification requirements.</p> <p>The department declines to make the suggested edit. This language is needed to provide detail on the extent of the exemption</p>
578	296.196(a)(1)	<p>(1) work practices published in the current edition of the Resilient Floor Covering Institute’s “Recommended Work Practices for Removal of Resilient Floor Coverings” <i>Training manual</i> (RFCI work practices); or</p> <p>The department declines to make the suggested edit. This language is needed to provide clarity.</p>
579	296.196(a)(2)	<p>(2) other methods determined by the department to provide public health protection from asbestos exposure, in accordance with §1954.104 of the Act. - <i>inappropriate</i></p> <p>The department declines to make the suggested edit. This language is directly from the Texas Asbestos Health Protection Act, except that the term "department" is substituted for "council" because the department is the agent of the council.</p>
580	296.196(b)(1)	<p>(1) The removal activity allowed under this exemption is strictly limited to resilient floor coverings and adhesives that are nonfriable; remain intact (as defined in 29 CFR §1926.1101); and have not been sanded, ground, mechanically chipped, drilled, abraded, cut, or sawed. These actions create RACM. Shearing, slicing, or punching the flooring does not render the flooring material RACM.</p> <p>The department declines to make the suggested edit. This language details the extent of the exemption and details forbidden work practices and what the department would regard as a violation.</p>

581	296.196(b)(2)	(2) The removal activity must not become a response action. - <i>Redundant</i> The department declines to make the suggested edit. The language is needed to provide clarity.
582	296.196(b)(4)	(4) If the flooring materials become RACM friable , or the PEL is exceeded, either before or during the removal, then: The department declines to make the suggested edit. The use of the term RACM is appropriate.
583	296.196(b)(6)(D)	(D) provide the department with written notification before the project starts , - <i>Redundant in accordance with §296.211 of this title</i> (relating to Notifications). The department declines to make the suggested edit. The language is needed to provide clarity.
584	296.196(c)(1)	(1) All individuals engaged in removal of resilient floor coverings by the RFCI work practices must have successfully completed training in an eight-hour RFCI course and any required refresher course in accordance with 296.171 and 29 CFR §1926.1101(k)(9), which covers the elements described in the RFCI work practices . An additional four-hour competent person course is required to qualify as an RFCI supervisor. The department declines to make the suggested edit. The language is needed to provide clarity.
585	296.196(c)(1)(A)	(A) Individuals employed by schools who elect to use the RFCI work practices must first <i>-inappropriate</i> complete the 16-hour custodial training, required by the EPA MAP. The department declines to make the suggested edit. The language is needed to provide clarity.
586	296.198(b)(3)	(3) Registered asbestos abatement workers or unlicensed O&M Supervisors who are also <u>maintenance personnel</u> may perform small projects and repetitive tasks that disturb friable ACBM using the work practices outlined in subsection (d) of this section only when supervised by a licensed asbestos abatement supervisor or a licensed O&M supervisor. The department declines to make the suggested edit. The current language is needed to allow unlicensed maintenance personnel to perform these small projects in accordance with this section when appropriately supervised.
587	296.198(d)	(d) Work practices. <u>Work practices as specified by a licensed consultant to</u> must include, <u>as a minimum the following</u> The department declines to make the suggested edit. The additional language is not necessary because projects conducted under this section will require a project design performed by a licensed consultant.
588	296.199(a)(2)	(2) Nonfriable ACM must not become regulated R friable ACM The department agrees and has made the suggested edit. (See also #656)

589	296.199(b)(1) through (4)	<p>(1) removal of transite panels by unbolting or unscrewing and removing the panels intact; (2) removal of transite lab-type desktops by either unbolting or unscrewing and removing the desktop intact; (3) removal of nonfriable countertops and backsplashes by completely removing the entire unit intact; (4) removal of window units with window glazing by removing the entire window unit intact. Window glazing must be secured with tape or similar material prior to removal; - inappropriate</p> <p>The department declines to make the suggested edit. The language is needed to provide guidance.</p>
590	296.199(b)(5) through (8)	<p>(5) picking up loose floor tiles that have become completely disassociated from the floor and are either whole or are slightly broken but are still <u>substantially intact</u> and not RACM; (6) picking up loose miscellaneous nonfriable items such as rolls of linoleum, loose gaskets, loose shingles, etc.; (7) removal of fire doors with asbestos-containing insulation from their hinges by removing each door intact including hardware; and (8) removal of any other nonfriable building component by removing it intact. - inappropriate</p> <p>The department declines to make the suggested edit. The language is needed to provide guidance and the term "intact" is sufficient to convey the intended meaning.</p>
591	296.199(c)	<p>(c) Work practices. At a minimum, the licensed consultant will design the Work practices include the following requirements:</p> <p>The department declines to make the suggested edit. The additional language is not necessary because projects conducted under this section will require a project design performed by a licensed consultant.</p>
592	296.200(b)(2)(R)	<p>(R) the Violation Notification Procedure poster issued by the department, which must be <u>in color as published</u>, posted and visible to the public at the entrance to the regulated area in accordance with §296.192(i) of this title (relating to General Requirements for Asbestos Abatement in Public Buildings); and</p> <p>The department declines to make the suggested edit. It is not the department's intent to require the poster to be printed in color. A color poster is better but a black and white one is also acceptable.</p>
593	296.200(h)(1)(d)	<p>(D) Examinations. Licensed training providers 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 in accordance with §296.93(b) of this title (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 available for inspection by the department immediately upon conclusion of the course and administration of the</p> <p>The department declines to make the suggested edit. This term is used to convey the need for promptness in responding to inquires and promote organized recordkeeping.</p>
594	296.211(l)(1)	<p>(1) A notification is required <u>as per the EPA NESHAP for operations</u> when planned renovation operations of individual nonscheduled operations, resulting from equipment failure, that when combined the RACM exceeds 260 linear feet of pipe length, or 160 square feet on other facility components, or 35 cubic feet of off-facility components where the length or area could not be measured. To determine whether notification is required, the facility owner or operator predicts the combined additive amount of RACM to be removed from January 1 to December 31. These operations may be notified on a single consolidated notification per facility. 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 in accordance with subsection (d) of this section.</p> <p>The department declines to make the suggested edit. The EPA NESHAP language is included to help clarify and minimize stakeholders having to go to other sources.</p>

595	296.231(c)(2)	<p>(2) review records and make copies; interview any person; locate, identify, and assess the condition of ACM; take photographs; and collect bulk and/or air samples. – <i>DSHS Inspectors are not accredited to collect samples as per the MA P</i></p> <p>Department inspectors are accredited under the MAP.</p>
596	296.221(c)	<p>Clarify that "NA" is appropriate for use with annual O&M work notices. The agency should revise the database (VO) to allow the "NA" to be included in the date for asbestos survey.</p> <p>The department declines to make the suggested edit. "NA" is not acceptable for the date of an asbestos survey.</p>
597	296.21(101)	<p>TDSHS use of the word "survey" is not in line with the EPA and AHERA. Using the word inspection should be the word used in the regulation. Re install the work Inspection and delete survey</p> <p>The department declines to make the suggested edit. To avoid confusion between "inspection" and "survey", the department removed "inspection" as a defined term. The word now has its common meaning when used in the rules. Survey has the detailed meaning that is described in the definitions section. (See #239)</p>
598	296.51(b)(1)(B)(iii)	<p>TDSHS is dictating who AMT can work for and who they can not. Remove this item.</p> <p>The department declines to make the suggested edit. The Department's intent is to prevent conflict of interest. One AMT can still perform both area and personal monitoring, they just cannot be employed by the contractor to collect personal samples if the AMT is also performing area monitoring. In these cases, the building owner or authorized representative must provide for a third party to perform the area monitoring and collect personal samples.</p>
599	296.56(c)(2)(C)	<p>Asbestos consultant is a very important part of the abatement industry. It should be left as a 4 yr science degree. Lowering the standards is less protective of human health.</p> <p>The department has included a 60 college minimum hour requirement. 30 of those hours must be in engineering, or natural science. An additional 9 hours of mathematics is required. This combined with 3 years in the environmental and occupational field and 250 days of asbestos experience was deemed sufficient by the department.</p>
600	296.191(e)(3)	<p>Add a statement such as " The old survey should be reviewed and signed by a currently Texas licensed consultant" A lot of old buildings had samples taken before TDSHS was around.</p> <p>The department declined to make this change. There is no expiration date on a survey if it accurately describes the location, quantity and condition of the ACM in the building.</p>
601	296.192(h)(1)(C)(ii)	<p>Remove the statement of minimum volume should be 3000 L. This requirement is out dated and contradictory to the previous statement. The new NIOSH 7400 recommends the 25 mm cassette and the sampling area of the cassette is smaller therefor the sampling area should be 45% less to achieve the proper fiber density.</p> <p>The department agrees and has made the suggested edit.</p>

602	296.198(b)(3)	<p>this requirement is a violation of OSHA and EPA and is less protective of public health and safety. Require all individuals working with asbestos have ASHARA MAP training.</p> <p>The department declines to make the suggested edit. The requirements of the exposure assessment state that the work practices cannot exceed the clearance level.</p>
603	296.200(b)(2)(A)	<p>Change 296.200(b)(2)(A) to be in accordance with MAP and require the worker to be registered. The statement need to be changed in order to be in compliance with EPA and MAP requirements.</p> <p>The department declines to make the suggested edit. The section states all applicable licenses and certifications, which includes licensure and registration documents.</p>
604	296.5	<p>...Workers would fall under OSHA, Class 3 Training which requires 16 hours training, for that type of activity...ok .So it's not they wouldn't have training they would fall under OSHA not the State, so possibly we can put something in this regulation about the 16 hour training for the repetitive task deal...</p> <p>The department declines to make the suggested edit. The workers are supervised and the project does not exceed clearance.</p>
605	296.50(b)(2)(O)(i)-(ii)	<p>...(O)(i) and (ii), that is generator responsibility as far as manifest and making sure everything gets back. That is not contractor's responsibility....saying it falls under NESHAP, it says generator responsibility.</p> <p>The department declines to make the suggested edit. The contractor is the generator.</p>
606	295.51(b)(1)(B)(iii)	<p>...your air monitoring duty, (iii) says employed by a asbestos abatement contractor to collect personal samples on the same, oh you should not be a AMT employed by the contractor to collect personal samples on the same project which AMT is collecting, Baseline areas of clearances that's a real common practice here in Texas for the AMT to be out there contract or hired to do the personals. It would be an unjust expense if we have to have 2 different AMTs to the same project. So I understand that there's ... provisions with conflict of interest there to some extent, but it's a common practice and would end up costing a lot more money to have 2 different AMT's out there on the same project...</p> <p>The department disagrees with this comment. One AMT can still analyze the samples if the building owner pays the AMT instead of the contractor paying. (See #430)</p>
607	296.93(a)(5)-(6), (9)	<p>...Page 92 talks about breaks and all that and how many people being a class at a time down at the bottom, it's already written in the model accreditation plan two 15 minute breaks one in the morning one in the afternoon one hour lunch, and then the student cannot be in class over 8 hours including breaks and lunch. The ratio 15 to 1 for hands on, the MAP says 40 for to 1 for classroom. Ok, so that's already there so this 25 to 1 needs to be deleted....</p> <p>The department declines to make the suggested edit. The department prefers a 25 to 1 ratio.</p>

608	296.191(f)(4)	<p>...Basically this came out of NESHAP 1990, said if the, it was PLM 10% or less it had to be point counted ok? ...we can always assume instead of going to point count. So if it's less than 10% we do not have to necessarily go to point count although NESHAP says that. Ok, which is kind of crazy when can assume stuff's asbestos anyway...</p> <p>The information in (f) has been restructured to delete (f)(4) and re-worded for clarification.</p> <p>(f)(2) Results of visual estimation by polarized light microscopy (PLM) analysis of 0% asbestos or no asbestos detected (NAD) do not require further analysis for the detection of asbestos in friable or nonfriable suspect materials.</p> <p>(f)(3) Results of visual estimation by PLM analysis of more than 0% and less than 10% asbestos must be further analyzed to demonstrate the material is not ACBM using other analysis using the hierarchy and guidance in subparagraphs (A)-(C) of this paragraph.</p> <p>(A) Results of point counting by PLM analysis of samples supersede and replace the initial results of visual estimation by PLM.</p> <p>(B) Results of gravimetric preparation followed by point counting or transmission electron microscopy (TEM) visual estimation analysis of samples supersede and replace results of visual estimation by PLM and results of point counting by PLM.</p> <p>(C) Point counting may be used to analyze both friable and nonfriable materials. Nonfriable materials such as mastics and floor tile where fibers are occluded by a binding matrix will be processed using techniques such as acid washing and ashing outlined in EPA/600/R-93/116, July 1993, "Method for the Determination of Asbestos in Bulk Building Materials."</p> <p>(See #243)</p>
609	296.191(h)	<p>...Page 112 at the bottom, (h)-demolition ACBM or ACM left in place is category on non-friable ACM, maybe left in place if it's not in poor condition, that's true, not friable, that's true and will not become friable during demolition. NESHAP doesn't say anything about once the demolition starts. All your category 1's, all your ACMs to begin with can be left in place from demolition, outside of intentional burning. You cannot intentionally burn the facility, you got to move out all your asbestos first. Okay?...</p> <p>It would be abated completely prior to burning.</p>
610	296.191(n)(3)	<p>...Page 115 (n)(3)3 talks about new materials going into a building prior to installation, that does not have to be done by a licensed person, before it's installed its as much as you can contain building material on public access building. The license does not apply nor does the 3 sample apply. So we can have a pallet of roofing, tar out there or whatever, one sample anybody can do that, ok? So that needs to be deleted...</p> <p>The sample would be additional evidence with an MSDS.</p>
611	296.193(c)	<p>...Page 122 talks about the decon ... it says the containment must include attached personal decontamination unit the area consist of including room shower equivalent, ... 30-inch , 30-inch 78-inch tall, the e-trim must be separated from other contaminated air locks so air doesn't escape. ...then it talks about the shower and the soap and all that, if we simply put it the way OSHA does, it has to imply 29 CFR §1910.141(d), which requires hot and cold running water coming out of a common faucet head that is adjustable, soap, towels, one shower head for every ten people.... So you can leave it like that instead of ... just putting hot and cold water that is adjustable 'cause there might be 1 hose or 2 different hoses or whatever.... the water is also under your Clean Water Act supposed to be deposited into a sanitary sewer system that is grey water or black water actually, ok you need to add that ... 'cause some people are just throwing it down a ditch.....</p> <p>The department declines to make the suggested edit. The department has chosen to detail the requirements of the decontamination area instead of referring to 29 CFR §1910.141(d). The department has not adopted provisions of the Clean Water Act.</p>
612	296.193(h)(2)	<p>...page 123 (h)(2), ... the bag must be rinsed off in a bag-out area to remove asbestos contamination placed inside another bag. You need to rewrite that rinsed off or HEPA vac, HEPA vac is another method of cleaning bags that's approved by OSHA and the EPA, ... not always do we have a shower available in a bag out system ok? By the way bag-outs are not required by any regulation--only if consultants specifies them.</p> <p>The department declines to make the suggested edit. A HEPA vacuum can be used if specified in the consultant's specifications.</p>

613	296.196(b)(3)	<p>... the PEL must not be exceeded during the removal activity, nowhere is monitoring required for RFCI, so we have no idea if we are exceeding the PEL or not, that's the big issue right there....they throw a negative exposure form and they promise some floor tile workers, oh they're not going to exceed the PEL. That has nothing to do with the Texas Public Building Exposure Limit, everybody understand that? That's one of the issues with RFCI, there just saying "I can see the PEL" but don't they say you're not going to exceed clearance levels but no air monitoring is required. So what do we do about that one?...</p> <p>The department declines to make the suggested edit.</p>
614	296.196(c)?	<p>...the other thing about RFCI, you all need to put a revision in there, people teaching RFCI have to be license with a Resilient Floor Covering Institute in order to teach that class. There's a lot of contractors out there saying that the guys are RFCI trained training their own people but they are not licensed through the RFCI. You have to license through the RFCI to teach that class....</p> <p>The department declines to make the suggested edit.</p>
615	296.200(b)(2)(H)	<p>...This is ludicrous, it says air monitoring results when we are talking about personal air monitoring results post within 48 hours with sample ok? OSHA says as soon as possible, no more than five working days after received. This year if y'all go to this AAR deal for the individual analyst, analyzing on-site, there's going to be a lot of samples that are taken into a lab because a lot of consultants can't afford the AAR deal. They get to lab, lab is out of town all that, they're not going to get the results back within 2 days of taking the sample ok? You ought to leave it like OSHA: as soon as possible after received from the lab no more than five working days....</p> <p>The department declines to incorporate the suggested edit. The requirement for AMTs to be listed on the AAR has been removed from the proposed rule text.</p>
616	296.211(a)(2)	<p>Uhm 138, this is dealing with notifications...(2) talks about facilities. I do a lot of training outside of public access buildings, uh says facilities not otherwise subject as public buildings, the department must be notified of any demolition, which is true. Whether or not asbestos have been identified the department must be notified of any renovation or bothering abatement of RACM in the facility. That needs to be added, when our RACM is over 160-260-35 in a facility if it's renovation it's under 160-260 over staged non-problem non-notification is required. Ok? So if it's over a ARU it needs to added to that paragraph.</p> <p>The department added, "...meets or exceeds the NESHAP threshold, as described in 40 CFR §61.145, 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..."</p>
617	296.211(f)(2), (3)	<p>...This is redundant since we have the online notification, y'all are hooked up with your regional office anyway. So (2) and (3) down there at the bottom, contacting the regional office is unnecessary. Cause they already know.</p> <p>The department declines to make the suggested edit. The requirement to telephone and fax/email the regional office is needed to alert inspectors of the amended notification.</p>
618	296.211(n)	<p>...Talks about notification of demolition. Now this is where doing abatement within a 10-working day notification, then if we're gonna to do a demolition, y'all are gonna require an additional 10-working-day notification for the demolition. It's what it says, read it.... As long as a notification is open, anything is amendable except for the job site and things...</p> <p>The department declines to make the suggested edit. The language is consistent with the NESHAP requirement for notification of demolition at least 10 working days before demolition begins.</p>

<p>619</p>	<p>296.192</p>	<p>296.192 includes 3000 liter minimum sample volume for PCM clearance and a 100 fiber per square millimeter minimum fiber density on the filters. These requirements are unnecessary, unrealistic and counterproductive. For example, if you have a clearance sample that passes the 0.01 f/cc it will not have 100 f/mm² on the filter and therefore if you follow this rule you should reject that sample – I don't think that is what we want to do. This rule cites NIOSH 7400 for these requirements, and remember 7400 was written for workplace atmospheres. Where the fiber concentration can be expected to be constant over the sampling period. You don't have those conditions during clearance sampling. The negative air machines are removing the contaminated air the leaf blowers have been turned off, no more fibers are being generated, the contaminated air is being replaced by clean make-up air. The fiber concentration is decreasing during the sampling period, something that is not being taken into account, in NIOSH 7400 or other guidance documents. So the effects are, according the industrial hygiene literature, that the concentration is decreasing exponentially. At 4 air exchanges per hour, concentration decreasing by 90 percent in 36 minutes, and it continues to decrease. So if we have a sample that we have taken over a currently 1250 liter volume, it will have the same number of fibers that you will collect on 3000 liter sample because after the 2 hours it takes to collect the shorter sample there are no fibers to collect. If the 1250 liter sample fails, it is quite possible that the 3000 liter sample will pass, and the area isn't any cleaner. It is you have just mathematically manipulated the calculations. Now for the contractor it really acts as a disincentive to get the area clean holding him to a smaller sample volume is a stricter standard than the higher sample volume. To really pass a clearance sample the easiest way to do it is to run a sampling pumps overnight and collect a lot of air reduce that number and the denominator. Now there are costs and delays that are associated with a longer sampling time that can extend into the period after the samplings are collected, I am recommending that these requirements and drafts be deleted and that the either that the 1250 liters be retained or leave it up to the consultant to specify the proper clearance volume for his particular project. I have been talking to some consultants and contractors to do some validation test to prove this hypothesis that I am depending on. I expect to have these results available sometime this summer as soon as the projects are done. I invite anyone who would like to participate and do some testing, take some samples from the projects, talk to me after this meeting or later. I will provide these results to the department, so they can use them for the remainder of the rulemaking of the process.</p> <p>The department changed the minimum sample volume back to 1,250 liters.</p>
<p>620</p>	<p>request for department outreach</p>	<p>Section 296.198 Exemption of Unlicensed Personnel, to add a section for unlicensed personnel to exempt person from licenses if they following ASTM Standard D 7886 Asbestos Exposure Assessment. The standard is available at astm.org. The proposal identifies young unlicensed personnel, unfortunately the employers of these individuals have not received the draft of these rules in most cases and do not know these exemptions are available to them. We are talking about building owners, managers, general contractors, tradesmen, and vendors, who go into buildings and perform these short-term tasks. What is needed is an outreach effort anybody who has clients, who may benefit from this exemption. I suggest that the department initiate an outreach effort to reach the people who will benefit and let them know of its awareness but also its availability and compliance requirements in terms of training and exposure assessment.</p> <p>I think in the interest of protecting public health, and I think the most important thing to look at is to have the unlicensed building owners and so forth, employers not have to pay to have the work done but so that they don't just tell the workers to do the work and not to worry about anything, they need to be trained, and they need to have the assessments done. This is not an easy process, but is well worth doing in the long term for the community who does asbestos work.</p> <p>The department intends to provide public outreach on the new rules when they are finalized.</p>

621	296.198	<p>With regards to the exposure assessment that is described in this section, I am going to recommend that the reference to the TPBEL 0.01 f/cc be deleted because the definition of that level refers to areas outside the regulated area if you look at the definition. Exposure assessment applies to work done inside a regulated area for compliance with the permissible 0.01 f/cc. The OSHA regulation does not tell you how to do an exposure assessment. It only tells you what it is supposed to accomplish. The procedure in ASTM D7886 as the author of the standard, I can assure you it is a rigorous process. This is not RFCI. Employers are going to face an upfront cost for having the assessments by licensed personnel and are going to have to pay to have their own people trained to do the task. They are going to save money by not having to send their people through an extensive training course to get licensed, nor will they have to call in abatement contractors to do the task, to do work that their own people could do.</p> <p>The department removed the definition of TPBEL. OSHA does give guidance, and the department references D7886 because it is a more detailed example of how to perform an exposure assessment.</p>
622	296.59	<p>...Breaking down NVLAP laboratories ... three separate items, PLM bulk samples, TEM bulk samples, and TEM air samples ... NVLAP simply accredits bulk asbestos and air-born asbestos.... The way you have it writing it makes it seem as though there are three types of accreditation when there are actually only two, bulk and airborne....</p> <p>The department clarified in §296.59(b)(1) that there are only two types of accreditation.</p>
623	296.191(f)(3)	<p>The other one is a little more complicated, and it is on Section 191(f)(3). (read section) Point counting is where I have a problem. Point sample may be used. Technically that is correct; however I believe there is a little more verbiage that needs to be included, and I would like to point your attention to a letter dated May 8, 1998, from the EPA Region 6... the EPA finds the analysis results acceptable only where the lab analysis has followed all of the prescribed test method procedures such as ashing and acid washing or gravimetric reduction per the July 1993 test method. I think this is important because if it is not changed, as far as a public health issue, in floor tile by polarized light microscopy you're lucky to see one to two percent. If you do gravimeter reduction on that same material, that one to two percent will go to 25 percent. It is very easy to miss asbestos in NOB in particular and it is critical that you'll make these changes, so that samples are properly treated and analyzed the right way. Gravimeter reduction, metric reduction, is essentially yes you can point count a non friable material as long as you make it friable first.</p> <p>The information in (f) has been restructured to delete (f)(4) and re-worded for clarification.</p> <p>(f)(2) Results of visual estimation by polarized light microscopy (PLM) analysis of 0% asbestos or no asbestos detected (NAD) do not require further analysis for the detection of asbestos in friable or nonfriable suspect materials.</p> <p>(f)(3) Results of visual estimation by PLM analysis of more than 0% and less than 10% asbestos must be further analyzed to demonstrate the material is not ACBM using other analysis using the hierarchy and guidance in subparagraphs (A)-(C) of this paragraph.</p> <p>(A) Results of point counting by PLM analysis of samples supersede and replace the initial results of visual estimation by PLM.</p> <p>(B) Results of gravimetric preparation followed by point counting or transmission electron microscopy (TEM) visual estimation analysis of samples supersede and replace results of visual estimation by PLM and results of point counting by PLM.</p> <p>(C) Point counting may be used to analyze both friable and nonfriable materials. Nonfriable materials such as mastics and floor tile where fibers are occluded by a binding matrix will be processed using techniques such as acid washing and ashing outlined in EPA/600/R-93/116, July 1993, "Method for the Determination of Asbestos in Bulk Building Materials."</p> <p>(See #399)</p>

<p>624</p>	<p>296.51(b)(1)(B)(iv)</p>	<p>The first one I want to alert you to or that I am concerned with is ... the AMT having to be registered with the AAR. ... I can understand if you're in the lab, you have certain tools and calibrations and stuff that are good, in the field there might be ... estimating and it's not that good, but why do you have a lab? My lab is in NVLAP ... you're looking for calibration, you're looking for precision and accuracy. We have those charts, then the NVLAP comes to my lab and they check to see if we're doing that and it's a simple thing to do it for air, we got the computer program for it, we do it for air and we do it with the PAT rounds. So now you're saying that I need the PAT rounds and this? I think it's totally wrong.... So I really would like that to be gone away and leave it like it was, leave the PAT rounds or join the AAR.</p> <p>The draft requirement to be listed on the AIHA AAR was removed from the proposed rule text.</p>
<p>625</p>	<p>296.56(c)(2)(C)</p>	<p>Number 2 is ... I am totally against lowering the standard or lowering the bar for becoming an asbestos consultant, I really am very concerned that you guys are allowing an individual with a couple years of college to get into a consultant. I think that's totally wrong...</p> <p>The department considered many pathway options for consultant licensure. The membership in a organization pathway has been dropped because there are groups other than AIHA that a person can belong to that have no testing or other requirements. The organizations' testing and requirements for entry to the highest level were too variable. The department also removed the educational pathway of a degree in any field and now requires a degree in a physical or natural science. (See #219)</p>
<p>626</p>	<p>296.21(104)</p>	<p>Third one, this new acronym-wow, TPBEL what in the, is this? ... let's say that we do a boiler room and the boiler room is not being done completely just the tank but there's asbestos all over.... If my sample outdoors or out of the containment is above that level of clearance level...that means it's contaminated, we have to keep cleaning and removing all this stuff, When do we stop cleaning? Sometimes you can't clean. You know the NIOSH 7400 method does not read asbestos only, sheetrock you know can come up looking like a fiber so you know are you really going to enforce this? If you are going to put this, are you going to enforce it?...</p> <p>The department removed the definition of TPBEL.</p>

<p>627</p>	<p>296.21(90)</p>	<p>...let me go to uh 296.21(90) the responsible person. I put these in the first comments of 2014. One of the concerns I have, is I've seen uh, project managers you know pass as being consultants. They rent the seal from a consultant and all of sudden they are doing plans and specs. Those consultants are not employees of that company, you should make this and I put some verbiage in here recommendation that they be either principals, full time employees that have the responsibility for the asbestos activities, it has to be - they can't be just a uh temporary employee okay?</p> <p>The department declines to make the suggested edit. That is a business practice that is up to the licensee that appoints the responsible person. (See #102)</p>
<p>628</p>	<p>296.51(b)(1)(B)(iii)</p>	<p>...AMT's are not allowed to collect air samples in the same project.... this is common practice and when you're going to add another air monitor, "Who's working for?" Another consultant agency, so you have 2 consultant agencies on this project and that's very deadly. Everything is going to get haywire, owners are going to be at a disadvantage and spend more money, I'd like to see that go away.</p> <p>The department declines to make the suggested edit. One AMT can still analyze the samples if the building owner pays the AMT instead of the contractor paying. (See #430 and #606)</p>
<p>629</p>	<p>296.21(101)</p>	<p>Another one I put back in 2014 was an asbestos survey, which is uh or the use of word I'm sorry the use of the word.... I read in your regulations that you're going to do away the word "inspections" has anybody contacted EPA under AHERA? Make sure they change their name on the survey/resurveys and surveys. The standard word in the industry has been inspections not surveys..... T</p> <p>The department declines to make the suggested edit. To avoid confusion between "inspection" and "survey", the department removed "inspection" as a defined term. The word now has its common meaning when used in the rules. Survey has the detailed meaning that is described in the definitions section. (See #239)</p>
<p>630</p>	<p>296.191(e)(3)</p>	<p>Next one I did this one in 2014, 296.191(e)(3) you have in there the asbestos survey remains acceptable so long as the survey was done with the rule in place. A lot of old buildings ... were done prior to the 80's doing surveys, they may have done 3 samples, what regulations were effect? TDH should not have any licensing at the time. So are these surveys good? According to your regulation it is. What I suggested that "yes, fine they're ok there should be a limit on them." But you know, if you're going to let them go to be good they should be at least reviewed by a licensed consultant, currently licensed to see if it meets the 3 sample rule or did they sample every material there</p> <p>The department declines to make the suggested edit. It is the building owner's responsibility to ensure the asbestos survey continues to accurately represent the materials present in the building. The department routinely inspects renovation and demolition projects to ensure compliance with the survey requirements.</p>

631	296.198(b)(3)	<p>Next is 296.198(b)(3) in the statement of using 3000 liters....3000 comes from the old 37mm cassettes. If you look at the AHERA, well first of you look into the old, old measuring uh airborne asbestos silver book. Many of you may have not even be born when this one was out there and I see some smiley faces, I know this is a very old book, but in here it talked about the 3000 liters, you know and in the other part of the regulations you call for the maximum air samples for the base lines to be 1250, "that's right, that's good" but now you're saying 3000 for clearance? Ah see you're confusing it with old samples, and if we would follow the AHERA recommended volumes by no less for TEM but you can follow them for PCM and falls between 1200 to 1800 and if you see over here on the right side it's a 37mm cassette 3000 liters, that's where that came from....</p> <p>The department changed the minimum sample volume back to 1,250 liters.</p>
632	296.91(c)(3)	<p>... it talks about Emergency Notification. I mostly want to clarify, it used to say it was a 72 hour emergency notification that we could do that and we'd go by the hour... here it says 3, at least 3 business days. So my question is, what is a business day and is it 3 days from tomorrow? Or does today count as part of the 3 days?...</p> <p>The department edited to: "...emergency notification must be submitted at least 3 working days prior to the start date of the course. The training provider must receive written approval from the department before conducting the course."</p>
633	296.171	<p>...resilient floor covering and my question on that is, if we look at the uh, it says removal. It says the department exempts persons from licensing and registration requirements in this chapter, when they are performing resilient floor covering removal in public buildings, uh using the work practices published under the current edition of the RFCI Institute ok, there's this or other methods determine by the department to provide public uh, protection from asbestos exposure in accordance with the 1954.104 of the Act. So my question is, if we're doing the resilient floor coverings, they have to be trained under the RFCI Institute requirements? Cause it doesn't say that here at all. And if they fall under the other method, do they have to be trained under the RFCI requirements as well? I just need a clarification on that....</p> <p>The department has added clarification in §§296.171, 296.174, and 296.196.</p> <p>§296.171. Removal of Resilient Floor Covering. The department exempts persons from the license and registration requirements in this chapter when they are performing resilient floor covering removal in public buildings using the work practices published in the current edition of the Resilient Floor Covering Institute's "Recommended Work Practices for Removal of Resilient Floor Coverings" (RFCI work practices) or other methods determined by the department to provide public health protection from asbestos exposure, in accordance with §1954.104 of the Act and §296.196 of this title (relating to Resilient Floor Covering Removal in Public Buildings). This includes the removal of asbestos-containing mastics adhered to non-asbestos-containing flooring material.</p> <p>§296.175. Regulatory Threshold for Nonfriable Material in a Public Building. Persons are exempt from license, registration, and notification requirements if their operations and maintenance project or installation project is not solely for the purpose of asbestos abatement and does not disturb more than three square feet or three linear feet of nonfriable ACBM per occurrence as described in §296.195 of this title (relating to Guidance for Regulatory Threshold in a Public Building).</p> <p>§296.196. Resilient Floor Covering Removal in Public Buildings. Changed "determined by the department" to "approved by the department." (b)(2) Projects and tasks that are below the threshold specified in paragraph (1) of this subsection are exempt from the licensing, registration, and notification requirements of this chapter. <u>Projects and tasks involving floor tile removal below the threshold specified in paragraph (1) of this subsection are exempt from the RFCI floor tile removal requirements described in §296.196 of this title (relating to Resilient Floor Covering Removal in Public Buildings).</u></p>

634		<p>... Texas public building exposure level, at some point in this regulation, it says that a building cannot exceed that.... what do we do if it exceeds clean air? I mean it happens, base line samples sometimes exceed clean air... My comment is we need a clarification on that, we need to know, if we exceed that level. Do we then close down the building? But I mean baseline samples if you come into a building and you run baseline samples in this room and then exceed clean air does that mean the foyer is now contaminated? ...I mean what does that mean exactly to us?...</p> <p>The department removed the definition of TPBEL.</p>
635	296.192- 296.199	<p>...Small scale short duration has turned into repetitive tasks. Repetitive task we don't require any training, we don't require any notification, we don't require anything, in the state of Texas anymore. Is that to the public interest? Does that make everybody safer?...Does it require notification? Do you require annual O&M notification?...To just tell the uh some maintenance guy somewhere "Yeah just do whatever you want" It's under 3 square feet, or its under 10 square feet get, is this, is this 10 square feet? What is this? 6x3? We can do more than that, under this law. We know it's training, there's no training requirement. I don't know if that's a good idea, I don't think, I don't think it is a good idea....I think they at least need to have training and I don't think our existing system in that regard is necessarily a bad thing ... because it prevents those frontline workers from making a mistake, and gets in their minds, that yes- this can hurt you. If we take that away, no training, no precautionary measures at all. What we're telling them now, "It can't hurt ya" and while the ... Chatfield Method is a good idea for floor tile, I think it's the only way to point count floor tile. I wonder if we should go through all that trouble, because we're turning around and telling Texans, that floor tile is really not that much of a hazard anyway. We're letting people remove it RFCI, we're in this law we're going to allow people to tear down buildings and leave it in place. Has anybody watched a demo of a building? How many people have seen a building demo'ed? How are you going to do that without tearing out floor tile? You can't? But it looks good on paper doesn't it? ...Well people are going to love that too because, when you tell them "Yeah, you got to remove that like its asbestos, because it has asbestos in it." They're like "Why?" You know? I mean that's the general public's response....I just think those things because it seems like while good intentions, repetitive task and some of these exclusions seem to make a lot of sense, I think we're lessening the protection for the public....</p> <p>The small-scale repetitive tasks require training, an exposure assessment, and supervision by a licensee. Demolition regulations are covered in NESHAP. The O&M requires training and notification. Threshold is limited to nonfriable materials under 3 feet. AHERA allows 3 square feet of friable material to be handled without containment.</p>
636		<p>What we're seeing here is, we're supposed to have the same level for clearance throughout the duration of the abatement project. When we do the clearance level, we're doing these clearance levels in a control environment within a containment with negative pressure when we're extracting the fibers, and we can achieve a clearance level. If we go above the clearance level we are in a control environment where it can be cleaned to achieve this level. If we're not putting the same clearance level outside the containment without controls, what do we do? Does that mean now we have to place whole outside, where saying regulated area within the barrier tape outside of our containment, now have to be put into containment so we can make a controlled environment? That was my first comment.</p> <p>A clearance level of 0.01 f/cc must be met. Baselines can be analyzed, and the project meets the baselines.</p>
637		<p>Second comment is on the term more than 1% when we're looking at ACM, uhm that sounds insignificant, the term you all are using in this new proposed rule is "more than." EPA defines ACM as a material with greater than 1% asbestos. More than/greater than, sounds very insignificant but EPA has a letter, control number A070007 which is in the response to what is ACM? In this response letter they say ACM is a material with 2% asbestos or more, and this came up with our laboratories doing point counts and ending in results at 1.4. Mathematically I agree 1.4 is greater than 1%. In this same letter EPA says that as a consultant, as a laboratory we have actually rounded to nearest number. 1.4 is more than 1% by TDH definition meaning that the material would be ACM. As far as EPA is concerned 1.4 is 1% not more than 1%. So I'm asking you to define what that "more than" means or let's adopt the EPA regulation saying it's greater than therefore 2% is greater and introduce the rounding of that.</p> <p>The department declines to make the suggested edit. The department follows EPA/600/R-93/116 for determining the percentage of asbestos. EPA methods allow rounding down for something that is 1.4% asbestos.</p>

<p>638</p>	<p>296.191(n)</p>	<p>Section 296.191(n), maybe I misunderstood that section, but I read that section it's saying that new materials that are introduced to a building, have to be reviewed by the architect or MSDS sheets or it can be tested. I think that's ... outside the department's scope. The department's scope is to test ACM within a public building that's in place, and so now we're saying ... that the owner now has the responsibility of testing or having his materials in new construction before application. Does that mean now that when building a new building, the building owner is going to be responsible for having all he MSDS issues prior to construction? ... I think maybe we need to add a whole new section that says, in new construction now TDH is involved, and these are what's involved with that or eliminate the new materials coming in....</p> <p>The department declines to make the suggested edit. This requirement has been in law since September 1, 2001, when it was passed under Health and Safety Code, Chapter 161, Subchapter Q (relating to Installation of Asbestos). The law requires the department to adopt rules designating the materials or replacement parts for which a person must obtain a material safety data sheet before installing the materials or parts in a public building. The law also prohibits a person from installing materials or replacement parts in a public building if the person does not obtain a required material safety data sheet; or if the materials or parts, according to the material safety data sheet, contain more than one percent asbestos and there is an alternative material or part. This requirement was adopted into the TAHPR in 2003. Department inspectors routinely request MSDSs or SDSs for materials used in new construction sites.</p>
<p>639</p>		<p>Under the laboratory section. When we're talking about this new AAR, we have to follow these samples done by the AAT, uhm I don't understand how and where this came from... I did this research on what this program is and I researched that in this program, there are currently 260 let me think, currently there is about 650 registered AAR's in the nation, there are 650 registered AAR's, of those 650, 1 person in the state of Texas, 1. Was there any research done on AAR and how is it involved now in TDH? I don't understand that, there's already proficiency programs in place, we follow the AIHA PAT rounds and you're telling us no more AIHA PAT rounds, now AIHA or AAR. Same agency, same program, why change it? I think we should just leave that in place.</p> <p>The draft requirement to be listed on the AIHA AAR was removed from the proposed rule text.</p>

<p>640</p>		<p>... under training now we're saying there's 3 ways you can become a trainer. So in order to train somebody in this industry you have to have 3 different types of education levels. You can have a college degree, I think that's great uhm, You can have a uhm experience with a college degree I think that's great, or you can graduate high school, work a couple of months in this industry and teach a consultant class, I don't understand that. The other thing is you're saying that you have to have teaching experience at the secondary education grade or higher and that's not defined. I don't understand what that means,... but in order to become a trainer... complete a train the trainer with OSHA. Maybe we need to adopt that here and say there has to be an, if you're going to be high school educated you have to have a another type of formal training where you can prove that you can teach uhm uh education to adults.... Here all we're saying is you have to have the experience and training, first of all what is the experience? And how do we prove that experience?....</p> <p>In (c)(1)(A)(i), the department removed "at least two years of experience performing asbestos-related activities" with a science degree. In (c)(1)(A)(ii), the department reduced the work experience from 1 year to 6 months with any bachelor's degree. The department also added the eligibility pathway of an associate's degree or successful completion of 60 college credit hours and one year of experience performing asbestos-related activities and at least three months of teaching experience.</p> <p>In addition to the high school diploma or equivalent, the training instructor must have at least two years of experience performing asbestos-related activities and at least three months of teaching experience at the secondary education level, post-secondary education level, or teaching adult learners at a vocational school, a trade school, or other similar setting approved by the department. A train-the-trainer course approved by the department to meets the requirement for three months of teaching experience.</p>
<p>641</p>	<p>296.21(3)</p>	<p>.... as determined by using the analytical method specified in 40 CFR part 763..... and/or the EPA recommended method, EPA /600/R-93/116 July 1993 "Method.....", by a laboratory accredited by the National Voluntary Laboratory Accreditation Program (NVLAP). Comment: As currently written this section implies that NVLAP accredits TEM laboratories for bulk sample analysis, which is incorrect. The above suggested language is more clear and factual.</p> <p>The department revised the definition of ACM: (3) ACM--Asbestos-containing material. Materials or products, including any single material component of a structure or any layer of a material sample, that contain <u>greater</u> [more] than 1.0% of any kind or combination of asbestos, as determined by using the method specified in 40 CFR Part 763, Subpart E, Appendix E to Subpart E, Section 1, Polarized Light Microscopy, by a laboratory accredited by the <u>NVLAP</u> [National Voluntary Laboratory Accreditation Program (NVLAP)] for polarized light microscopy (PLM), or by using the EPA-recommended method listed in EPA/600/R-93/116, July 1993, "Method for the Determination of Asbestos in Bulk Building Materials" for transmission electron microscopy (TEM), [by a laboratory accredited by NVLAP.]</p>

642	296.21(12)	<p>recommend use of AHERA definition for Asbestos as follows; Asbestos –means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); anthophyllite; tremolite; and actinolite</p> <p>The department declines to make the suggested edit. The department chooses to use the definition that is in the Act.</p>
643	296.21(23)	<p>Recommend language as follows; remove all TEM references in description (23) Category 1 non friable ACM- Asbestos containing packings, gaskets, resilient floor covering and asphalt roofing products containing more that 1.0% asbestos as determined using polarized light microscopy as determined by using the analytical method specified in 40 CFR part 763..... and/or the EPA recommended method, EPA /600/R-93/116 July 1993 “Method.....”, by a laboratory accredited by the National Voluntary Laboratory Accreditation Program (NVLAP).</p> <p>The department declines to make the suggested edit. The language suggested is already included in the definition of ACM. TEM is added to allow for the use of this method.</p>
644	296.21(24)	<p>Recommend language as follows; remove all TEM references in description (24) Category 11 non friable ACM – Any non-friable material, excluding Category 1 non friable materials.... using polarized light microscopy as determined by using the analytical method specified in 40 CFR part 763..... and/or the EPA recommended method, EPA /600/R-93/116 July 1993 “Method.....”, by a laboratory accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) and that when dry, cannot be crumbled , pulverized or reduced to a powder by hand pressure.</p> <p>The department declines to make the suggested edit. The language suggested is already included in the definition of ACM and does not need to be repeated here. TEM is added to allow for the use of this method.</p>
645	296.21(68)	<p>Recommended acronym for inclusion in definitions; (68) NVLAP- The National Voluntary Laboratory Accreditation Program is a federal program run by the National Institute of Standards and Technology that provides third party accreditation in conformance with ISO/IEC 17025 for asbestos fiber analysis laboratories, both TEM and PLM test methods, in the United States, Japan and Canada.</p> <p>The department added the definition:(74) NVLAP--National Voluntary Laboratory Accreditation Program. NVLAP is a federal program administered by the National Institute of Standards and Technology, an agency 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 requirements are established in accordance with 15 CFR Part 285 and encompass the requirements of the international standard, ISO/IEC 17025 .</p>
646	296.21(104)(A)	<p>recommend editing this section by using the most current reference;using the NIOSH 7400 Method, Issue 2, dated 15 August 1994, entitled “Asbestos and other fibers by PCM” from the NIOSH Manual of Analytical Methods, 4th Edition.</p> <p>The department removed the definition of TPBEL.</p>

647	296.51(b)(B)(iv)	<p>The requirement for air monitoring technicians who analyze filters in the field to be participants in the AIHA-AAR program is a significant improvement in the quality of the program requirements. The City of Austin has always required field air monitoring technicians to be successful participants in this quality assurance program. We support the AAR participation requirement.</p> <p>The department removed the requirement for an AMT to be listed on the AIHA AAR in order to analyze fibers in the field from the proposed rule text. The department will collect data during its monitoring of the AMTs to address performance in the field.</p>
648	296.59(b)(1)(B) (ii)	<p>should be changed as follows: (ii) TEM analysis of air samples. Remove the word bulk Comment: TEM laboratories are not accredited for bulk sample analysis under the NVLAP. TEM laboratories can only be accredited for air sample analysis under the NVLAP. In addition, there is no NVLAP accreditation criteria or Proficiency Testing program for TEM labs performing bulk sample analysis.</p> <p>The department removed the word "bulk."</p>
649	296.59(c)(1)(A) (ii) and (2)(A)(ii)	<p>remove the language in both of these sections because it is inaccurate Comment: NVLAP does not accredit TEM laboratories for bulk sample analysis.</p> <p>The department removed the word "bulk."</p>
650	296.93(b)(3)(E) (vii) and (F)(vii)	<p>a method is cited that does not exist, the NIOSH 7200 Method Comment: Is this intended to be ASTM D7200 or NIOSH 7402? ASTM D7200 is inaccurate because this applies to air sampling for asbestos in mines and quarries and is not applicable to public buildings. Recommend removal of the references to NIOSH 7200 and reassess the department's meaning/intent.</p> <p>The department removed the reference to NIOSH 7200.</p>

<p>651</p>	<p>296.191(d) and (e)</p>	<p>recommend adding the following additional language for mandatory asbestos surveys and before renovation or demolition involving exterior building walls; “Before renovation or demolition involving exterior building walls an asbestos survey shall be conducted which includes an evaluation of any exterior wall cavities for the presence of asbestos containing vermiculite fill.”</p> <p>Comment: The inclusion of this language is strongly recommended because although a “comprehensive survey” is required prior to disturbance of any building materials for renovation, etc and demolition these surveys do not normally address a common problem in Texas, friable vermiculite fill in building exterior wall cavities. Friable asbestos containing vermiculite fill was available for use in the construction of buildings in Texas where it was used in the past as an insulating material and sound attenuator. This material was used in the construction of many municipal and industrial buildings constructed in Texas during the 1960s through the 1980s. The material was mined in Libby, Montana and was shipped to one of at least nine exfoliation plants in Texas including the Big Tex exfoliation plant in San Antonio, Texas for processing between 1967 and 1988. See list of states and Texas at http://www.gao.gov/special.pubs/gao-09-7sp/toc.html</p> <p>During this time, over 750, 000 tons of vermiculite were shipped to Texas for processing at various sites. The Big Tex site is a recent super fund clean up site for asbestos contamination. The City of Austin has found this friable asbestos containing material in libraries, recreation centers, fire stations, municipal water utility facilities, etc.. that were built during this time period. Since the material was used as a fill in exterior walls it is commonly missed during an initial “comprehensive” asbestos survey because the building envelope, i.e., walls and roofs, is rarely disturbed because of potential resulting moisture issues , voiding of insurance warranties and fiscal liabilities associated with same. The City of Austin currently requires that asbestos consulting firms performing asbestos surveys evaluate the exterior wall cavities of buildings with CMU or brick exterior walls and facades to determine if vermiculite may be present as a cavity fill material.</p> <p>When present and unidentified this friable asbestos containing material poses a significant health risk to the public because it is not commonly identified proactively through an initial comprehensive asbestos survey. It may be noticed, but not normally identified, as a granular fill material that spills out of cracks and holes in CMU exterior walls. Also, if not identified before a demolition it poses a significant hazard to workers who disturb the material as a friable dry fill, in addition to the resultant site contamination if not properly handled.</p> <p>The City of Austin recommends that the department take this opportunity to protect public health by requiring that the comprehensive asbestos survey specifically include the possible occurrence of friable asbestos containing vermiculite fill in the wall cavities of exterior CMU and brick walls. Further since there is currently no approved methodology to reliably confirm vermiculite as non-asbestos containing, these materials must be assumed to be contaminated with asbestos and therefore designated as RACM. In fact EPA states since “the Libby mine was estimated to be the source of over 70 per cent of all vermiculite sold in the U.S. from 1919 to 1990 and vermiculite from Libby was contaminated with asbestos, further testing is not necessary to take the appropriate precautions”. See.... https://www.epa.gov/asbestos/protect-your-family-asbestos-contaminated-vermiculite-insulation</p> <p>The department will research this issue further to determine if this suggestion can be incorporated in future rule-making or a policy statement.</p>
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<p>652</p>	<p>296.191(f)(2-4)</p>	<p>These sections appear to be attempting to incorporate previous “clarifications” by the department but the result is confusing. See the recommended language and comments regarding these sections.</p> <p>(f)(2-4) Recommended language</p> <p>(2) Results of point counting by polarized light microscopy (PLM) analysis of samples supersede and replace the initial PLM analysis results.</p> <p>(3) TEM analysis following gravimetric reduction may be used to determine if a sample contains asbestos.</p> <p>(4) No changes recommended</p> <p>Comments on these sections, TEM and bulk sample analysis;</p> <p>Not all nonfriable and friable materials can be analyzed using point counting methods, i.e., vermiculite fill and cementitious materials. NVLAP does not accredit TEM laboratories for bulk sample analysis. Laboratories providing such bulk sample analysis for public buildings would presumably need to be accredited per 25 TAC 295.54 (e) (2) and ARC -019, page 4.</p> <p>There are no proficiency Analytical Testing Programs (AIHA, RTI, etc) for bulk sample analysis by TEM.</p> <p>Bulk samples are evaluated initially by PLM using analysts with calibrated visual estimation. <i>All NVLAP accredited labs are required to calibrate the visual estimation of their analysts for PLM by comparing their visual estimation quantitation to point counting quantitation to confirm it's precision.</i></p> <p>If asbestos is not detected by PLM due to low asbestos content, problematic matrices, or small fiber size of the component asbestos then subsequent gravimetric reduction is appropriate for isolating any component asbestos from the matrix for identification and potential quantitation.</p> <p>Point counting by PLM of some non-friable building materials can lead to false negatives.</p> <p>TEM analysis of gravimetric reduction residues may be appropriate for nonfriable samples where both initial PLM bulk analysis and follow up gravimetric analysis by PLM are inconclusive.</p> <p>Point counting of gravimetric reduction residues using TEM is semi quantitative at best. Often these residues contain other interfering components that survive gravimetric reduction other than asbestos including quartz, wollastonite, glass, clay minerals, oxides, metal, etc..</p> <p>TEM can be an excellent choice for follow up on non-definitive PLM sample analysis of non friable organically bound samples and analyzing properly prepared non-friable or low percentage (by PLM) estimated samples. However, it's use should be limited to verifying the presence of asbestos and not quantifying content.</p> <p>Unfortunately, when bulk samples are prepared using gravimetric reduction and the incombustible and insoluble residues evaluated by TEM are often contaminated with non asbestos materials which interfere with accurate and precise quantitation measurements.</p> <p>Since accreditation for TEM laboratories to provide bulk analysis is not available it is recommended to remove allowing TEM visual estimation to supersede previous positive PLM analyses as stated in section 296.191(f) (2) for proving negative or <1% asbestos content.</p> <p>Analysis by TEM (AEM) is an extension of the 1993 method which addresses the use of AEM as a follow up for gravimetric reduction and PLM which show negative results (<1 % or non detect) and to be “capable of the identification of component asbestos and semi-quantitative analysis of content.” See EPA 600–R-93-113, Appendix D.</p> <p>The department declines to make the suggested edits. The language incorporate the Asbestos Regulatory Clarification (ARC) 19, which clarifies that TEM analysis supercedes PLM analysis. The department has added language to 296.191(d) to specify that additional information related to determining suspect ACBM is located on the department’s website at www.dshs.state.tx.us .</p>
<p>653</p>	<p>296.200 (h)(2)</p>	<p>Recommended language in conformance with NIOSH 7400 verbiage....</p> <p><i>Analyzing laboratories must maintain copies of individual records for each analyst to document the individual's relative standard of deviation in conformance with the NIOSH 7400 Method for at least 3 years.</i></p> <p>The department agrees with the suggested language. The department changed "coefficient of variation" to "relative standard of deviation" in (g)(3) and (h)(2).</p>

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1) Final clearance air sampling requirements; Phase contract microscopy (PCM)

In the promulgation of rules regarding methods it is essential that we follow “documented methodologies (DM).” the documented methodology concept is a general principle in basic scientific inquiry as well as applied science as found in methodologies used in a regulatory framework. For final clearance air sampling our documented methodologies are found in an EPA regulation known as AHERA (40 CFR Part 763, Sub. E: Response Actions; § 763.90 (i) and within Appendix A (to Subpart E) “Interim TEM Analytical Methods...to Determine Completion of Response Actions.”

For the purposes of PCM ... the sampling requirements can be found at §763.90 (i)(5) in the section titled “Completion of response actions.” ...
 “...The action shall be considered complete when the results of samples collected in the affected functional space and analyzed by phase contrast microscopy using the National Institute for Occupational Safety and Health (NIOSH) Method 7400 entitled “Fibers” published in the NIOSH Manual of Analytical Methods, 3rd Edition, Second Supplement, August 1987, show that the concentration of fibers for each of the five samples is less than or equal to a limit of quantitation for PCM (0.01 fibers per cubic centimeter (0.01 f/cm³) of air).”

Of importance here is the underlined term, limit of quantitation or LOQ. In this we are to sample to achieve a fiber loading that best produces reproducibility of results when quality control (QC) procedures are used to validate data. Within the NIOSH 7400 method we are told to sample to achieve a fiber loading based on the “Range” of the method which is 100-1300 f/mm² (see page one of the 7400 method). For brevity, within this range NIOSH has found the best reproducibility of results in their own validation of the method.

Further, the 7400 method gives further guidance for sampling at lower fiber levels, such as final clearance air sampling which is an implied issue...from page 4 of the 7400 method, Section 5.7, reference #1, “Sampling” section, No. 4, Note #1 (page 4):
 “...In relatively clean atmospheres, where targeted fiber concentrations are much less than 0.1 fiber/cc, use larger sample volumes (3000 to 10000 L) to achieve quantifiable loadings....”

Here the method clearly states that not less than 3000 L of air to be sampled to meet the intent of meeting LOQ requirements
 There has been much confusion and misapplication of how sampling is performed by PCM within the AHERA context. For sampling for transmission electron microscopy (TEM) within AHERA, there is recommended sampling volume range of 1200-1800 L of air to be sampled (See App. A to Sub E., page 785). These TEM issues have been taught as part of AHERA model courses; especially in Contractor/Supervisor air sampling sections. As such the general assumption is that PCM sampling is the pursued the same as TEM; this is incorrect. As such many have been using 1200 L for PCM final clearance air sampling out of poor training and lack of scholarship of the regulations and the 7400 method.

There is no question that the NIOSH 7400 method was really developed for exposure assessments (as with OSHA requirements), and not for final clearance per se, nonetheless we have documented methodology requirements that are defined in AHERA. This means we much follow the 7400 method and not outside of those issues. There is a very small percentage of air sampling firms that can document statistical data for PCM analysis (as with relative standard deviations) that may justify lesser sampling volumes for PCM sampling, but the vast majority of those performing air sampling and PCM analysis cannot produce this data. As such we must stick to the documented methodologies given to us for final clearance sampling and analysis as defined by AHERA; there is no other federal regulatory source of guidance this nature on these PCM issues that would differ here.

Further in 2015, The Environmental Information Association (EIA) published the following document: Managing Asbestos in Buildings: A Guide for Owners and Managers. This is a revision to the United States Environmental Protection Agency’s 1985 document Guidance for Controlling Asbestos-Containing Materials in Buildings (EPA 560/5-85-024) known as the “Purple Book”. When the Purple Book was published in 1985, it was the core of industry knowledge at that time. But all of the regulatory citations had become obsolete as EPA and OSHA regulations changed over the years. As part of this revision the authors detailed asbestos final clearance air sampling requirements based on AHERA documented methodologies. These can be found in section 5.7 “Final Clearance Testing and Air Sample Analysis.” The PCM issues described above including the minimum PCM air volume of 3000 L are found in section 5.7.2.1 on page 88. To put relevance here, this document was written by industry experts and a national peer review was performed on the text. As such, this issue has been further documented for industry compliance.

In addition, the proposed regulations [page 118 of 152, (1) Air Sampling (A) Baseline] the required air volume is 1250 L. If the state desires fiber levels outside of the work areas to meet ≤ 0.01 f/cc, this should be changed to 3000 L to meet the issues raised above. Editors should be sure that any other references to 1250 L should be removed if air sampling is performed to determine if fiber levels are 0.01 f/cc or less.

The department discussed this issue and declines to make the edit. Please see comment # 619

<p>655</p>	<p>2) One issue that can, and should be changed in the editing process is how the EPA’s asbestos NESHAP regulation is referenced throughout the document; it varies far too much to be defensible. In some cases the term “NESHAP” is used alone at other times a full citation; NESHAP 40 CFR Part 61 subpart M.</p> <p>It is suggested that in the definitions section for NESHAP (#69) be changed to the following:</p> <p>(69) NESHAP--The EPA National Emission Standards for Hazardous Air Pollutants, as described in Title 40 CFR, Part 61, Subpart M – National Emission Standard for Asbestos. (Hereinafter as NESHAP)</p> <p>In this, the term NESHAP would imply the full citation and unburden the text with various way in which the regulation is cited. It is understood there are sections of the rules that would be need to be enumerated as in referring to the removal requirements such as “...as found in §61.145... and the like. This simplifies the reading of the regulation and brings it in line with good editing practices.</p> <p>The department replaced "40 CFR Part 61, Subpart M" with "NESHAP" throughout the rule as appropriate.</p>
<p>656</p>	<p>3) Also there are a number of issues regarding the use of the word “friable” when the term RACM should be used. An example can be found on page 112 of 152 (h)(1):</p> <p>(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 friable during demolition.</p> <p>Should be:</p> <p>(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.</p> <p>It is suggested that editors look to the definition of RACM at §61.141. The term friable is used in the NESHAP regulation, but the term RACM is gravely important in the requirements for removal. It is suggested that the editors take the time to assure that the term friable is only used where appropriate as RACM is likely often the accurate term when referencing demolition and renovation removal requirements. The misuse of the term friable is often accidental and a common error. As a designated state NESHAP program it is important to have these NESHAP terms and citations be uniform and accurate otherwise enforcement could become entangled with semantics and stakeholder will misunderstand the intent of friable versus RACM.</p> <p>The department made edits to the following sections to replace "friable" with "RACM" as appropriate:</p> <p>§296.191(h)(1): (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.</p> <p>§296.191(h)(2): (2) Category II nonfriable ACM may be left in place if the probability is low that the material will become RACM, or crumbled , pulverized, or reduced to a powder during demolition.</p> <p>§296.197(a)(2) This section does not apply if the ACBM listed in paragraph (1) of this subsection becomes friable during the removal project. If the ACBM becomes friable or is made into RACM , all...</p> <p>§296.199(a)(2): (2) Nonfriable ACM must not become RACM</p>

657	296.92 (b)(1)(B)(ii)	<p>(B) An asbestos training instructor may not:</p> <ul style="list-style-type: none"> (i) teach courses for accreditation under the MAP or courses required for a license from the department: <ul style="list-style-type: none"> (I) independent of a licensed asbestos training provider; (II) that the department has not approved; (III) without possessing current accreditation for that course; and (IV) without submitting notification to the department, in accordance with §296.91(c) of this title (relating to Asbestos Training Provider); (ii) self-train in order to qualify to teach a training course or qualify for a license or accreditation; or <p>The department incorporated the suggested edits.</p>
658	296.191(a) and (b)	<p>Update rule sections noted here to say building owners are required to "have an inspection performed and have the ACBM abated " instead of "building owners are required to inspect for the presence of asbestos and abate ACBM in accordance with this chapter."</p> <p>The department revised (a) and (b) to require building owners to "have an inspection performed and have the ACBM abated... "</p>
659	296.91(a)	<p>(a) License required. A person must be licensed as an asbestos training provider may to offer training to an individual who seeks MAP accreditation or a department license</p> <p>The department agrees and will make the change in a subsequent version of the rule.</p>