

**Department of State Health Services  
Council Agenda Memo for State Health Services Council  
August 17-18, 2016**

**Agenda Item Title:** Repeal of rules and new rules concerning Texas asbestos health protection

**Agenda Number:** 4.h.

**Recommended Council Action:**

For Discussion Only

For Discussion and Action by the Council

**Background:**

The Asbestos Program is housed in the Division for Regulatory Services. The purpose of the program is to protect public health by preventing the general public and persons who perform asbestos-related activities from being exposed to asbestos. Training is required for individuals who perform asbestos-related activities in commercial buildings, and licensure or registration is required for individuals and companies that perform asbestos-related activities in public buildings in Texas. Laboratories that analyze asbestos samples taken from public buildings, transporters that transport asbestos-containing materials from public buildings, and training providers that provide training for licensure in Texas must be licensed as well. DSHS issued 3,893 initial and renewal licenses in fiscal year 2015. There are currently 7,441 licensed individuals and companies.

DSHS is required by law to be notified of renovation projects that involve asbestos and of demolition projects regardless of the presence of asbestos. DSHS was notified of 8,223 asbestos projects and demolitions during fiscal year 2015. Schools are required by law to maintain management plans for asbestos in school buildings. DSHS asbestos inspectors enforce training requirements, licensure and registration requirements, and safe work practices during renovation and demolition of commercial and public buildings and schools. Inspections are completed for notified projects, for projects not notified but observed by the inspector, and in response to public complaints. DSHS asbestos inspectors performed 3,980 building inspections and 397 school inspections in fiscal year 2015.

The Asbestos Program receives federal funding from National Emission Standards for Hazardous Air Pollutants and Asbestos Hazard Emergency Response Act grants. The program also receives an appropriated amount from the General Revenue Dedicated Fund 5017.

**Summary:**

The new rules will increase clarity and readability by re-ordering and grouping the rule sections into subchapters by topic, editing for plain language and consistency in terminology, updating citations, and reducing redundancy between rule sections. The proposed new rules make significant changes to current rule that include:

- Adding minimum thresholds for small projects and alternate abatement methods;
- Prohibiting potential conflicts of interest by ensuring more accurate data is created and acted upon on-site;
- Reducing apprenticeship requirement for the air monitoring technician (AMT) license from 30 to 15 days
- Adding a new license type for asbestos training instructors;
- Reducing the fee for the asbestos abatement supervisor license, saving licensees \$245 per license renewal;

- Simplifying the notification fee schedule for asbestos abatement/demolition fees by creating a tiered system to make fees easier to calculate; and
- Requiring municipalities that issue renovation or demolition permits, based on evidence of a survey or an architect or engineer's certification statement, to require that the evidence of the survey be in writing and the certification statement include specific elements.

The proposed new rules affect building owners, license applicants, licensed asbestos professionals and training providers, current asbestos training instructors, municipalities, and local education agencies. The review of the rules complies with the four-year review required by Government Code, Section 2001.039.

**Key Health Measures:**

Regarding stakeholder satisfaction, DSHS has an online customer service survey that provides the responder with the opportunity to comment in a narrative format on any topic the responder chooses. Regarding asbestos abatement activities and demolitions, DSHS monitors the number of asbestos projects that are performed in compliance with DSHS rules and state and federal regulations during discretionary and complaint-initiated inspections. DSHS also monitors the number and type of alleged violations that are referred for enforcement action, the number and type of violation findings, and the amount of penalties assessed.

Regarding licensure, DSHS monitors the number and types of licensure examinations administered and passed; the number and type of licensure applications received; and the number and type of licenses issued, suspended, revoked, or denied.

DSHS will analyze the information received in customer service surveys and shifts in these statistics following adoption of the new rules in order to evaluate the effectiveness of the rules. DSHS will monitor inspection results to evaluate changes in work practices, compliance levels, and enforceability of the rules. Experienced program staff who have extensive phone communication with asbestos professionals will assist in determining the clarity of the rules. DSHS will evaluate notification data for trends in work practices and compliance rates.

DSHS expects that trends in the monitored statistics will substantiate improved compliance corresponding to the clarified rule requirements; documentation from customer satisfaction surveys will substantiate improved stakeholder satisfaction; and documentation provided in asbestos abatement/demolition notification forms will substantiate widespread use of the alternate abatement methods for minimizing costs to stakeholders. DSHS also expects the new tiered system for notification fees, which makes fees easier to calculate, will result in fewer deficiencies related to notifications.

**Summary of Input from Stakeholder Groups:**

DSHS requested recommendations from stakeholders for changes to the rules during a 30-day informal recommendation period in July 2014. DSHS received approximately 153 recommendations from 31 stakeholders including UT Austin, American Electric Power, NASA Johnson Space Center, and NATEC of Texas, Inc. Numerous recommendations were incorporated into the draft rule, including improved decontamination shower systems; updated work practices for removal of resilient floor coverings; new definitions to clarify rule language; and 20 rule clarifications. In April 2016, DSHS notified stakeholders by mail and GovDelivery email of an informal comment period for the new draft rules and a public meeting on April 26, 2016, to receive oral comments. Approximately 25 stakeholders attended the public meeting, and 7 provided oral comments on behalf of North American Analytical Labs, The Environmental Consultancy, J3 Resources, Longpoint Environmental Training, Enviro-Con Services, and Sun City Analytical. Several more commenters submitted written comments at the public meeting. Approximately 27 stakeholders emailed informal comments. In response to comments, DSHS restored the eligibility pathway to laboratory licensure based solely on proficiency through the American Industrial

Hygiene Association (AIHA) Proficiency Analytical Testing Program, removed a draft requirement that AMTs be listed on the AIHA Asbestos Analyst Registry in order to analyze airborne fibers in the field, and restored the sampling volume for clearance samples at the end of an abatement project to 1,250 liters from the draft 3,000 liters.

**Proposed Motion:**

Motion to recommend HHSC approval for publication of rules contained in agenda item # 4.h.

**Approved by Assistant  
Commissioner/Director:**

Kathryn C. Perkins, R.N.,  
M.B.A.

**Date:** 5/18/2016

**Presenter:** Annabelle Dillard

**Program:** Asbestos Program

**Phone No.:** 512/834-6608

**Approved by CPEA:**

Carolyn Bivens

**Date:** 6/16/2016

Title 25. Health Services  
Part 1. Department of State Health Services  
Chapter 295. Occupational Health  
Subchapter C. Texas Asbestos Health Protection  
Repeal §§295.31-295.73  
Chapter 296. Texas Asbestos Health Protection Rules  
New §§296.1-296.5, 296.21, 296.31-296.32, 296.41-296.59, 296.71-296.74, 296.91-296.93,  
296.111-296.118, 296.131, 296.151, 296.171-296.175, 296.191-296.200, 296.211, 296.231,  
296.251-296.260.

### Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§295.31 – 295.73 and proposes new §§296.1-296.5, 296.21, 296.31-296.32, 296.41-296.59, 296.71-296.74, 296.91-296.93, 296.111-296.118, 296.131, 296.151, 296.171-296.175, 296.191-296.200, 296.211, 296.231, 296.251-296.260, concerning the regulation of asbestos abatement and other asbestos-related activities in public buildings, facilities, and commercial buildings.

### BACKGROUND AND PURPOSE

The Asbestos Program is housed in the Division for Regulatory Services. The purpose of the program is to protect public health by preventing the general public and persons who perform asbestos-related activities from being exposed to asbestos.

The department proposes repealing the current Texas Asbestos Health Protection Rules (TAHPR), located in 25 TAC Chapter 295, Subchapter C, Texas Asbestos Health Protection, §§295.31-295.73. The department proposes replacing the current rules with new Chapter 296, Texas Asbestos Health Protection Rules. The new chapter is divided into Subchapters A-N, including subchapters that are specific to definitions, standards of conduct, licensing, accreditation, exemptions, operations, notifications, and enforcement requirements. Most of the current rules have been updated in the proposed new rules. Some of the provisions in the current rules have been determined to be obsolete or no longer necessary and have been omitted from the proposed new rules.

The purpose of repealing sections in Chapter 295 and proposing new sections in Chapter 296 is to update training, licensing, and work practice requirements; incorporate guidance from 22-separately published rule clarifications, and implement amendments to Texas statutes. The proposed new sections implement Family Code, Chapter 232, relating to license suspension for failure to comply with court-ordered child support; Government Code, Chapter 2005, relating to refund of initial application and renewal fees for good cause; Occupations Code, Chapter 55, relating to Licensing of Military Service Members, Military Veterans, and Military Spouses (amended by Senate Bill (SB) 1733, 82nd Legislature, Regular Session, 2011; House Bill (HB) 2254, 83rd Legislature, Regular Session, 2013; SB 162, 83rd Legislature, Regular Session, 2013; S.B. 1307, 84th Legislature, Regular Session, 2015; and S.B. 807, 84th Legislature, Regular Session, 2015). In addition, moving the rules to a new chapter allows the department to increase

clarity and readability of the rules, making sections easy to find and access. The department has organized the proposed rules by topic, edited for plain language and consistency, updated citations, and eliminated redundancy.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency in accordance with Government Code, Chapter 2001 (Administrative Procedure Act). The department has reviewed §§295.31 - 295.73 and has determined that rules regarding asbestos health protection continue to be necessary to administer the program.

## SECTION-BY-SECTION SUMMARY

Proposed new Subchapter A, General Provisions, §§296.1 - 296.5:

Proposed new §296.1 summarizes the general provisions, scope, and license requirements of the chapter. This section excludes single private residences or single apartment buildings with no more than four dwelling units from the scope of the chapter and implements Health and Safety Code, Chapter 161, Subchapter Q, Installation of Asbestos.

Proposed new §296.2 adopts by reference particular federal regulations, informs the public where copies of the rule are available for review, and establishes that state requirements must be met when state requirements are more stringent than federal requirements.

Proposed new §296.3 adopts by reference the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations, describes NESHAP compliance, and identifies a memorandum of understanding with the Texas Commission on Environmental Quality (TCEQ) concerning the inspection of solid waste facilities that receive asbestos waste.

Proposed new §296.4 adopts by reference a memorandum of understanding with TCEQ.

Proposed new §296.5 establishes that the department may take enforcement action for violation of the federal regulations implementing the Asbestos Hazard Emergency Response Act (AHERA), that local education agencies must ensure compliance with AHERA, and that the department may enter any regulated school building to determine compliance.

Proposed new Subchapter B, Definitions, §296.21:

Proposed new §296.21 defines new terms, clarifies existing terms, and removes terms that no longer need to be defined. This section defines the following new terms: aggressive air sampling, amended water, bag-out area, containment-area ventilation, critical barrier, decontamination area, emergency responder, exposure assessment, intact, miscellaneous material, MSDS, negative exposure assessment, nuisance residence demolition, permit, RFCI, RFCI contractor, SDS, and survey report. This section clarifies the definitions of the following terms: asbestos-containing material (ACM), employee, independent third-party air monitor, industrial/manufacturing facility (which is the currently defined term, “industrial building”), public building, regulated area, and survey. This section does not include definitions of the

following currently defined terms: asbestos exposure, inspection, or operations and maintenance (O&M) manual.

Proposed new Subchapter C, Standards of Conduct, §296.31 and §296.32:

Proposed new §296.31 establishes a code of ethics for licensees.

Proposed new §296.32 prohibits the following conflicts of interest: a third party air monitor employed or subcontracted by the asbestos abatement contractor hired to conduct the asbestos abatement project, an asbestos consultant hired by an asbestos abatement contractor, an asbestos abatement contractor hired by an asbestos consultant, a person that is licensed as an asbestos abatement contractor and an asbestos consultant acting in both capacities on the same project, an asbestos management planner or asbestos management planner agency that is also an asbestos abatement contractor performing asbestos abatement for which he or she performed the survey or developed the management plan, or a person being the responsible person for two companies with the same type of licensure. This section also exempts municipalities from the requirements of this section.

Proposed new Subchapter D, License and Registration, §§296.41 - 296.59:

Proposed new §296.41 establishes the general requirements for each license type, the issuance of a photo identification card, the responsibility to report violations, prohibitions related to licensure and registration, and penalty information. This section also requires individual licensees except asbestos abatement workers to read, write, and communicate effectively in English.

Proposed new §296.42 establishes general requirements for initial and renewal licenses, application processing timeframes, and reasons for denial of applications.

Proposed new §296.43 establishes the acceptable academic credit to meet license requirements. This section adopts into rule the department's current internal procedures for evaluating the equivalency of foreign degrees and course work.

Proposed new §296.44 establishes license requirements unique to out-of-state applicants. This section extends the Texas Asbestos Law and Rules course completion requirement from the current requirement of 60 days before application to one year before application.

Proposed new §296.45 establishes insurance requirements for licensees. The current rule requires licensees to obtain verification from their insurance carriers that the insurance carriers will notify the department of a policy cancellation ten days before the effective date of the cancellation. Instead of requiring licensees to provide verification that the insurance carrier will notify the department, this section requires the licensee to notify the department.

Proposed new §296.46 establishes the requirements for registration as an asbestos abatement worker along with the scope of practice and responsibilities. This section adds the responsibility for compliance with the work practices for asbestos abatement in public buildings to the list of worker responsibilities in the current rule.

Proposed new §§296.47, 296.48, and 296.49 establish the license requirements, scope of practice, and responsibilities for an asbestos abatement supervisor, asbestos abatement contractor, and asbestos operations and maintenance supervisor, respectively.

Proposed new §296.50 establishes the license requirements, scope of practice, and responsibilities for an asbestos operations and maintenance contractor. This section also adds requirements from the Texas Asbestos Health Protection Act (TAHPA), Occupations Code §1954.105(c), which requires an applicant to provide applicable certificates issued by the Secretary of State.

Proposed new §296.51 establishes the license requirements, scope of practice, and responsibilities for an asbestos air monitoring technician (AMT). This section requires an AMT employed by a licensed asbestos laboratory to be listed on the American Industrial Hygiene Association (AIHA) Asbestos Analyst Registry or to have received the NIOSH 582 or NIOSH 582 Equivalent training and participate in the AIHA Proficiency Analytical Testing (PAT) Program in order to analyze airborne fibers in the field. This section also establishes a new responsibility for AMTs analyzing in the field to demonstrate full competency in PCM analysis using the NIOSH 7400 method upon request by a department inspector, establishes time frames for recording and reporting the results of air sampling, and reduces the apprenticeship requirement for the AMT license from 30 days to 15 days.

Proposed new §296.52 establishes the license requirements, scope of practice, and responsibilities for an asbestos inspector.

Proposed new §296.53 establishes the license requirements, scope of practice, and responsibilities for an asbestos project manager. This section also adds a new license requirement of 45 days of qualifying work experience.

Proposed new §296.54 and §296.55 establish the license requirements, scope of practice, and responsibilities for an asbestos management planner and asbestos management planner agency, respectively. Section 296.54 also adds a new license requirement of participation in conducting five asbestos surveys.

Proposed new §296.56 establishes the license requirements, scope of practice, and responsibilities for an asbestos consultant. This section revises the current list of options for meeting the professional, educational, and work experience requirement by removing the option of membership in a national professional organization and adding the new option of 60 college credit hours, which include 30 credit hours in engineering or natural or physical science and 9 credit hours in mathematics, combined with specific work experience.

Proposed new §§296.57, 296.58, and 296.59 establish the license requirements, scope of practice, and responsibilities for asbestos consultant agencies, asbestos transporters, and asbestos laboratories, respectively.

Proposed new Subchapter E, License and Registration Fees, §§296.71 - 296.74:

Proposed new §296.71 lowers the fee for the asbestos abatement supervisor license from \$645 to \$400 to better align the fee with the responsibilities of the licensee. This section also increases the fee to process refunds from the \$30 that is in current rule to \$50 to cover administrative costs and adds a fee of \$30 for each returned check.

Proposed new §296.72 establishes the circumstances that will result in late fees.

Proposed new §296.73 establishes rules related a payment device that is not honored by the issuing financial institution.

Proposed new §296.74 regarding fee reimbursement implements Government Code, Chapter 2005 by clarifying what constitutes “good cause” for denying a request for fee reimbursement.

Proposed new Subchapter F, Training Providers, Instructors, and Courses, §§296.91 - 296.93:

Proposed new §296.91 establishes the license requirements, scope of practice, and responsibilities for asbestos training providers. This section removes the responsibility for the training provider to provide a color photograph to each trainee. This section adds a requirement that for the Asbestos Abatement Worker course, the course name must specify the language in which the course will be conducted.

Proposed new §296.92 creates the new license category of asbestos training instructor and the license requirements, scope of practice, and responsibilities.

Proposed new §296.93 establishes general training requirements; initial training course requirements for the Asbestos Abatement Worker, Asbestos Contractor/Supervisor, Asbestos Air Monitoring Technician, Asbestos Inspector, Asbestos Management Planner, Asbestos Project Designer, and Texas Asbestos Law and Rules courses; and refresher training course requirements.

Proposed new Subchapter G, State Licensing Examination, §§296.111 - 296.118:

Proposed new §296.111 establishes general examination provisions and adds time frames for requirements in the current rules. This section requires an approved applicant to take the examination within six months of submitting an application. This section also requires applicants to submit all documents and fees necessary to complete the licensing process within three years of passing the examination.

Proposed new §296.112 establishes rules relating to the examination schedule.

Proposed new §296.113 establishes rules relating to examination qualifications.

Proposed new §296.114 establishes rules relating to examination registration and confirmation.

Proposed new §296.115 establishes rules relating to examination admittance and conduct.

Proposed new §296.116 establishes rules relating to grading examinations and reporting scores.

Proposed new §296.117 establishes rules regarding re-examination.

Proposed new §296.118 establishes provisions regarding analysis of examination performance and adds a new deadline by requiring a request for an analysis to be made within one-year of the examination date.

Proposed new Subchapter H, License and Registration Provisions related to Military Service Members, Military Veterans, and Military Spouses, §296.131:

Proposed new §296.131 establishes licensing procedures for military service members, military veterans, and military spouses in accordance with Occupations Code, Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses.

Proposed new Subchapter I, Accreditation, §296.151:

Proposed new §296.151 establishes requirements for accredited persons performing asbestos abatement in commercial buildings and adds the new requirement that accredited persons have a photo identification card on-site.

Proposed new Subchapter J, Exemptions, §§296.171 - 296.175:

Proposed new §296.171 establishes an exemption from license and registration requirements for persons performing resilient floor covering removal in public buildings using the Resilient Floor Covering Institute's (RFCI) work practices.

Proposed new §296.172 provides that the department may waive license requirements when asbestos abatement is required due to a catastrophic emergency affecting public health or safety.

Proposed new §296.173 exempts Texas-registered architects and Texas-licensed professional engineers from requiring a department license in order to provide written certifications described in new §296.191, relating to Asbestos Management in Public Buildings, Commercial Buildings, and Facilities.

Proposed new §296.174 exempts persons who perform small projects and repetitive tasks in accordance with new §296.198, relating to Procedures for Small Projects and Repetitive Tasks in a Public Building, from department licensure.

Proposed new §296.175 exempts a person from license, registration, and notification requirements if the 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 asbestos-containing building material (ACBM) per occurrence.

Proposed new Subchapter K, Operations, §§296.191 - 296.200:

Proposed new §296.191 establishes responsibilities for public building owners, commercial building owners, and facility owners. This section adds two options to the current rule requirements for an asbestos survey: the option to rebut the presence of asbestos by having a licensed inspector sample new materials before installation and the option to use an environmental assessment as a survey if it contains all of the required elements of an asbestos survey. This section also establishes mandatory abatement related to nuisance residence demolition and large construction projects. This section also adds a responsibility for public building owners to ensure the building or work area complies with air clearance requirements. For municipalities that obtain evidence that a survey was completed or a certification that the building materials do not contain asbestos before issuing renovation or demolition permits, this section requires that the evidence of a survey be in writing and a certification include specific elements.

Proposed new §296.192 establishes general requirements for asbestos abatement in public buildings. The currently existing rule requires supervisors to be in “immediate contact with” those under their supervision. To avoid the misinterpretation that remaining in cell phone contact is sufficient, this section revises the language and requires supervisors to remain in “immediate proximity” during all periods of asbestos abatement activity. This section requires the asbestos consultant or designated project manager to enter and inspect the containment before the start of the asbestos abatement daily and throughout the day to ensure the containment is in compliance with Chapter 296 and the specifications and plans. This section narrows the requirement for employers to establish and maintain written respiratory protection programs to those employers with employees involved in asbestos-related activities (removes the requirement from transporters and laboratories).

Proposed new §296.193 establishes abatement practices and procedures for full containment in public buildings. This section requires an asbestos abatement project design to be prepared by a licensed asbestos consultant. This section specifies that if a particular asbestos abatement project has specifications and plans that contain asbestos abatement activities that are more detailed than those found in this section or which are specific to that project, those specifications and plans must be met to maintain compliance with Chapter 296. This section adds improvements to decontamination shower systems, such as specifying that the shower room must be provided with soap and hot and cold water where the temperature can be adjusted by the user, and waste water must be filtered using a 2-stage filtration system with a 50 micron and a 5 micron filter. This section also improves containment area ventilation by specifying HEPA filtration units be operated in sufficient number to provide a negative pressure of at least 0.02 inches of water column differential between the containment work space and outside and be operated with unrestricted exhaust.

Proposed new §296.194 establishes work practices specific to operations and maintenance (O&M) activities for public buildings; restricts O&M activities involving ACBM to small-scale, short duration activities; and prohibits asbestos O&M licensees from engaging any activity for which the primary purpose is asbestos abatement.

Proposed new §296.195 establishes a regulatory threshold under which department licensure, registration, and notification are not required to complete an O&M project that disturbs a small amount of nonfriable ACM. This section applies only to maintenance or installation projects and tasks that are not asbestos abatement activities and that disturb three square feet or three linear feet or less of nonfriable material for each occurrence.

Proposed new §296.196 establishes an exemption from licensing and registration requirements for persons when they are performing resilient floor covering removal in public buildings in accordance with §296.171 of this title (relating to Removal of Resilient Floor Covering). Section 296.196 establishes the scope of the exemption and the training requirements for the persons exempted.

Proposed new §296.197 establishes abatement practices and procedures for low-risk materials such as nonfriable gaskets, adhesives, and mastics that allow for the materials to be removed without containment if certain criteria are met.

Proposed new §296.198 establishes procedures for small projects and repetitive tasks in public buildings that allow non-licensed persons to remove small amounts of friable ACM if supervised by a licensed asbestos abatement supervisor or licensed O&M supervisor.

Proposed new §296.199 establishes exemptions for the removal of intact ACM in a public building, who may perform the activities under the exemptions, and the work practices they must use.

Proposed new §296.200 establishes recordkeeping requirements for asbestos abatement contractors, asbestos O&M contractors, and RFCI contractors and describes which records they must keep at a central location and which records they must keep on-site. This section further establishes the recordkeeping requirements for asbestos management planners, asbestos management planner agencies, asbestos consultants, asbestos consultant agencies, asbestos air monitoring technicians, asbestos laboratories, and asbestos training providers.

Proposed new Subchapter L, Notifications, §296.211:

Proposed new §296.211 establishes the general provisions for notifying the department of any asbestos abatement or demolition. This section describes completing and submitting the department's notification form; amending start dates and stop dates on the notification form; consolidated notifications; notification of emergency renovation operations, notification of demolition; notification of ordered demolitions for structurally unsound buildings; notification of abatement with demolition; and notification of phased asbestos abatement and/or demolition projects. In addition, this section creates a simplified tiered notification fee schedule, adds a graphic of the fee schedule, and describes the requirements for payment and reimbursement of fees.

Proposed new Subchapter M, Inspections and Investigations, §296.231:

Proposed new §296.231 establishes that the department has the right to inspect or investigate the practices of any person involved with asbestos abatement or related activity in a public building, commercial building, or facility. This section specifies that advance notice of inspections is not required, a person may not interfere with an inspection, and attempting to bribe or threaten a department representative is a violation of Chapter 296 and criminal law.

Proposed new Subchapter N, Enforcement, §§296.251 - 296.260:

Proposed new §296.251 describes enforcement actions that apply to Chapter 296.

Proposed new §296.252 describes enforcement actions regarding an accreditation.

Proposed new §296.253 describes enforcement actions regarding a license and reprimand of a licensee.

Proposed new §296.254 describes emergency suspension of a license, registration, or approval of an asbestos training course.

Proposed new §296.255 describes suspension of license for failure to pay child support or to comply with a court order.

Proposed new §296.256 describes probation of a person whose license or registration is suspended.

Proposed new §296.257 describes denial, withdrawal, suspension, or revocation of approval of training courses.

Proposed new §296.258 describes assessment of an administrative penalty.

Proposed new §296.259 describes revocation of an asbestos abatement supervisor's license.

Proposed new §296.260 describes notice and hearing procedures for particular enforcement actions in Subchapter N.

#### FISCAL NOTE

Jon Huss, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five years the new rules are in effect, there will be fiscal implications to state government, but no fiscal implications to local governments, as a result of enforcing or administering the rules as proposed. The effect on state government will be an increase in revenue to the state of \$9,910 during the first, third, and fifth years; and an increase in revenue of \$310 during the second and fourth years.

The department will receive an estimated additional \$310 in revenue each year of the first five years from increasing the refund processing fee for overpayment of license fees from \$30 to \$50

and implementing a returned check fee of \$30. The department will lose an estimated \$81,585 in revenue each year from decreasing the asbestos abatement supervisor fee from \$645 to \$400.

The department will receive an estimated additional \$9,600 in revenue the first, third, and fifth years from the creation of the asbestos training instructor license for which the license fee is \$100. The license is renewable every two years.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Huss has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with the proposed rules.

There will be no adverse economic impact because only licensed asbestos training providers will be required to alter their business practices in order to comply with the rules, and that alteration in business practices will not cause the licensed asbestos training providers to incur any additional costs. Proposed new §296.91 requires licensed asbestos training providers to ensure that training is provided by licensed asbestos training instructors in accordance with proposed new §296.92, but the cost of licensing for the instructors is incurred by the instructors, not the training providers.

No other small businesses and micro-businesses will be required to alter their business practices in order to comply with the rules. Therefore, an economic impact statement and regulatory flexibility analysis for small businesses and micro-businesses are not required.

#### ECONOMIC COST TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are anticipated costs to persons who are required to comply with the rules as proposed.

The proposed rules require current asbestos training instructors to become licensed. The fee for an initial license and a renewal license is \$100.

The proposed rules include a minor cost for photographs for license photographs. The current rules require training providers to provide the photographs. The proposed rules require applicants instead of training providers to provide photographs for licenses. Applicants may incur minimal costs associated with providing a photograph of anywhere from \$.09 to \$15.00 per initial and renewal application. Companies often provide the photograph for their employees' license applications, in which case the applicant would not incur any cost.

There is no anticipated impact on local employment.

#### PUBLIC BENEFIT

In addition, Mr. Huss has determined that for each year of the first five years that the rules will be in effect, the public will benefit from adoption of the rules.

Proposed new §296.32 prohibits the asbestos abatement contractor hired to conduct the asbestos abatement project, the person who is disturbing the asbestos, from employing the air monitor, the person monitoring the level of asbestos exposure to the workers on the project. Eliminating this potential conflict of interest could improve worker health by ensuring more accurate data is being created and acted upon on the project site.

Proposed new §296.41 better ensures the safety of registered asbestos abatement workers by requiring that licensed asbestos professionals will be able to read and comprehend the rules in order to accurately explain them to the workers.

Proposed new §296.45 will result in a cost savings for persons and businesses who must comply with the insurance requirements of the new rules because the requirement for the notice of cancellation endorsement has been removed. The removal of this requirement will shorten application processing time. The current requirement to have each insurance policy endorsed to provide the department with a notice of cancellation accounted for at least 90 percent of application deficiencies.

Proposed new §296.51 will result in a cost savings to licensed asbestos abatement contractors, licensed asbestos laboratories, and licensed asbestos consultant agencies. This section also reduces the period of apprenticeship for the air monitoring technician (AMT) license from 30 to 15 days. Licensees who employ AMT trainees will be paying trainees for fewer days of shadowing licensed professionals while gaining the required experience for licensure.

Proposed new §296.71 lowers the asbestos abatement supervisor license fee from \$645 to \$400.

Proposed new §296.91 removes the requirement that training providers provide a color photograph to each trainee that is suitable to be submitted with a license application for use as the license photograph.

Proposed new §296.131 may result in license exemptions and fee waivers for military service members, military veterans, and military spouses.

Proposed new §§296.195, 296.197, 296.198, and 296.199 add options for managing asbestos in a building that is being repaired, renovated, or demolished. These options are anticipated to benefit building owners and contractors by reducing project time, cost of materials, and cost of labor.

## REGULATORY ANALYSIS

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

## TAKINGS IMPACT ASSESSMENT

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

## PUBLIC COMMENT

Comments on the proposal may be mailed to the Environmental Hazards Group Rules Coordinator, Department of State Health Services, PO Box 149347, Mail Code 1987, Austin, Texas 78714-934756, or emailed to [EHGRulesCoordinator@dshs.state.tx.us](mailto:EHGRulesCoordinator@dshs.state.tx.us) with "Formal Comments on TAHPR" in the subject line. Comments will be accepted for 60 days following publication of the proposal in the *Texas Register*.

## PUBLIC HEARING

A public meeting to receive comments on the proposal will be scheduled at the Department of State Health Services, 1100 West 49th Street, K-100 Lecture Hall, Austin, Texas 78756. The meeting date and other information will be posted on the Asbestos Program website at <http://www.dshs.texas.gov/asbestos/>. For more information, please contact Environmental Hazards Group rules coordinator at (512) 834-6787 or by email at [EHGRulesCoordinator@dshs.state.tx.us](mailto:EHGRulesCoordinator@dshs.state.tx.us).

## STATUTORY AUTHORITY

The repeals and new sections are authorized by Occupations Code, §1954.056, which requires the Executive Commissioner to adopt rules to implement Chapter 1954; Health and Safety Code, §12.0111, which requires the department to collect fees for issuing or renewing a license; Health and Safety Code §161.402, which requires the Executive Commissioner 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; and Health and Safety Code, §1001.075, and Government Code, §531.0055, which authorize the Executive Commissioner to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed new rules affect Health and Safety Code, Chapters 12, 161, and 1001; Government Code, Chapter 531; and Occupations Code, Chapter 1954.

### Sections for Repeal.

§295.31. General Provisions.

§295.32. Definitions.

§295.33. Adoption by Reference of Federal and Other Standards.

§295.34. Asbestos Management in Facilities and Public Buildings.

§295.35. Licensing and Registration: Conditions.

§295.36. Licensing and Registration: Exemptions; Emergency.

- §295.37. Licensing and Registration: Conflict of Interests.
- §295.38. Licensing and Registration: Applications and Renewals.
- §295.39. Licensing and Registration: Out-of-State Applicants and Out-of-State Training.
- §295.40. Licensing, Training and Registration: Insurance Requirements.
- §295.41. Licensure: State Licensing Examination.
- §295.42. Registration: Asbestos Abatement Workers.
- §295.43. Licensure: Asbestos Operations and Maintenance Contractor (Restricted).
- §295.44. Licensure: Asbestos Operations and Maintenance Supervisor (Restricted).
- §295.45. Licensure: Asbestos Abatement Contractor.
- §295.46. Licensure: Asbestos Abatement Supervisor.
- §295.47. Licensure: Individual Asbestos Consultant.
- §295.48. Licensure: Asbestos Consultant Agency.
- §295.49. Licensure: Asbestos Project Manager.
- §295.50. Licensure: Asbestos Inspector.
- §295.51. Licensure: Asbestos Management Planner.
- §295.52. Licensure: Air Monitoring Technician.
- §295.53. Licensure: Asbestos Management Planner Agency.
- §295.54. Licensure: Asbestos Laboratory.
- §295.55. Licensure: Asbestos Training Provider.
- §295.56. Licensure: Asbestos Transporters.
- §295.57. Accreditation: Asbestos Abatement in Commercial Buildings.
- §295.58. Operations: General Requirements for Public Buildings.
- §295.59. Operations: Operations and Maintenance (O&M) Requirements for Public Buildings.
- §295.60. Operations: Abatement Practices and Procedures for Public Buildings.
- §295.61. Operations: Notifications.
- §295.62. Operations: Record keeping.
- §295.63. Asbestos Hazard Emergency Response Act (AHERA) Compliance.
- §295.64. Training: Required Asbestos Training Courses.
- §295.65. Training: Approval of Training Courses.
- §295.66. Compliance: Deaccreditation.
- §295.67. Compliance: Policy of the Texas Department of Health.
- §295.68. Compliance: Inspections and Investigations.
- §295.69. Compliance: Reprimand, Suspension, Revocation, Probation.
- §295.70. Compliance: Administrative Penalty.
- §295.71. National Emission Standards for Hazardous Air Pollutants (NESHAP) Compliance.
- §295.72. Memorandum of Understanding Between the Texas Commission on Environmental Quality (TCEQ) and the Texas Department of Health for the Regulation of the Asbestos.
- §295.73. Asbestos Advisory Committee.

Title 25. Health Services

Part 1. Department of State Health Services

Chapter 296. Texas Asbestos Health Protection Rules

New §§296.1-296.5, 296.21, 296.31-296.32, 296.41-296.59, 296.71-296.74, 296.91-296.93, 296.111-296.118, 296.131, 296.151, 296.171-296.175, 296.191-296.200, 296.211, 296.231, 296.251-296.260

Legend: (Proposed New Rules)

Regular Print = Proposed new language

Subchapter A: General Provisions

§296.1. General Provisions

(a) Purpose. Asbestos is a known carcinogen and health hazard. Preventing asbestos disease depends on limiting the exposure of an individual to asbestos fibers. The purpose of this chapter is to control and minimize public exposure to airborne asbestos by regulating asbestos-related activities in public buildings, commercial buildings, and facilities, as defined in §296.21 of this title (relating to Definitions). This chapter implements Occupations Code, Chapter 1954 (relating to Asbestos Health Protection); Health and Safety Code, Chapter 161, Subchapter Q (relating to Installation of Asbestos); federal regulations of the United States Environmental Protection Agency (EPA) adopted by reference in §296.2 of this title (relating to Adoption by Reference of Federal and Other Standards); and federal regulations of the Occupational Safety and Health Administration referenced in this chapter.

(b) Scope.

(1) This chapter applies to persons disturbing, removing, encapsulating, or enclosing any amount of asbestos within public buildings for any purpose, including repair, renovation, dismantling, demolition, installation, or maintenance operations, or any other activity that may involve the disturbance or removal of any amount of ACBM whether intentional or unintentional. This chapter establishes:

- (A) licensing requirements;
- (B) building owner and facility owner responsibilities;
- (C) work practices and procedures; and
- (D) notification requirements.

(2) For the purposes of enforcing the federal National Emission Standards for Hazardous Air Pollutants, this chapter applies to all facilities as defined in §296.21(46) of this title.

(3) For the purposes of enforcing the federal EPA Asbestos Model Accreditation Plan, this chapter applies to commercial buildings as defined in §296.21(26) of this title.

(4) For the purposes of enforcing the federal regulations adopted to implement the Asbestos Hazard Emergency Response Act of 1986, this chapter applies to all LEAs as defined in §296.21(57) of this title.

(c) Exclusions. This chapter does not apply to a single private residence or a single apartment building with no more than four dwelling units, except as provided under NESHAP for structures defined as installations.

(d) Severability. If any provision of this chapter is held invalid for any reason, the invalidity would not affect the remaining provisions. The valid provisions are severable and would remain in effect.

(e) License possession requirements. Anyone engaged in asbestos-related activities that require a license must provide proof of a current license to any inspecting official from the department, to an employer, or to a prospective employer upon request. All licensed individuals must carry the identification card issued by the department on-site at all times while engaged in any asbestos-related activity.

#### §296.2. Adoption by Reference of Federal and Other Standards.

(a) Adoption by reference. The department adopts by reference and enforces the following federal regulations, as amended:

(1) 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP), Subpart M (relating to National Emission Standard for Asbestos); and

(2) 40 CFR Part 763, Subpart E with Appendices A, C, D, and E (relating to Asbestos-Containing Materials in Schools), adopted under the Asbestos Hazard Emergency Response Act (AHERA).

(b) Availability. Copies of the documents in subsection (a) of this section are available for review on the department's Asbestos Program website, <http://www.dshs.texas.gov/asbestos/>; and are available for review during normal business hours at the department's Division for Regulatory Services office in Austin, Texas, and at department regional offices.

(c) State and federal standards. State requirements in the Act or this chapter may be more stringent than the federal standards listed in subsection (a) of this section. In such cases, the state requirements must be met.

#### §296.3. National Emission Standards for Hazardous Air Pollutants (NESHAP) Compliance.

(a) The department adopts by reference the following federal regulations regarding demolition and renovation activities: 40 CFR Part 61, Subpart M, §§61.140, 61.141, 61.145, 61.146, 61.148, 61.150, 61.152, and 61.157 (NESHAP).

(b) An owner or operator of a demolition or renovation activity, as defined in §296.21(79) of this title (relating to Definitions), shall ensure compliance with NESHAP for all covered activities.

(c) The department may enter any facility to inspect and investigate conditions to determine compliance in accordance with §296.231(c) of this title (relating to Inspections and Investigations).

(d) The department has developed a memorandum of understanding with the Texas Commission on Environmental Quality concerning the inspection of solid waste facilities that receive asbestos waste, set forth in §296.4 of this title (relating to Memorandum of Understanding between the Texas Commission on Environmental Quality and the Texas Department of State Health Services for the Regulation of the National Emission Standards for Hazardous Air Pollutants for Asbestos).

(e) The department may take enforcement action as set forth in subchapter N of this chapter (relating to Enforcement) for violations of NESHAP.

§296.4. Memorandum of Understanding between the Texas Commission on Environmental Quality and the Texas Department of State Health Services for the Regulation of the National Emission Standards for Hazardous Air Pollutants for Asbestos.

The department adopts by reference a memorandum of understanding with the Texas Commission on Environmental Quality adopted by rule in 30 TAC §7.122 (relating to Adoption of Memorandum of Understanding between the Texas Natural Resource Conservation Commission (commission) and the Texas Department of Health (TDH) Regarding Emissions Related to Asbestos Demolition and Renovation Activities).

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

(a) The department adopts by reference 40 CFR Part 763, Subpart E (relating to Asbestos-Containing Materials in Schools).

(b) An LEA shall ensure compliance with AHERA for all schools under its administrative control.

(c) The department may enter any regulated school building to inspect and investigate conditions to determine compliance.

(d) The department may take enforcement action as set forth in subchapter N of this chapter (relating to Enforcement) for violations of AHERA.

#### Subchapter B: Definitions

#### §296.21. Definitions.

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

(1) ACBM--Asbestos-containing building material. Surfacing, TSI, or miscellaneous ACM that is found in or on interior structural members or other parts of a public or commercial building and contains greater than 1.0% asbestos.

(2) Accredited person--A person who has attended and passed, within the last year, the appropriate asbestos 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 that has been approved directly by EPA.

(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 greater 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, Section 1 (relating to Polarized Light Microscopy), by a laboratory accredited by the 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).

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

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

(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.

(7) Aggressive air sampling--Collecting air samples after walls, ceilings, and floors are swept with the exhaust of 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.

(8) AHERA--EPA regulations, 40 CFR Part 763, Subpart E (relating to Asbestos-Containing Materials in Schools). AHERA implements the Asbestos Hazard Emergency Response Act of 1986, 15 USC §2641, et seq.

(9) Airlock--A system for permitting movement into and out of the containment, consisting of doors and/or curtains that control air-flow patterns in the doorway.

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

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

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

(13) Asbestos abatement--The removal, encapsulation, or enclosure of ACBM.

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

(15) Asbestos abatement contractor--A person who performs asbestos removal, enclosure, or encapsulation for others under contract or other agreement.

(16) Asbestos abatement project design--Includes the survey report of public buildings for ACBM; the evaluation and selection of appropriate asbestos abatement methods; the project layout; the preparation of specifications and plans and contract documents; and the review of environmental controls, abatement procedures, and personal protection equipment.

(17) Asbestos abatement supervisor--An individual who is responsible for the personnel, practices, and procedures of an asbestos abatement activity or project.

(18) Asbestos-related activity--The removal (whether intentional or unintentional), encapsulation, or enclosure of asbestos, including preparations or final clearance; the performance of asbestos surveys; the development of asbestos survey reports, management plans, or response actions; asbestos abatement project design; the collection or analysis of bulk asbestos samples; monitoring for airborne asbestos; or any other activity for which a license is required under the Act.

(19) Asbestos removal--Any action that dislodges, strips, or otherwise takes away ACBM.

(20) ASTM E1494--The current edition of the Standard Practice for Encapsulation Testing of Friable Asbestos-Containing Surfacing Materials published by ASTM International.

(21) Bag-out area--An area distinct from the decontamination area that is used to decontaminate asbestos waste bags before placing them into outer bags. At a minimum, a bag-out area is a two-stage area connected to the containment, separated by airlocks, with a rinse station separated from the bagging-room.

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

(23) Category I nonfriable ACM--Asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing greater than 1.0% asbestos as determined using polarized light microscopy or transmission electron microscopy.

(24) Category II nonfriable ACM--Any material, excluding Category I nonfriable ACM, containing greater 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.

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

(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.

(27) Commissioner--The commissioner of state health services.

(28) Competent person--As defined in 29 CFR §1926.1101 (relating to Asbestos). The competent person has completed the appropriate level of training as required by the MAP for the class of asbestos-related activity being performed and is capable of identifying existing asbestos hazards in the workplace and taking the appropriate action to eliminate them. For a NESHP project, this is a person with MAP supervisor training.

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

(30) Containment-area ventilation--Ventilation of the containment area 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.

(31) Contractor--A person who is under contract to perform a service with wage or income reporting and tax responsibility to the state or federal government. The term may include, but is not limited to, a general contractor, demolition contractor, or subcontractor.

(32) Critical barrier--An impermeable barrier, such as plastic sheeting, sealing penetrations between the containment and adjacent areas.

(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.

(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 resupport of the structure is considered renovation, not demolition. Moving a building from its foundation is considered demolition.

(35) Department--The Department of State Health Services.

(36) Designated person--The individual designated by an LEA in accordance with 40 CFR Part 763, Subpart E to ensure compliance with all AHERA requirements.

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

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

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

(40) Employee--A person who works in the service of an employer and whose work performance the employer has the right to control.

(41) Encapsulation--A method of control of asbestos fibers in which the surface of ACM is penetrated by or covered with a liquid coating prepared for that purpose. Materials that do not conform to ASTM E1494 are not considered encapsulating materials. Painting with a non-encapsulant that does not disturb asbestos is not an asbestos-related activity.

(42) Enclosure--The construction of an airtight, impermeable, permanent barrier surrounding ACBM to prevent the release of asbestos fibers into the air.

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

(44) EPA regulations--Federal regulations found in 40 CFR Parts 61-62 (relating to Air Programs) and Parts 700-789 (relating to Toxic Substances Control Act).

(45) Exposure assessment--A determination of the level of exposure to asbestos fibers by analyzing breathing zone air samples that are representative of an 8-hour time-weighted average and a 30-minute representative short-term exposure of each employee.

(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 previously subject to NESHAP 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.

(47) Facility owner--The owner of record of any facility or any person who exercises control over a facility to the extent that the person contracts for or permits renovation to or demolition of the facility.

(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.

(49) Friable asbestos material--Any asbestos material containing greater than 1.0% asbestos that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

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

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

(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.

(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 processes or functions that are hazardous to human safety or health.

(54) Installation--As defined by NESHAP, a building or structure, or group of buildings or structures, at a single demolition or renovation site controlled by the same owner or operator.

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

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

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

(A) a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or 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.

(58) License--Any license or registration issued in accordance with this chapter.

(59) Licensee--A person who meets all qualifications and has been issued a license or registration by the department in accordance with this chapter.

(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 three square feet or three linear feet of friable ACBM.

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

(62) MAP--Asbestos Model Accreditation Plan. 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 (relating to Asbestos Model Accreditation Plan).

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

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

(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.

(66) MSDS--Material safety data sheet.

(67) Municipality--A general-law, home-rule, or special-law municipality as defined in the Local Government Code §1.005 (relating to Definitions). A legally created body politic providing local government functions in a community.

(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.

(69) NESHAP--The EPA National Emission Standards for Hazardous Air Pollutants, as described in 40 CFR Part 61, Subpart M (relating to National Emission Standards for Asbestos).

(70) NIOSH--The National Institute for Occupational Safety and Health.

(71) Nonfriable asbestos material--Asbestos material containing greater than 1.0% asbestos that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

(72) Nonscheduled renovation operation--A renovation operation necessitated by the routine failure of equipment, which is expected to occur within a given period based on past operating experience, but for which an exact date cannot be predicted.

(73) Nuisance residence demolition--Single private residences that are demolished by municipalities for reasons of public health, welfare, or safety.

(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 (relating to National Voluntary Laboratory Accreditation Program) and encompass the requirements of the international standard, ISO/IEC 17025.

(75) O&M activity--Operations and maintenance activity. O&M activities are repairs, maintenance, renovation, installation, replacement, or cleanup of building materials or equipment.

(76) O&M contractor--A person who holds an Asbestos Operations & Maintenance Contractor license for general asbestos operations and maintenance work in a public building, as a building owner or agent, or as a contractor, if working for others.

(77) OSHA--The Occupational Safety and Health Administration, part of the United States Department of Labor.

(78) OSHA regulations--Regulations found in Title 29 of the Code of Federal Regulations (relating to Labor), including 29 CFR §1926.1101 and portions of 29 CFR §1910 (relating to Occupational Safety and Health Standards), as referenced in this chapter.

(79) Owner or operator of a demolition or renovation activity--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.

(80) PEL--Permissible exposure limit as defined in 29 CFR §1926.1101.

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

(82) Person--A person is:

(A) an individual;

(B) an organization such as a corporation, partnership, sole proprietorship, governmental subdivision, or agency; or

(C) any other legal entity recognized by law as having rights and duties.

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

(84) Preparation--Preparation for asbestos abatement activity, which includes, but is not limited to, the following activities:

(A) removing any moveable items from the interior space of a public building once an asbestos abatement contractor takes control of that space for the purpose of asbestos abatement. Control occurs when the area has been established by the asbestos abatement contractor as a regulated area;

(B) pre-cleaning; wet wiping; HEPA vacuuming; sealing penetrations and openings; installing polyethylene; installing isolation barriers (critical barriers, dividing walls, etc.); installing any part of a decontamination system or any part of the water line connections to the showers, drains, and/or filtration; set-up or use of any load-out or bag-out systems; selection, installation, or maintenance of respiratory systems or fiber reduction systems (misting, spraying, etc.); and positioning of warning signs; and

(C) installing engineering controls (local exhaust ventilation equipped with HEPA filter dust collection systems, construction of containments or isolation mechanisms to control processes producing asbestos dust, ventilation of the regulated area to move contaminated air away from the breathing zone of employees and toward a filtration or collection device equipped with a HEPA filter); installing scaffolding (in an area in which asbestos may be disturbed during the installation); installing, setting-up, and calibrating monitoring devices (including sampling systems and manometers).

(85) 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:

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

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

(C) a private residence;

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

(E) a manufacturing facility or building that is part of a 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;

(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

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

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

(87) RACM--Regulated asbestos-containing material. RACM means:

(A) friable asbestos material;

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

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

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

(88) Regulated area--An area where asbestos-related activity is performed, and any adjoining area where debris and waste from such asbestos-related activity accumulate. This includes any area that requires monitoring for airborne concentrations of asbestos when there is a reasonable possibility the concentration may exceed 0.01 f/cc.

(89) Renovation--Additions to or alterations of a building by removal, repairing, and rebuilding.

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

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

(92) RFCI--Resilient Floor Covering Institute.

(93) RFCI contractor--A contractor that removes resilient floor covering 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."

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

(95) 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.

(96) SDS--Safety data sheet. This term is synonymous with MSDS and reflects a change in terminology with the adoption of the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals (GHS).

(97) Specifications and plans--Site-specific asbestos abatement description, which includes drawings, floor plans or equivalent of sufficient size and detail that display the location of asbestos abatement activities, the location of regulated areas, and a clear and understandable written description of the work to be performed and requirements that address unusual or unique circumstances of an asbestos abatement project.

(98) 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:

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

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

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

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

(E) repairs, involving encapsulation, enclosure, or removal, to small amounts of friable ACBM 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.

(99) Start date--The dates defined as:

(A) Asbestos abatement start date--For the purpose of notification to the department in accordance with §296.211 of this title (relating to Notifications), the date on which the actual disturbance of asbestos begins. Preparation that does not disturb asbestos is not the asbestos abatement start date.

(B) Demolition start date--The date on which the demolition begins.

(100) Stop date--The dates defined as:

(A) Asbestos abatement stop date (completion date)--For the purpose of notification to the department in accordance with §296.211 of this title, the date on which air monitoring clearance of asbestos abatement is achieved. For removal of resilient floor covering material in accordance with §296.171 of this title (relating to Removal of Resilient Floor Covering), the asbestos abatement stop date is the date that the ACBM is removed from the substrate and properly containerized as required in the RFCI work practices. For NESHAP projects, the asbestos abatement stop date is the date that all RACM is removed from the substrate and properly containerized.

(B) Demolition stop date (completion date)--In public buildings, commercial buildings, or facilities that do not contain RACM, the date on which the wrecking and/or removal operations of load-bearing structural components are complete. In structurally unsound buildings or facilities that contain RACM, the demolition stop date is the date on which load-bearing structural components are removed, and RACM is disposed of or removed from the site in accordance with 40 CFR §61.150 (relating to Standard for Waste Disposal for Manufacturing, Fabricating, Demolition, Renovation, and Spraying Operations).

(101) Surfacing material--Material that is sprayed on, troweled on, or otherwise applied to surfaces such as acoustical plaster on ceilings and fireproofing materials on structural members, or other materials on surfaces for acoustical, fireproofing, or other purposes.

(102) Survey--An inspection activity undertaken in a building to determine the quantities and locations of homogeneous areas of ACBM by assuming suspect material or collecting samples of such material and to assess its condition, whether by visual or physical examination. This term includes reinspections of friable and nonfriable known or assumed ACBM that has been previously identified as described in 40 CFR §763.85(b) (relating to Inspection and Reinspections). The term does not include the following:

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

(B) inspections performed by employees or agents of federal, state, or local government solely for the purpose of determining compliance with applicable statutes or regulations; or

(C) visual inspections of the type described in 40 CFR §763.90(i) (relating to Response Actions) solely for the purpose of determining completion of response actions.

(103) Survey report--A report that shows by diagram and narrative the sampling locations and the boundaries of the homogeneous areas of ACBM; the estimated amount of ACM in each homogeneous area; and a written inventory of the locations where samples were taken, the type of material sampled, and the condition of the ACBM.

(104) TAHPR--The Texas Asbestos Health Protection Rules, 25 TAC Chapter 296.

(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.

(106) USC--The United States Code.

(107) Working days--Monday through Friday including holidays that fall on those days.

#### Subchapter C: Standards of Conduct

#### §296.31. Code of Ethics for Licensees.

(a) Purpose. The purpose of this section is to establish the requirements for professional and ethical conduct for licensed persons performing asbestos-related activities in a public building.

(b) The persons described in subsection (a) of this section who perform asbestos-related activities shall:

(1) be qualified by training or possess licenses specific to the asbestos-related activity;

(2) meet or exceed the minimum standards for asbestos-related activities in this chapter;

(3) not participate in activities where a conflict of interest might arise, in accordance with §296.32 of this title (relating to Conflict of Interest) and disclose any known or potential conflicts of interest to any party affected or potentially affected by such conflicts;

(4) not make any false, misleading, or deceptive claims in any asbestos-related advertising, announcement, presentation, or competitive bidding;

(5) not misrepresent any asbestos-related professional qualifications or credentials;

(6) not provide deceptive, false, or misleading information to the department; and

(7) not work if impaired by drugs, alcohol, or other conditions that may pose a risk to workplace safety or public health, and not allow those under their supervision to work if they are known to be impaired.

#### §296.32. Conflict of Interest.

(a) Independent third-party air monitoring. The public building owner or authorized representative must provide for a third party to perform area monitoring and project clearance monitoring for airborne concentrations of asbestos fibers during an abatement project. The third party must not be employed or subcontracted by the asbestos abatement contractor hired to conduct the asbestos abatement project.

(1) The building owner may hire a third party to collect personal samples for the contractor in accordance with §296.51(b)(1)(A)(iii) of this title (relating to Asbestos Air Monitoring Technician).

(2) Building owners who are licensed and who are performing asbestos abatement in their own buildings shall use a licensed asbestos consultant or a licensed asbestos consultant agency for the purpose of obtaining area monitoring and final clearance.

(b) Licensee conflict of interest.

(1) On any given project in a public building:

(A) a licensed asbestos consultant may not hire a licensed asbestos abatement contractor;

(B) a licensed asbestos abatement contractor may not hire a licensed asbestos consultant;

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

(D) a licensed asbestos management planner or licensed asbestos management planner agency that is also a licensed asbestos abatement contractor may not perform an asbestos abatement for which the licensee performed a survey or developed the management plan.

(2) Conflict of interest provisions under this subsection do not apply to municipalities as described in subsection (c) of this section.

(3) A person may not be the responsible person for two companies with the same type of license.

(c) Municipality exemption. Municipalities may hire a licensed person who may perform asbestos inspections and surveys, write management plans, design abatement projects, and abate asbestos in the same building or facility. This exemption does not allow a licensee who engages in these activities to conduct air monitoring or abatement project clearance procedures on the same project, which includes performing visual inspection and collecting and analyzing air samples for clearance in accordance with §296.192(h)(1) of this title (relating to General Requirements for Asbestos Abatement in Public Buildings). Air monitoring activities, except as required by 29 CFR §1926.1101 (relating to Asbestos), must be performed by an independent third party who is not an employee of the municipality.

#### Subchapter D: License and Registration

#### §296.41. License and Registration Requirements.

(a) License and registration requirements. A person must be licensed or registered in compliance with this chapter to perform asbestos abatement or any asbestos-related activity within the scope of this chapter unless exempt in accordance with §296.195 of this title (relating to Guidance for Regulatory Threshold for Nonfriable Material in a Public Building), §296.196 of this title (relating to Resilient Floor Covering Removal in Public Buildings), or §296.198 of this title (relating to Procedures for Small Projects and Repetitive Tasks in Public Buildings). The department will not issue a license or registration to an individual who is not eligible for employment in the United States.

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

(c) Language requirement. All individual licensees, except asbestos abatement workers, must be able to read, write, and communicate effectively in English.

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

(e) License or registration card. A license or registration identification card issued by the department is valid for the person named on the card until the card expires or is revoked. The department may revoke any cards that have been altered.

(f) Responsibility to report violations. Licensees who become aware of violations of this chapter must report these violations within 24 hours to the department if the violations are not immediately corrected by the responsible party. The phone number to report a violation is on the Violation Notification Procedure poster that is required to be posted 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).

(g) Prohibition. 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. 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.

(h) Penalties. Submitting fraudulent documentation or false information to obtain a license, attempting to bribe a state employee, or threatening a state employee is a violation of this chapter and criminal law. State or federal violations and citations become a part of the department's records.

#### §296.42. Initial and Renewal Applications.

(a) General requirements. To apply for a license or registration in accordance with this chapter, an applicant must submit a completed and signed application on the form provided by the department. A completed application includes all required documentation and payment of the application fee by check, money order, or proof of online payment. An applicant who applies for more than one license or registration must submit all required documentation with each application.

(b) Processing applications.

(1) An application is not complete until the department receives all required documentation and fees. The following time periods apply, beginning on the date the department receives the application:

(A) letter of acceptance of application for an initial or renewal registration or license (receipt of license or identification card may serve as notice of acceptance of a complete application)--45 days;

(B) letter of initial or renewal application deficiency--45 days;

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

(D) letter of acceptance of application for an initial training provider license (receipt of license may serve as notice of acceptance of a complete application)--90 days;

(E) letter of acceptance of application for a training provider license renewal (receipt of license may serve as notice of acceptance of a complete application)--45 days;

(F) approval of additional training course--90 days;

(G) issuance of duplicate license or identification card--30 days; and

(H) letter of denial of examination, license, or registration--180 days. The time period for issuing a notice of proposed denial includes, if required, the opportunity to show compliance with the law and the opportunity for a formal hearing.

(2) After the department issues a notice of deficiency, the following time periods apply, beginning on the date the department receives the last item that completes the application:

(A) letter of acceptance of application for an initial or renewal registration or license (receipt of license or ID card may serve as notice of acceptance of a complete application)--20 days;

(B) letter of approval for examination--20 days;

(C) letter of acceptance of application for an initial training provider license (receipt of license may serve as notice of acceptance of a complete application)--30 days;

(D) letter of acceptance of application for a training provider license renewal (receipt of license may serve as notice of acceptance of a complete application)--20 days;

(E) approval of additional training course--30 days;

(F) issuance of duplicate license or ID card--20 days; and

(G) letter of denial of examination, license, or registration--180 days. The time period for issuing a notice of proposed denial includes, if required, the opportunity to show compliance with the law and the opportunity for a formal hearing.

(c) Denial. The department may deny an application for license or registration to persons who fail to meet the standards established by this chapter, including, but not limited to, the provisions of §296.253 of this title (relating to Denial, Suspension, or Revocation of License or Reprimand of Licensee) and §296.255 of this title (relating to Suspension of License for Failure to Pay Child Support or Comply with a Court Order).

(d) Enforcement action. The department may take enforcement action for fraud or misrepresentation in obtaining, attempting to obtain, or renewing a license or registration, as set forth in subchapter N of this chapter (relating to Enforcement).

(e) Renewal notices. The department will send a renewal notice to the licensee before the license expires. All licensees must renew their licenses before the license expiration date, even if the licensee does not receive a renewal notice. The renewal notice will include the following:

(1) license type;

(2) time period allowed for renewal; and

(3) renewal fee.

(f) Renewal requirements.

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

(A) meets the requirements to renew the license;

(B) pays the required fee;

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

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

(2) If a licensee submits a complete renewal application with the required fee and documentation before the license expires, the current license will not expire until the department:

(A) approves the application;

(B) finds the application to be deficient, and the deficiency is not cleared before the license expiration date; or

(C) denies the application.

(g) Re-application for license. A person whose license has been expired for more than one year may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an initial license.

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

(1) an application;

(2) an unaltered, 2-inch by 3-inch, color photograph of the face (without tinted 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. This photograph may be submitted in digital format with an electronically submitted application; and

(3) the required fee.

(i) Name change. A licensee shall submit a name change application and required fee to change the name currently on record. The department will waive the fee for a name change if the applicant submits the name change application with the renewal application. If the tax identification number for a company has changed, a new license must be obtained. The name change application must be submitted with a copy of a divorce decree, marriage certificate, legal name change document, driver's license, or social security card showing the new name.

(j) 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) (relating to Asbestos) or 40 CFR §763.122 (relating to What Does This Subpart Require Me to Do?). A current copy of the individual's Physician's Written Statement form must be on-site while performing asbestos-related activities.

#### §296.43. Acceptable Academic Credit and Qualifying Work Experience.

(a) Degrees and academic credit earned in the United States must be from colleges and universities that have programs accredited by a national accrediting organization that is also recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 USC §1001, et seq.).

(b) Degrees and academic credits received from universities outside the United States may apply toward the education requirement for a license only if the course work and degrees could be counted as transfer credits by universities described in subsection (a) of this section. Applicants must furnish, at their own expense, an original or certified copy of an evaluation of each foreign degree from a credential evaluation service that is acceptable to the department. Applicants must show proof of each degree and the date it was awarded by submitting original or certified copies of transcripts. Documents written in languages other than English must also be accompanied by a certified English translation.

(c) High school diplomas or equivalency diplomas received from schools outside the United States may apply toward the education requirement for a license only if the education is equivalent to a diploma or equivalency diploma issued in the United States. Applicants must furnish, at their own expense, an original or certified copy of an evaluation of each foreign diploma from a credential evaluation service. Applicants must show proof of each diploma and the date it was awarded by submitting original or certified copies of the diploma. Documents written in languages other than English must also be accompanied by a certified English translation.

(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.

#### §296.44. Out-of-State Applicants.

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

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

(c) Texas Asbestos Law and Rules course. Persons applying for an initial or renewal license or registration who did not receive any of the required training for that license or registration from a department-licensed training provider must complete a three-hour Texas Asbestos Law and Rules course. The Texas Asbestos Law and Rules course must be completed within one year of applying for a department license or registration. A training course taken from a Texas licensed training provider in any other asbestos discipline may substitute for the Texas Asbestos Law and Rules course.

(d) Interstate commerce. An out-of-state corporation that engages only in interstate commerce may qualify as not transacting business in Texas if the corporation submits a sworn affidavit from a

corporate officer stating that the corporation engages only in interstate commerce and does not transact business in Texas.

(e) Formerly licensed in Texas. A person who was licensed by the department, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for the license term. The person must meet all other qualifications applicable to the new license.

#### §296.45. Insurance Requirements.

(a) Licensees who perform asbestos-related activities and who are required to maintain insurance as a condition of licensure must meet the insurance requirements in this section and the applicable insurance requirements for their licenses in accordance with §1954.105(c) of the Act and this chapter.

(b) Liability insurance must include coverage in the amount of at least \$1 million per occurrence.

(c) Licensees required to have insurance must obtain individual coverage unless covered under the policy of the individual's employer or employed by an entity that qualifies for insurance exemption.

(d) Licensees must obtain policies that are written by:

- (1) an insurance company authorized to do business in Texas;
- (2) an eligible surplus lines insurer as defined in the Insurance Code, §981.002 (relating to Definitions);
- (3) a Texas-registered risk retention group; or
- (4) a Texas-registered purchasing group.

(e) Before a policy is canceled by the licensee or the insurance company, the licensee shall notify the department at least 10 days before the effective date of the cancellation. The licensee shall promptly replace the policy without lapse in coverage.

(f) Before a policy expires, the licensee shall promptly replace or renew the policy without lapse in coverage.

(g) Exemptions.

(1) A governmental entity applying for a license is exempt from the insurance requirements in this chapter.

(2) A non-governmental entity (company or individual) applying for a license may be exempted from the insurance requirements in this chapter by submitting to the

department for approval a notarized affidavit stating a net worth of at least \$1 million dollars accompanied by a current financial statement that documents the net worth. A new affidavit and current financial statement must be submitted with each application.

§296.46. Asbestos Abatement Worker.

(a) Registration required. A person must be registered as an asbestos abatement worker to perform asbestos abatement work in a public building, including, but not limited to, performing any maintenance, repair, installation, renovation, or cleaning that dislodges, breaks, cuts, abrades, or impinges on asbestos material.

(b) Scope of practice.

(1) Practice and limitations.

(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.

(B) An asbestos abatement worker may not:

(i) perform asbestos abatement activities with expired training or an expired medical examination; or

(ii) engage in acts prohibited in §296.31 of this title (relating to Code of Ethics for Licensees).

(2) Responsibilities. An asbestos abatement worker shall:

(A) comply with standards of operation, including the EPA regulations adopted by reference in §296.2 of this title (relating to Adoption by Reference of Federal and Other Standards) and the OSHA regulations as referenced in this chapter;

(B) comply with the work practices described in §296.192 of this title (relating to General Requirements for Asbestos Abatement in Public Buildings);

(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);

(D) comply with the standards and practices for O&M activities, in accordance with §296.194 of this title (relating to Operations and Maintenance (O&M) Requirements for Public Buildings);

(E) 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);

(F) comply with the work practices described in §296.198 of this title (relating to Procedures for Small Projects and Repetitive Tasks in Public Buildings);

(G) comply with the work practices described in §296.199 of this title (relating to Exemptions for the Removal of Intact Asbestos-Containing Materials in a Public Building);

(H) cooperate with department personnel during inspections and investigations, in accordance with §296.231 of this title (relating to Inspections and Investigations); and

(I) properly wear personal protective equipment as provided by the asbestos abatement contractor.

(c) Initial and renewal registration requirements. To receive or renew a license in accordance with this section, all applicants shall submit a completed application in accordance with §296.42 of this title (relating to Initial and Renewal Applications) and documentation required in this section. An out-of-state applicant must comply with §296.44 of this title (relating to Out-of-State Applicants).

(1) Initial requirements. An applicant for an initial license shall submit the following:

(A) a copy of the department's Physician's Written Statement form that documents a medical examination performed within the past 12 months, in accordance with §296.42(j) of this title;

(B) a training certificate for the initial Asbestos Abatement Worker course and any refresher training courses to show current accreditation, in accordance with §296.93 of this title (relating to Asbestos Training Courses). The Contractor/Supervisor course may be substituted for the Asbestos Abatement Worker course. All subsequent refresher training courses must be in the same discipline as the initial training course;

(C) a copy of the current photo-identification card issued by the training provider; and

(D) an unaltered, 2-inch by 3-inch, color photograph of the face (without tinted 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. This photograph may be submitted in digital format with an electronically submitted application.

(2) Renewal requirements. An applicant renewing a license shall submit the following:

(A) a copy of the department's Physician's Written Statement form that documents a medical examination performed within the past 12 months, in accordance with §296.42(j) of this title;

(B) a current training certificate for the Asbestos Abatement Worker course or the Contractor/Supervisor course, if the Contractor/Supervisor course was used to meet requirements for the initial asbestos abatement worker license, in accordance with §296.93 of this title;

(C) a copy of the current photo-identification card issued by the training provider; and

(D) an unaltered, 2-inch by 3-inch, color photograph of the face (without tinted 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. This photograph may be submitted in digital format with an electronically submitted application.

#### §296.47. Asbestos Abatement Supervisor.

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

(b) Scope of practice.

(1) Practice and limitations.

(A) An asbestos abatement supervisor must be employed by a licensed asbestos abatement contractor or operations and maintenance (O&M) contractor to supervise or perform asbestos abatement activities in a public building, except when performing activities in accordance with §296.198 of this title (relating to Procedures for Small Projects and Repetitive Tasks in Public Buildings). An asbestos abatement supervisor employed by an O&M contractor is limited to SSSD activities.

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

(C) An asbestos abatement supervisor may not:

(i) perform asbestos abatement activities when the asbestos project manager or asbestos consultant is not on-site, except during asbestos O&M activities and activities performed in accordance with §296.197 of this title (relating to Asbestos Abatement Practices and Procedures for Nonfriable Asbestos-Containing Building Material), §296.198 of this title, and §296.199 of this title (relating to Exemptions for the Removal of Intact Asbestos-Containing Materials in a Public Building);

(ii) supervise or perform asbestos abatement activities with expired training or an expired medical examination; or

(iii) engage in acts prohibited in §296.31 of this title (relating to Code of Ethics for Licensees).

(2) Responsibilities. An asbestos abatement supervisor shall:

(A) comply with standards of operation, including the EPA regulations adopted by reference in §296.2 of this title (relating to Adoption by Reference of Federal and Other Standards) and the OSHA regulations as referenced in this chapter;

(B) comply with the work practices described in §296.192 of this title (relating to General Requirements for Asbestos Abatement in Public Buildings);

(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);

(D) comply with the standards and practices for O&M activities, in accordance with §296.194 of this title (relating to Operations and Maintenance (O&M) Requirements for Public Buildings);

(E) 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);

(F) comply with the work practices described in §296.198 of this title;

(G) comply with the work practices described in §296.199 of this title;

(H) maintain records at the work site location, in accordance with §296.200 of this title (relating to Recordkeeping);

(I) cooperate with department personnel during inspections and investigations, in accordance with §296.231 of this title (relating to Inspections and Investigations);

(J) comply with personal protective equipment (PPE) requirements for employees who perform asbestos-related activities to ensure that PPE is worn in accordance with 29 CFR §1926.1101 (relating to Asbestos);

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

(L) control access to the regulated area and entrance into containment;

(M) ensure asbestos abatement activities are performed only when the asbestos project manager or asbestos consultant is on-site, except during asbestos O&M activities and activities performed in accordance with §§296.197, 296.198, or 296.199 of this title; and

(N) immediately correct conditions not in compliance with this chapter. If these conditions are related to removal of ACBM, then removal must stop and may not resume until all identified conditions have been corrected.

(c) Initial and renewal license requirements. To receive or renew a license in accordance with this section, all applicants shall submit a completed application in accordance with §296.42 of this title (relating to Initial and Renewal Applications) and documentation required in this section. An out-of-state applicant must comply with §296.44 of this title (relating to Out-of-State Applicants).

(1) Initial requirements. An applicant for an initial license shall submit the following:

(A) a copy of the department's Physician's Written Statement form that documents a medical examination performed within the past 12 months, in accordance with §296.42(j) of this title;

(B) a training certificate for the initial Asbestos Contractor/Supervisor course and any refresher training courses to show current accreditation, in accordance with §296.93 of this title (relating to Asbestos Training Courses);

(C) a copy of the current photo-identification card issued by the training provider;

(D) an unaltered, 2-inch by 3-inch, color photograph of the face (without tinted 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. This photograph may be submitted in digital format with an electronically submitted application;

(E) proof of passing the department's Asbestos Contractor/Supervisor examination, in accordance with subchapter G of this chapter (relating to State Licensing Examination); and

(F) verifiable written documentation of at least 90 days of qualifying work experience gained within the past 24 months that includes:

(i) contact information for the person who supervised the applicant and can verify the work experience; and

(ii) proof of any combination of the following qualifying work experiences:

(I) experience as a licensed asbestos consultant, asbestos 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 as qualifying experience under this category.

(2) Renewal requirements. An applicant renewing a license shall submit the following:

(A) a copy of the department's Physician's Written Statement form that documents a medical examination performed within the past 12 months, in accordance with §296.42(j) of this title;

(B) a current training certificate for the Asbestos Contractor/Supervisor course, in accordance with §296.93 of this title;

(C) a copy of the current photo-identification card issued by the training provider; and

(D) an unaltered, 2-inch by 3-inch, color photograph of the face (without tinted 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. This photograph may be submitted in digital format with an electronically submitted application.

§296.48. Asbestos Abatement Contractor.

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

(b) Scope of practice.

(1) Practice and limitations.

(A) Asbestos abatement contractors shall employ licensed asbestos abatement supervisors and registered asbestos abatement workers to perform asbestos abatement activities.

(B) An asbestos abatement contractor must employ a responsible person trained in accordance with subsection (c)(1)(A) or (c)(2)(A) of this section to engage in asbestos abatement activities.

(C) Asbestos abatement contractors may employ licensed asbestos operations and maintenance (O&M) supervisors to supervise O&M activities or to work as asbestos abatement workers.

(D) Asbestos abatement contractors may not:

(i) engage in acts prohibited in §296.31 of this title (relating to Code of Ethics for Licensees);

(ii) engage in the acts prohibited in §296.32 of this title (relating to Conflict of Interest); or

(iii) engage in asbestos abatement activities when the asbestos project manager or asbestos consultant is not on-site.

(2) Responsibilities. An asbestos abatement contractor shall:

(A) comply with EPA regulations adopted by reference in §296.2 of this title (relating to Adoption by Reference of Federal and Other Standards);

(B) ensure that each employee who performs asbestos-related activities has a current Physician's Written Statement, in accordance with §296.42(j) of this title (relating to Initial and Renewal Applications);

(C) maintain liability insurance, in accordance with §296.45 of this title (relating to Insurance Requirements);

(D) comply with the work practices described in §296.192 of this title (relating to General Requirements for Asbestos Abatement in Public Buildings);

(E) comply with the work practices described in §296.193 of this title (relating to Abatement Practices and Procedures for Full Containment in Public Buildings);

(F) comply with the standards and practices for O&M activities, in accordance with §296.194 of this title (relating to Operations and Maintenance (O&M) Requirements for Public Buildings);

(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);

(H) comply with the work practices described in §296.198 of this title (relating to Procedures for Small Projects and Repetitive Tasks in Public Buildings);

(I) comply with the work practices described in §296.199 of this title (relating to Exemptions for the Removal of Intact Asbestos-Containing Materials in a Public Building);

(J) ensure that all training is current for each employee who performs asbestos-related activities, in accordance with §296.93 of this title (relating to Asbestos Training Courses);

(K) comply with recordkeeping requirements, in accordance with §296.200 of this title (relating to Recordkeeping);

(L) comply with the notification requirements, in accordance with §296.211 of this title (relating to Notifications);

(M) cooperate with department personnel during inspections and investigations, in accordance with §296.231 of this title (relating to Inspections and Investigations);

(N) comply with 29 CFR §1926.1101 (relating to Asbestos);

(O) appoint at least one responsible person who will comply with the training requirements specified in subsection (c)(1)(A) or (c)(2)(A) of this section, oversee the operations for the asbestos abatement activities, and ensure compliance with this chapter;

(P) report changes of responsible person in writing to the department within 10 working days;

(Q) employ at least one licensed asbestos abatement supervisor to oversee asbestos abatement activity for each project where asbestos abatement activity is occurring;

(R) at no cost to the employee, comply with personal protective equipment (PPE) requirements in accordance with 29 CFR §1910.132(h) (relating to General Requirements) and §1926.1101(h) and (i) for employees who perform asbestos-related activities by:

(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;

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

(T) provide for disposal of ACWM, in accordance with 40 CFR §61.150 (relating to Standard for Waste Disposal for Manufacturing, Fabricating, Demolition, Renovation, and Spraying Operations):

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

(ii) contact the waste site if a copy of the manifest signed by the owner or operator of the designated waste disposal site has not been received within 35 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 of the manifest signed by the owner or operator of the designated waste disposal site is not obtained by the 45th day from the date the waste was accepted by the transporter;

(iv) provide a copy of the manifest signed by the owner or operator of the designated waste disposal site to the project consultant, or the building owner if there is no consultant; and

(v) maintain records in accordance with 40 CFR §61.150(d)(5) and §296.200 of this title.

(c) Initial and renewal license requirements. To receive or renew a license in accordance with this section, all applicants shall submit a completed application in accordance with §296.42 of this title and documentation required in this section. An out-of-state applicant must comply with §296.44 of this title (relating to Out-of-State Applicants).

(1) Initial requirements. An applicant for an initial license shall submit the following:

(A) current training certificate for the Asbestos Contractor/Supervisor course for the appointed responsible person, in accordance with §296.93 of this title;

(B) proof of active tax account status or tax exempt status from the Texas Comptroller of Public Accounts if the applicant is a Texas corporation;

(C) a valid certificate of authority issued by the Secretary of State authorizing the company to do business in Texas if the applicant is located outside of Texas;

(D) a taxpayer identification number;

(E) 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”);

(F) physical address of office where asbestos records are maintained in accordance with §296.200 of this title;

(G) evidence of asbestos abatement liability insurance coverage in accordance with §1954.105(c) of the Act and §296.45 of this title;

(H) a copy of the applicant’s standard operating procedures relating to activities involving ACBM, specifically:

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

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

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

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

(v) a description of the personal air monitoring procedures;

(vi) a description of final cleanup procedures; and

(vii) a description of the provisions for recordkeeping.

(2) Renewal requirements: An applicant renewing a license shall submit the following:

(A) current training certificate for the Asbestos Contractor/Supervisor course for the appointed responsible person, in accordance with §296.93 of this title;

(B) proof of active tax account status or tax exempt status from the Texas Comptroller of Public Accounts if the applicant is a Texas corporation;

(C) a valid certificate of authority issued by the Secretary of State authorizing the company to do business in Texas if the applicant is located outside of Texas;

(D) physical address of office where asbestos records are maintained in accordance with §296.200 of this title; and

(E) evidence of asbestos abatement liability insurance coverage in accordance with §1954.105(c) of the Act and §296.45 of this title.

#### §296.49. Asbestos Operations and Maintenance Supervisor.

(a) License required. A person must be licensed as an asbestos operations and maintenance (O&M) supervisor to directly oversee personnel and work practices during O&M activities that affect

ACBM in public buildings. A licensed asbestos abatement supervisor may also perform these same duties.

(b) Scope of practice.

(1) Practice and limitations.

(A) An asbestos O&M supervisor must be employed by a licensed asbestos O&M contractor or by a licensed asbestos abatement contractor to perform or supervise asbestos O&M activities in a public building, except when performing activities in accordance with §296.198 of this title (relating to Procedures for Small Projects and Repetitive Tasks in Public Buildings).

(B) An asbestos O&M supervisor may perform the duties of an asbestos abatement worker on any project.

(C) An asbestos O&M supervisor may not:

(i) supervise asbestos abatement projects, which are larger than SSSD activities as defined in §296.21(98) of this title (relating to Definitions);

(ii) supervise any activity for which the sole purpose is removing ACBM;

(iii) supervise or perform asbestos abatement activities with expired training or medical examination; or

(iv) engage in acts prohibited in §296.31 of this title (relating to Code of Ethics for Licensees).

(2) Responsibilities. An asbestos O&M supervisor shall:

(A) comply with the EPA regulations for standards of small-scale, short-duration work practices that are adopted by reference in §296.2 of this title (relating to Adoption by Reference of Federal and Other Standards);

(B) comply with 29 CFR §1926.1101(g)(9) (relating to Asbestos);

(C) comply with the work practices described in §296.192 of this title (relating to General Requirements for Asbestos Abatement in Public Buildings);

(D) comply with the work practices described in §296.194 of this title (relating to Operations and Maintenance (O&M) Requirements for Public Buildings);

(E) 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);

(F) comply with the work practices described in §296.198 of this title;

(G) comply with the work practices described in §296.199 of this title (relating to Exemptions for the Removal of Intact Asbestos-Containing Materials in a Public Building);

(H) maintain records at both the central office and work site locations in accordance with §296.200 of this title (relating to Recordkeeping);

(I) cooperate with department personnel during inspections and investigations in accordance with §296.231 of this title (relating to Inspections and Investigations);

(J) comply with personal protective equipment (PPE) requirements for employees who perform asbestos-related activities to ensure that PPE is worn in accordance with 29 CFR §1926.1101; and

(K) immediately correct conditions not in compliance with this chapter. If these conditions are related to removal of ACBM, then removal must stop and may not resume until all identified conditions have been corrected.

(c) Initial and renewal license requirements. To receive or renew a license in accordance with this section, all applicants shall submit a completed application in accordance with §296.42 of this title (relating to Initial and Renewal Applications) and documentation required in this section. An out-of-state applicant must comply with §296.44 of this title (relating to Out-of-State Applicants).

(1) Initial requirements. An applicant for an initial license shall submit the following:

(A) a copy of the department's Physician's Written Statement form that documents a medical examination performed within the past 12 months, in accordance with §296.42(j) of this title;

(B) a training certificate for the initial Asbestos Contractor/Supervisor course and any refresher training courses to show current accreditation, in accordance with §296.93 of this title (relating to Asbestos Training Courses);

(C) a copy of the current photo-identification card issued by the training provider;

(D) an unaltered, 2-inch by 3-inch, color photograph of the face (without tinted 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. This photograph may be submitted in digital format with an electronically submitted application; and

(E) proof of passing the department's Asbestos Contractor/Supervisor examination, in accordance with subchapter G of this chapter (relating to State Licensing Examination).

(2) Renewal requirements. An applicant renewing a license shall submit the following:

(A) a copy of the department's Physician's Written Statement form that documents a medical examination performed within the past 12 months, in accordance with §296.42(j) of this title;

(B) a current training certificate for the Asbestos Contractor/Supervisor course in accordance with §296.93 of this title;

(C) a copy of the current photo-identification card issued by the training provider; and

(D) an unaltered, 2-inch by 3-inch, color photograph of the face (without tinted 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. This photograph may be submitted in digital format with an electronically submitted application.

#### §296.50. Asbestos Operations and Maintenance Contractor.

(a) License required. A person must be licensed as an asbestos abatement contractor or as an asbestos operations and maintenance (O&M) contractor to conduct asbestos O&M activities. Building owners that have their own employees perform such activities for their buildings shall be licensed according to this section.

(b) Scope of practice.

(1) Practice and limitations.

(A) An asbestos O&M contractor is restricted to small-scale, short-duration work activities and engineering controls for tasks that result in the disturbance or removal of asbestos in the course of performing repairs, maintenance, renovation, installation, replacement, or cleanup operations in accordance with §296.194 of this title (relating to Operations and Maintenance (O&M) Requirements for Public Buildings).

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

(C) An asbestos O&M contractor must employ a responsible person trained in accordance with subsection (c)(1)(A) or (c)(2)(A) of this section to engage in asbestos O&M activities.

(D) An asbestos O&M contractor may not:

(i) conduct asbestos abatement activities in a public building where the primary purpose of the activity is abatement;

(ii) engage in acts prohibited in §296.31 of this title (relating to Code of Ethics for Licensees); or

(iii) engage in the acts prohibited by §296.32 of this title (relating to Conflict of Interest).

(2) Responsibilities. An asbestos O&M contractor shall:

(A) ensure that all training is current for each employee who performs asbestos-related activities in accordance with §296.93 of this title (relating to Asbestos Training Courses);

(B) comply with standards of operation in accordance with §296.192 of this title (relating to General Requirements for Asbestos Abatement in Public Buildings) and §296.194 of this title for the asbestos activity being performed;

(C) provide for temporary storage of ACWM, in accordance with §296.193(j)(9) of this title (relating to Abatement Practices and Procedures for Full Containment in Public Buildings);

(D) comply with the work practices described in §296.198 of this title (relating to Procedures for Small Projects and Repetitive Tasks in Public Buildings);

(E) comply with the work practices described in §296.199 of this title (relating to Exemptions for the Removal of Intact Asbestos-Containing Materials in a Public Building);

(F) comply with recordkeeping requirements in accordance with §296.200 of this title (relating to Recordkeeping);

(G) comply with the notification requirements in accordance with §296.211 of this title (relating to Notifications);

(H) cooperate with department personnel during inspections and investigations, in accordance with §296.231 of this title (relating to Inspections and Investigations);

(I) comply with 29 CFR §1926.1101(g)(9), (relating to Asbestos);

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

(K) appoint at least one responsible person who will comply with the training requirements specified in subsection (c)(1)(A) of this section, oversee the operations for the asbestos O&M activities, and ensure compliance with this chapter;

(L) report changes of responsible person in writing to the department within 10 working days;

(M) 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:

(i) providing and maintaining PPE for employees;

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

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

(iv) documenting respirator inspections; and

(v) ensuring compliance with the use of PPE;

(N) provide and maintain in good working condition, and free of asbestos contamination, the necessary equipment for performing asbestos O&M activities;

(O) provide for disposal of ACWM, in accordance with 40 CFR §61.150 (relating to Standard for Waste Disposal for Manufacturing, Fabricating, Demolition, Renovation, and Spraying Operations):

(i) complete and provide a waste shipment record (manifest) for the asbestos transporter before the transporter departs with the waste;

(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).

(c) Initial and renewal license requirements. To receive or renew a license in accordance with this section, all applicants shall submit a completed application in accordance with §296.42 of this title (relating to Initial and Renewal Applications) and documentation required in this section. An out-of-state applicant must comply with §296.44 of this title (relating to Out-of-State Applicants).

(1) Initial requirements. An applicant for an initial license shall submit the following:

(A) a current training certificate for the Asbestos Contractor/Supervisor course for the appointed responsible person, in accordance with §296.93 of this title;

(B) proof of active tax account status or tax exempt status from the Texas Comptroller of Public Accounts if the applicant is a Texas corporation;

(C) a valid certificate of authority issued by the Secretary of State authorizing the applicant to do business in Texas if the applicant is located outside of Texas;

(D) 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”);

(E) a taxpayer identification number;

(F) physical address of office where asbestos records are maintained in accordance with §296.200 of this title;

(G) evidence of asbestos abatement liability insurance as required in §296.45 of this title (relating to Insurance Requirements); and

(H) a copy of the company’s standard operating procedures relating to O&M activities involving ACBM as referenced in 29 CFR §1926.1101(g)(9), must include:

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

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

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

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

(v) a description of the personal air monitoring procedures;

(vi) a description of final cleanup procedures; and

(vii) a description of the provisions for recordkeeping.

(2) Renewal requirements. An applicant renewing a license shall submit the following:

(A) a current training certificate for the Asbestos Contractor/Supervisor course for the appointed responsible person, in accordance with §296.93 of this title;

(B) proof of active tax account status or tax exempt status from the Texas Comptroller of Public Accounts if the applicant is a Texas corporation;

(C) a valid certificate of authority issued by the Secretary of State authorizing the applicant to do business in Texas if the applicant is located outside of Texas;

(D) physical address of office where asbestos records are maintained in accordance with §296.200 of this title; and

(E) evidence of asbestos abatement liability insurance as required in §296.45 of this title.

#### §296.51. Asbestos Air Monitoring Technician.

(a) License required. A person must be licensed as an asbestos air monitoring technician (AMT) to perform air monitoring services for the presence of airborne asbestos in a public building. A licensed asbestos consultant may also perform these same services.

(b) Scope of practice.

(1) Practice and limitations.

(A) An AMT may:

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

(ii) 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 (relating to Asbestos);

(iii) be employed by a building owner to collect personal air samples on behalf of the contractor on the same project for which the AMT is collecting baseline, area, and clearance samples for the asbestos consultant agency; and

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

(I) is listed on the American Industrial Hygiene Association Asbestos Analyst Registry in accordance with §296.59 of this title (relating to Asbestos Laboratory); or

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

(B) An AMT may not:

(i) engage in acts prohibited in §296.31 of this title (relating to Code of Ethics for Licensees);

(ii) engage in the acts prohibited in §296.32 of this title (relating to Conflict of Interest); or

(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.

(2) Responsibilities. An AMT shall:

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

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

(ii) in accordance with §296.192(h) of this title (relating to General Requirements for Asbestos Abatement in Public Buildings) when specifications and plans are not required; and

(B) collect personal air samples in accordance with 40 CFR Part 763, Subpart G (relating to Asbestos Worker Protection) or 29 CFR §1926.1101 (relating to Asbestos);

(C) record the results of area, baseline, clearance, and personal air sampling in writing and report the results in writing to the asbestos abatement contractor within:

(i) 24 hours after sampling if the air samples were analyzed on-site; or

(ii) 72 hours after sampling if the air samples were analyzed in an asbestos laboratory off-site;

(D) comply with recordkeeping requirements, in accordance §296.200 of this title (relating to Recordkeeping); and

(E) if analyzing air samples in the field, demonstrate full competency in PCM analysis using the NIOSH 7400 method upon request by a department inspector.

(c) Initial and renewal license requirements. To receive or renew a license in accordance with this section, all applicants shall submit a completed application in accordance with §296.42 of this title (relating to Initial and Renewal Applications) and documentation required in this section. An out-of-state applicant must comply with §296.44 of this title (relating to Out-of-State Applicants).

(1) Initial requirements. An applicant for an initial license shall submit the following:

(A) a copy of the department's Physician's Written Statement form that documents a medical examination performed within the past 12 months, in accordance with §296.42(j) of this title;

(B) training certificates for the initial Asbestos Air Monitoring Technician course and any refresher training courses to show current accreditation, in accordance with §296.93 of this title (relating to Asbestos Training Courses);

(C) copy of the current photo-identification card issued by the training provider;

(D) an unaltered, 2-inch by 3-inch, color photograph of the face (without tinted 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. This photograph may be submitted in digital format with an electronically submitted application;

(E) a high school diploma or equivalent;

(F) proof of passing the department's Asbestos Air Monitoring Technician examination, in accordance with subchapter G of this chapter (relating to State Licensing Examination); and

(G) proof of work experience performing air monitoring on at least three asbestos abatement projects for a total of at least 15 days 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.

(2) Renewal requirements. An applicant renewing a license shall submit the following:

(A) a copy of the department's Physician's Written Statement form that documents a medical examination performed within the past 12 months, in accordance with §296.42(j) of this title;

(B) current training certificate for the Asbestos Air Monitoring Technician course, in accordance with §296.93 of this title;

and (C) copy of the current photo-identification card issued by the training provider;

(D) an unaltered, 2-inch by 3-inch, color photograph of the face (without tinted 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. This photograph may be submitted in digital format with an electronically submitted application.

§296.52. Asbestos Inspector.

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

(b) Scope of practice.

(1) Practice and limitations.

(A) An asbestos inspector may:

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

(ii) determine that ACBM is present in a public building by collecting bulk samples of suspected ACBM or assuming the suspected ACBM contains greater than 1.0% asbestos; and

(iii) develop an asbestos survey report.

(B) An asbestos inspector may not:

(i) perform asbestos surveys in public buildings if not employed by a licensed asbestos consultant agency or licensed asbestos management planner agency;

(ii) perform asbestos surveys if the required training or medical examination has expired; or

(iii) engage in acts prohibited in §296.31 of this title (relating to Code of Ethics for Licensees).

(2) Responsibilities. An asbestos inspector shall:

(A) comply with standards of operation and sampling schemes, as described in §296.191 of this title (relating to Asbestos Management in Public Buildings, Commercial Buildings, and Facilities);

(B) sign, date, and print name and license number on the cover page of each asbestos survey report; and

(C) cooperate with department personnel during compliance inspections and investigations, as described in §296.231 of this title (relating to Inspections and Investigations).

(c) Initial and renewal license requirements. To receive or renew a license in accordance with this section, all applicants shall submit a completed application in accordance with §296.42 of this title (relating to Initial and Renewal Applications) and documentation required in this section. An out-of-state applicant must comply with §296.44 of this title (relating to Out-of-State Applicants).

(1) Initial requirements. An applicant for an initial license shall submit the following:

(A) a copy of the department's Physician's Written Statement form that documents a medical examination performed within the past 12 months, in accordance with §296.42(j) of this title;

(B) a training certificate for the initial Asbestos Inspector course and any refresher training courses to show current accreditation, in accordance with §296.93 of this title (relating to Asbestos Training Courses);

(C) a copy of the current photo-identification card issued by the training provider;

(D) an unaltered, 2-inch by 3-inch, color photograph of the face (without tinted 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. This photograph may be submitted in digital format with an electronically submitted application;

(E) proof of high school diploma or equivalent;

(F) proof of passing the department's Asbestos Inspector examination, in accordance with subchapter G of this chapter (relating to State Licensing Examination); and

(G) proof of work experience that includes participation in at least five asbestos surveys 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.

(2) Renewal requirements. An applicant renewing a license shall submit the following:

(A) a copy of the department's Physician's Written Statement form that documents a medical examination performed within the past 12 months, in accordance with §296.42(j) of this title;

(B) a current training certificate for the Asbestos Inspector course, in accordance with §296.93 of this title;

(C) a copy of the current photo-identification card issued by the training provider; and

(D) an unaltered, 2-inch by 3-inch, color photograph of the face (without tinted 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. This photograph may be submitted in digital format with an electronically submitted application.

§296.53. Asbestos Project Manager.

(a) License required. A person must be licensed as an asbestos project manager and must be employed by a licensed asbestos consultant agency and have written delegated authority in accordance with §296.56(b)(1)(A)(ix) of this title (relating to Asbestos Consultant) to perform asbestos project management in a public building.

(b) Scope of practice.

(1) Practice and limitations.

(A) An asbestos project manager must be employed by a licensed asbestos consultant agency to perform in the capacity of the building owner's representative to evaluate the quality of the work being performed during an asbestos abatement project.

(B) An asbestos project manager may:

(i) monitor an asbestos abatement project and document whether the asbestos abatement contractor is complying with the asbestos abatement specifications and plans and this chapter and report observations to the asbestos abatement contractor and asbestos consultant;

(ii) recommend changes to the asbestos abatement specifications and plans to the asbestos consultant. Changes to specifications and plans must be made in writing by the licensed asbestos consultant and be available on-site; and

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

(C) An asbestos project manager may not:

(i) conduct visual inspections without written authorization by the licensed asbestos consultant for the project;

(ii) perform project management if the required training or medical examination has expired; or

(iii) engage in acts prohibited in §296.31 of this title (relating to Code of Ethics for Licensees).

(2) Responsibilities. An asbestos project manager shall:

(A) ensure compliance with regulations adopted by reference in §296.2 of this title (relating to Adoption by Reference of Federal and Other Standards);

(B) ensure compliance with standards of operation, as described in §296.192 of this title (relating to General Requirements for Asbestos Abatement in Public Buildings);

(C) ensure compliance with standards of operation and that asbestos abatement controls are implemented for the asbestos activity being performed, as described in §296.193 of this title (relating to Abatement Practices and Procedures for Full Containment in Public Buildings);

(D) ensure compliance with the contract documents, specifications and plans, and relevant regulations for the duration of the project from the beginning of containment construction through completion of the removal of containment and final visual inspection of the project site. The asbestos project manager must be on the project site at all times when asbestos abatement activities are being performed and when ACWM is being loaded for transport;

(E) maintain records at both the central office and on-site locations, as described in §296.200 of this title (relating to Recordkeeping); and

(F) cooperate with department personnel during compliance inspections and investigations, as described in §296.231 of this title (relating to Inspections and Investigations).

(c) Initial and renewal license requirements. To receive or renew a license in accordance with this section, all applicants shall submit a completed application in accordance with §296.42 of this title (relating to Initial and Renewal Applications) and documentation required in this section. An out-of-state applicant must comply with §296.44 of this title (relating to Out-of-State Applicants).

(1) Initial requirements. An applicant for an initial license shall submit the following:

(A) a copy of the department's Physician's Written Statement form that documents a medical examination performed within the past 12 months, in accordance with §296.42(j) of this title;

(B) a training certificate for the initial Asbestos Contractor/Supervisor course and any refresher training courses to show current accreditation, in accordance with §296.93 of this title (relating to Asbestos Training Courses);

(C) a copy of the current photo-identification card issued by the training provider;

(D) an unaltered, 2-inch by 3-inch, color photograph of the face (without tinted 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. This photograph may be submitted in digital format with an electronically submitted application;

(E) proof of high school diploma or equivalent;

(F) proof of passing the department's Asbestos Contractor/Supervisor examination, in accordance with subchapter G of this chapter (relating to State Licensing Examination); and

(G) verifiable written documentation of at least 45 days of qualifying work experience gained within the past 24 months that includes:

(i) contact information for the person who supervised the applicant and can verify the work experience; and

(ii) proof of any combination of the following qualifying work experiences:

(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 15 days may be counted as qualifying experience for this category.

(2) Renewal requirements. An applicant renewing a license shall submit the following:

(A) a copy of the department's Physician's Written Statement form that documents a medical examination performed within the past 12 months, in accordance with §296.42(j) of this title;

(B) a current training certificate for the Asbestos Contractor/Supervisor course, in accordance with §296.93 of this title;

(C) a copy of the current photo-identification card issued by the training provider; and

(D) an unaltered, 2-inch by 3-inch, color photograph of the face (without tinted 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. This photograph may be submitted in digital format with an electronically submitted application.

#### §296.54. Asbestos Management Planner.

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

(b) Scope of practice.

(1) Practice and limitations.

(A) An asbestos management planner may:

(i) develop a management plan; and

(ii) act as a licensed asbestos inspector.

(B) An asbestos management planner may not:

(i) be employed as a management planner at a company that employs another asbestos management planner, asbestos consultant, or an asbestos inspector, unless the company is licensed as an asbestos management planner agency, in accordance with §296.55 of this title (relating to Asbestos Management Planner Agency), or an asbestos consultant agency, in accordance with §296.57 of this title (relating to Asbestos Consultant Agency);

(ii) perform asbestos surveys or develop management plans if any required training or medical examination has expired; or

(iii) engage in acts prohibited in §296.31 of this title (relating to Code of Ethics for Licensees).

(2) Responsibilities. An asbestos management planner shall:

(A) prepare management plans that include, at a minimum:

(i) the date of asbestos survey;

(ii) a blueprint, diagram, or written description of each building that identifies clearly each location and approximate square or linear footage of any homogeneous or sampling area where material was sampled for ACBM;

(iii) sample information, specifically:

(I) a drawing and description of the exact locations where bulk samples were collected and the dates of collection;

(II) a copy of the analyses of any bulk samples and the dates of analyses; and

(III) a copy of any other laboratory reports pertaining to the analyses;

(iv) a description of assessments:

(I) in a public building that is not a school, the assessment must include all ACBM; or

(II) in a school, the assessment must be done as required by 40 CFR §763.88 (relating to Assessment), of material that was identified before December 14, 1987, as friable ACBM or friable suspected ACBM assumed to be ACM;

(v) for each person making the assessment:

(I) name and signature; and

(II) Texas license number;

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

(vii) a description of any response actions or preventive measures taken to reduce asbestos exposure, including:

(I) the names and addresses of all contractors involved;

(II) start and stop dates of the work; and

(III) results of any air samples analyzed during and upon completion of the work; and

(B) prepare asbestos survey reports as defined in §296.21(103) of this title (relating to Definitions);

(C) advise the building owner in writing of the requirement to address ACBM that is damaged or separating from building material or equipment, or that will be disturbed during operations and maintenance, renovation, or demolition;

(D) sign, date, and print name and license number on all drawings and the cover page of asbestos survey reports and management plans; and

(E) comply with recordkeeping requirements, in accordance with §296.200 of this title (relating to Recordkeeping).

(c) Initial and renewal license requirements. To receive or renew a license in accordance with this section, all applicants shall submit a completed application in accordance with §296.42 of this title (relating to Initial and Renewal Applications) and documentation required in this section. An out-of-state applicant must comply with §296.44 of this title (relating to Out-of-State Applicants).

(1) Initial requirements. An applicant for an initial license shall submit the following:

(A) a copy of the department's Physician's Written Statement form that documents a medical examination performed within the past 12 months, in accordance with §296.42(j) of this title;

(B) training certificates for the initial Asbestos Inspector and Asbestos Management Planner courses and any refresher training courses to show current accreditation, in accordance with §296.93 of this title (relating to Asbestos Training Courses);

(C) copies of the current photo-identification cards issued by the training provider;

(D) an unaltered, 2-inch by 3-inch, color photograph of the face (without tinted 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. This photograph may be submitted in digital format with an electronically submitted application;

(E) proof of an associate's degree or successful completion of a minimum of 60 credit hours from an accredited college or university;

(F) proof of passing the department's Asbestos Management Planner examination, in accordance with subchapter G of this chapter (relating to State Licensing Examination);

(G) 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 (relating to Insurance Requirements); and

(H) verifiable work experience that includes participation in the development of at least five management plans as a licensed asbestos management planner or under the direct supervision of a licensed asbestos management planner or licensed asbestos consultant and participation in conducting five asbestos surveys, including development of asbestos survey reports, as a licensed asbestos inspector, licensed asbestos management planner, licensed asbestos consultant or under the direct supervision of a licensed asbestos inspector, licensed asbestos management planner, or licensed asbestos consultant. The department will accept experience developing a management plan and participating in the asbestos survey on the same project for both the management plan and the asbestos survey. Experience must be gained after completion of appropriate training.

(2) Renewal requirements. An applicant renewing a license shall submit the following:

(A) a copy of the department's Physician's Written Statement form that documents a medical examination performed within the past 12 months, in accordance with §296.42(j) of this title;

(B) copies of current training certificates for the Asbestos Inspector and Asbestos Management Planner courses in accordance with §296.93 of this title;

(C) copies of the current photo-identification cards issued by the training provider;

(D) an unaltered, 2-inch by 3-inch, color photograph of the face (without tinted 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. This photograph may be submitted in digital format with an electronically submitted application; and

(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.

#### §296.55. Asbestos Management Planner Agency.

(a) License required. A person employing an asbestos management planner and one or more additional asbestos management planners, asbestos consultants, or asbestos inspectors must be licensed as an asbestos management planner agency.

(b) Scope of practice.

(1) Practice and limitations.

(A) An asbestos management planner agency may employ:

(i) licensed asbestos management planners and licensed asbestos consultants to conduct surveys, develop asbestos survey reports, and develop management plans;

(ii) licensed asbestos inspectors to conduct surveys and develop asbestos survey reports; and

(iii) licensed asbestos consultants only when the consultants' duties are limited to those of management planners.

(B) An asbestos management planner agency may not:

(i) engage in acts prohibited in §296.31 of this title (relating to Code of Ethics for Licensees);

(ii) engage in the acts prohibited in §296.32 of this title (relating to Conflict of Interest);

(iii) perform asbestos management planning if not insured in accordance with §1954.105(c) of the Act and §296.45 of this title (relating to Insurance Requirements); or

(iv) perform asbestos management planning or surveys without a licensed asbestos management planner appointed as the responsible person.

(2) Responsibilities. An asbestos management planner agency shall:

(A) appoint one employee who is a licensed asbestos management planner to be the responsible person. Any changes of responsible person must be reported in writing to the department within ten working days of the change;

(B) use generally accepted principles and practices in performing asbestos surveys and producing management plans, as described in §296.191 of this title (relating to Asbestos Management in Public Buildings, Commercial Buildings, and Facilities);

(C) ensure that each employee who performs asbestos-related activities receives an annual medical examination, provided at no cost to the employee, in accordance with §296.42(j) of this title (relating to Initial and Renewal Applications);

(D) maintain professional liability insurance coverage for errors and omissions, in accordance with §1954.105(c) of the Act and §296.45 of this title;

(E) comply with the responsibilities for licensed asbestos inspectors, in accordance with §296.52 of this title (relating to Asbestos Inspector), and for licensed asbestos management planners in accordance with §296.54 of this title (relating to Asbestos Management Planner);

(F) comply with standards of operation, in accordance with §296.192 of this title (relating to General Requirements for Asbestos Abatement in Public Buildings);

(G) comply with personal protective equipment (PPE) requirements in 29 CFR §1926.1101(h) and (i) (relating to Asbestos), for employees who perform asbestos-related activities to include:

- (i) providing and maintaining PPE for employees;
- (ii) training employees in 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;

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

(I) ensure each employee who performs asbestos-related activities receives annual training in accordance with §296.93 of this title (relating to Asbestos Training Courses);

(J) comply with recordkeeping requirements, as described in §296.200 of this title (relating to Recordkeeping); and

(K) cooperate with department personnel during inspections and investigations, as described in §296.231 of this title (relating to Inspections and Investigations).

(c) Initial and renewal license requirements. To receive or renew a license in accordance with this section, all applicants shall submit a completed application in accordance with §296.42 of this title and documentation required in this section. An out-of-state applicant must comply with §296.44 of this title (relating to Out-of-State Applicants).

(1) Initial requirements. An applicant for an initial license shall submit the following:

(A) name and license number of the asbestos management planner appointed as the responsible person;

(B) proof of active tax account status or tax exempt status from the Texas Comptroller of Public Accounts if the applicant is a Texas corporation;

(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”);

(D) a valid certificate of authority issued by the Secretary of State authorizing the company to do business in Texas if the applicant is located outside of Texas; and

(E) evidence of professional liability insurance coverage for errors and omissions, in accordance with §1954.105(c) of the Act and §296.45 of this title.

(2) Renewal requirements. An applicant renewing a license shall submit the following:

(A) name and license number of the asbestos management planner appointed as the responsible person;

(B) proof of active tax account status or tax exempt status from the Texas Comptroller of Public Accounts if the applicant is a Texas corporation;

(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”);

(D) a valid certificate of authority issued by the Secretary of State authorizing the company to do business in Texas if the applicant is located outside of Texas; and

(E) evidence of professional liability insurance coverage for errors and omissions, in accordance with §1954.105(c) of the Act and §296.45 of this title.

#### §296.56. Asbestos Consultant.

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

(b) Scope of practice.

(1) Practice and limitations.

(A) An asbestos consultant may:

- (i) prepare an asbestos abatement project design;
- (ii) collect bulk material samples and plan sampling strategies;
- (iii) develop management plans;
- (iv) perform asbestos surveys, develop an asbestos survey report, and report the results;
- (v) provide consultation regarding compliance with asbestos regulations and standards,
- (vi) recommend abatement options, prepare contract documents for asbestos abatement projects, and provide technical specifications and plans to include engineering controls, project layout, and abatement methods;

(vii) provide the building owner with asbestos project management services, asbestos air monitoring services, and sampling strategies to be used during asbestos abatement projects;

(viii) recommend appropriate personal protective equipment for asbestos abatement activities;

(ix) designate a project manager and delegate specific responsibilities and authority to the project manager in writing; and

(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).

(B) An asbestos consultant may not:

(i) design an asbestos abatement project that includes alterations to a building's structure, or its electrical, mechanical, or safety systems or their components, unless the consultant is, or works together with, a licensed professional engineer (PE) in Texas. The specifications and plans for such alterations must be prepared as required by the Occupations Code, Chapter 1001 (relating to Engineers) and 22 TAC Chapters 131-139 (relating to Texas Board of Professional Engineers);

(ii) prepare a design for an asbestos abatement project that specifies work practices that vary from the requirements of §296.193(a)(2) of this title (relating to Abatement Practices and Procedures for Full Containment in Public Buildings) unless the work practices are as protective of public health and are approved by the department;

(iii) employ asbestos inspectors, asbestos project managers, asbestos air monitoring technicians, asbestos management planners, or additional asbestos consultants to work in the capacity of their licenses unless licensed as an asbestos consultant agency in accordance with §296.57 of this title (relating to Asbestos Consultant Agency);

(iv) perform consulting activities if any required training or medical examination has expired;

(v) perform consulting activities if not properly insured in accordance with §1954.105(c) of the Act and §296.45 of this title (relating to Insurance Requirements);

(vi) engage in acts prohibited in §296.31 of this title (relating to Code of Ethics for Licensees); or

(vii) engage in the acts prohibited in §296.32 of this title (relating to Conflict of Interest).

(2) Responsibilities. An asbestos consultant shall:

(A) provide the following professional services to the building owner or the owner's authorized representative:

(i) project air monitoring, in accordance with §296.51(b) of this title (relating to Asbestos Air Monitoring Technician);

(ii) asbestos surveys and assessments, in accordance with §296.52(b) of this title (relating to Asbestos Inspector);

(iii) project management, in accordance with §296.53(b) of this title (relating to Asbestos Project Manager);

(iv) management plans, in accordance with §296.54(b) of this title (relating to Asbestos Management Planner);

(v) a written report after completion of an asbestos survey advising the building owner of the requirement to address ACBM or assumed ACBM that is damaged or separating or that will be disturbed as part of any renovation, demolition, or O&M;

(vi) progress records and, when necessary, photographs;

(vii) ensuring that ACWM is properly transported and disposed of by:

(I) observing that ACWM containers are properly labeled, in accordance with 40 CFR §61.150(a)(iv)-(v) (relating to Standard for Waste Disposal for Manufacturing, Fabricating, Demolition, Renovation, and Spraying Operations);

(II) observing that vehicles used to transport ACWM are marked, in accordance with 40 CFR §61.150(c);

(III) obtaining a copy of 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) before the removal of the waste from the site; and

(IV) ensuring the building owner receives a manifest from the contractor, signed by the disposal site owner or operator, for each load of ACWM abated from the building; and

(viii) final close-out documents for each asbestos abatement project to the building owner or operator, which include:

(I) baseline and area air monitoring results;

(II) clearance documentation including visual inspections and clearance air monitoring results, in accordance with §296.192 of this title (relating to General Requirements for Asbestos Abatement in Public Buildings);

(III) signed manifest from the contractor;

(IV) copies of licenses, certifications, and registrations for all personnel; and

(V) daily logs;

(B) prepare specifications and plans, schedules, and contract options for asbestos abatement projects, in accordance with §296.192 of this title:

(i) for specifications and plans prepared by the consultant, the consultant must:

(I) sign every page that addresses the scope of work or contains drawings related to the abatement work;

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

(III) provide the specifications and plans to the building owner before the asbestos abatement begins; and

(ii) for specifications and plans developed by another consultant or an asbestos consultant agency, the consultant must:

(I) review every page that addresses the scope of work or contains drawings related to the abatement work, and

(-a-) amend, as needed; and

(-b-) sign every reviewed page;

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

(III) provide the specifications and plans to the building owner before the asbestos abatement begins;

(C) consult with the asbestos abatement contractor and oversee the contractor to ensure:

(i) compliance with regulations and specifications and plans; or

(ii) for noncompliance issues, corrections are made or reported as violations;

(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;

(E) specify the selection and use of appropriate personal protective equipment for all asbestos abatement activities;

(F) ensure compliance with the contract documents, specifications and plans, and relevant regulations for the duration of the project from the beginning of containment preparation through completion of the removal of containment and final visual inspection of the project site and loading of ACWM for transport;

(G) remain on-site and in immediate proximity during all periods of asbestos abatement activity and when ACWM is being loaded for transport;

(H) receive written approval from the department for a design prepared for an asbestos abatement project that specifies work practices that vary from the requirements of §296.193(a)(2) of this title before releasing specifications and plans to the asbestos abatement contractor;

(I) supervise exposure assessments performed in accordance with §296.198 of this title (relating to Procedures for Small Projects and Repetitive Tasks in Public Buildings). This responsibility may not be delegated; and

(J) comply with recordkeeping requirements, in accordance with §296.200 of this title (relating to Recordkeeping).

(c) Initial and renewal license requirements. To receive or renew a license in accordance with this section, all applicants shall submit a completed application in accordance with §296.42 of this title (relating to Initial and Renewal Applications) and documentation required in this section. An out-of-state applicant must comply with §296.44 of this title (relating to Out-of-State Applicants).

(1) Initial requirements. An applicant for an initial license shall submit the following:

(A) proof of one of the combinations of professional or educational achievement and/or work experience as described in paragraph (2)(A)-(C) of this subsection. Asbestos-related experience must be gained after completion of any training that is required to perform an asbestos-related activity and while the training is current;

(B) proof of passing the department's Asbestos Consultant examination, in accordance with subchapter G of this chapter (relating to State Licensing Examination);

(C) copies of training certificates for the initial Asbestos Project Designer, Asbestos Inspector, Asbestos Management Planner, and Asbestos Air Monitoring Technician courses and any refresher training courses to show current accreditation, in accordance with §296.93 of this title (relating to Asbestos Training Courses);

(D) a copy of the current photo identification cards issued by the training provider;

(E) an unaltered, 2-inch by 3-inch, color photograph of the face (without tinted 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. This photograph may be submitted in digital format with an electronically submitted application;

(F) a copy of the department's Physician's Written Statement form that documents a medical examination performed within the past 12 months, in accordance with §296.42(j) of this title; and

(G) 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.

(2) Acceptable professional or educational achievement and/or work experience. An applicant for an initial license shall submit documentation of one of the following combinations of professional or educational achievement and/or work experience as described in subparagraphs (A)-(C) of this paragraph:

(A) current status as a Texas-registered architect or a Texas-licensed professional engineer combined with at least 180 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:

(i) must include the following:

(I) developing at least six specifications and plans under the direct supervision of a licensed asbestos consultant;

(II) conducting at least three asbestos surveys that include 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;

(III) 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

(IV) performing air monitoring for ten days under the direct supervision of a licensed air monitoring technician or a licensed asbestos consultant; and

(ii) may include the following:

(I) developing management plans as a licensed management planner or under the direct supervision of a licensed asbestos management planner or licensed asbestos consultant;

(II) work experience as a licensed asbestos abatement supervisor;  
and

(III) work experience as a registered asbestos abatement worker, limited to no more than 30 days;

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

(i) 2 years of experience in an environmental field or in occupational health; and

(ii) at least 180 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:

(I) must include the following:

(-a-) developing at least six specifications and plans under the direct supervision of a licensed asbestos consultant;

(-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;

(-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

(-d-) performing air monitoring for ten days under the direct supervision of a licensed air monitoring technician or a licensed asbestos consultant; and

(II) may include the following:

(-a-) developing management plans under the direct supervision of a licensed asbestos management planner or licensed asbestos consultant;

(-b-) experience as a licensed asbestos abatement supervisor; and

(-c-) experience as a licensed asbestos abatement worker, limited to no more than 30 days; or

(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;

(i) 3 years of experience in an environmental field or in occupational health, and

(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:

(I) must include the following:

(-a-) developing at least six specifications and plans under the direct supervision of a licensed asbestos consultant;

(-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;

(-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

(-d-) performing air monitoring for ten days under the direct supervision of a licensed air monitoring technician or a licensed asbestos consultant; and

(II) may include the following:

(-a-) developing management plans under the direct supervision of a licensed asbestos management planner or licensed asbestos consultant;

(-b-) work experience as a licensed asbestos abatement supervisor; and

(-c-) work experience as a registered asbestos abatement worker, limited to no more than 30 days.

(3) Renewal requirements. An applicant renewing a license shall submit the following:

(A) copies of current training certificates for the Asbestos Project Designer, Asbestos Inspector, Asbestos Management Planner, and Asbestos Air Monitoring Technician courses, in accordance with §296.93 of this title;

(B) a copy of the current photo-identification cards issued by the training provider;

(C) an unaltered, 2-inch by 3-inch, color photograph of the face (without tinted 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. This photograph may be submitted in digital format with an electronically submitted application;

(D) a copy of the department's Physician's Written Statement form that documents a medical examination performed within the past 12 months, in accordance with §296.42(j) of this title; and

(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.

#### §296.57. Asbestos Consultant Agency.

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

(b) Scope of practice.

(1) Practice and limitations.

(A) An asbestos consultant agency may:

(i) employ asbestos consultants, asbestos management planners, asbestos inspectors, asbestos project managers, and asbestos air monitoring technicians who are currently licensed in accordance with this chapter and working in the capacity of their licenses; and

(ii) represent a building owner by providing asbestos project management services and asbestos air monitoring services during asbestos abatement projects.

(B) An asbestos consultant agency may not:

(i) engage in acts prohibited in §296.31 of this title (relating to Code of Ethics for Licensees);

(ii) engage in the acts prohibited in §296.32 of this title (relating to Conflict of Interest);

(iii) perform asbestos consulting activities if not properly insured, in accordance with §1954.105(c) of the Act and §296.45 of this title (relating to Insurance Requirements); or

(iv) perform asbestos consulting activities without employing a licensed asbestos consultant appointed as the responsible person.

(2) Responsibilities. An asbestos consultant agency shall:

(A) use generally accepted principles and practices in designing asbestos abatement projects;

(B) ensure all asbestos abatement projects are monitored by the designated asbestos consultant or asbestos project manager for general compliance with the contract documents, specifications and plans, and relevant regulations for the duration of the project from the beginning of containment construction through final visual inspection after the removal of the containment;

(C) 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) (relating to Standard for Waste Disposal for Manufacturing, Fabricating, Demolition, Renovation, and Spraying Operations);

(D) 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;

(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 contractor by the 45th day from the date the waste was accepted by the transporter;

(F) appoint one employee who is a licensed asbestos consultant to be the responsible person as defined in §296.21(91) of this title (relating to Definitions). Any changes of responsible person must be reported in writing to the department within 10 working days of the change;

(G) ensure that each employee who performs asbestos-related activities receives an annual medical examination, provided at no cost to the employee, in accordance with §296.42(j) of this title (relating to Initial and Renewal Applications);

(H) maintain professional liability insurance coverage for errors and omissions in accordance with §1954.105(c) of the Act and §296.45 of this title;

(I) ensure each employee who performs asbestos-related activities receives annual training in accordance with §296.93 of this title (relating to Asbestos Training Courses);

(J) maintain workers' compensation insurance as described in §296.191(a)(5) of this title (relating to Asbestos Management in Public Buildings, Commercial Buildings, and Facilities);

(K) comply with the relevant requirements in §296.192 of this title (relating to General Requirements for Asbestos Abatement in Public Buildings);

(L) comply with the abatement practices and procedures in §296.193 of this title (relating to Abatement Practices and Procedures for Full Containment in Public Buildings);

(M) comply with recordkeeping requirements, in accordance with §296.200 of this title (relating to Recordkeeping);

(N) cooperate with department personnel during inspections and investigations, as described in §296.231 of this title (relating to Inspections and Investigations);

(O) comply with personal protective equipment (PPE) requirements in 29 CFR §1926.1101(h) and (i) (relating to Asbestos), for employees who perform asbestos-related activities to include:

(i) providing and maintaining PPE for employees;

(ii) training employees in 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; and

(P) acquire the necessary equipment for performing asbestos-related activities and maintain equipment in good working condition.

(c) Initial and renewal license requirements. To receive or renew a license in accordance with this section, all applicants shall submit a completed application in accordance with §296.42 of this title and documentation required in this section. An out-of-state applicant must comply with §296.44 of this title (relating to Out-of-State Applicants).

(1) Initial requirements. An applicant for an initial license shall submit the following:

(A) name and license number of the asbestos consultant appointed as the responsible person;

(B) proof of active tax account status or tax exempt status from the Texas Comptroller of Public Accounts if the applicant is a Texas corporation;

(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”);

(D) a valid certificate of authority issued by the Secretary of State authorizing the company to do business in Texas if the applicant is located outside of Texas; and

(E) evidence of professional liability insurance coverage for errors and omissions, in accordance with §1954.105(c) of the Act and §296.45 of this title.

(2) Renewal requirements. An applicant renewing a license shall submit the following:

(A) name and license number of the asbestos consultant appointed as the responsible person;

(B) proof of active tax account status or tax exempt status from the Texas Comptroller of Public Accounts if the applicant is a Texas corporation;

(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”);

(D) a valid certificate of authority issued by the Secretary of State authorizing the company to do business in Texas if the applicant is located outside of Texas; and

(E) evidence of professional liability insurance coverage for errors and omissions, in accordance with §1954.105(c) of the Act and §296.45 of this title.

#### §296.58. Asbestos Transporter.

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

(b) Scope of practice.

(1) Practice and limitations.

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

(B) An asbestos transporter may not:

(i) transport ACWM that is not properly labeled or without a waste shipment record (manifest); or

(ii) engage in acts prohibited in §296.31 of this title (relating to Code of Ethics for Licensees).

(2) Responsibilities. An asbestos transporter shall:

(A) comply with federal regulations in 49 CFR Parts 100-199 (relating to Pipeline and Hazardous Materials Safety Administration, Department of Transportation); 40 CFR Part 61 (relating to National Emission Standards for Hazardous Air Pollutants), specifically the provisions concerning asbestos transport; and, where applicable, 40 CFR Part 763, Subpart E, Appendix D, (relating to Transport and Disposal of Asbestos Waste);

(B) ensure that all employees who will be transporting, loading, or unloading asbestos are fully trained in accordance with 49 CFR Parts 171-177 (relating to Hazardous Materials Regulations);

(C) at no cost to the employee, comply with personal protective equipment (PPE) requirements in 29 CFR §1926.1101(h) and (i) (relating to Asbestos) for employees who will handle asbestos by:

(i) providing and maintaining PPE for employees;

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

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

(iv) inspecting respirators every six months and documenting the inspections; and

(v) ensuring employees use PPE properly;

(D) acquire and maintain the necessary equipment for performing asbestos-related activities. Equipment must be in good working condition;

(E) cooperate with department personnel during inspections and investigations, in accordance with §296.231 of this title (relating to Inspections and Investigations);

(F) in anticipation of possible spills of ACWM, train employees on hazardous materials and emergency response operations, in accordance with 29 CFR §1910.120(a)(1)(v) (relating to Occupational Safety and Health Standards) or 49 CFR Part 172, Subpart H (relating to Training), as applicable;

(G) ensure ACWM is properly labeled with warning labels, in accordance with 29 CFR §1926.1101(k), and generator labels, in accordance with 40 CFR §61.150(a)(1)(v) (relating to Standard for Waste Disposal for Manufacturing, Fabricating, Demolition, Renovation, and Spraying Operations);

(H) 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;

(I) 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

(J) keep proof of pollution liability insurance and a copy of the current asbestos transporter license in the transport vehicle.

(c) Initial and renewal license requirements. To receive or renew a license in accordance with this section, all applicants shall submit a completed application in accordance with §296.42 of this title (relating to Initial and Renewal Applications) and documentation required in this section. An out-of-state applicant must comply with §296.44 of this title (relating to Out-of-State Applicants).

(1) Initial requirements. An applicant for an initial license shall submit the following:

(A) proof of active tax account status or tax exempt status from the Texas Comptroller of Public Accounts if the applicant is a Texas corporation;

(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”);

(C) a valid certificate of authority issued by the Secretary of State authorizing the company to do business in Texas if the applicant is located outside of Texas;

(D) physical address of the office where asbestos records are maintained, in accordance with §296.200 of this title (relating to Recordkeeping);

(E) proof of liability insurance to transport for hire ACM for purposes of disposal, in accordance with §1954.105(c) of the Act and §296.45 of this title (relating to Insurance Requirements); and

(F) a copy of the company’s emergency response plan, in accordance with 29 CFR §1910.120(q), specifically:

- (i) pre-emergency planning and coordination with outside parties;
- (ii) personnel roles, lines of authority, training, and communication;
- (iii) emergency recognition and prevention;
- (iv) safe distances and places of refuge;
- (v) site security and control;
- (vi) evacuation routes and procedures;
- (vii) decontamination;
- (viii) emergency medical treatment and first aid;

- (ix) emergency alerting and response procedures;
- (x) critique of response and follow-up; and
- (xi) PPE and emergency equipment.

(2) Renewal requirements. An applicant renewing a license shall submit the following:

(A) proof of active tax account status or tax exempt status from the Texas Comptroller of Public Accounts if the applicant is a Texas corporation;

(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”);

(C) a valid certificate of authority issued by the Secretary of State authorizing the company to do business in Texas if the applicant is located outside of Texas;

(D) physical address of the office where asbestos records are maintained in accordance with §296.200 of this title; and

(E) proof of liability insurance to transport for hire ACM for purposes of disposal, in accordance with §1954.105(c) of the Act and §296.45 of this title.

#### §296.59. Asbestos Laboratory.

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

(b) Scope of practice.

(1) Practice and limitations.

(A) Each branch office of a licensed asbestos laboratory must be separately licensed and accredited for the types of analyses it will perform.

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

- (i) PLM analysis of bulk samples; or
- (ii) TEM analysis of air samples.

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

(i) in the laboratory if accredited by the American Industrial Hygiene Association (AIHA) or if the laboratory’s individual analysts performing the analysis are listed on the

AIHA Asbestos Analyst Registry (AAR) or the laboratory is enrolled and proficient in the AIHA PAT Program; and

(ii) in the field only if the laboratory's individual analysts performing the analysis are licensed asbestos air monitoring technicians and:

(I) listed on the AIHA AAR; or

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

(D) An asbestos laboratory or a laboratory's individual analyst may not perform asbestos analysis if the laboratory or analyst loses accreditation or proficiency.

(E) An asbestos laboratory may not engage in acts prohibited in §296.31 of this title (relating to Code of Ethics for Licensees).

(2) Responsibilities. An asbestos laboratory shall:

(A) employ one individual as the responsible person as defined in §296.21(91) of this title (relating to Definitions) who is responsible for the asbestos laboratory's operations and compliance with this chapter. Any changes of responsible person must be reported in writing to the department within ten working days of the change;

(B) maintain the proficiency and accreditation requirements specified in subsection (c)(1) of this section for each analytical method performed. Any change in accreditation or proficiency must be reported in writing to the department within ten working days of the change; and

(C) comply with recordkeeping requirements as described in §296.200 of this title (relating to Recordkeeping).

(c) Initial and renewal license requirements. To receive or renew a license in accordance with this section, all applicants shall submit a completed application in accordance with §296.42 of this title (relating to Initial and Renewal Applications) and documentation required in this section. An out-of-state applicant must comply with §296.44 of this title (relating to Out-of-State Applicants).

(1) Initial requirements. An applicant for an initial license shall submit the following:

(A) evidence of at least one of the following:

(i) accreditation by the NVLAP for analysis of bulk samples by PLM if the laboratory is applying for a PLM bulk analysis license;

(ii) accreditation by the NVLAP for analysis of air samples by TEM if the laboratory is applying for a TEM air analysis license;

(iii) accreditation by the AIHA Industrial Hygiene Laboratory Accreditation Program and most recent proficiency testing results if the laboratory is applying for a PCM air analysis license;

(iv) 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; or

(v) proficiency of the individual laboratory analysts through the AIHA Asbestos Analyst Registry (AAR) and most recent proficiency testing results if the laboratory is applying for a PCM air analysis license;

(B) proof of active tax account status or tax exempt status from the Texas Comptroller of Public Accounts if the applicant is a Texas corporation;

(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”);

(D) a valid certificate of authority issued by the Secretary of State authorizing the company to do business in Texas if the applicant is located outside of Texas;

(E) physical address of the principal place of business where asbestos samples are analyzed and asbestos records are maintained, in accordance with §296.200 of this title; and

(F) evidence of professional liability insurance for errors and omissions, in accordance with §1954.105(c) of the Act and §296.45 of this title (relating to Insurance Requirements).

(2) Renewal requirements. An applicant renewing a license shall submit the following:

(A) evidence of at least one of the following:

(i) accreditation by the NVLAP for analysis of bulk samples by PLM if the laboratory is applying for a PLM bulk analysis license;

(ii) accreditation by the NVLAP for analysis of air samples by TEM if the laboratory is applying for a TEM air analysis license;

(iii) accreditation by the AIHA Industrial Hygiene Laboratory Accreditation Program and most recent proficiency testing results if the laboratory is applying for a PCM air analysis license;

(iv) proficiency according to the standards of the AIHA 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; or

(v) proficiency of the individual laboratory analysts through the AIHA Asbestos Analyst Registry (AAR) and most recent proficiency testing results if the laboratory is applying for a PCM air analysis license;

(B) proof of active tax account status or tax exempt status from the Texas Comptroller of Public Accounts if the applicant is a Texas corporation;

(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”);

(D) a valid certificate of authority issued by the Secretary of State authorizing the company to do business in Texas if the applicant is located outside of Texas;

(E) physical address of the principal place of business where asbestos samples are analyzed and asbestos records are maintained, in accordance with §296.200 of this title; and

(F) evidence of professional liability insurance for errors and omissions, in accordance with §1954.105(c) of the Act and §296.45 of this title.

(d) Asbestos laboratories that do not meet the requirements of this section are not eligible to renew the license after August 31, 2018.

#### Subchapter E: License and Registration Fees

##### §296.71. Fees.

(a) All applicable fees must be paid to the department before the department will issue a registration or license.

(b) For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Department of Information Resources, to recover costs associated with electronic application and renewal application processing.

(c) The fees, not including subscription and convenience fees, are as follows:

- (1) asbestos abatement contractor initial or renewal--\$1,070;
- (2) asbestos abatement supervisor initial or renewal--\$400;
- (3) asbestos abatement worker initial or renewal--\$65;
- (4) asbestos air monitoring technician initial or renewal--\$110;
- (5) asbestos consultant initial or renewal--\$645;
- (6) asbestos consultant agency initial or renewal--\$430;
- (7) asbestos inspector initial or renewal--\$130;
- (8) asbestos training instructor initial or renewal--\$100;
- (9) asbestos laboratory initial or renewal--\$430;
- (10) asbestos management planner initial or renewal--\$260;
- (11) asbestos management planner agency initial or renewal--\$430;

- (12) asbestos operations and maintenance contractor initial or renewal--\$260;
- (13) asbestos operations and maintenance supervisor initial or renewal--\$225;
- (14) asbestos project manager initial or renewal--\$320;
- (15) asbestos training provider initial or renewal--\$1,070;
- (16) asbestos transporter initial or renewal--\$430;
- (17) refund processing--\$50;
- (18) approval of additional training course--\$200;
- (19) examination--\$25;
- (20) identification card replacement--\$20;
- (21) license replacement--\$20;
- (22) name change--\$20;
- (23) returned check--\$30; and
- (24) special examination request--\$50.

#### §296.72. Late Fees.

Licensees who do not submit a timely renewal application are subject to late fees. A renewal application is considered timely if the application, fee, and all required documents are received by the department or postmarked before the license expires. If the application, fee, or required documents are deficient and the deficiency is not cleared before the license expires, the renewal is not timely and is subject to late fees. Late fees are assessed as follows:

(1) A renewal received 1 to 90 days after license expiration is assessed a late fee that is equal to 1.5 times the normal renewal fee.

(2) A renewal received 91 to 365 days after license expiration is assessed a late fee that is equal to 2 times the normal renewal fee.

#### §296.73. Dishonored Payment Device.

(a) If an applicant's payment device is not honored by the issuing financial institution, the department will consider the application to be deficient and will notify the applicant. Not later than 30 days after the date of the department's notice, the applicant must submit to the department a money order or cashier's check in the amount of the dishonored payment device plus the fee of \$30 for each dishonored payment device.

(b) If the department has issued a license obtained with a dishonored payment device and the person does not pay the full amount due by the 30-day payment deadline specified in the department's notice, the person will be in violation of this chapter and subject to enforcement action, including license

revocation and administrative penalties, as set forth in subchapter N of this chapter (relating to Enforcement).

(c) If an applicant has taken an examination, the department will not release the examination score or approve the initial license until the department receives all fees.

#### §296.74. Reimbursement of Fees.

(a) Application fees paid to the department are not transferable and may be refunded only if:

(1) fee amounts are paid in excess of the required fee. The department will deduct an administrative fee of \$50 and subscription and convenience fees from an excess payment before issuing a refund;

(2) an error in the online payment system results in excess payments; or

(3) an application is not processed within the time periods in §296.42(b) of this title (relating to Initial and Renewal Applications), the applicant has the right to request reimbursement of the application fee. Requests for reimbursement must be submitted in writing. If the department does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the department will deny the request. Good cause exists if:

(A) the number of license applications exceeds by 15% or more the number of applications processed in the same calendar quarter of the preceding year;

(B) another public or private entity, relied upon by the department in the application process, caused the delay; or

(C) any other condition, such as a contested case involving a violation of this chapter, exists that gives the department good cause for exceeding the time period.

(b) Subscription and convenience fees are not refundable.

(c) Appeal process for denied reimbursement. If the department denies a request for reimbursement in accordance with subsection (a)(3) of this section, the applicant may appeal to the commissioner. The applicant shall give written notice to the commissioner of the request for full reimbursement of all fees paid, claiming that the department exceeded the applicable time period without good cause. The department will submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The commissioner will notify the applicant in writing of the decision. If the commissioner decides the appeal in favor of the applicant, the department will process the reimbursement of the application fee after deducting the subscription and convenience fee.

#### Subchapter F: Training Providers, Instructors, and Courses

#### §296.91. Asbestos Training Provider.

(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.

(b) Scope of practice.

(1) Practice and limitations.

(A) A licensed asbestos training provider, after receiving course approvals from the department, may offer, schedule, and conduct:

(i) asbestos training courses for the purpose of meeting accreditation requirements in accordance with the MAP;

(ii) the Asbestos Air Monitoring Technician course in accordance with §296.93 of this title (relating to Asbestos Training Courses); and

(iii) the Texas Asbestos Law and Rules course in accordance with §296.93 of this title.

(B) An asbestos training provider may not:

(i) allow instructors to self-train in order to qualify for a license or accreditation;

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

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

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

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

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

(vii) engage in acts prohibited in §296.31 of this title (relating to Code of Ethics for Licensees).

(2) Responsibilities. An asbestos training provider shall:

(A) ensure that promotional materials specify course prerequisites for admission, the content of the course, and requirements for successful completion;

(B) ensure that training is provided by licensed asbestos training instructors who:

(i) are licensed by the department to teach the course; and

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

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

will not be licensed;

- (i) individuals who are not eligible for employment in the United States

license being sought;

- (ii) the requirements and qualifications that apply to the category of

- (iii) the initial management planner training course requires a current and valid inspector accreditation at the time of course admission;

- (iv) to maintain accreditation, refresher training must be taken before the accreditation expiration date. After the accreditation expiration date, there is a 12-month grace period to take the refresher training course to renew the accreditation. After the 12-month grace period, initial training must be completed again in order to obtain accreditation; and

- (v) 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;

- (D) refund any course-related fees to a prospective trainee due to the training provider's failure to provide the information listed in subparagraph (C) of this paragraph;

- (E) ensure that licensed asbestos training instructors employed by the training provider:

- (i) present all course materials as outlined in the syllabus and as presented to the department for approval;

- (ii) provide a course review to improve comprehension before administering the course examination; and

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

- (F) confirm that trainees possess current and valid accreditation, or are within the 12-month grace period, before granting admission to a refresher training course;

- (G) ensure that training is provided in an environment that is conducive to learning and without any external distractions. A classroom may not be utilized for other purposes while training is being conducted. Facilities must have the following:

- (i) adequate lighting;

- (ii) adequate seating and workspace for each trainee;

- (iii) a comfortable temperature that is maintained in all areas used for training; and

- (iv) clean restrooms that are readily accessible and in proper working order;

- (H) ensure necessary training equipment is on-site and in proper working order;

(I) record each trainee's examination score;

(J) comply with requirements for asbestos training courses in accordance with §296.93 of this title, 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;

(K) appoint a responsible person who will be responsible for compliance with this chapter. Any changes of responsible person must be reported in writing to the department within 10 working days of the change;

(L) comply with recordkeeping requirements as described in §296.200 of this title (relating to Recordkeeping);

(M) cooperate with department personnel during inspections and investigations as described in §296.231 of this title (relating to Inspections and Investigations);

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

(O) permit department representatives to observe, evaluate, and monitor training courses;

(P) issue training certificates that meet the requirements in subsection (d)(1)(N) of this section at the conclusion of each course to trainees who have completed the course and passed the required final examination;

(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;

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

(S) submit a training course roster to the department within 10 working days of the completion date of each course. The course roster must include:

(i) the name of each trainee;

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

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

(iv) a color group photograph, of trainees who successfully completed the course, taken at the end of the training course; and

(T) comply with course notification requirements in subsection (c) of this section.

(c) Course notification requirements.

(1) Training providers shall notify the department of each scheduled course. The department must receive the notification at least 10 working days before the start date of the course. A notification may include multiple courses. The notification must include:

(A) name and contact phone number of training provider;

(B) name, license number, and contact phone number of instructor;

(C) name of course (for the Asbestos Abatement Worker course, the course name must specify the language in which the course will be conducted);

(D) physical location (address and room number or name of conference room) where training will be held, including all off-site field trip locations;

(E) start and end dates for training course; and

(F) start and end times for each day of training.

(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.

(A) Amendments are accepted for the following changes:

(i) instructor;

(ii) location;

(iii) times; and

(iv) dates.

(B) Amendments are not accepted for the following changes:

(i) name of training course; or

(ii) language of the course.

(C) Notified courses may not be amended less than 5 working days before the start date. The course must be cancelled and notified as an emergency request.

(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 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 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.

(4) Cancellation notifications. A training provider shall notify the department of a course cancellation by email or fax as soon as possible but no later than 2 hours after the scheduled start time of the course.

(d) Initial and renewal license requirements. To receive or renew a license in accordance with this section, all applicants shall submit a completed application in accordance with §296.42 of this title (relating to Initial and Renewal Applications) and documentation required in this section. An out-of-state applicant must comply with §296.44 of this title (relating to Out-of-State Applicants).

(1) Initial requirements. An applicant for an initial license shall submit the following:

(A) proof of active tax account status or tax exempt status from the Texas Comptroller of Public Accounts if the applicant is a Texas corporation;

(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”);

(C) if the applicant is located outside of Texas:

(i) a valid certificate of authority issued by the Secretary of State, authorizing the company to do business in Texas; or

(ii) a notarized letter from an official of the corporation certifying that the applicant is incorporated outside of Texas and shall not provide training courses within the state;

(D) name(s) and mailing address(es) of owner(s);

(E) list of courses to be offered that includes the name and license number of each licensed asbestos instructor that will teach each course;

(F) a list of guest speakers the training provider intends to use in the asbestos training courses that includes the topics that each guest speaker will present;

(G) name of the responsible person as described in subsection (b)(2)(K) of this section;

(H) description of equipment and accessories that will be used for course instruction (including hands-on items, audiovisual aids, brochures, etc.);

(I) refund and cancellation policies. If the applicant will provide the Asbestos Abatement Worker course in a language other than English, the refund and cancellation policies must be submitted in that language;

(J) detailed course outline for each day that includes start and end times for each topic covered, scheduled break times, and specific hands-on training activities for each course;

(K) training manuals and related course materials that include all required elements listed in §296.93 of this title 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 the manual;

(L) policy regarding the administration of the multiple-choice examination to be given at the conclusion of training, in accordance with §296.93 of this title. The policy must state the following:

(i) each trainee must obtain a passing score of at least 70% on the multiple-choice examination before receiving a training certificate;

(ii) one multiple-choice re-examination is allowed per trainee for each course;

(iii) questions from the original examination will not be used for the re-examination;

(iv) if a trainee fails the re-examination, the trainee shall repeat the course and pass a new examination before issuance of the training certificate; and

(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;

(M) copy of each examination and re-examination that will be administered at the end of each course. If the applicant will provide the Asbestos Abatement Worker course in a language other than English, examinations must be submitted in that language;

(N) sample of the training certificate that will be issued to each trainee who completes the course and passes the final course examination. The certificate must include:

(i) a unique certificate number;

(ii) the school's name, address, and phone number;

(iii) printed name of accredited person;

(iv) discipline (name) of the training course completed;

(v) printed name and signature of instructor;

(vi) start and end dates of the training course;

(vii) expiration date of one year after the date upon which the person successfully completed the training course;

(viii) printed name and signature of the responsible person, principal officer, owner, or chief executive officer; and

(ix) statement that trainee:

(I) “has successfully completed the requisite training for asbestos accreditation under the Toxic Substances Control Act, Title II and meets the requirements of the Texas Asbestos Health Protection Rules,” for accredited courses; or

(II) “has successfully completed training that meets the requirements in accordance with the Texas Asbestos Health Protection Rules,” for the Asbestos Air Monitoring Technician course or the Texas Asbestos Law and Rules course; and

(O) sample of the training ID card that will be issued to each trainee who completes the course and passes the final course examination. The training ID card must include:

- (i) the name of the training provider;
- (ii) a color photo of the trainee’s face (without tinted glasses, hats, bandanas, or other articles that may obscure the head and face) taken on a white background;
- (iii) the name of the accredited person;
- (iv) the discipline of the training course completed;
- (v) the effective date of the accreditation;
- (vi) the unique certificate number shown on the training certificate for the accredited person; and
- (vii) the signature of the instructor.

(2) Renewal requirements. An applicant renewing a license shall submit the following:

(A) proof of active tax account status or tax exempt status from the Texas Comptroller of Public Accounts if the applicant is a Texas corporation;

(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”);

(C) if the applicant is located outside of Texas:

(i) a valid certificate of authority issued by the Secretary of State, authorizing the company to do business in Texas; or

(ii) a notarized letter from an official of the corporation certifying that the applicant is incorporated outside of Texas and shall not provide training courses within the state;

(D) a copy of all policies, training resources, training certificates, or training manuals that the applicant would like to amend, with a detailed description of the specific changes. All amendments must be approved before the training provider may implement the changes; and

(E) a list of all licensed asbestos instructors and guest speakers the training provider intends to use in the asbestos training courses. The list must include the courses that each instructor will teach and the topics that each guest speaker will present.

(e) Approval of additional training courses.

(1) Licensed training providers may request approval for additional training courses that were not submitted as part of the initial application for license by submitting:

(A) an Asbestos Course Approval Application for each course;

(B) the fee as outlined in §296.71 of this title (relating to Fees);

(C) training manuals and related course materials that include all required elements listed in §296.93 of this title 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 the manual;

(D) a detailed course outline for each day that includes start and end times for each topic covered, scheduled break times, and specific hands-on training activities for each course;

(E) a copy of each required examination that will be administered at the end of each course, if applicable. If the applicant will provide the Asbestos Abatement Worker course in a language other than English, examinations must be submitted in that language;

(F) the name and license number of the licensed asbestos instructor who will teach the additional course; and

(G) the name of any guest speaker.

(2) The licensed training provider will be notified in writing once the department grants approval of the additional course. Training providers may not add the additional training course to their schedule, advertise, accept payment for, or conduct the course until approved by the department.

(f) Guest speaker approval, revocation, and suspension.

(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 knowledge based on education, research, or experience in a particular area of study related to the course content being taught. Training providers seeking approval for a guest speaker must submit a completed Asbestos Guest Speaker Approval Application Form and sufficient documentation to show the person's knowledge, experience, and expertise. Acceptable documentation may include:

(A) official academic transcripts or diploma specifying major;

(B) technical experience;

(C) a verifiable resume; and

(D) relevant, verifiable work experience.

(2) Revocation or suspension of approval. The department may revoke guest speaker approval if the guest speaker is not providing training that meets the requirements of the MAP or this chapter, or if it is discovered that the guest speaker's qualifications are no longer valid or current.

§296.92. Asbestos Training Instructor.

(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.

(b) Scope of practice.

(1) Practice and limitations.

(A) An asbestos training instructor must:

(i) teach department-approved asbestos training courses, in accordance with the MAP and this subchapter; and

(ii) be able to read, write, and communicate effectively in the language in which the course is taught.

(B) An asbestos training instructor may not:

(i) teach courses for accreditation under the MAP or courses required for a license from the department:

(I) independent of a licensed 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

(iii) engage in acts prohibited in §296.31 of this title (relating to Code of Ethics for Licensees).

(2) Responsibilities. An asbestos training instructor shall:

(A) confirm with each trainee that the training provider has informed the trainee of the requirements in §296.91(b)(2)(C) of this title;

(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 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 of this title (relating to Asbestos Training Courses);

(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) of this title;

(J) record each trainee's examination score;

(K) comply with requirements for training courses in §296.93 of this title;

(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 instructions for locating the registration form for the state licensing examination and examination schedule on the department's website.

(c) Initial and renewal license requirements. To receive or renew a license in accordance with this section, all applicants shall submit a completed application in accordance with §296.42 of this title (relating to Initial and Renewal Applications) and documentation required in this section. An out-of-state applicant must comply with §296.44 of this title (relating to Out-of-State Applicants).

(1) Initial requirements. An applicant for an initial license shall submit the following:

(A) An applicant for an initial license must have achieved one of the following combinations of education, work experience, and teaching experience:

(i) a bachelor's degree in a natural or physical science with 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;

(ii) a bachelor's degree with at least six 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;

(iii) an associate's degree or successful completion of 60 college credit hours with at least one year 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; or

(iv) 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, post-secondary education level, or teaching adult learners at a vocational school, a trade school, or other similar setting approved by the department.

(B) 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.

(C) An applicant for initial license must submit acceptable documentation of the relevant education, work, and teaching experience as described in subparagraph (A) of this paragraph. The documentation may include:

(i) official academic transcript or diploma that verifies the major;

(ii) description of experience performing asbestos-related activities that includes:

(I) project name and location;

(II) start and end date;

(III) description of duties performed; and

(IV) name and contact information of individual or office that can verify the experience;

(iii) description of teaching experience that includes:

(I) course title and description;

(II) start and end date;

(III) location or institution; and

(IV) name and contact information of individual or office that can verify the teaching experience; and

(iv) proof of license and/or accreditation to verify that work was performed in accordance with applicable laws and rules.

(D) An applicant for an initial license must submit training certificates for the initial asbestos training courses and all subsequent refresher training courses to show current and valid accreditation for the courses the instructor will teach;

(2) Renewal requirements. An applicant for a renewal license shall submit proof of current and valid accreditation for the courses the applicant will teach.

(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 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.

### §296.93. Asbestos Training Courses.

(a) General training requirements.

(1) The MAP requires that each of the approved training disciplines be separate and distinct from the others. Training courses for all disciplines must be in accordance with the MAP, except the Asbestos Air Monitoring Technician and Texas Asbestos Law and Rules courses, which are specific to Texas.

(2) Each initial and refresher training course, including hands-on-training, must be specific to a single discipline and not combined with other training.

(3) The Asbestos Air Monitoring Technician and Texas Asbestos Law and Rules courses are department-approved courses and not MAP courses. Any such courses conducted by training providers not licensed by the department will not apply toward license requirements.

(4) 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.

(5) Initial training courses must be conducted as follows:

(A) one day of training must be a minimum of eight hours and include:

(i) at least 6 hours and 40 minutes of classroom instruction, hands-on training, and field trips (excluding field trip travel time); and

(ii) 80 minutes for breaks and lunch. No more than four hours of instruction may be given without at least a 30-minute break;

(B) trainees will not be allowed to attend more than eight hours of classroom instruction, hands-on training, and field trips in a 24-hour period;

(C) evening instruction must not exceed 4 hours in any single session; and

(D) the course must be completed within 14 calendar days of the first class.

(6) Refresher training courses must be conducted as follows:

(A) one day of training must be a minimum of eight hours and include:

(i) at least 6 hours and 40 minutes of classroom instruction, hands-on training, and field trips (excluding field trip travel time); and

(ii) 80 minutes for breaks and lunch;

(B) one half-day of training must be a minimum of four hours and include:

(i) at least 3 hours and 40 minutes of classroom instruction; and

(ii) 20 minutes for breaks.

(7) 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 allowed.

(8) 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.

(9) Student to instructor ratios must be as follows:

(A) hands-on training activities must not exceed 15 to 1; and

(B) all other training course sessions must not exceed 25 to 1.

(10) Methods of instruction.

(A) At least 50% of the classroom instruction must be presented by the instructor. Instructors must direct and oversee 100% of the hands-on training.

(B) Audiovisual materials are not substitutes for the instructor-led portion of the class or the required hands-on training.

(11) All training courses must be taught in English, except the Asbestos Abatement Worker course. The Asbestos Abatement Worker course may be taught in another language, provided the instructor is able to speak, read, and write in that language, and training materials and examinations are in the same language.

(b) Initial training course requirements.

(1) Asbestos Abatement Worker course. The Asbestos Abatement Worker course must be at least four training days. This course must include lectures, demonstrations, at least 14 hours of hands-on training, individual respirator fit-testing, course review, and a written examination of 50 multiple-choice questions. Successful completion of the course will require passing the examination with a score of at least 70%. The course must adequately address the following in accordance with the MAP:

- (A) 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;
- (I) relevant federal, Texas, and local regulatory requirements, procedures and standards;
- (J) establishment of respiratory protection programs and medical surveillance programs;
- (K) hands-on training that includes work area preparation, decontamination chamber construction, cleaning and disposal, and respirator fit-testing and maintenance; and
- (L) course review.

(2) Asbestos Contractor/Supervisor course. The Asbestos Contractor/Supervisor course must be at least five training days. The course must include lectures, demonstrations, at least 14 hours of hands-on training, individual respirator fit-testing, course review, and a written examination of 100 multiple-choice questions. Successful completion of the course will require passing the examination with a score of at least 70%. The course must adequately address the following in accordance with the MAP:

- (A) 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;
- (I) relevant federal, Texas, and local regulatory requirements and standards;
- (J) establishment of respiratory protection programs and medical surveillance programs;
- (K) hands-on training that includes work area preparation, decontamination chamber construction, cleaning and disposal, and respirator fit-testing and maintenance;
- (L) insurance and liability issues;
- (M) recordkeeping for asbestos abatement projects;
- (N) supervisory techniques for asbestos abatement activities;
- (O) contract specifications; and
- (P) course review.

(3) Asbestos Air Monitoring Technician course. The Asbestos Air Monitoring Technician course must be at least three training days. The course must include lectures, demonstrations, hands-on individual respirator fit-testing, course review, and a written examination consisting of 50 multiple-choice questions. Successful completion of the course will require passing the examination with a score of at least 70%. The course must adequately address the following:

- (A) the health effects of asbestos exposure including:
  - (i) the nature of asbestos-related diseases;
  - (ii) routes of exposure;
  - (iii) no known safe exposure level;
  - (iv) the synergistic effect between cigarette smoking and asbestos exposure;
  - (v) the latency periods for asbestos-related diseases; and

(vi) a discussion of the relationship of asbestos exposure to asbestosis, lung cancer, mesothelioma, and cancers of other organs;

(B) the following OSHA regulations:

(i) 29 CFR §1910.134 (relating to Respiratory Protection), OSHA's standard for respirators;

(ii) 29 CFR §1910.1001, Appendix A, (relating to OSHA Reference Method–Mandatory);

(iii) 29 CFR §1910.1001, Appendix B (relating to Detailed Procedure for Asbestos Sampling and Analysis–Non-Mandatory);

(iv) 29 CFR §1910.1200 (relating to Hazard Communication); and

(v) 29 CFR §1926.1101 (relating to Asbestos), OSHA's asbestos standard for the construction industry;

(C) the following sections of TAHPR:

(i) §296.21 of this title (relating to Definitions);

(ii) §296.51 of this title (relating to Asbestos Air Monitoring Technician);

(iii) §296.192 of this title (relating to General Requirements for Asbestos Abatement in Public Buildings);

(iv) §296.193 of this title (relating to Abatement Practices and Procedures for Full Containment in Public Buildings);

(v) §296.194 of this title (relating to Operations and Maintenance (O&M) Requirements for Public Buildings); and

(vi) §296.200 of this title (relating to Recordkeeping);

(D) 40 CFR Part 763, Subpart E, Appendix A (relating to Interim Transmission Electron Microscopy Analytical Methods–Mandatory and Nonmandatory–and Mandatory Section to Determine Completion of Response Actions), overview of AHERA air monitoring requirements and AHERA sampling;

(E) asbestos sampling methods including:

(i) calibration of air sampling pumps;

(ii) air sample volume calculations;

(iii) sampling strategies for clearance monitoring;

area);

(iv) types of air samples (personal breathing zone versus fixed-station area);

and clearance monitoring);

(v) sampling location and objectives (pre-abatement, during abatement, and clearance monitoring);

(vi) number of samples to collect;

(vii) minimum and maximum air volumes per the NIOSH 7400 method;

(viii) period of sampling;

(ix) aggressive clearance sampling;

(x) interpretations of sampling results;

(xi) quality assurance (for example, Z-test); and

(xii) special sampling problems (crawl spaces, unacceptable samples for laboratory analysis, sampling in occupied buildings);

(F) evaluation methods including:

(i) transmission electron microscopy (analysis feedback affecting flow rates, EPA's recommended technique for analysis of final air clearance samples);

(ii) phase contrast microscopy;

(iii) AHERA's limits on the use of phase contrast microscopy;

(iv) what each technique measures (phase contrast microscopy versus transmission electron microscopy);

(v) analytical methodologies;

(vi) AHERA transmission electron microscopy protocol;

(vii) NIOSH 7400 method;

(viii) OSHA reference method (non-clearance); and

(ix) EPA recommendation for clearance (transmission electron microscopy);

(G) sampling equipment including:

(i) sampling pumps (low volume versus high volume, battery versus plugin);

(ii) flow regulating devices;

- (iii) sampling media;
- (iv) types of filters;
- (v) types of cassettes and how to prepare for the type of analysis;
- (vi) filter orientation;
- (vii) storage and shipment of filters;
- (viii) calibration techniques;
- (ix) primary and secondary calibration standards;
- (x) temperature and pressure effects;
- (xi) environmental conditions that prohibit analysis; and
- (xii) frequency of calibration;

(H) calculating sampling times including:

- (i) documenting start time and end time; and
- (ii) calculating total time;

(I) time weighted average (TWA) calculation including 8-hour TWA and TWA

formula;

(J) calibration of air sampling pumps including:

- (i) primary versus secondary calibration standards;
- (ii) soap film flowmeter (SFF);
- (iii) in-line and inlet rotameter positioning;
- (iv) rotameter calibration worksheet;
- (v) electronic calibrators;
- (vi) temperature and pressure correction and effects on sample integrity;
- (vii) high volume air sampling pumps and calibration; and
- (viii) critical orifices;

(K) air sampling logs and records including:

- (i) data elements;

- (ii) air sample labeling;
- (iii) chain of custody forms;
- (iv) shipping and handling methods;
- (v) cassette labeling; and
- (vi) recordkeeping and field work documentation;

(L) types of air sampling including:

- (i) baseline;
- (ii) area;
- (iii) personal;
- (iv) clearance;
- (v) area sampling during glove bag operations; and
- (vi) upwind and downwind; and

(M) course review.

(4) Asbestos Inspector course. The Asbestos Inspector course must be at least three training days. The course must include lectures, demonstrations, 4 hours of hands-on training, individual respirator fit-testing, course review, and a written examination consisting of 50 multiple choice questions. Successful completion of the course will require passing the examination with a score of at least 70%. The course must adequately address the following in accordance with the MAP:

- (A) background information on asbestos;
- (B) potential health effects related to asbestos exposure;
- (C) functions/qualifications and role of inspectors;
- (D) legal liabilities and defenses;
- (E) understanding building systems;
- (F) public/employee/building occupant relations;
- (G) pre-survey planning, and review of previous survey records;
- (H) inspecting for friable and nonfriable ACM;
- (I) assessing the condition of friable ACM;

- (J) bulk sampling/documentation of asbestos;
- (K) respiratory protection;
- (L) personal protective equipment;
- (M) hands-on training that includes a pre-field-trip simulated asbestos survey with bulk sampling of non-ACBM, and respirator fit-testing and maintenance;
- (N) recordkeeping and writing the asbestos survey report;
- (O) federal, state, and local regulations;
- (P) field trip that includes a building walk-through at a suitable location outside of the classroom; and
- (Q) course review.

(5) Asbestos Management Planner course. The Asbestos Management Planner course must be two training days. The prerequisite for admission to the course is to provide a copy of a current and valid asbestos inspector training certificate. The course must include lectures, demonstration, course review, and a written examination consisting of 50 multiple choice questions. Successful completion of the course will require passing the examination with a score of at least 70%. The course must adequately address the following in accordance with the MAP:

- (A) course overview;
- (B) evaluation and interpretation of survey results;
- (C) hazard assessment;
- (D) legal implications;
- (E) evaluation and selection of control options;
- (F) role of other professionals;
- (G) developing an operations and maintenance (O&M) plan;
- (H) regulatory review;
- (I) recordkeeping for the management planner;
- (J) assembling and submitting the management plan;
- (K) financing abatement actions; and
- (L) course review.

(6) Asbestos Project Designer course. The Asbestos Project Designer course must be at least three training days. This course must include lectures, demonstrations, a field trip, course review,

and a written examination of 100 multiple-choice questions. Successful completion of the course will require passing the examination with a score of at least 70%. The course must adequately address the following in accordance with the MAP:

- (A) background information on asbestos;
- (B) potential health effects related to asbestos exposure;
- (C) overview of abatement construction projects to include clearance of the project area;
- (D) safety system design specifications, including written sampling rationale for air clearance;
- (E) field trip;
- (F) employee personal protective equipment;
- (G) additional safety hazards;
- (H) fiber aerodynamics and control;
- (I) designing abatement solutions 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;
- (R) occupied buildings, special design procedures required in occupied buildings, education of occupants, extra monitoring recommendations, staging of work to minimize occupant exposure, and scheduling of renovation to minimize exposure;
- (S) how to accomplish a complete visual inspection;
- (T) relevant federal, Texas, and local regulatory requirements; and

(U) course review.

(7) Texas Asbestos Law and Rules course. The Texas Asbestos Law and Rules course must be three hours. The course must adequately address the law and rules for the following:

- (A) asbestos management in public buildings;
- (B) notification requirements for public buildings;
- (C) operations and maintenance (O&M) requirements for public buildings;
- (D) abatement practices and procedures for public buildings;
- (E) asbestos licensing requirements;
- (F) recordkeeping requirements;
- (G) exemptions; and
- (H) conflicts of interest.

(c) Refresher training course requirements.

(1) An annual refresher training course is required for each discipline to maintain accreditation or licensure. Each refresher training course must adequately address the following:

- (A) federal, state, and local regulations;
- (B) developments in state-of-the-art procedures; and
- (C) key aspects of the initial training course.

(2) Refresher training courses must be at least the following:

- (A) asbestos abatement worker--one day of training;
- (B) asbestos contractor/supervisor--one day of training;
- (C) asbestos inspector--one half-day of training;
- (D) asbestos management planner--one half-day of training;
- (E) asbestos project designer--one day of training; and
- (F) asbestos air monitoring technician--one half-day of training.

## Subchapter G: State Licensing Examination

### §296.111. General Examination Provisions.

- (a) All license applicants, except asbestos abatement worker applicants, must pass the examination to qualify for a license.
- (b) A passing examination score may not be used to obtain more than one license.
- (c) Applicants must submit all documents and fees necessary to complete the licensing process within three years after passing the required examination. If the applicant does not complete the application process within three years, the applicant must prepare and submit a new application with the application fee and retake the examination.
- (d) The department will withdraw examination approval and void an application to take the examination if an applicant:
  - (1) fails to show for a scheduled examination; or
  - (2) does not take an examination within six months of submitting the application.
- (e) The department will make reasonable modifications for a qualified person with a disability during the licensing examination process. Applicants must follow the Health and Human Services System's Reasonable Modifications in the Licensing and Certification Examination Process. Applicants may contact the department for additional information.

### §296.112. Examination Schedule.

The department publishes all scheduled examination dates and locations on its website. The department may cancel or reschedule examinations when necessary. A request to take an examination on a date not listed on the schedule must be submitted to the department in writing. The department will approve or deny a request at the department's discretion. Scheduling an examination on a date not listed on the schedule may require an additional examination fee.

### §296.113. Examination Qualifications.

- (a) Individuals must complete all required training courses from a department-licensed training provider or a training provider approved by another state that administers training in accordance with the MAP (40 CFR Part 763, Subpart E, Appendix C (relating to Asbestos Model Accreditation Plan)) before applying to take an examination.
- (b) Individuals who have completed all required training in another state must meet the requirements in §296.44 of this title (relating to Out-of-State Applicants).
- (c) A copy of all required initial and refresher training certificates proving current accreditation must be submitted with the examination application.

### §296.114. Examination Registration and Confirmation.

(a) To register for an examination, an applicant must submit a completed examination application, the examination fee outlined in §296.71 of this title (relating to Fees), and documentation of all required training courses at least 15 calendar days before the desired examination date.

(b) Submission of an application does not guarantee admission for a specific examination. The department will attempt to schedule the applicant for the requested date and location, but space limitations may require the department to offer an examination date and location other than the preferred selection.

(c) The department will email, fax, or mail an examination confirmation letter. The confirmation letter will include the date, location, and time of the examination.

#### §296.115. Examination Admittance and Conduct.

(a) To enter the test site, the examinee must present the examination confirmation letter from the department and government-issued photo identification.

(b) If the proctor finds an examinee's conduct to be inappropriate, the proctor may terminate the examination by collecting the examination materials and asking the examinee to leave. The examination fee will not be refunded. An examination that has been terminated as a result of an examinee's inappropriate conduct counts as an examination attempt.

(c) If an examinee's conduct involves an act of dishonesty, the department may withdraw the examination confirmation letter, impose administrative penalties, and revoke or deny a license.

#### §296.116. Grading Examinations and Reporting Scores.

(a) A grade of 70% must be achieved in order to pass the examination.

(b) Scores will be mailed to the examinee no later than 30 working days after the examination is administered.

(c) Notification of a failing grade will be accompanied by instructions regarding re-examination.

(d) If the examination is graded or reviewed by a testing service, the department will notify the examinee of the results received from the testing service no later than the 14th day after receiving the results. If notice of the examination results will be delayed for more than 90 days after the examination date, the department will notify the examinee of the reason for the delay before the 90th day. The department may require a testing service to notify an examinee of the results directly.

#### §296.117. Re-examination.

Individuals applying for re-examination must submit a new examination application and pay the required fee. An applicant may take a maximum of two re-examinations after failing the initial examination. Applicants who fail the state examination three times per license category must repeat the initial training course(s) for the intended license and submit a new examination application. Re-examination must occur within one year of the previous examination.

#### §296.118. Analysis of Examination Performance.

The department will furnish an analysis of the examinee's performance on a failed examination if requested in writing by the examinee. The request must be made within one year of the examination date.

Subchapter H: License and Registration Provisions related to Military Service Members, Military Veterans, and Military Spouses

§296.131. Military Service Members, Military Veterans, and Military Spouses.

(a) Purpose. This subchapter establishes licensing procedures for military service members, military veterans, and military spouses in accordance with Occupations Code, Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses.

(b) An applicant shall provide documentation of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The department will not process the application of a person who fails to provide appropriate documentation.

(c) Upon request, an applicant shall provide acceptable proof of current license issued by another jurisdiction and proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of Texas.

(d) A verified military service member or military veteran 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.

(e) 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 (h) of this section.

(f) In accordance with Occupations 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 another jurisdiction that has licensing requirements substantially equivalent to those of Texas.

(g) 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 there are no unresolved complaints against the applicant and there is no other bar to licensure, such as noncompliance with a department order. The applicant must prove current accreditation.

(h) If the department issues an initial license to an applicant who is a military spouse in accordance with subsection (e) 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.

(i) Under certain circumstances, examination and licensing fees may be waived for military service members, military veterans, and military spouses.

#### Subchapter I: Accreditation

#### §296.151. Asbestos Abatement in a Commercial Building.

(a) Activities. In a commercial building, a person must be appropriately accredited as an asbestos abatement worker, asbestos contractor/supervisor, asbestos project designer, or asbestos inspector, in accordance with the MAP, to engage in:

(1) work, supervision, or design to carry out any of the following activities:

(A) a response action other than an SSSD activity;

(B) a maintenance activity that disturbs friable ACBM other than an SSSD activity; or

(C) a response action for a major fiber release episode;

(2) conducting asbestos surveys; or

(3) project management to observe abatement activities performed by accredited contractors/supervisors, serving as the commercial building owner's representative to ensure that abatement work is completed according to specifications and plans and in compliance with all relevant statutes and regulations.

(b) Accreditation course. Persons receive accreditation by successfully completing the appropriate asbestos training course as described in the MAP, and:

(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.

(c) Proof of accreditation. Persons performing an asbestos-related activity must provide proof of current accreditation at the work site by having one of the following:

(1) a government-issued photo identification (ID) with either a Texas training course certificate from a Texas-licensed asbestos training provider or an accreditation certificate from another state; or

(2) a training ID card from a Texas-licensed asbestos training provider or an accreditation photo ID card from another state.

(d) Reaccreditation. Annual refresher training is required for reaccreditation. An accredited person has a 12-month grace period in which to complete a refresher training course after the expiration

date of the accreditation certificate. After that grace period, initial training must be repeated to become reaccredited.

(e) Standards. Work practices and accreditation requirements for asbestos-related activities described in this section must be at least as stringent as applicable federal laws and regulations relating to the MAP and NESHAP.

#### Subchapter J: Exemptions

##### §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.

##### §296.172. Emergency Abatement.

In a catastrophic emergency affecting public health or safety that results from a sudden, unexpected event that is not a planned renovation or demolition, where asbestos abatement is required, the department, on receipt of notice, may waive the requirement for a license.

##### §296.173. Written Certification Used as an Asbestos Survey.

A Texas-registered architect or Texas-licensed professional engineer does not need a license from the department to provide the written certifications described in §296.191 of this title (relating to Asbestos Management in Public Buildings, Commercial Buildings, and Facilities).

##### §296.174. Small Projects and Repetitive Tasks in a Public Building.

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.

##### §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 ACM per occurrence as described in §296.195 of this title (relating to Guidance for Regulatory Threshold for Nonfriable Material in a Public Building).

#### Subchapter K: Operations

##### §296.191. Asbestos Management in Public Buildings, Commercial Buildings, and Facilities.

(a) Public building owner responsibilities. The public building owner is responsible for compliance with this chapter for the presence, condition, disturbance, renovation, demolition, and disposal of any ACBM and ACWM encountered in the construction, operations, maintenance, or furnishing of that building. Prior to operations and maintenance, renovation, or demolition, building owners are required to have an inspection performed and have the ACBM abated in accordance with this chapter. Building owners are required to inform in writing, or document oral communication between the owner (or authorized representative) and those who perform any type of maintenance, custodial, renovation, or demolition work, of the presence and location of ACBM prior to the start of any asbestos-related activity. An authorized representative may perform the following functions; however, the building owner ultimately retains:

(1) the responsibility for hiring a licensed asbestos contractor and a licensed asbestos consultant to perform asbestos-related activities;

(2) the responsibility for ensuring compliance with this chapter during periods of vacancy;

(3) the obligation to inform those who enter the building for purposes of construction, maintenance, installation, repairs, etc., of the presence and location of ACBM that could be disturbed or dislodged by those activities, and to arrange for its proper handling;

(4) the responsibility for periods when the building is under management by others;

(5) the responsibility to ensure licensees have workers' compensation insurance issued by an insurance company authorized to do business in Texas, or licensees are exempted from the insurance requirements of this chapter, in accordance with §296.45(g) of this title (relating to Insurance Requirements), if workers' compensation insurance is required by the owner or by the specifications and plans for the asbestos-related activity; and

(6) the responsibility to ensure that the regulated area meets the clearance level of 0.01 f/cc prior to reoccupancy of that area.

(b) Commercial building owner responsibilities. The commercial building owner is responsible for compliance with this chapter for the presence, condition, disturbance, renovation, demolition, and disposal of any asbestos encountered in the construction, operations, maintenance, or furnishing of that commercial building. Prior to operations and maintenance, renovation, or demolition, commercial building owners are required to have an inspection performed and have the ACBM abated in accordance with the NESHAP. The commercial building owner retains:

(1) the responsibility for ensuring compliance with this chapter during periods of vacancy; and

(2) the responsibility for periods when the building is under management by others.

(c) Facility owner responsibilities. The facility owner is responsible for compliance with this chapter for the presence, condition, disturbance, renovation, demolition, and disposal of any asbestos encountered in the construction, operations, maintenance, or furnishing of that facility. Prior to operations and maintenance, renovation, or demolition, facility owners are required to inspect for the presence of asbestos and abate ACBM in accordance with the NESHAP. The facility owner retains:

(1) the responsibility for ensuring compliance with the NESHAP during periods of vacancy; and

(2) the responsibility for periods when the facility is under management by others.

(d) Mandatory survey for ACBM before renovation or demolition. Before any renovation or dismantling outside of or within a public building, commercial building, or facility, including preparations for partial or complete demolition, owners must have an asbestos survey performed. The work area and all immediately surrounding areas that could foreseeably be disturbed by the actions necessary to perform the project must be thoroughly surveyed and sampled as applicable before renovation or demolition. A copy of the asbestos survey report must be produced upon request by the department within 10 working days. A building may be demolished with RACM in place if a state or local government orders the demolition because the building is structurally unsound and in danger of imminent collapse as determined by a professional engineer or a city, county, or state government official who is qualified to make that decision. If an owner is unable to obtain a survey because the building is structurally unsound and unsafe to enter, and the owner has been unable to obtain an order for demolition and has a letter from a professional engineer stating the building is structurally unsound and in danger of imminent collapse, then the owner may contact the department to request a waiver from survey. Documentation supporting the inability to obtain an order must be submitted with the request. If a survey cannot be performed before demolition starts due to the building being structurally unsound and unsafe to enter, all suspect material must be treated as RACM in accordance with NESHAP 40 CFR §§61.141, 61.145(a)(3) and (c)(4)-(9), and 61.150(a)(3). Additional information related to determining suspect ACBM is located on the department's website at <http://www.dshs.texas.gov/>.

(1) In a public building, the mandatory survey requirement may be met in one of the following two ways.

(A) A person appropriately licensed in accordance with this chapter performs a survey using the AHERA protocol specified in 40 CFR §§763.85-763.88 (relating to Asbestos-Containing Materials in Schools), which is the required method for schools. To demonstrate that there is no ACBM, the licensed individual must collect a minimum of three samples from each suspect homogeneous area.

(B) A Texas-registered architect or a Texas-licensed professional engineer may compile the information from MSDSs and SDSs of the materials used in the construction of the building and, finding no asbestos in any of those materials, prepare a signed written certification that he or she has reviewed the MSDSs and SDSs for all materials used in the building's construction, and that none of those materials 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 the specific dates on which the work was completed.

(2) 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.

(3) In a facility that is not a public or commercial building, the survey must conform to 40 CFR §61.145 (relating to Standard for Demolition and Renovation). OSHA regulations or EPA regulations may apply.

(e) Asbestos survey reports.

(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.

(2) A comprehensive asbestos survey covering the entire building is required before demolition of the building.

(3) Asbestos surveys remain acceptable if the asbestos survey was done in compliance with the TAHPR in effect at the time the asbestos survey was completed, and if the asbestos survey continues to represent accurately the types of material, location, and the condition of the material that will be disturbed.

(4) An environmental assessment report may not be used as an asbestos survey report unless it contains all of the required elements of an asbestos survey report.

(f) Sampling for asbestos in a public building. A licensed asbestos inspector must perform an asbestos survey in accordance with 40 CFR §§763.85-763.88. To demonstrate that there is no ACBM 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. 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. Building materials that have not been surveyed as required in this subsection and which are suspected of containing asbestos must be treated as ACBM.

(1) When conducting core sample analysis, each layer must be analyzed separately. Reporting the results as an average for a composite result is not allowed for a public building.

(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.

(3) Results of visual estimation by PLM analysis of greater 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."

(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.

(1) Demolition and/or renovation of a public building. Before performing any demolition in a public building, building owners shall ensure that all suspect ACBM is surveyed and RACM is abated in accordance with NESHAP and this chapter. Before performing any renovation in a public building, building owners shall ensure that all suspect ACBM that could foreseeably be disturbed in the area to be renovated is surveyed, and ACBM is abated in accordance with this chapter.

(2) Demolition and/or renovation of a commercial building. Before performing any O&M, renovation, or demolition activity in a commercial building, owners or operators shall ensure that all suspect ACBM is surveyed and RACM is abated in accordance with NESHAP and the MAP.

(3) Demolition and/or renovation of a facility. Before performing any O&M, renovation, or demolition activity in a facility, owners or operators shall ensure that all suspect ACBM is surveyed and RACM is abated in accordance with NESHAP.

(4) Demolition and/or renovation of a residential building containing four or fewer dwelling units. Two or more such residential buildings that are being demolished or renovated on the same site by the same owner or operator or owner or operator under common control as part of the same project are subject to the NESHAP requirements.

(A) Residential buildings 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 NESHAP.

(B) A residential building that is being demolished together with any other type of building as part of a larger private or public project (such as an urban renewal, shopping mall, or highway construction project) is subject to the NESHAP, and owners or operators shall ensure that all suspect ACM is surveyed and RACM is abated in accordance with NESHAP. If one residential building is the only building being demolished, NESHAP regulations do not apply.

(C) Nuisance residence demolition is subject to the NESHAP if two or more single family dwellings are under control of the same owner or operator, are located on one site, are part of a larger project, or are within 660 feet of each other.

(h) Demolition with ACM left in place.

(1) Category I nonfriable ACM may be left in place if it is not in poor condition, has not become friable, and will not become RACM during demolition.

(2) Category II nonfriable ACM may be left in place if the probability is low that the material will become RACM, or crumbled, pulverized, or reduced to a powder during demolition.

(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.

(i) Mandatory abatement project design for friable ACBM. It is mandatory to have a project designed and prepared by either a licensed asbestos consultant (for a public building) or an accredited project designer (for a commercial building) for all projects that involve any of the following activities:

(1) a response action other than an SSSD activity;

(2) a maintenance activity that disturbs friable ACBM other than an SSSD activity or a small project or repetitive task described in §296.198 of this title (relating to Procedures for Small Projects and Repetitive Tasks in Public Buildings); or

(3) a response action for a major fiber release episode.

(j) Mandatory abatement project design for nonfriable ACBM. It is mandatory to have a project designed by a licensed asbestos consultant for abatement projects in public buildings that have a combined amount of nonfriable asbestos exceeding 160 square feet of surface area, or 260 linear feet of pipe length, or 35 cubic feet of material to be removed. The exception to this requirement is for floor tile removed in accordance with §296.171 of this title (relating to Removal of Resilient Floor Covering) and projects described in §296.197 of this title (relating to Asbestos Abatement Practices and Procedures for Nonfriable Asbestos-Containing Building Material). In a commercial building, nonfriable material does not require a project design but must be treated in accordance with NESHAP.

(k) Asbestos control and abatement. A public building owner has the following options for managing the asbestos found in the owner's building.

(1) Building owners may hire a licensed asbestos consultant or licensed asbestos management planner to perform a comprehensive asbestos survey of the entire building that may be used for O&M activities, renovation, or demolition.

(2) Building owners may hire a licensed asbestos abatement contractor to conduct:

(A) asbestos abatement in accordance with §296.193 of this title (relating to Abatement Practices and Procedures for Full Containment in Public Buildings); and

(B) asbestos abatement of nonfriable ACBM using the work practices described in §296.197 of this title (relating to Asbestos Abatement Practices and Procedures for Nonfriable Asbestos-Containing Building Material).

(3) A building owner may hire a licensed asbestos abatement contractor or a licensed asbestos O&M contractor to conduct:

(A) small projects and/or repetitive tasks involving the disturbance of friable ACBM using the work practices described in §296.198 of this title (relating to Procedures for Small Projects and Repetitive Tasks in Public Buildings); and

(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).

(4) Building owners may hire or retain a licensed asbestos abatement contractor or a licensed asbestos O&M contractor to conduct SSSD activities or cleanup affecting asbestos. When utility work is to be performed, the building owner shall either have the affected ACM removed prior to the work of a utility contractor, or require the utility contractor to be licensed to handle ACM.

(5) Building owners may conduct:

(A) asbestos abatement projects if they obtain an asbestos abatement contractor's license, in accordance with §296.48 of this title (relating to Asbestos Abatement Contractor); and

(B) asbestos O&M activities within public buildings with their own employees for their own account if they obtain an asbestos O&M contractor license, in accordance with §296.50 of this title (relating to Asbestos Operations and Maintenance Contractor), have a licensed asbestos O&M supervisor, in accordance with §296.49 of this title (relating to Asbestos Operations and Maintenance Supervisor), and have registered asbestos abatement workers, in accordance with §296.46 of this title (relating to Asbestos Abatement Worker).

(6) Building owners may hire an asbestos management planner to develop a management plan to control O&M, renovation, and demolition.

(l) Mandatory notification. Notification is required in accordance with §296.211 of this title (relating to Notifications) under the following conditions.

(1) Notification is required for any demolition of a facility or public building, whether or not asbestos has been identified.

(2) In a public building, a notification to abate any amount of asbestos must be submitted to the department by the public building owner and/or operator.

(3) In a facility, a notification to abate amounts described in NESHAP must be submitted to the department by the facility owner and/or operator.

(m) Requirement for survey and management plan. If, in the opinion of the department following a site inspection of a public building, there appears to be a danger or potential danger from ACBM in poor condition to the workers or occupants of the building or the general public, the department will, by certified letter, require the building owner or authorized representative to immediately obtain an asbestos survey and asbestos management plan completed by a licensed asbestos inspector, licensed asbestos management planner, or licensed consultant. A copy of the management plan must be submitted for review and approval to the department within 90 days of receipt of the certified letter. Copies of the plan must be on file with the owner or management agency, and in the possession of the supervisor in charge of building operations and maintenance.

(n) Installation of new materials. A person may not install building materials or replacement parts in a public building unless:

(1) the person obtains a required MSDS or SDS showing that the materials or replacement parts contain 1.0% or less of asbestos; or

(2) the materials or replacement parts, according to the MSDSs or SDSs, contain greater than 1.0% asbestos, but there is no alternative material or part as demonstrated by the building owner or contractor; or

(3) a licensed asbestos inspector may sample new materials prior to installation, and based on the laboratory results, certify that the building or renovation is free of asbestos.

(o) The department may exempt a demolition or renovation project from the Act or NESHAP rules relating to demolition and renovation activities if:

- (1) the EPA has exempted the project from federal regulations; or
- (2) the department determines that:

(A) the project will use methods for the abatement or removal of asbestos that provide protection for the public health and safety at least equivalent to the protection provided by the procedures required in this chapter for the abatement or removal of asbestos; and

(B) the project does not violate federal law.

(p) Survey required. A municipality that requires a person to obtain a permit before renovating or demolishing a public or commercial building may not issue the permit unless the applicant provides one of the following types of documentation:

(1) written evidence acceptable to the municipality that an asbestos survey of all parts of the building affected by the planned renovation or demolition has been completed by a person licensed in accordance with the Act and this chapter (for a public building) or accredited under the MAP (for a nonpublic building) to perform a survey; or

(2) written certification from a Texas-registered architect or Texas-licensed professional engineer that, together with copies of the MSDSs, SDSs, and copies of any previous and subsequent asbestos survey reports may be used as an asbestos survey report. The certification must:

(A) identify the name of the building, the street address, and the specific area of the building to which the certification applies;

(B) certify that the Texas-registered architect or Texas-licensed professional engineer compiled and reviewed the information from MSDSs and SDSs of all products used in the construction of the building and has matched them by manufacturer to materials on-site in the construction;

(C) certify that none of the building materials are ACBM;

(D) specify whether the relevant work was new construction or renovation; and

(E) specify dates when the work was completed.

#### §296.192. General Requirements for Asbestos Abatement in Public Buildings.

(a) Responsibility. This section addresses general requirements for asbestos abatement projects in public buildings. It is the responsibility of owners of public buildings or their delegated agents to engage persons licensed in accordance with this chapter to perform any asbestos-related activity.

(b) Supervision.

(1) Every asbestos abatement project undertaken by a licensed contractor in a public building must be supervised by at least one licensed asbestos abatement supervisor and consultant or the consultant's designated project manager. A consultant or a project manager is not required for O&M

activities described in §296.194 of this title (relating to Operations and Maintenance (O&M) Requirements for Public Buildings).

(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.

(3) An asbestos abatement supervisor shall supervise the asbestos abatement activity from inside the containment area during at least 25% of each day on which asbestos abatement activity occurs.

(4) The asbestos consultant or designated project manager shall enter and inspect the containment before the start of the asbestos abatement daily and throughout the day to ensure the containment is in compliance with this chapter and the specifications and plans.

(5) Every O&M activity shall be supervised by at least one asbestos O&M supervisor or abatement supervisor during all periods of asbestos abatement activity.

(c) Employees. Each employee or delegated agent of any licensee who must intentionally disturb, handle, or otherwise work with ACM, or who engages in an asbestos abatement project, asbestos O&M activity, or other asbestos-related activity shall have an annual medical examination and respirator fit-test and be properly equipped, trained, and licensed in accordance with this chapter.

(d) Records. Project records for all asbestos-related activities in public buildings must be kept for 30 years from the date of project completion and made available for inspection and review upon request from the department. Project records include all violations issued against a licensee by the EPA, OSHA, or a state agency. The recordkeeping responsibilities for licensees are explained in §296.200 of this title (relating to Recordkeeping).

(e) Compliance inspections. Each licensee, RFCI contractor, and building owner shall assist and cooperate with all properly identified representatives of the department in the conduct of asbestos inspections or investigations at all reasonable or necessary times, with or without prior notice. Such inspections may be made at proposed, actual, or former sites of asbestos-related activities, or of the premises, records, equipment, and personnel of licensees or of those who have held licenses. It is a violation of the Act and this chapter to interfere with or delay an inspection or investigation conducted by a department representative. A licensee, RFCI contractor, or building owner or owner's representative may not deny entry to a properly identified representative of the department.

(f) Respiratory protection program. Each employer with employees performing asbestos-related activities shall be responsible for establishing and following a written respiratory protection program, as required by OSHA regulations in 29 CFR §1910.134 (relating to Respiratory Protection). Each employer shall maintain a current copy of the respiratory protection program at all project locations. A copy of 29 CFR §1910.134 is not acceptable as a written respiratory protection program. Respirators must be properly worn at all times in containment during asbestos abatement activity.

(1) The employer shall perform personal air monitoring to determine airborne concentrations of asbestos exposure to its employees in accordance with 40 CFR Part 763, Subpart G (relating to Asbestos Worker Protection), or 29 CFR §1926.1101 (relating to Asbestos).

(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.

(g) Suspect ACBM found during the asbestos abatement project. Suspect building materials found during an asbestos abatement project that have not been surveyed must be treated as ACBM. These materials may be proven to be non-asbestos-containing by laboratory analysis in accordance with §296.191(d) of this title (relating to Asbestos Management in Public Buildings, Commercial Buildings, and Facilities).

(h) Project monitoring. The asbestos consultant shall specify in writing the duties, responsibilities, and authority of the project manager and air monitoring technician.

(1) Air sampling.

(A) Baseline.

(i) 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) of this title. 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. A minimum of three samples must be collected on 0.8 micron mixed cellulose ester (MCE) filters loaded in cassettes with electrically conductive extension cowls. 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. Sampling and analysis must conform to the latest edition of the 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. 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.

(ii) Baseline air samples must be analyzed if the clearance level of 0.01 f/cc cannot be achieved.

(iii) Baseline air samples must be kept for no fewer than 30 days after clearance is achieved.

(B) Area air monitoring.

(i) Ambient air samples must be collected continuously during asbestos abatement activity and analyzed in accordance with the latest edition of the NIOSH 7400 method, counting rules A.

(ii) Ambient air samples must be collected inside containment adjacent to the abatement activities; outside containment but inside the building (if applicable); at the negative air unit discharge, but not directly in the airstream; immediately outside the entrance to the decontamination area (representative of the air being drawn into the area); outside the bag-out area; and at any other locations required by the specifications and plans. Only one cassette may be placed on a pump at a time.

(C) Clearance.

(i) Project clearance must consist of an initial visual inspection, followed by air clearance sampling, removal of containment, and a final visual inspection.

(ii) 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 the 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 electrically conductive extension 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/mm<sup>2</sup>. 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 1,250 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 (relating to 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.

(2) Other monitoring requirements.

(A) Initial visual inspection. The asbestos abatement contractor shall perform an initial visual inspection of the abatement area to confirm that all specified ACM has been removed, encapsulated, or enclosed. The asbestos abatement contractor shall ensure that all abatement-related items are removed from the containment excluding negative air machine(s) and equipment essential to maintain the containment and to perform the visual inspection. Once the abatement contractor has confirmed that all specified ACM has been addressed, the asbestos consultant or project manager designated by the asbestos consultant must perform a visual inspection to verify that all specified ACM has been removed, encapsulated, or enclosed. The visual inspection must be performed in accordance with the specifications and plans and federal regulations.

(B) Final visual inspection. A final visual inspection must be performed after the removal of containment to determine if any ACM has escaped the containment or any ACWM remains. This visual inspection must be conducted by a licensed asbestos consultant or project manager designated by the asbestos consultant. The licensed asbestos abatement contractor shall abate all ACM and remove any ACWM discovered by the final visual inspection.

(3) Deviations. A licensed asbestos consultant shall design the air monitoring scheme and may deviate from this subsection only if the consultant can show that the deviation is as protective of public health. The asbestos consultant shall, upon request by the department, provide documentation and justification to support deviations and must be able to demonstrate that the design meets the requirements of 40 CFR Part 763, Subpart E (relating to Asbestos-Containing Materials in Schools) and other applicable regulations.

(i) Posting documents. Licensed asbestos abatement contractors, licensed O&M contractors, and RFCI contractors shall post the following documents visible to the public at the entrance to the regulated area:

- (1) the Violation Notification Procedure poster issued by the department; and

(2) copies of any asbestos-related orders issued by the department or any other order from the federal or state asbestos-regulating authorities. These orders must be posted for 12 months from the date the order becomes effective.

(j) Prohibitions. Solvents with a flash point of 140 degrees Fahrenheit or below must not be used.

#### §296.193. Abatement Practices and Procedures for Full Containment in Public Buildings.

(a) General provisions. The following general work practices are minimum requirements for protection of public health, and do not constitute complete or sufficient specifications and plans for an asbestos abatement project. If an asbestos abatement project has specifications and plans that contain asbestos abatement activities that are more detailed than are found in this 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 this chapter. The specifications and plans written for the asbestos abatement project must also include the required air clearance procedures.

(1) Federal work practices for asbestos abatement are referenced in 40 CFR §61.145 (relating to Standard for Demolition and Renovation) and §61.150 (relating to Standard for Waste Disposal for Manufacturing, Fabricating, Demolition, Renovation, and Spraying Operations).

(2) An asbestos abatement project design must be prepared by a licensed asbestos consultant in accordance with §296.191 of this title (relating to Asbestos Management in Public Buildings, Commercial Buildings, and Facilities).

(A) A licensed asbestos consultant who designs a project that includes dry removal or no negative air must submit the design with a written request for approval to the department. The request must include the licensed asbestos consultant's certification that the design is as protective of public health as the work practices described in this section. The request must include documentation that a certified industrial hygienist (CIH) or a professional engineer (PE) licensed in Texas approved the design. The consultant must receive written approval from the department before beginning the project.

(B) A licensed asbestos consultant who designs a project with work practices that differ from this section must document the variance on the department's notification form. The notification form must clearly describe the work practices and demonstrate how the specific work practices are as protective of public health as the work practices in this section.

(3) If ACBM is to be removed, encapsulated, or enclosed, it must be within a regulated area.

(4) Only licensees, emergency responders as defined in §296.21(39) of this title (relating to Definitions), or appropriate governmental 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 a 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.

(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.

(b) Containment requirements.

(1) Plastic sheeting. When specified by a licensed asbestos consultant that fire retardant plastic sheeting must be used, it must be certified by the Underwriters Laboratory (UL) as being fire retardant.

(2) Objects within containment. All movable objects must be removed from the containment before the start of asbestos abatement. Contaminated non-porous items that are to be salvaged or reused must be decontaminated. Porous items that are contaminated must be disposed of as ACWM. All non-movable objects that remain in the containment must be decontaminated and covered with a minimum of 4-mil thick plastic sheeting, secured in place.

(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.

(4) Floor preparation. Floors must be sealed to prevent water leakage. All floor surfaces must be completely covered by a minimum of two layers of 6-mil thick plastic sheeting with at least a dart impact of 270 grams and tear resistance of machine direction (M.D.) 512 grams and transverse direction (T.D.) of 2,067 grams or at least 6-mil thickness. Floor sheeting must extend up sidewalls at least 12 inches and be sized to minimize the number of seams. No seams may be located at wall-to-floor joints.

(5) Wall preparation. All wall surfaces must be completely covered by a minimum of two layers of 4-mil thick plastic sheeting. Wall sheeting must be installed so as to minimize seams and must extend beyond wall-to-floor joints at least 12 inches. The wall sheeting must overlap the floor sheeting. No seams may be located at wall-to-wall joints. A viewing window must be included in the wall to permit the viewing of at least 51% of the abatement work area, unless a licensed asbestos consultant specifies a viewing window is not practical. The window must be constructed of a transparent, shatter-resistant panel, also called acrylic or acrylic glass, which measures approximately 18 inches by 18 inches. The bottom of the window must be at a reasonable height for viewing.

(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.

(7) Bag-out area. A licensed asbestos consultant shall specify when a bag-out area is required as part of containment. A bag-out area may not be used to decontaminate personnel.

(8) 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.

(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 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 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:

(1) remove all gross contamination and debris from their protective clothing before entering the equipment room;

(2) remove their protective clothing in the equipment room and deposit the clothing in 6-mil thick plastic impermeable bags or containers labeled in accordance with subsection (h)(1) of this section;

(3) not remove their respirators in the equipment room;

(4) shower before entering the clean room; and

(5) enter the clean room before changing into street clothes.

(d) 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.

(e) Warning signs. Danger signs, in accordance with 29 CFR §1926.1101 (relating to Asbestos), must be displayed, in both Spanish and English, at all entrances to regulated areas, and on the outside of critical barriers. Asbestos caution tape may not be substituted for warning signs.

(f) Cleaning. Cleaning procedures must include wet methods and HEPA vacuuming. A HEPA vacuum equipped with HEPA filter must remain on-site during the asbestos abatement activity.

(g) Containment-area ventilation. HEPA filtration units must be operated continuously from the time containment is established through the time acceptable final air clearance is achieved. HEPA units must be in sufficient number to provide a negative pressure of at least 0.02 inches of water column differential between the containment work space and outside, as measured by a manometer. HEPA units must provide a minimum of four containment air changes per hour. Units must be operated with unrestricted exhaust. These units must exhaust filtered air to the outside of the building wherever feasible.

(h) Requirements for removal of ACM.

(1) All ACM 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 ACM must then be placed in clear bags (or other suitable containers) that must be marked in accordance with the applicable OSHA and NESHAP regulations. All ACM must be double-bagged or double-wrapped by placing into 6-mil thick plastic

bags or placing in a bag and fiberboard drum. The bags must have a tear resistance of no less than M.D. 300 grams, T.D. 2,068 grams, and dart impact of no less than 216 grams.

(2) ACWM bags must be double-bagged or placed inside fiberboard drums. The bags must not be filled to a level that tears or breaks the bags. Excess air in the bags must be removed before entering the bag-out area. The top of the bag must be twisted closed, folded over, and sealed with duct tape. The bag must be rinsed off in the bag-out area to remove asbestos contamination and placed inside another bag or fiberboard drum. If an outer bag is used, excess air must be removed, and the bag must be closed and sealed in the same manner as the inner bag.

(3) If a bag leaks, the bag must be placed into a third bag and sealed as described in paragraphs (1) and (2) of this subsection. If a fiberboard drum leaks, the drum must be wrapped in a minimum of one layer of 6-mil thick plastic sheeting and sealed.

(4) The exterior bag, wrapping, or fiberboard drum must have warning and generator labels applied as specified in 40 CFR §61.150(a)(1)(iv)-(v) (relating to Standard for Waste Disposal for Manufacturing, Fabricating, Demolition, Renovation, and Spraying Operations). The generator labels must be printed in letters of sufficient size and contrast so as to be readily visible and legible. All required labeling of ACWM containers must be done before removal from the regulated area. Any container or wrapped component labeled as asbestos must be treated as ACBM.

(5) Components covered with, coated with, or containing ACM that are going to be removed from the building may either be stripped in place and cleaned (and pass a visual inspection by the asbestos consultant), or the ACBM may be adequately wetted and the entire component wrapped in two layers of 6-mil thick plastic sheeting or two layers of plastic sheeting with a tear resistance of no less than M.D. 512 grams, T.D. of 2,068 grams, and a dart impact of no less than 297 grams as measured using ASTM International methods ASTM D1709, ASTM D1922, and ASTM D882, labeled, and sealed providing that:

(A) components such as sections of metal lath that cannot be safely lowered to the floor must be stripped in place;

(B) any component that cannot be lowered or handled without presenting an excessive fiber release or safety hazard must be stripped in place; and

(C) sharp edges of components must be protected to preclude tearing the plastic wrapping and causing injury.

(6) ACBM must be removed in small sections and containerized while wet. Material must not be allowed to accumulate on the floor or become dry. Structural components and piping must be adequately wetted before wrapping in plastic sheeting for disposal.

(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 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.

(8) At the conclusion of the removal, the asbestos abatement contractor shall perform a visual inspection to ensure that all ACBM required to be removed has been removed and containerized, in accordance with this section, and the containment is free of all residual dust and debris.

(i) Requirements for the encapsulation of ACBM.

(1) Encapsulations must be performed within a containment.

(2) Loose and hanging ACBM must be removed before encapsulation. Filler material applied to gaps in existing material must contain no asbestos, must adhere well to the substrate, and must provide an adequate base for the encapsulating agent.

(3) Encapsulant must be applied using only airless spray equipment with the nozzle pressure and tip size set according to the manufacturer's recommendations.

(4) Encapsulated materials must be specifically designated by signs, labels, color coding, or some other mechanism to warn individuals who may in the future be required to disturb the material.

(j) Requirements for the enclosure of ACBM.

(1) Acceptable enclosure must be airtight and of permanent construction so that the material enclosed is inaccessible.

(2) All areas of ACBM must be wetted within containment if they are to be disturbed during the installation of hangers, brackets, or other portions of the enclosure.

(3) Before building the enclosure, loose and hanging ACBM that may be disturbed must be removed.

(4) Enclosures for ACBM must be specifically designated by signs, labels, color coding, or some other mechanism to warn individuals who may in the future be required to disturb the material.

(k) Safety requirements. The following safety requirements must be in effect for an abatement project:

(1) Fire safety. A minimum of one fire extinguisher with a minimum National Fire Protection Association rating of 10BC (dry chemical) must be placed within each abatement project containment for every 3,000 square feet, or fraction thereof, of containment. One fire extinguisher must be placed at each entrance of containment. Each fire extinguisher must be maintained in a fully charged and operable condition with a current annual inspection tag approved for use by an inspector trained to determine if the extinguisher is properly functioning and maintained. Where more than one fire extinguisher is required, they must be distributed proportionately throughout the containment and their locations clearly marked.

(2) Electrical safety. All active electrical service lines within the regulated areas and containments must be connected through ground-fault circuit interrupter (GFCI) devices.

§296.194. Operations and Maintenance (O&M) Requirements for Public Buildings.

(a) Restrictions. O&M activities involving ACBM are restricted to SSSD activities. Asbestos O&M licensees shall not engage in any activity for which the primary purpose is asbestos abatement.

(b) Work practices. Work practices must include the following requirements.

(1) Employers shall be responsible for furnishing and requiring the use of respirators, protective clothing, HEPA vacuum machines, glove bags, and other necessary equipment for all employees who perform O&M activities.

(2) Access to the regulated area must be limited to authorized personnel in accordance with 29 CFR §1926.1101(e) (relating to Asbestos). At a minimum, caution tape must be used to demarcate the regulated area.

(3) Warning signs must be displayed in English and Spanish at all entrances to the regulated area in accordance with 29 CFR §1926.1101.

(4) A negative pressure mini-containment must 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 (relating to Asbestos Model Accreditation Plan).

(5) Asbestos material must be wetted with amended water and remain wet throughout the work operation.

(6) Asbestos exposed as a result of spot repairs must be suitably enclosed or encapsulated.

(7) HEPA vacuuming and/or wet cleaning must be used to decontaminate regulated areas and equipment until there is no visible debris.

(8) ACWM must be double-bagged into 6-mil thick 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 disposed of in accordance with §296.193 of this title and NESHAP.

(9) Air clearance and visual inspections must be performed before removing any mini-containment.

(10) A single glove bag must be used only once and may not be reused by moving the bag to another area in accordance with 29 CFR §1926.1101(g)(5)(ii)(B)(3).

(c) Access. Only licensees, emergency responders as defined in §296.21(39) of this title (relating to Definitions), appropriate governmental inspectors, or the owner or owner's representative accompanied by and under the direction of the licensed asbestos O&M supervisor or asbestos abatement supervisor are allowed to enter the regulated areas.

#### §296.195. Guidance for Regulatory Threshold for Nonfriable Material in a Public Building.

(a) Purpose. The purpose of this section is to establish a regulatory threshold under which department licensure, registration, and notification are not required to complete an O&M project that disturbs a small amount of nonfriable ACBM.

(b) Scope and limitations.

(1) This section applies only to maintenance or installation projects and tasks that are not asbestos abatement activities and that disturb three square feet or three linear feet or less of nonfriable ACBM for each occurrence. If the materials become RACM, then:

(A) the maintenance or installation activity must cease; and

(B) the area must be prepared and abated in accordance with the requirements of this chapter.

(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. 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).

(3) A larger project may not be broken down into smaller projects or tasks in order to circumvent the requirements of this section or this chapter.

(4) This section does not exempt a public building from an asbestos survey required by §296.191 of this title (relating to Asbestos Management in Public Buildings, Commercial Buildings, and Facilities).

(5) Failure to stop the project under the circumstances described in paragraph (1) of this subsection violates this section and §296.191 of this title, and subjects the contractor and the building owner to penalties in accordance §296.258 of this title (relating to Administrative Penalty).

(c) Work practices. Information regarding the detection of ACBM and its control can be obtained on the department's website and in §§296.192, 296.193, 296.194, 296.197, 296.198, and 296.199 of this title (relating to General Requirements for Asbestos Abatement in Public Buildings, Abatement Practices and Procedures for Full Containment in Public Buildings, Operations and Maintenance (O&M) Requirements for Public Buildings, Asbestos Abatement Practices and Procedures for Nonfriable Asbestos-Containing Building Material, Procedures for Small Projects and Repetitive Tasks in Public Buildings, and Exemptions for the Removal of Intact Asbestos-Containing Materials in a Public Building).

#### §296.196. Resilient Floor Covering Removal in Public Buildings.

(a) General provisions. The department exempts persons from licensing and registration requirements when they are performing resilient floor covering removal in public buildings in accordance with §296.171 of this title (relating to Removal of Resilient Floor Covering). The exemption applies only if the persons are using the:

(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 approved by the department to provide public health protection from asbestos exposure, in accordance with §1954.104 of the Act.

(b) Scope and limitations.

(1) The removal activity allowed under this exemption is strictly limited to resilient floor coverings and adhesives that are nonfriable; remain intact as defined in 29 CFR §1926.1101 (relating to Asbestos); 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.

(2) The removal activity must not become a response action.

(3) The PEL must not be exceeded during the removal activity.

(4) If the flooring materials become RACM, or the PEL is exceeded, either before or during the removal, then:

(A) removal under RFCI work practices must cease; and

(B) the area must be prepared and abated in accordance with the requirements of this chapter.

(5) Failure to stop the project under the circumstances described in paragraph (4) of this subsection violates this section and §296.191 of this title (relating to Asbestos Management in Public Buildings, Commercial Buildings, and Facilities), and subjects the contractor and the building owner to penalties in accordance §296.258 of this title (relating to Administrative Penalty).

(6) Persons who perform the RFCI removal in accordance with this section must:

(A) keep a copy of the current RFCI work practices and other records applicable to the removal activity on-site for the duration of the project, in accordance with §296.200 of this title (relating to Recordkeeping);

(B) double bag and label ACWM, in accordance with §296.193(h) of this title (relating to Abatement Practices and Procedures for Full Containment in Public Buildings);

(C) provide proper temporary storage of ACWM (for example, a roll-off box, dumpster, or storage room lined with plastic sheeting) and proper final disposal within 30 days of project completion or when the receiving container is full, whichever is sooner, in accordance with §296.193 of this title; and

(D) provide the department with written notification before the project starts, in accordance with §296.211 of this title (relating to Notifications).

(c) Training.

(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 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.

(A) Individuals employed by schools who elect to use the RFCI work practices must first complete the 16-hour custodial training, required by the EPA MAP.

(B) Possession of a current, valid asbestos abatement worker registration, asbestos O&M supervisor license, or asbestos abatement supervisor license eliminates the individual's need for the 16-hour custodial training.

(2) Training or experience gained from performing resilient floor covering removal in accordance with this section does not apply toward the training or work experience requirements for registration or license to perform other asbestos-related activities.

(3) An individual licensed as an asbestos abatement supervisor is not required to complete the four-hour competent person training.

#### §296.197. Asbestos Abatement Practices and Procedures for Nonfriable Asbestos-Containing Building Material.

(a) Scope and limitations.

(1) This section applies to the removal of the following intact, nonfriable ACBM:

(A) packings;

(B) gaskets; and

(C) cements and mastics.

(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 abatement activities must be stopped, and the area must be prepared and abated in accordance with §296.194 of this title (relating to Operations and Maintenance (O&M) Requirements for Public Buildings) or §296.193 of this title (relating to Abatement Practices and Procedures for Full Containment in Public Buildings).

(3) Only licensed asbestos abatement contractors, licensed asbestos abatement supervisors, and registered asbestos abatement workers may conduct asbestos abatement of nonfriable ACBM using the work practices outlined in subsection (b) of this section. All registered asbestos abatement workers must be supervised by a licensed asbestos abatement supervisor.

(b) Work practices.

(1) Access to the regulated area must be limited to authorized personnel in accordance with 29 CFR §1926.1101(e) (relating to Asbestos). At a minimum, caution tape must be used to demarcate the regulated area.

(2) Warning signs must be displayed at all entrances to the regulated area in accordance with 29 CFR §1926.1101. The warning signs must be in English and Spanish.

(3) 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 6-mil thick plastic sheeting and/or tape.

(4) All active electrical service lines within the regulated area must be connected through ground-fault circuit interrupter devices.

(5) ACBM must be wetted with amended water and remain wet throughout the abatement activity.

(6) Work practices may not include grinding, abrading, sanding, or pulverizing ACBM.

(7) HEPA vacuuming and/or wet cleaning must be used to decontaminate the regulated area and equipment until there is no visible debris.

(8) ACWM must be double-bagged into 6-mil thick plastic bags, plastic bags that meet the dart impact test as specified in §296.193 of this title, or sealed in leak-tight drums, and must be disposed of in accordance with §296.193 of this title and NESHAP.

(9) Ambient air must be monitored and analyzed on-site. Samples will be taken throughout the regulated area and adjacent to active asbestos abatement activities. All asbestos abatement activities must be stopped and cleanup conducted in accordance with §296.193 of this title if at any time the level of asbestos exposure exceeds 0.01 f/cc (fibers per cubic centimeter) for any sample 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.

(10) A licensed asbestos abatement supervisor shall perform a visual inspection upon completion of the project to ensure all ACBM required to be removed has been removed and containerized in accordance with this chapter, and the abatement work area is free of all residual dust and debris.

#### §296.198. Procedures for Small Projects and Repetitive Tasks in Public Buildings.

(a) Purpose. The purpose of this section is to simplify requirements for small projects and repetitive tasks in public buildings while limiting risk to public health.

(b) Scope and limitations.

(1) This section applies only to maintenance or installation projects and tasks that are not primarily asbestos abatement activities and that disturb less than 10 square feet of ACBM for each occurrence.

(2) A larger project may not be broken down into smaller projects or tasks in order to circumvent the requirements of this section or this chapter.

(3) Registered asbestos abatement workers or unlicensed maintenance personnel 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.

(4) 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.

(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 work practices will not exceed 0.01 f/cc. Exposure

assessments must be completed using the process outlined in 29 CFR §1926.1101(f) (relating to Asbestos) or ASTM D7886 or an equivalent procedure. 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.

(d) Work practices. Work practices must include the following:

(1) Access to the regulated area must be limited to authorized personnel in accordance with 29 CFR §1926.1101(e). 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 in accordance with 29 CFR §1926.1101.

(3) 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 6-mil thick plastic sheeting and/or tape.

(4) All active electrical service lines within the regulated area must be connected through ground-fault circuit interrupter devices.

(5) ACBM must be wetted with amended water or foam agents intended to control airborne fiber release and remain wet throughout project.

(6) HEPA vacuuming and/or wet cleaning must be used to decontaminate the regulated area and equipment until there is no visible debris.

(7) ACWM must be double-bagged into 6-mil thick plastic bags, 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 of this title and the NESHAP. Final disposal of ACWM must be within 30 days of project completion or when the receiving container is full, whichever is sooner.

(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.

#### §296.199. Exemptions for the Removal of Intact Asbestos-Containing Materials in a Public Building.

(a) Restrictions.

(1) ACM must be in good condition and removed intact with no breakage or dust during the removal or collection.

(2) Nonfriable ACM must not become RACM.

(3) If the ACM cannot be removed intact, all abatement activities must be stopped, and the area must be prepared and abated in accordance with §296.194 of this title (relating to Operations and

Maintenance (O&M) Requirements for Public Buildings) or §296.193 of this title (relating to Abatement Practices and Procedures for Full Containment in Public Buildings).

(4) Only licensed asbestos abatement contractors, licensed asbestos abatement supervisors, licensed asbestos O&M contractors, and licensed asbestos O&M supervisors may perform activities under these exemptions. Registered asbestos abatement workers may perform these activities only when supervised by a licensed asbestos abatement supervisor or a licensed asbestos O&M supervisor.

(b) Exemptions. The following activities are exempted from the requirements described in §296.193 of this title:

(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;

(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 intact 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.

(c) Work practices. Work practices must include the following:

(1) A regulated area must be established where asbestos abatement will be conducted. Access to the regulated area must be limited to authorized personnel in accordance with 29 CFR §1926.1101(e) (relating to Asbestos). At a minimum, caution tape must be used to demarcate the regulated area.

(2) Warning signs must be displayed at all entrances to the regulated area in accordance with 29 CFR §1926.1101. The warning signs must be in English and Spanish.

(3) ACWM must be:

(A) double-bagged or double-wrapped using 6-mil thick plastic bags or sheeting;

(B) double-bagged or double-wrapped in plastic bags or sheeting that meets the dart impact test as specified in §296.193 of this title; or

(C) sealed in leak-tight drums.

(4) ACWM must be disposed of in accordance with §296.193 of this title and the NESHAP.

#### §296.200. Recordkeeping.

(a) Recordkeeping requirements. Records and documents required by this section must be retained as defined in each subsection. Licensees ceasing to do business shall notify the department in writing within 30 days of such event. The department, on receipt of such notification, may require that licensees provide records to the department in a specified format. The licensees shall comply with the department's instructions within 60 days.

(b) Asbestos abatement contractors, asbestos O&M contractors, and RFCI contractors.

(1) Central location. The following records and documents must be maintained at a central location at the principal place of business for a period of 30 years from the date of project completion and must be made available to the department upon request:

(A) records and documents required by 29 CFR Part 1910 (relating to Occupational Safety and Health Standards) and 29 CFR §1926.1101 (relating to Asbestos);

(B) name, address, and asbestos certificate number of each employee, past and present, including dates of employment, and description of each employee's involvement in each asbestos project while employed by the contractor. Records must include the name, physical address, and duration of these projects;

(C) copies of all regulatory agency correspondence including asbestos abatement/demolition notification forms, inspection forms, letters, notices, and orders;

(D) records and documents required to be maintained in accordance with any other applicable federal, state, or local law, regulation, or ordinance;

(E) copies of all waste shipment records (manifests), including a copy of the manifest signed by the owner or operator of the designated waste disposal site, in accordance with 40 CFR §61.105(d)(5) (relating to Recordkeeping Requirements); and receipts and documentation of disposal of asbestos waste showing dates, locations, and amounts of asbestos waste disposed including the identification of the source of the asbestos waste and the transporter (company name or driver name, if an employee of the contractor);

(F) copies of laboratory reports and sample analysis documenting workplace and personal exposure levels, including copies of consultant's reports provided to the contractor regarding employee or clearance level monitoring; and

(G) copies of all project specifications and plans and contracts for asbestos abatement projects.

(2) On-site. Records and documents must be maintained on-site at the asbestos project location for the duration of the project. Department-licensed companies and RFCI contractors are responsible for their employees' documents to be on-site. All on-site records and documents must be

made available to the department upon request. The records and documents covered by this paragraph include:

(A) all valid, original, and applicable licenses and registrations for individuals and full-sized copies of current training certificates;

(B) a current copy of the asbestos contractor license;

(C) a current copy of the standard operating procedures;

(D) a copy of the asbestos project specifications and plans, or if a project specification is not required, a scope of work that outlines location and describes operations and abatement procedures;

(E) a listing of all employees working on the project, by name, asbestos license number, and certificate number;

(F) name and address of each of the contractors, project supervisors, subcontractors, consultants, project managers, waste transporters, waste disposal sites, and building owners on the asbestos project;

(G) a daily sign-in/out log for the containment and/or regulated area that identifies all persons by name and the length of time each spent in containment and/or the regulated area;

(H) air monitoring results, which must be posted within 24 hours after sampling if air samples were analyzed on-site or within 72 hours after sampling if analyzed in an asbestos laboratory off-site;

(I) a written respiratory protection program that conforms to requirements of 29 CFR §1910.134(b) (relating to Respiratory Protection);

(J) a description of personal safety practices;

(K) current copies of the department's Physician's Written Statement forms and respirator fit-tests of individuals who enter a regulated area;

(L) a copy of the current asbestos abatement/demolition notification;

(M) a copy of the TAHPR;

(N) appropriate publications as listed in §296.2 of this title (relating to Adoption by Reference of Federal and Other Standards) for the asbestos activity that is being performed;

(O) the EPA Green Book (also known as "Managing Asbestos in Place: A Building Owner's Guide to Operations and Maintenance Programs");

(P) the O&M book or manual developed for the facility, if O&M activities are being performed;

(Q) a copy of the current edition of the "Recommended Work Practices for the Removal of Resilient Floor Coverings," published by the Resilient Floor Covering Institute, if removing floor coverings using this method;

(R) the Violation Notification Procedure poster issued by the department, which must be 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

(S) copies of any asbestos-related orders issued by the department (as evidenced by an order from the federal or state asbestos-regulating authorities), which must be posted for 12 months from the date the order becomes effective and visible to the public at the entrance to the regulated area in accordance with §296.192(i) of this title.

(c) Asbestos management planners. Licensed asbestos management planners who operate independently shall maintain asbestos survey reports, bulk sampling results, and management plans for 30 years from the date of project completion. These records and documents must be maintained at a central location and be made available to the department upon request.

(d) Asbestos management planner agencies. Licensed asbestos management planner agencies shall maintain asbestos survey reports, bulk sampling results, and management plans for 30 years from the date of project completion. These records and documents must be maintained at the management planner agency's principal place of business and be made available to the department upon request.

(e) Asbestos consultants. Licensed asbestos consultants who operate independently shall maintain asbestos survey reports, assessments, bulk sampling results, asbestos management plans, O&M plans, asbestos abatement designs and specifications, air monitoring records, the written designation of the project manager and the project manager's responsibilities and authority, and copies of asbestos abatement project documents for 30 years from the date of project completion. These records and documents must be maintained at a central location and be made available to the department upon request. All asbestos abatement project documents for current projects must be kept at the asbestos project site until final visual inspection has been completed.

(f) Asbestos consultant agencies. Licensed asbestos consultant agencies shall maintain asbestos survey reports, assessments, bulk sampling results, asbestos management plans, O&M plans, asbestos abatement designs, specifications and plans, air monitoring records, the written designation of the project manager and the project manager's responsibilities and authority, and copies of asbestos abatement project documents for 30 years from the date of project completion. These records and documents must be maintained at a central location and be made available to the department upon request. All asbestos abatement project documents for the immediate project must be kept at the asbestos project site until final visual inspection has been completed.

(g) Asbestos air monitoring technicians. Licensed air monitoring technicians (AMTs) who perform phase contrast microscopy (PCM) analysis in the field as employees of a licensed asbestos laboratory shall maintain on-site for the duration of the project:

(1) all analyzed slides each labeled with the project name, date and time of analysis, and sample location;

(2) a copy of the AMT's NIOSH 582 or NIOSH 582 Equivalent training certificate or proof of current registration with the American Industrial Hygiene Association (AIHA) Asbestos Analyst Registry (AAR); and

(3) documentation of the AMT's relative standard of deviation in conformity with the NIOSH 7400 method.

(h) Asbestos laboratories. Licensed asbestos laboratories shall maintain copies of all analyses performed and all other records and documents required by this chapter for 30 years, including the sample identification number and analytical results, and make such documents available to the department for inspection upon request.

(1) Analyzing laboratories must hold all samples from public buildings presented for analysis for 30 days following completion of analysis. Sample grids must be maintained for 1 year from the date of the analysis.

(2) Analyzing laboratories must maintain copies of individual records for each analyst to document the individual analyst's relative standard of deviation in conformity with the NIOSH 7400 method for 3 years. Records must be kept in the laboratory indicating which samples were used to meet the 10% quality-control analysis requirement.

(i) Asbestos training providers.

(1) Central location. The following records and documents must be maintained at a central location at the principal place of business for a period of three years and made available to the department upon request:

(A) Training course materials. Licensed training providers must retain copies of all instructional materials used in the delivery of the classroom training such as student manuals, instructor notebooks, and handouts.

(B) Training courses. Records must indicate the name of the course, date of the course, the instructors who taught the course, and list the students who attended the course. All records required to be maintained in accordance with this section must be available for inspection by the department upon request.

(C) Instructor qualifications. Licensed training providers must retain copies of all instructors' resumes and the documents approving each instructor issued by the department or EPA.

(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 examination.

(E) Accreditation certificates. Licensed training providers shall maintain records that document the names of all persons who have been awarded certificates, their certificate numbers, the disciplines for which accreditation was conferred, training and expiration dates, and the training location. All records required to be maintained in accordance with this section must be available for inspection by the department upon request.

(2) Records access. Licensed training providers must allow the department reasonable access to all of the records required by the MAP, and to any other records that may be required by the department for the approval of asbestos training providers or the accreditation of asbestos training courses.

#### Subchapter L: Notifications

#### §296.211. Notifications.

(a) 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 TAHPR. 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 <http://www.dshs.texas.gov/>.

(1) Public buildings. The department must be notified of any demolition of a public building whether or not asbestos has been identified. 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). Notification must be submitted in accordance with this section.

(2) Facilities. For all facilities which are not otherwise subject to this title as public buildings, the department must be notified of any demolition of a facility, whether or not asbestos has been identified. 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 (relating to Standard for Demolition and Renovation), of 160 square feet of surface area, 260 linear feet of pipe length, or 35 cubic feet off facility components where the length or area could not be measured. Notification must be submitted in accordance with NESHAP.

#### (b) Responsibility for proper notification.

(1) Public buildings. It is the responsibility of the public building owner and/or operator or delegated agent (such as a licensed asbestos contractor or asbestos consultant) to notify the department. When the task to notify is delegated, it must be in writing on the notification form. In a demolition where a licensed asbestos abatement contractor or asbestos consultant is not required, the task may be delegated in writing to the demolition contractor or other agent. The building owner and/or operator or the delegated agent is responsible for the accuracy and timeliness of the notification.

(2) Facilities. It is the responsibility of the facility owner and/or operator to notify the department. The facility owner and/or operator are jointly and severally responsible for the accuracy and timeliness of the notification.

(c) Completion of the notification form. The department notification form must be completed fully and properly.

(1) No form field may be left blank. Form fields that are not applicable must be marked "NA". The department does not accept the designation of NA for the identification of the work site, building description, building owner, abatement and waste transportation companies, or start or completion dates in compliance with 40 CFR §61.145.

(2) The building owner or the delegated agent or the facility owner or operator must submit an amendment to the notification for any changes. The changes may include, but are not limited to, those for start and stop dates, phased schedule form, changes greater than 20% in amounts of asbestos to be removed, and cancellations.

(3) Forms not submitted online must contain an original signature. The department will not accept a copied signature.

(d) Submission of the notification form.

(1) Notification forms must be:

(A) submitted online on the department's website;

(B) postmarked and delivered by the United States Postal Service (USPS);

(C) date-stamped and delivered by commercial delivery service; or

(D) delivered by hand during normal business hours.

(2) Printed notification forms may not be submitted by fax or email.

(e) Timeliness of notification.

(1) The initial notification of asbestos abatement or demolition must be submitted to the department at least 10 working days before the asbestos abatement or demolition start date.

(2) When a project start date or stop date or schedule or time changes from the current notified date or time, an amended notification must be submitted to the department in accordance with subsections (f)-(j) of this section.

(f) Start date change to an earlier date. When asbestos abatement or demolition will begin on a date earlier than the date contained in the notification:

(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;

(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.

(g) Stop date change to an earlier date. When asbestos abatement or demolition ends on a date earlier than the date contained in the notification:

(1) an amended notification of the new stop date must be submitted to the department before but no later than the new stop date. Amended notification must be submitted in accordance with subsection (d) of this section;

(2) the appropriate regional office must be contacted by phone of the new stop date before but no later than the new stop date; and

(3) for notification not submitted online, the appropriate regional office must be provided with a fax or email copy of the amended notification before but no later than the new stop date.

(h) Start date change to a later date. When asbestos abatement or demolition will begin later than the date contained in the notification:

(1) an amended notification with the new start date must be submitted to the department before the current notified date. Amended notification must be submitted in accordance with subsection (d) of this section;

(2) the appropriate regional office must be contacted by phone of the new start date before but no later than 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 no later than the day following the current notified start date.

(i) Stop date change to a later date. When asbestos abatement or demolition will end on a date later than the current notified stop date:

(1) an amended notification of the new stop date must be submitted to the department no later than the current notified stop date. Amended notification must be submitted in accordance with subsection (d) of this section;

(2) the appropriate regional office must be contacted by phone of the new stop date before but no later than the current notified stop date; and

(3) for notification not submitted online, the appropriate regional office must be provided with a fax or email copy of the new stop date before but no later than the current notified stop date.

(j) Cancellation.

(1) When asbestos abatement or demolition is cancelled, the building owner or the delegated agent or the facility owner or operator must:

(A) submit a notice of the cancellation to the department no later than the current notified start date. Notification of cancellation must be submitted in accordance with subsection (d) of this section;

(B) notify the appropriate regional office by phone of the cancellation no later than the current notified start date; and

(C) for notification not submitted online, provide the appropriate regional office with a fax or email copy of the notice of cancellation no later than the current notified start date.

(2) When asbestos abatement and demolition are notified on the same notification, and abatement has occurred, but the demolition will not occur, an amendment must be submitted to remove the demolition.

(k) Consolidated notification of nonscheduled asbestos O&M activities in a public building.

(1) Notification of a series of nonscheduled, separate O&M activities involving ACBM each of which does not meet or exceed a threshold of 160 square feet of surface area, or 260 linear feet of pipe length, or 35 cubic feet volume off building components may be made annually. An individual project that meets or exceeds this threshold must be notified separately and may not be combined as part of the consolidated notification. The consolidated notification must include a prediction of the cumulative amount of asbestos to be removed, enclosed, or encapsulated from January 1 through December 31. 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.

(2) The building owner or delegated agent must notify the appropriate regional office by phone or email before each O&M activity.

(3) The building owner shall keep records of the individual O&M activities. If by January 1 of the following year, the amount of asbestos removed, enclosed, or encapsulated exceeds the notified amount by 20% or more, then an amendment must be submitted within 10 working days.

(l) Consolidated notification of nonscheduled operations in a facility that is not a public building.

(1) A notification is required when planned renovation operations of individual nonscheduled operations, resulting from equipment failure, that when combined the RACM meets or exceeds the NESHAP threshold of 160 square feet of surface area, 260 linear feet of pipe length, or 35 cubic feet off facility components where the length or area could not be measured. To determine whether notification is required, the facility owner or operator 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.

(2) Upon request by the department, the facility owner or operator must be able to demonstrate that the amount of RACM stripped or removed did not exceed the notified amount by 20% or more. If by January 1 of the following year, the amount of RACM stripped or removed exceeds the notified amount by 20% or more, then an amendment must be submitted within 10 working days.

(3) If the facility owner or operator determines the NESHAP threshold amount will be exceeded, and a consolidated notification was not previously submitted, then a notification must be submitted at least 10 working days before the activity that will exceed the threshold.

(m) Notification of emergency renovation operations.

(1) An emergency notification must be submitted when an emergency renovation operation as defined in §296.21(38) of this title (relating to Definitions) occurs. A description of the emergency must be documented on the form. Emergency notifications must be submitted as soon as possible but no later than the following working day after the occurrence of the incident. Notification must be made in accordance with subsection (d) of this section.

(2) The building owner or the delegated agent or the facility owner or operator must notify the appropriate regional office by email as soon as possible but no later than the working day following the occurrence of the incident. The email must include a description of the emergency and a copy of the notification form.

(n) Notification of demolition. The department must be notified of all demolitions 10 working days before commencement of demolition. If demolition dates are to be added to a notification for asbestos abatement, and the abatement stop date has not passed, a notification amendment must be submitted to the department to add the demolition dates no fewer than 10 working days before commencement of the demolition. Notification must be submitted in accordance with subsection (d) of this section.

(o) Notification of ordered demolitions for structurally unsound buildings.

(1) If the facility is being demolished under an order of a state or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse, then the department notification must be submitted as soon as possible but no later than the working day following the commencement of demolition. The judgment that a structure is in danger of imminent collapse or that it is unsafe for anyone to enter must be made by a professional engineer or government official reasonably qualified to make the decision. A copy of the order must be attached to the notification form. Notification must be made in accordance with subsection (d) of this section. If an owner is unable to obtain a demolition order from a city, county, or state government official due to the building being structurally unsound and unsafe to enter, and has a letter from a professional engineer stating the building is structurally unsound and in danger of imminent collapse, then the owner may contact the department to request a waiver from the 10-day-notification deadline. Documentation supporting the inability to obtain an order must be submitted with the waiver request.

(2) For structurally unsound buildings that are in danger of imminent collapse, the building owner or the delegated agent or the facility owner or operator must notify the appropriate regional office by email as soon as possible but no later than the working day following the commencement of demolition. The email must include a copy of the demolition order and notification form.

(p) In public or commercial buildings or facilities, when an asbestos abatement and demolition is notified on the same notification form, and the asbestos abatement concludes early, the demolition contractor may start as early as the next calendar day after contacting the appropriate regional office by email to notify of the new demolition start date. In addition, the abatement contractor must ensure the new stop date is amended in accordance with subsection (g) of this section if applicable. The notification must be submitted in accordance with subsection (d) of this section.

(q) Notification of phased asbestos abatement and/or demolition projects in a public building.

(1) To qualify as a phased project, the project must have planned periods of inactivity, and all of the abatement and demolition work must be performed at one site. The site may contain more than one building, such as an office complex or university, under the control of one owner or operator. A phased project notification must not exceed 12 calendar months from the project start date. A completed Phased Project Schedule form must be submitted with each notification. The notification form must be submitted at least 10 working days before the start date of the first phase. The notification form must be submitted in accordance with subsection (d) of this section.

(2) When there is a change to the phased project schedule, the building owner or the delegated agent or the facility owner or operator must:

(A) submit a notification amendment along with the revised Phased Notification Schedule form to the department as soon as possible but no later than the current scheduled date or the proposed scheduled date, whichever is earlier; and

(B) email a revised Phased Notification Schedule form to the appropriate department regional inspector as soon as possible but no later than the current scheduled date or the proposed scheduled date, whichever is earlier.

(r) Asbestos notification fees.

(1) Applicability. The building owner or the delegated agent or the facility owner or operator shall remit to the department an asbestos notification fee that is based upon the amount of asbestos removed and includes a subscription fee in an amount determined by the Texas Department of Information Resources to recover costs associated with the development and maintenance of Texas.gov services. The subscription fee is 3% of the total notification fee and applies regardless of the type of asbestos notification submitted.

(2) Payment.

(A) When a notification is submitted online, the notification fee payment must be made at the time of submission.

(B) When a notification is submitted by mail, the department will mail an invoice to the building owner or the facility owner or operator within 30 working days after the notification is submitted. Payment must be received by the department within 60 working days of the invoice date.

(3) Basis for fees. The fees will be based on the total amount of the RACM or ACBM, reported to be removed and notified, in accordance with §296.191 of this title (relating to Asbestos Management in Public Buildings, Commercial Buildings, and Facilities) and this section.

(A) 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.

Figure: 25 TAC §296.211(r)(3)(A)

(B) The minimum notification fee for abatement is \$50. The maximum notification fee is \$3,800, except for public or private, non-profit, elementary or secondary (kindergarten through grade 12) schools, for which the maximum notification fee is \$180. The fee will be assessed

based on the amount of asbestos to be removed. If the amount of asbestos removed increases or decreases from the original notified amount, a change in fee may be assessed.

(C) The notification fee for a demolition is \$50.

(D) The notification fee for abatement with demolition is based solely on the amount of RACM and ACBM removed during the abatement. If an abatement notification is amended to add demolition, a demolition fee is not added.

(4) To be considered for reimbursement, a refund request must be received by the department within 90 days after the date the project ends or is cancelled. The department will deduct an administrative fee of \$52 before issuing a refund.

#### Subchapter M: Inspections and Investigations

##### §296.231. Inspections and Investigations.

(a) The department has the right to inspect or investigate the practices of any person involved with asbestos abatement or related activity in a public building, commercial building, or facility.

(b) Advance notice of inspections or investigations by the department is not required.

(c) In order to inspect and investigate for compliance with this chapter, a department representative, upon presenting the department identification (ID) card, shall have the right to:

(1) enter at all reasonable times any area or environment, including but not limited to, any containment, facility or building, construction site, storage area, vehicle, or office area; and

(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.

(d) A department representative conducting official duties is not required to notify or seek permission to conduct inspections or investigations. A person shall not interfere with, deny, or delay an inspection or investigation conducted by a department representative.

(e) Authority and responsibility for the qualifications, health status, and personal protection of department representatives resides with the department by law. A department representative may not be impeded or refused entry to conduct official duties by reason of any regulatory or contractual specification. Attempting to bribe or threaten a department representative is a violation of this chapter and criminal law.

#### Subchapter N: Enforcement

##### §296.251. Enforcement Action.

The department has the authority to enforce this chapter, the Act, and an order issued under the Act. The department may:

(1) reprimand an accredited person;

(2) suspend, revoke, or modify an accreditation;

- (3) suspend an accreditation on an emergency basis;
- (4) deny an application for license or registration;
- (5) suspend or revoke a license or registration;
- (6) reprimand a licensee or registrant;
- (7) modify or refuse to renew a license or registration;
- (8) suspend a license on an emergency basis;
- (9) place on probation a person whose license or registration is suspended;
- (10) impose an administrative penalty on a person regulated under the Act;
- (11) withdraw approval of a training course; or
- (12) suspend or revoke approval of a training course.

§296.252. Action against an Accreditation.

(a) The department may reprimand an accredited person, or may suspend or revoke an accreditation for:

- (1) performing work requiring accreditation on an asbestos project without being in physical possession of current accreditation certificates;
- (2) possessing a duplicate, failing to prevent duplication, or failing to prevent unauthorized use of an accreditation certificate;
- (3) performing work for which accreditation has not been received;
- (4) obtaining accreditation from a training provider that does not have approval to offer training for the particular discipline from EPA or from a state that has a contractor accreditation plan at least as stringent as the MAP; or
- (5) failing to pay a fee required or assessed in accordance with this chapter.

(b) The department may modify an accreditation certificate or suspend an accreditation certificate on an emergency basis if the accredited person violated this chapter, the Act, or an order issued under the Act.

(c) If an accreditation has been suspended, the person named in the suspension shall not be eligible for reaccreditation for one year after the date of the order imposing the suspension.

(d) If an accreditation has been revoked, the person named in the revocation shall not be eligible for reaccreditation for three years after the date of the order imposing the revocation.

§296.253. Denial, Suspension, or Revocation of License or Reprimand of Licensee.

(a) The department may take enforcement action if the department finds that a person regulated under the Act:

(1) obtained or attempted to obtain a license, registration, or contract to perform an asbestos-related activity by fraud, deception, or submission of invalid documentation;

(2) falsified records required by a federal agency or by the department for asbestos-related activities;

(3) has been convicted within the past five years of a felony or misdemeanor arising from an asbestos-related activity;

(4) violated a federal or state law or rule regarding asbestos-related activities;

(5) violated this chapter, the Act, or an order issued under the Act;

(6) failed to maintain records required by a federal agency or by the department for asbestos-related activities;

(7) failed at any time to meet the qualifications for a license;

(8) failed to comply with the requirements of a probation period imposed under this subchapter; or

(9) failed to pay a fee required or assessed in accordance with this chapter or submitted a payment device that was not honored by the financial institution.

(b) The department may deny an application for license or registration or may suspend or revoke a license or registration for violations described in subsection (a)(1)-(9) of this section.

(1) A person who has had an application for license or registration denied or has had a license or registration suspended or revoked under subsection (a)(1)-(5), (8) or (9) of this section will remain ineligible for a license or registration three years after the date of the denial, suspension, or revocation order.

(2) A person who has had an application for license or registration denied or has had a license or registration suspended or revoked under subsection (a)(6) of this section may reapply for a license one year after the date of the denial, suspension, or revocation order.

(3) A person who has had an application for license or registration denied or has had a license or registration suspended or revoked under subsection (a)(7) of this section may reapply for a license or registration after the person meets all qualifications for a license.

(c) The department may reprimand a licensee or registrant, modify or refuse to renew a license or registration, or suspend a license or registration on an emergency basis for violations described in subsection (a)(1)-(6), (8), and (9) of this section.

§296.254. Emergency Suspension.

(a) The department may suspend a license, a registration, or approval of an asbestos training course on an emergency basis.

(b) Emergency suspension is effective immediately.

(c) The department will provide to the person named in the emergency suspension an opportunity to request a hearing not later than the 20th day after the date of the emergency suspension order.

#### §296.255. Suspension of License for Failure to Pay Child Support or Comply with a Court Order.

(a) A court or the Office of the Attorney General may issue an order suspending a license in accordance with Family Code Chapter 232 (relating to Suspension of License) for overdue child support or for failure to comply with the terms of a court order providing for the possession of or access to a child. The court or Office of the Attorney General will forward this order to appropriate licensing agencies.

(b) If the department receives an order described in subsection (a) of this section, the department will immediately determine if a license has been issued to the individual named on the order. If a license has been issued, the department will:

(1) record the suspension of the license in the department's records;

(2) report the suspension as appropriate to:

(A) the Office of the Attorney General;

(B) the licensee; and

(C) the licensee's current employer, if known; and

(3) demand surrender of the suspended license.

(c) The department will implement the terms of a final order described in subsection (a) of this section without additional review or hearing. The department will provide notice as appropriate to the licensee and may provide notice to others concerned with the license.

(d) A licensee who is the subject of a final order rendered by a court or the Office of the Attorney General suspending the license is not entitled to a refund for any fee paid to the department for the license.

(e) During the time that a license is suspended, the individual must comply with normal renewal procedures to keep the license current. Renewing a suspended license will not make the license active. A suspended license remains suspended until the final order that is described in subsection (a) of this section is vacated or stayed as described in subsection (g) of this section.

(f) An individual whose license has been suspended by a final order described in subsection (a) of this section is prohibited from engaging in activity requiring a license. An individual whose license is suspended but who continues to engage in activity requiring a license violates the Act and this chapter and is subject to enforcement action.

(g) On receipt of an order vacating or staying an order suspending a license, the department will promptly activate the individual's license if the individual is otherwise qualified for the license.

#### §296.256. Probation.

The department may place on probation a person whose license or registration is suspended. If a suspension is probated, the department may require the person to:

- (1) report regularly to the department on matters that are the basis of the probation;
- (2) limit practice to the areas prescribed by the department; or
- (3) continue or review professional education until the person demonstrates a degree of skill satisfactory to the department in those areas that are the basis of the probation.

#### §296.257. Denial, Withdrawal, Suspension, or Revocation of Approval of Training Courses.

(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:

- (1) misrepresentation of the extent of a training course's approval by a state or EPA;
- (2) failure to submit required information or notifications in a timely manner;
- (3) failure to maintain required records;
- (4) falsification of accreditation records, instructor qualifications, or other accreditation information or submission of invalid documentation;
- (5) failure to adhere to the training standards and requirements of the EPA MAP or State Accreditation Program; or
- (6) violation of provisions of the Act or this chapter related to training duties and responsibilities.

(b) The department may revoke or suspend approval if a training course does not meet the requirements of the MAP or this chapter or for failing to pay a fee required or assessed in accordance with this chapter.

#### §296.258. Administrative Penalty.

(a) The department may impose an administrative penalty against a person who violates this chapter, the Act, or an order issued under the Act.

(b) The maximum administrative penalty is \$10,000 per day, per violation. The department may consider each day that a violation continues as a separate violation for purposes of imposing a penalty.

(c) To determine the amount of the administrative penalty, the department considers:

- (1) the person's history of previous violations;

- (2) the seriousness of the violation;
- (3) any hazard to the health and safety of the public;
- (4) demonstrated good faith efforts to correct the violation and maintain compliance; and
- (5) any other matter that justice may require.

(d) For subsequent violations, the department may impose up to five times the initial administrative penalty, up to the maximum administrative penalty of \$10,000 per day, per violation.

(e) The department classifies violations according to levels of severity.

(1) Severity Level I, critical violation. Critical violations have a direct negative impact on public health and safety. Severity Level I includes fraud and misrepresentation that result in a negative impact on public health and safety. The maximum administrative penalty for a Level I violation is \$10,000 per day, per violation.

(2) Severity Level II, serious violation. Serious violations threaten public health and safety. The maximum administrative penalty for the first occurrence of a Level II violation is \$1,000 per day, per violation.

(3) Severity Level III, significant violation. Significant violations have the potential to threaten public health and safety. The maximum administrative penalty for the first occurrence of a Level III violation is \$100 per day, per violation.

#### §296.259. Revocation of Asbestos Abatement Supervisor's License.

(a) This section applies to an asbestos abatement supervisor against whom the department has issued final orders arising from three complaints of violations of the Act or this chapter.

(b) If this section applies to a license holder, the department will revoke the person's license in accordance with the Act.

(c) When the department revokes a license as described in this section, the department will issue to the person a registration that expires six months from the date of issuance.

(d) After the registration expires, the person may reapply for a license.

#### §296.260. Notice and Hearing.

(a) Before the department takes final enforcement action under §296.252 of this title (relating to Action against an Accreditation), §296.253 of this title (relating to Denial, Suspension, or Revocation of License or Reprimand of Licensee), §296.256 of this title (relating to Probation), or §296.258 of this title (relating to Administrative Penalty), the department will issue a notice of violation proposing enforcement action.

(b) The department will send the notice by certified mail to the person named in the notice at the person's current address in the department's records.

(c) The notice will describe the alleged violation, specify the action the department proposes (including any conditions for reinstatement of accreditation, license, or registration, and the amount of any administrative penalty), provide an opportunity to demonstrate compliance, and inform the person of the right to request a hearing to contest the occurrence of the violation or the department's proposed enforcement action.

(d) A person may accept the department's proposal in writing or request a hearing in writing not later than 30 days after the date the person receives the notice. If the person accepts the department's proposal, the department will issue a final order imposing the proposed enforcement action. If the person requests a hearing, the department will refer the matter to the State Office of Administrative Hearings for a contested case hearing.

(e) If the person named in a notice does not timely request a hearing, the department may determine that a violation has occurred and issue an order taking final enforcement action by default.

(f) Hearings held under this chapter will be conducted in accordance with Government Code, Chapter 2001 and §§1.21-1.27 of this title (relating to Formal Hearing Procedures).