The existing rules for Texas Asbestos Health Protection in Texas Administrative Code Title 25, [Chapter 295, Subchapter C](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=25&pt=1&ch=295&sch=C&rl=Y) are being repealed entirely from their current location. The new rules for the Texas Asbestos Health Protection will be located in Texas Administrative Code Title 25, Chapter 296. This draft includes the new rules for Chapter 296.

TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION

SUBCHAPTER A GENERAL PROVISIONS

§296.1. General Provisions.

(a) Purpose. Asbestos is a known carcinogen and health hazard. Preventing asbestos disease depends on limiting 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 chapter (relating to Definitions). This chapter implements Texas Occupations Code, Chapter 1954 (relating to Asbestos Health Protection); Texas Health and Safety Code, Chapter 161, Subchapter Q (relating to Installation of Asbestos); and federal regulations of the EPA, as adopted by reference in §296.2 of this chapter (relating to Reference of Federal Standards). Any federal regulations of OSHA with which a person is required to comply is not limited by the applicability or effect of the provisions of this chapter.

(b) Scope.

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

(A) licensing requirements;

(B) building owner, facility owner, and licensee responsibilities;

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

(D) notification requirements.

(2) For the purposes of enforcing NESHAP, as defined in §296.21(62) of this chapter, this chapter applies to facilities as defined in §296.21(42) of this chapter.

(3) For the purposes of enforcing, the MAP, as defined in §296.21(57) of this chapter, this chapter applies to commercial buildings as defined in §296.21(26) of this chapter.

(4) For the purposes of enforcing the federal regulations adopted to implement the Asbestos Hazard Emergency Response Act of 1986, this chapter applies to LEAs as defined in §296.21(52) of this chapter.

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

(d) Severability. Should any section or subsection in this chapter be found invalid through adjudication, such finding shall not affect all other sections.

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

§296.2. Reference of Federal Standards.

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

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

(2) except as otherwise provided in this paragraph, 40 CFR Part 763, Subpart E, (relating to Asbestos-Containing Materials in Schools) adopted under the Asbestos Hazard Emergency Response Act: §§763.80-763.86, adopted effective October 30, 1987; §763.87, amended effective June 19, 1985; §763.88, adopted effective October 30, 1987; §763.90, amended effective August 3, 2012; §763.91 and §763.92, amended effective November 15, 2000; §§763.93-763.97, adopted effective October 30, 1987; §763.98, amended effective October 13, 2005; §763.99, adopted effective October 30, 1987; Appendix A, adopted effective October 30, 1987; Appendix C and Appendix D, amended effective June 25, 2013; and Appendix E, amended effective June 19, 1995. The executive commissioner does not adopt from Appendix C (relating to Asbestos Model Accreditation Plan), the EPA’s recommended project monitor accreditation category in its MAP, but adopts certain recommended training and accreditation components specified for a project monitor in relation to other license types, as specifically described in this chapter.

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

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

(2) the provisions of OSHA, 29 CFR Part 1910, Subpart H, §1910.120, amended effective February 8, 2013 (relating to Hazardous waste operations and emergency response);

(3) the provisions of OSHA, 29 CFR Part 1910, Subpart I, §1910.132, amended effective November 18, 2016 (relating to General requirements);

(4) the provisions of OSHA, 29 CFR Part 1910, Subpart I, §1910.134, amended effective August 7, 2012 (relating to Respiratory protection);

(5) the provisions of OSHA, 29 CFR Part 1910, Subpart Z, §1910.1001 with its Appendices A and B, adopted effective June 20, 1986 (relating to Asbestos);

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

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

(8) the provisions of OSHA, 29 CFR Part 1926, Subpart Z, §1926.1101, adopted effective June 20, 1986 (relating to Asbestos);

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

(10) the provisions of 42 USC Chapter 126, §§12101-12103, and §§12111-12114, amended effective September 25, 2008; §§12115-12117, §§12131-12134, and §§12141-12150, effective July 26, 1990; §12161, amended effective October 11, 1996; §§12162-12165, effective July 26, 1990; §§12181-12185, effective July 26, 1990; §12186, amended effective November 28, 1995; §§12187-12189, effective July 26, 1990; §12201, amended effective September 25, 2008; §§12202-12203, effective July 26, 1990, §12204, amended effective December 19, 2004; §12205, effective July 26, 1990; §12205a, amended effective September 25, 2008; §§12206-12208, amended effective September 25, 2008; §12209, amended effective December 16, 2014; §§12210-12213, amended effective September 25, 2008 (relating to Equal Opportunity for Individuals with Disabilities);

(11) the provisions of Pipeline and Hazardous Materials Safety Administration, 49 CFR Part 172, Subpart H, §172.700 and §172.701, effective May 15, 1992, §172.702, amended effective, May 30, 1996, and §172.704, amended effective November 23, 2015;

(12) the NIOSH 7400 analytical method, entitled, "Asbestos and Other Fibers by PCM," published in the NIOSH Manual of Analytical Methods, Fourth Edition, Second Issue, August 15, 1994;

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

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

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

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

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

(a) The Executive Commissioner of the Health and Human Services Commission adopts by reference the following federal NESHAP regulations and Appendix A, as listed in §296.2(a)(1) of this chapter.

(b) An owner or operator of a demolition or renovation activity, as defined in §296.21(72) of this chapter (relating to Definitions), shall comply with NESHAP for all covered activities.

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

(d) A memorandum of understanding between the predecessor agencies for DSHS and the Texas Commission on Environmental Quality concerning the inspection of solid waste facilities that receive asbestos waste, which was adopted by rule, is adopted by reference in §296.4 of this chapter (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 Standard for Hazardous Air Pollutants for Asbestos).

(e) DSHS may take enforcement action as described in Subchapter Q of this chapter (relating to Compliance) 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 Standard for Hazardous Air Pollutants for Asbestos.

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

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

(a) Except as otherwise provided in this subsection, the Executive Commissioner of the Health and Human Services Commission (executive commissioner) adopts by reference 40 CFR Part 763, Subpart E, with its Appendices A, C, D, and E (relating to Asbestos-Containing Materials in Schools), through the effective date listed in §296.2(a)(2) for the Subpart or any of its Appendices. The executive commissioner does not adopt from Appendix C (relating to Asbestos Model Accreditation Plan), the EPA’s recommended project monitor accreditation category in its MAP, but adopts certain of its recommended training and accreditation components specified for a project monitor in relation to other license types, as specifically described in this chapter.

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

(c) DSHS may enter any regulated school building to inspect and investigate conditions to determine compliance as described in Subchapter O of this chapter (relating to Inspections and Investigations).

(d) DSHS may take enforcement action as described in Subchapter Q of this chapter (relating to Compliance) for violations of AHERA, as adopted by reference under this chapter.

TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION

SUBCHAPTER B DEFINITIONS

§296.21. Definitions.

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

(1) 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.

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

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

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

(C) has been approved directly by EPA.

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

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

(B) for purposes of complying with AHERA provisions, relating to a school building, greater than 1.0% asbestos, if subparagraph (A) of this paragraph does not apply;

(C) for purposes of complying with NESHAP provisions, relating to commercial buildings and facilities, greater than 1.0% asbestos, if subparagraph (A) and subparagraph (D) of this paragraph do not apply;

(D) for purposes of complying with this chapter’s provisions, relating to commercial buildings regarding the requirement for municipalities to obtain evidence of an acceptable asbestos survey before issuing a building permit as defined in paragraph 74 of this section, and as required by Texas Occupations Code, §1954.259(b)(2)(B), 1.0% or more asbestos; or

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

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

(5) ACWM--Asbestos-containing waste material. This term includes mill tailings or any waste material that contains asbestos and is generated by a source subject to the provisions of NESHAP or this chapter. This term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with asbestos. As applied to demolition and renovation operations, this term also includes RACM and materials contaminated with asbestos, including 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 is operated as it comes from the factory, and is directed at all surfaces to cause loose asbestos fibers to become airborne.

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

(9) Airlock--A system for permitting movement into and out of the containment, consisting of doors, curtains, or both 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--Asbestos removal, encapsulation, or enclosure, as those terms are defined in this section, to reduce or eliminate, or that has the effect of reducing or eliminating a concentration of asbestos fibers or an ACM.

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

(15) Asbestos abatement contractor or asbestos contractor--A person who implements asbestos removal, enclosure, or encapsulation for others under contract or other agreement, or is otherwise designated to perform that function.

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

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

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

(C) the project layout;

(D) the preparation of specifications and plans;

(E) the contract documents directly applicable to the abatement project; and

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

(17) Asbestos abatement supervisor--An individual who is responsible for overseeing 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:

(A) the preparations or final clearance;

(B) the performance of an asbestos survey;

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

(D) the development of an asbestos abatement project design;

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

(F) the monitoring for airborne asbestos; or

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

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

(20) ASTM E1494-12--The 2012 edition of the Standard Practice for Encapsulation Testing of Friable Asbestos-Containing Surfacing Materials developed 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.

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

(23) Category I nonfriable ACM--Asbestos-containing packings, gaskets, resilient floor-covering material, and asphalt roofing products determined to be ACM as defined in paragraph (3) of this section.

(24) Category II nonfriable ACM--Any material determined to be ACM as defined in paragraph (3) of this section, excluding Category I nonfriable ACM, 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 does not otherwise fall within the definition of a public building. Interior space includes exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space. The term includes industrial buildings, federal government-owned buildings, warehouses, and factories. The term does not include a detached single private residence or single apartment building with four or fewer dwelling units.

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

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

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

(30) 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.

(31) 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.

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

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

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

(35) 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.

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

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

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

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

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

(41) 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.

(42) 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. For purposes of this chapter, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation, or building that was previously subject to NESHAP is not excluded, regardless of its current use or function. A single private residence or apartment building having four or fewer dwelling units may be subject to NESHAP under the conditions described in paragraph (49) of this section.

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

(44) 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.

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

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

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

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

(49) 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. 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.

(50) 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.

(51) 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.

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

(A) a public board of education or other public authority legally constituted within a state for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a state, or such combination of school districts or counties as are recognized in a state as an administrative agency for its public elementary or secondary schools;

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

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

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

(54) Licensee--A person who meets all qualifications and has been issued a license or registration by DSHS under this chapter.

(55) 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.

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

(57) MAP--Asbestos Model Accreditation Plan. An EPA plan, as adopted by reference into this chapter, that provides standards for initial training, examinations, refresher training courses, applicant qualifications, decertification, and reciprocity, as described in Appendix C (relating to Asbestos Model Accreditation Plan) of AHERA, relating to accredited persons and becoming accredited.

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

(59) MSDS--Material safety data sheet. (See also the definition of SDS.)

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

(61) Negative exposure assessment--A demonstration by the employer under 29 CFR §1926.1101(f) that employee exposure during an operation is expected to remain below the PELS for the duration of the applicable asbestos-related activity.

(62) NESHAP--The EPA National Emission Standards for Hazardous Air Pollutants specific to asbestos, in 40 CFR Part 61, Subpart M (relating to National Emission Standard for Asbestos), as adopted by reference into this chapter. Citations within this chapter to NESHAP provisions include citations to those regulations as adopted into this chapter by reference.

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

(64) Nonfriable ACM--ACM that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

(65) 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.

(66) Nuisance residence demolition--Demolition of a single private residence by a municipality for reasons of public health, welfare, or safety.

(67) NVLAP--National Voluntary Laboratory Accreditation Program. NVLAP is a federal program administered by the National Institute of Standards and Technology, an office of the U.S. Department of Commerce. NVLAP provides third-party accreditation to testing and calibration laboratories based on evaluation of their technical qualifications and competence to carry out specific calibrations or tests. Accreditation procedures and requirements are described in 15 CFR Part 285 (relating to National Voluntary Laboratory Accreditation Program), which references clauses 4 and 5 of the international standard, ISO/IEC 17025, as the criteria for accreditation.

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

(69) 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 manager.

(70) OSHA--The Occupational Safety and Health Administration, part of the U.S. Department of Labor.

(71) OSHA regulations--Regulations found in 29 CFR (relating to Labor), including 29 CFR §1926.1101 and portions of 29 CFR Parts 1926 (relating to Safety and Health Regulations for Construction) and 1910 (relating to Occupational Safety and Health Standards), as referenced in this chapter or otherwise applicable to persons subject to this chapter.

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

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

(74) 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.

(75) Person--A person is:

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

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

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

(77) Preparation--Preparation for asbestos abatement activity, which includes 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, and controlling occurs when the contractor has occupied any portion of an area where asbestos-related activity is to be performed;

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

(C) installing polyethylene, installing an isolation barrier (such as a critical barrier or dividing wall), installing any part of a decontamination system or any part of the water line connections to a shower, drain, or filtration;

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

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

(F) posting warning signs;

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

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

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

(78) Public building--The interior space of a building used, either in the past or at present, or to be used, for a purpose that involves public access or occupancy, such as a school, hospital, or prison. Interior space includes exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space. The term includes any such interior space during a period of vacancy, including the period during preparations before 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 manufacturing 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, before demolition, has been determined to be structurally unsound and in danger of imminent collapse by a professional engineer or a city, county, or state government official; or

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

(79) 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.

(80) 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.

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

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

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

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

(85) 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 implementing that person’s operations and compliance requirements under this chapter.

(86) RFCI--Resilient Floor Covering Institute.

(87) RFCI contractor--A contractor whose removal of resilient floor-covering material is subject to the work practices published in the current edition of the Resilient Floor Covering Institute’s “Recommended Work Practices for Removal of Resilient Floor Coverings.”

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

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

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

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

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

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

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

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

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

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

(A) a clear and understandable written description of the work to be performed and requirements that address unusual or unique circumstances of the asbestos abatement project; and

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

(92) SSSD activities--Small-scale, short-duration activities are work operations where it is impractical to construct a negative-pressure containment because of the configuration of the work environment. SSSD activities include tasks, such as removal of asbestos-containing insulation on pipes, removal of small quantities of asbestos-containing insulation on beams or above ceilings, replacement of an asbestos-containing gasket on a valve, installation or removal of a small section of drywall, or installation of electrical conduits through or proximate to ACM. SSSD activities can be further defined as the following:

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

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

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

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

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

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

(A) Asbestos abatement start date. For the purpose of notification to DSHS as required in §296.251 of this chapter (relating to Notifications), the date 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.

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

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

(i) For the purpose of notification to DSHS as required in §296.251 of this chapter, the date on which air monitoring clearance of asbestos abatement is achieved.

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

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

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

(95) 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.

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

(A) 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).

(B) The term does not include:

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

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

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

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

(A) a written description, diagram, or both that clearly and accurately identifies and reflects the location and boundaries of each homogeneous area of suspected ACBM that is assumed to be ACM or was sampled for ACM, including the exact sampling location for each bulk sample and the dates that each sample was collected;

(B) a written description of:

(i) the manner used to determine sampling locations;

(ii) the estimated amount of ACM in each homogeneous area;

(iii) the type of material sampled;

(iv) the condition of the ACBM; and

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

(C) a copy of the analyses of any bulk samples, the dates of analyses, and a copy of any other laboratory reports pertaining to the analyses.

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

(99) USC--The United States Code.

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

TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION

SUBCHAPTER C STANDARDS OF CONDUCT

§296.31. Prohibited Activities for Licensees.

(a) The purpose of this section is to specify prohibited activities for a licensee who performs an asbestos-related activity in a public building.

(b) A licensee described in subsection (a) of this section may not:

(1) perform an asbestos-related activity for which the person is not specifically licensed;

(2) perform an asbestos-related activity without meeting or exceeding the minimum standards established in this chapter that relate to that activity;

(3) participate in activities prohibited under §296.32 of this chapter (relating to Conflict of Interest) or the Act;

(4) participate in any other activity where a conflict of interest might arise;

(5) fail to disclose to any party affected or potentially affected any conflict or potential conflict of interest of another person that is known to the licensee and which affects an asbestos-related activity;

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

(7) misrepresent an asbestos-related professional qualification or credential;

(8) provide deceptive, false, or misleading information to DSHS; or

(9) work if impaired by drugs, alcohol, or another condition that may pose a risk to workplace safety or public health, or allow any person under the licensee’s supervision to work if the person is 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 an appropriately licensed third party to perform area monitoring and project clearance monitoring for airborne concentrations of asbestos fibers during an abatement project, as required in §296.211(h)(1) of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building). The third party who analyzes an area sample collected during the abatement project must not be employed or subcontracted for that purpose by an asbestos abatement contractor hired to conduct the asbestos abatement project by or for the owner.

(b) Licensee conflict of interest.

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

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

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

(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, licensed asbestos management planner agency, or licensed asbestos inspector that is also a licensed asbestos abatement contractor may not implement an asbestos abatement on a project for which the licensee also performed a survey or, if otherwise authorized by the person’s license, developed the management plan.

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

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

TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION

SUBCHAPTER D LICENSE AND REGISTRATION

§296.41. License and Registration Requirements.

(a) License and registration requirements. A person must be licensed or registered in compliance with the Act and this chapter to perform any asbestos abatement or asbestos-related activity that requires a license or registration under the Act or this chapter. An individual must be able to demonstrate legal authorization to be hired for employment in the United States to be licensed.

(b) Qualifying work experience.

(1) A licensee who performs supervision for any form of pre-licensure experiential training activity required to obtain a license under any of the following provisions must provide direct, in-person supervision in the immediate proximity of the trainee, and is the responsible licensee for such supervised acts performed for §296.47(c)(1)(F)(ii)(III) of this chapter (relating to Asbestos Abatement Supervisor); §296.51(c)(1)(G) of this chapter (relating to Asbestos Air Monitoring Technician); §296.52(c)(1)(H) of this chapter (relating to Asbestos Inspector); §296.53(c)(1)(G)(ii)(III) of this chapter (relating to Asbestos Project Manager); §296.54(c)(1)(H) of this chapter (relating to Asbestos Management Planner); §296.56(c)(1)(H)(i)(I)(-a) - (-d-), §296.56(c)(1)(H)(i)(II)(-a-), §296.56(c)(1)(H)(ii)(II)(-a-)(-1-) - (-4-), §296.56(c)(1)(H)(ii)(II)(-b-)(-1-), §296.56(c)(1)(H)(iii)(II)(-a-)(-1-) - (-4-), and §296.56(c)(1)(H)(iii)(II)(-b-)(-1-) of this chapter (relating to Asbestos Consultant).

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

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

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

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

(f) License or registration card. A license or registration identification card issued by DSHS is valid for the person named on the card until the card expires or is revoked. DSHS may revoke any card that has been altered.

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

(h) Prohibition. A licensee is subject to disciplinary action if the licensee engages in the following activities:

(1) works with an expired license;

(2) allows required qualifications (such as accreditation, DSHS’s Physician’s Written Statement form, or insurance requirements) to expire and continues to work with the license; or

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

(i) Penalties. A licensee shall not submit fraudulent documentation or false information to obtain a license, attempt to bribe a state employee, or threaten a state employee, and is subject to applicable administrative, civil, and criminal sanctions for any violation. State and federal violations and citations become a part of a licensee’s DSHS record.

§296.42. Initial and Renewal Applications.

(a) General requirements. To apply for a license or registration as required in this chapter, an applicant must submit a completed and signed application on the form provided by DSHS. 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 DSHS receives all required documentation and fees. If DSHS did not issue a deficiency notice for the application, the following time periods apply, beginning on the date that DSHS receives the applicable application:

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

(i) for a registration or license, except for a training provider license--45 days; and

(ii) for a training provider license--90 days;

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

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

(D) issuance of duplicate license or ID card--30 days; and

(E) letter of denial of examination, license, or registration, as applicable--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 to schedule a formal hearing.

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

(A) receipt of license or ID card, letter of acceptance, or deficiency notice:

(i) for a registration or license, except for a training provider license--20 days; and

(ii) for a training provider license--30 days;

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

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

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

(E) 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 to schedule a formal hearing.

(c) Denial. DSHS may deny an application for license or registration of a person for fraud or misrepresentation or for failure to meet the standards established by this chapter, as described in Subchapter Q of this chapter (relating to Compliance). This includes §296.313 of this chapter (relating to Denial, Suspension, or Revocation of License or Reprimand of Licensee), and as required in §296.315 of this chapter (relating to Suspension of License for Failure to Pay Child Support or Comply with a Court Order), or for any reason allowed by law.

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

(1) the license type;

(2) the time period allowed for renewal; and

(3) the applicable renewal fee.

(e) Renewal requirements.

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

(A) meets the requirements to renew the license;

(B) pays the required fee;

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

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

(2) If a licensee submits an incomplete application, including an application resubmitted in response to a deficiency letter, and the application is not completed or the deficiency cleared before the license expiration date, the license expires on the expiration date and engaging in activities for which a license is required is a violation of this chapter. If a licensee submits a complete renewal application with the required fee and documentation before the license expires, the current license does not expire until DSHS approves or finally denies the application.

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

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

(1) an application;

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

(3) the required fee.

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

(i) Physician’s written statement. A copy of DSHS’s Physician’s Written Statement form must be submitted with all individual applications to document that the applicant has received a medical examination within the past 12 months, in accordance with 29 CFR §1926.1101(m) (relating to Asbestos) or 40 CFR §763.122 (relating to What does this subpart require me to do?) under 40 CFR Part 763, Subpart G (relating to Asbestos Worker Protection), whichever is applicable. A current copy of the individual’s Physician’s Written Statement form must be on-site while performing asbestos-related activities.

§296.43. Acceptable Academic Credit and Qualifying Work Experience.

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

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

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

§296.44. Out-of-State Applicants.

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

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

(c) Texas Asbestos Law and Rules course. 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 DSHS-licensed training provider must complete a three-hour Texas Asbestos Law and Rules course. The Texas Asbestos Law and Rules course must be completed within one year before DSHS has received the license or registration application. A training course taken from a Texas-licensed training provider in an asbestos licensure or accreditation category other than the one for which license or registration is sought may substitute for the Texas Asbestos Law and Rules course.

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

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

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

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

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

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

(C) the person pays the nonrefundable provisional license or registration fee as outlined in §296.71 of this chapter (relating to Fees); and

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

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

(3) A person who holds a provisional license or registration issued in accordance with this section may apply for a license or registration if the applicant provided documentation showing successful completion of the Texas Asbestos Law and Rules course described in §296.93 of this chapter (relating to Asbestos Training Courses), paid the appropriate licensing fee in addition to the provisional license or registration fee as outlined in §296.71, and met the requirements in §296.46 of this chapter (relating to Asbestos Abatement Worker), §296.47 of this chapter (relating to Asbestos Abatement Supervisor), §296.52 of this chapter (relating to Asbestos Inspector), or §296.54 of this chapter (relating to Asbestos Management Planner), as applicable.

§296.45. Insurance Requirements.

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

(1) Each applicant and licensee who performs asbestos-related activities and who is required under §1954.105(c) of the Act or this subchapter to maintain specified liability insurance, as a condition of licensure, must meet the insurance and proof requirements of this section; the sections of this subchapter applicable to each license they hold; and §1954.105(c) of the Act.

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

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

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

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

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

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

(ii) A governmental applicant or licensee that is otherwise subject to specific requirements for liability coverage under this subchapter may request a variance from a requirement of this subchapter based upon a demonstrated legal limitation to meeting that requirement, and a demonstrated alternative method for assessing and addressing the risks otherwise addressed by the required liability coverage.

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

(c) Workers' compensation.

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

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

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

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

(A) proof of workers' compensation insurance issued by a company licensed to issue workers' compensation insurance in this state and written in this state on the Texas form; or

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

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

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

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

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

§296.46. Asbestos Abatement Worker.

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

(b) Registrant scope of practice.

(1) Registrant 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 any act prohibited in §296.31 of this chapter (relating to Prohibited Activities for Licensees).

(2) Registrant responsibilities. An asbestos abatement worker shall:

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

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

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

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

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

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

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

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

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

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

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

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

(B) copies of the training certificates for the initial Asbestos Abatement Worker course and any refresher training courses to show current accreditation under §296.93 of this chapter (relating to Asbestos Training Courses); and

(i) the Contractor/Supervisor course may be substituted for the Asbestos Abatement Worker course; and

(ii) all subsequent refresher training courses must be for the same course taken as the initial training;

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

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

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

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

(B) a copy of the current training certificate for the Asbestos Abatement Worker course or, if the Contractor/Supervisor course was used to meet requirements for the initial asbestos abatement worker registration, the Contractor/Supervisor course, completed as required in §296.93(c) of this chapter;

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

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

§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) Licensee scope of practice.

(1) Licensee 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 §296.233 of this chapter (relating to Alternative Asbestos Practices and Procedures for Small Projects and Repetitive Tasks in a Public Building). An asbestos abatement supervisor employed by an O&M contractor is limited to supervising the work practices and procedures described in §296.213 of this chapter (relating to Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building) for SSSD activities, and as permitted under that section.

(B) An asbestos abatement supervisor may act as a registered asbestos abatement worker on any project.

(C) An asbestos abatement supervisor may not:

(i) perform asbestos abatement activities in a public building when the asbestos project manager or asbestos consultant is not on-site, except during asbestos O&M activities and activities performed in accordance with §296.232 of this chapter (relating to Alternative Asbestos Abatement Practices and Procedures for Certain Nonfriable Asbestos-Containing Building Material (ACBM) in a Public Building), §296.233 of this chapter, and §296.234 of this chapter (relating to Alternative Practices and Procedures for Removal of Whole Components of Intact Asbestos-Containing Material (ACM) in a Public Building);

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

(iii) engage in any act prohibited in §296.31 of this chapter (relating to Prohibited Activities for Licensees).

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

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

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

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

(D) comply with the restrictions and required work practices for O&M activities described in §296.213 of this chapter;

(E) comply with the restrictions and required work practices described in §296.232 of this chapter for activities conducted under that section;

(F) comply with the restrictions and required work practices described in §296.233 of this chapter for activities conducted under that section;

(G) comply with the restrictions and required work practices described in §296.234 of this chapter for activities conducted under that section;

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

(I) cooperate with DSHS personnel during inspections and investigations, as required in §296.271 of this chapter (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 compliance with 29 CFR §1926.1101 (relating to Asbestos) or 40 CFR §763.122 (relating to What does this subpart require me to do?) under 40 CFR Part 763, Subpart G (relating to Asbestos Worker Protection), whichever is applicable;

(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; and

(M) immediately correct any condition that is not in compliance with this chapter. If such a condition is related to removal of ACBM, the asbestos abatement supervisor must stop the removal and may not resume until each identified condition has been corrected.

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

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

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

(B) copies of the training certificates for the initial Asbestos Contractor/Supervisor course and any refresher training courses to show current accreditation under §296.93 of this chapter (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 2-inch, color photograph of the face (without tinted glasses, hats, bandanas, or other articles that may obscure the head or any part of the face) with a white background, taken within the past 12 months, and submitted either on photo quality paper or in digital format;

(E) proof of passing DSHS’s Asbestos Contractor/Supervisor examination, as required in Subchapter G of this chapter (relating to State Licensing Examination); and

(F) written documentation of at least 90 days of verifiable 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) written documentation of any combination of verifiable qualifying work experience from one or more of the following categories, as needed to fulfill the requirements:

(I) work experience as a licensed asbestos consultant, asbestos project manager, asbestos abatement supervisor (during previous Texas or out-of-state licensure), or asbestos abatement worker, and work experience must have been gained while the qualifying license was current;

(II) work experience as an accredited asbestos project designer, asbestos abatement supervisor, or asbestos abatement worker in Texas or another state, or as an asbestos project monitor in another state, and work experience must have been gained while accreditation was current under the MAP and while conducting activities for which either a Texas license was not required, or for which the applicant held the required license; or

(III) work experience as a licensed or trained asbestos air monitoring technician on at least five asbestos abatement projects; and

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

(-b-) if an applicant is relying on work experience as a trained asbestos air monitoring technician, the applicant must have been authorized to perform the activity in the state where the work experience occurred, or perform the air monitoring under the in-person, direct, and immediately proximate supervision of a licensed AMT or consultant.

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

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

(B) a copy of the current training certificate for the Asbestos Contractor/Supervisor course, completed as required in §296.93 of this chapter;

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

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

§296.48. Asbestos Abatement Contractor.

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

(b) Licensee scope of practice.

(1) Licensee practice and limitations.

(A) An asbestos abatement contractor 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 as required in subsection (c)(1)(A) and (c)(2)(A) of this section to engage in asbestos abatement activities.

(C) An asbestos abatement contractor may employ a licensed asbestos operations and maintenance (O&M) supervisor to supervise an O&M activity or to work as an asbestos abatement worker.

(D) An asbestos abatement contractor may not:

(i) engage in any act prohibited in §296.31 of this chapter (relating to Prohibited Activities for Licensees);

(ii) engage in any act prohibited in §296.32 of this chapter (relating to Conflict of Interest); or

(iii) engage in an asbestos abatement activity in a public building unless the asbestos project manager or asbestos consultant, and an asbestos abatement supervisor is on-site.

(2) Licensee responsibilities. An asbestos abatement contractor shall:

(A) appoint at least one responsible person, as defined in §296.21(85) of this chapter (relating to Definitions), whom the asbestos abatement contractor must hold accountable to comply with the applicable training requirements specified in subsection (c)(1)(A) and (c)(2)(A) of this section, oversee the operations for the asbestos abatement activities, and ensure compliance with the applicable requirements of this chapter;

(B) hold its responsible person and any employee who performs an activity on behalf of the asbestos abatement contractor accountable to comply with all applicable responsibilities for licensed asbestos abatement supervisors, as required in §296.47 of this chapter (relating to Asbestos Abatement Supervisor), for licensed asbestos air monitoring technicians, as required in §296.51 of this chapter (relating to Asbestos Air Monitoring Technician), and for licensed asbestos abatement workers, as required in §296.46 of this chapter (relating to Asbestos Abatement Worker);

(C) hold its responsible person and any employee who performs an activity on behalf of the asbestos abatement contractor accountable to comply with all applicable standards of operation, as required in §296.211 of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building);

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

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

(F) comply with applicable OSHA regulations, including, as applicable, the work practices and controls in 29 CFR §1926.1101(g)(9) (relating to Asbestos);

(G) comply with the requirements of §296.211 of this chapter;

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

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

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

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

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

(M) control asbestos exposure in all work, in compliance with 29 CFR §1926.1101 (relating to Asbestos) and 40 CFR §763.122 (relating to What does this subpart require me to do?) under 40 CFR Part 763, Subpart G (relating to Asbestos Worker Protection), as applicable;

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

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

(P) obtain and keep on-site a copy of the current training certificate, as required in §296.93 of this chapter (relating to Asbestos Training Courses) for each employee who performs an asbestos-related activity;

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

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

(S) at no cost to the employee, comply with personal protective equipment (PPE) requirements, including in 29 CFR §1910.132(h) (relating to General requirements), §1926.1101(h) and (i), and 40 CFR §763.122 (relating to What does this subpart require me to do?) under 40 CFR Part 763, Subpart G (relating to Asbestos Worker Protection), as applicable, for employees who perform asbestos-related activities. This includes:

(i) providing and maintaining PPE for employees;

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

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

(iv) documenting respirator inspections; and

(v) ensuring compliance with the use of PPE;

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

(U) provide for temporary storage of ACWM, as required in §296.212(c)(8) of this chapter (relating to Standard Asbestos Abatement Practices and Procedures in a Public Building);

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

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

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

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

(iv) provide a copy of the manifest signed by the owner or operator of the designated waste disposal site to the 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 §296.291 of this chapter (relating to Recordkeeping);

(W) maintain asbestos abatement liability coverage, including pollution liability coverage, if performing work for hire, and workers' compensation insurance, where required, each in accordance with §1954.105(c) of the Act and §296.45 of this chapter (relating to Insurance Requirements);

(X) comply with the notification requirements, as required in §296.251 of this chapter (relating to Notifications);

(Y) comply with recordkeeping requirements, as required in §296.291 of this chapter; and

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

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

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

(A) a copy of the current training certificate for the Asbestos Contractor/Supervisor course for the appointed responsible person, completed as required in §296.93 of this chapter;

(B) in relation to the applicant’s franchise tax account status, whichever applies;

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

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

(iii) any verification relating to clause (i) or (ii) of this subparagraph requested by DSHS;

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

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

(i) documentation issued by the secretary of state that verifies:

(I) a domestic entity’s existence; or

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

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

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

(F) a taxpayer identification number;

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

(H) the physical address of the office where asbestos records are maintained that are required by§296.291 of this chapter to be kept at a central location;

(I) proof of asbestos abatement liability coverage, including pollution liability coverage, if performing work for hire, and workers' compensation insurance, where required, each in accordance with §1954.105(c) of the Act and as required in §296.45 of this chapter; and

(J) 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) a copy of the current training certificate for the asbestos contractor/supervisor course for the appointed responsible person, completed as required in §296.93 of this chapter;

(B) in relation to the applicant’s franchise tax account status, whichever applies;

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

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

(iii) any verification relating to clause (i) or (ii) of this subparagraph requested by DSHS;

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

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

(i) documentation issued by the secretary of state that verifies:

(I) a domestic entity’s existence; or

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

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

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

(F) a taxpayer identification number;

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

(H) the physical address of the office where asbestos records are maintained that are required by§296.291 of this chapter to be kept at a central location; and

(I) proof of asbestos abatement liability coverage, including pollution liability coverage, and workers' compensation insurance coverage, where required, each in accordance with §1954.105(c) of the Act and as required in §296.45 of this chapter.

§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 the practices and procedures described in §296.213 of this chapter (relating to Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building), for the activities described in that section, and to supervise any registered asbestos abatement workers performing such work. A licensed asbestos abatement supervisor may also perform these same duties.

(b) Licensee scope of practice.

(1) Licensee practice and limitations.

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

(B) An asbestos O&M supervisor may:

(i) act as a licensed asbestos abatement worker on any project; and

(ii) supervise only those practices and procedures described in §296.213 of this chapter, for the activities described in that section, and for buildings under the control of the license holder's employer.

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

(i) supervise any asbestos-related activity in a public building that is outside the scope of §296.213 of this chapter;

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

(iii) engage in any act prohibited in §296.31 of this chapter (relating to Prohibited Activities for Licensees).

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

(A) comply with applicable OSHA regulations, including, as applicable, the work practices and controls in 29 CFR §1926.1101(g)(9)(relating to Asbestos);

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

(C) comply with the restrictions and required work practices for O&M activities described in §296.213 of this chapter;

(D) maintain records at both the central office and work site locations as required in §296.291 of this chapter (relating to Recordkeeping);

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

(F) comply with personal protective equipment (PPE) requirements for employees who perform asbestos-related activities to ensure that PPE is worn in compliance with 29 CFR §1926.1101 (relating to Asbestos) or 40 CFR §763.122 (relating to What does this subpart require me to do?) under 40 CFR Part 763, Subpart G (relating to Asbestos Worker Protection), whichever is applicable; and

(G) immediately correct any condition that is not in compliance with this chapter. If such a condition is related to removal of ACBM, the asbestos O&M supervisor must stop the removal and may not resume until each identified condition has been corrected.

(c) Initial and renewal license requirements. To receive or renew a license as required in this section, an applicant must be an employee of a public building owner or manager; and shall submit a completed application as required under §296.42 of this chapter (relating to Initial and Renewal Applications), and the documentation required in this section. An out-of-state applicant must comply with §296.44 of this chapter (relating to Out-of-State Applicants).

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

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

(B) copies of the training certificates for the initial Asbestos Contractor/Supervisor course and any refresher training courses to show current accreditation under §296.93 of this chapter (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 2-inch, color photograph of the face (without tinted glasses, hats, bandanas, or other articles that may obscure the head or any part of the face) with a white background, taken within the past 12 months, and submitted either on photo quality paper or in digital format; and

(E) proof of passing DSHS’s Asbestos Contractor/Supervisor examination, as required under 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 DSHS’s Physician’s Written Statement form that documents a medical examination performed within the past 12 months, as required in §296.42(i) of this chapter;

(B) a copy of the current training certificate for the Asbestos Contractor/Supervisor course, completed as required in §296.93 of this chapter;

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

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

§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 implement asbestos O&M activities. Building owners that have their own employees perform such activities for their buildings must be licensed as required in this section.

(b) Licensee scope of practice.

(1) Licensee practice and limitations.

(A) An asbestos O&M contractor is restricted to carrying out O&M activities in a public building owned or otherwise under the control of the contractor, which utilize the practices and procedures described in §296.213 of this chapter (relating to Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building) for SSSD activities, as defined in §296.21(92) of this chapter (relating to Definitions), involving friable and nonfriable ACBM.

(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 as required in 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 any asbestos-related activity in a public building that is outside the scope of §296.213 of this chapter;

(ii) engage in any act prohibited in §296.31 of this chapter (relating to Prohibited Activities for Licensees); or

(iii) engage in any act prohibited in §296.32 of this chapter (relating to Conflict of Interest).

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

(A) appoint at least one responsible person, as defined in §296.21(85) of this chapter (relating to Definitions), whom the asbestos O&M contractor must hold accountable to comply with the applicable training requirements as required in subsection (c)(1)(A) and (c)(2)(A) of this section, oversee the operations for the asbestos O&M activities, and ensure compliance with the applicable requirements of this chapter;

(B) hold its responsible person and any employee who performs an activity on behalf of the asbestos O&M contractor accountable to comply with all applicable responsibilities for licensed asbestos abatement supervisors, as required in §296.47 of this chapter (relating to Asbestos Abatement Supervisor), for licensed asbestos air monitoring technicians, as required in §296.51 of this chapter (relating to Asbestos Air Monitoring Technician), and for licensed asbestos abatement workers, as required in §296.46 of this chapter (relating to Asbestos Abatement Worker);

(C) hold its responsible person and any employee who performs an activity on behalf of the asbestos O&M contractor accountable to comply with all applicable standards of operation, as required in §296.211 of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building), and §296.213 of this chapter;

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

(E) comply with the requirements of §296.211 of this chapter and §296.213 of this chapter, as applicable, to operations and maintenance for the asbestos-related activity being performed;

(F) comply with applicable OSHA regulations, including, as applicable, the work practices and controls in 29 CFR §1926.1101(g)(9) (relating to Asbestos);

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

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

(I) obtain and keep on-site a copy of the current training certificate, as required in §296.93 of this chapter (relating to Asbestos Training Courses) for each employee who performs an asbestos-related activity;

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

(K) ensure that each employee who performs asbestos-related activities has a current DSHS’s Physician’s Written Statement, as required in §296.42(i) of this chapter (relating to Initial and Renewal Applications);

(L) at no cost to the employee, follow personal protective equipment (PPE) requirements, including in 29 CFR §1910.132(h), §1926.1101(h) and (i), and 40 CFR §763.122 (relating to What does this subpart require me to do?) under 40 CFR Part 763, Subpart G (relating to Asbestos Worker Protection), as applicable, for employees who perform asbestos-related activities. This includes:

(i) providing and maintaining PPE for employees;

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

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

(iv) documenting respirator inspections; and

(v) ensuring compliance with the use of PPE;

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

(N) provide for temporary storage of ACWM, as required in §296.213(b)(15) of this chapter (relating to Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building);

(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, on a form as described for the waste generator in 40 CFR §61.150(d);

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

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

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

(P) maintain asbestos abatement liability coverage, including pollution liability coverage, if performing work for hire, and workers' compensation insurance, where required, each in accordance with §1954.105(c) of the Act and as required in §296.45 of this chapter (relating to Insurance Requirements);

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

(R) comply with recordkeeping requirements as required in §296.291 of this chapter; and

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

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

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

(A) a copy of the current training certificate for the Asbestos Contractor/Supervisor course for the appointed responsible person, completed as required in §296.93 of this chapter;

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

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

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

(iii) any verification relating to clause (i) or (ii) of this subparagraph that is requested by DSHS;

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

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

(i) documentation issued by the secretary of state that verifies:

(I) a domestic entity’s existence; or

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

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

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

(F) a taxpayer identification number;

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

(H) the physical address of the office where asbestos records are maintained that are required by§296.291 of this chapter to be kept at a central location;

(I) proof of asbestos abatement liability coverage, including pollution liability coverage, if performing work for hire, and of workers' compensation insurance where required, each in accordance with §1954.105(c) of the Act and as required in §296.45 of this chapter; and

(J) a copy of the company’s standard operating procedures, which must include the following elements relating to O&M activities involving ACBM, in accordance with 29 CFR §1926.1101(g)(9):

(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 copy of the current training certificate for the Asbestos Contractor/Supervisor course for the appointed responsible person, completed as required in §296.93 of this chapter;

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

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

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

(iii) any verification relating to clause (i) or (ii) of this subparagraph that is requested by DSHS;

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

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

(i) documentation issued by the secretary of state that verifies:

(I) a domestic entity’s existence; or

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

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

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

(F) a taxpayer identification number;

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

(H) the physical address of the office where asbestos records are maintained that are required by§296.291 of this chapter to be kept at a central location; and

(I) proof of asbestos abatement liability coverage, including pollution liability coverage, if performing work for hire, and of workers' compensation insurance coverage, where required, each in accordance with §1954.105(c) of the Act and as required in §296.45 of this chapter.

§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 an asbestos abatement project or related activity in a public building. A licensed asbestos consultant may also act as a licensed AMT to perform these same services, which shall be subject, unless otherwise authorized under the consultant’s asbestos consultant license, to the same conditions, restrictions, and requirements applicable to an AMT under this section.

(b) Licensee scope of practice.

(1) Licensee practice and limitations.

(A) A licensed AMT may:

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

(ii) collect personal samples in accordance with 29 CFR §1926.1101 (relating to Asbestos), if employed by an asbestos abatement contractor or asbestos operations and maintenance (O&M) contractor; and

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

(I) is listed on the American Industrial Hygiene Association (AIHA) Asbestos Analyst Registry as required in §296.59 of this chapter (relating to Asbestos Laboratory); or

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

(B) An AMT may not:

(i) engage in any act prohibited in §296.31 of this chapter (relating to Prohibited Activities for Licensees); or

(ii) engage in any act prohibited in §296.32 of this chapter (relating to Conflict of Interest).

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

(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), whichever is applicable;

(C) record in writing the results of area, baseline, clearance, and personal air samples that are analyzed, and report such results in writing to the asbestos abatement contractor by no later than:

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

(ii) the third working day after the date of initial sampling of friable ACBM, for any air sample analyzed in an asbestos laboratory off-site, unless the consultant has designed a sampling strategy that deviates from the timeframe required and has demonstrated in writing that the engineering controls are at least as protective of public health as the requirements of this chapter;

(D) comply with recordkeeping requirements, as required in §296.291 of this chapter (relating to Recordkeeping); and

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

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

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

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

(B) copies of the training certificates for the initial Asbestos Air Monitoring Technician course and any refresher training courses to show current accreditation under §296.93 of this chapter (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 2-inch, color photograph of the face (without tinted glasses, hats, bandanas, or other articles that may obscure the head or any part of the face) with a white background, taken within the past 12 months, and submitted either on photo quality paper or in digital format;

(E) a high school diploma or equivalent;

(F) proof of passing DSHS’s Asbestos Air Monitoring Technician examination, in accordance with Subchapter G of this chapter (relating to State Licensing Examination); and

(G) written documentation of verifiable work experience performing air monitoring on at least three asbestos abatement projects for a total of at least 15 days under the in-person, direct, and immediately proximate supervision of a licensed air monitoring technician or licensed asbestos consultant working for a licensed asbestos laboratory, asbestos abatement contractor, or asbestos consultant agency, and work experience must be gained after completion of training required for licensure as an asbestos air monitoring technician under this chapter.

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

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

(B) a copy of the current training certificate for the Asbestos Air Monitoring Technician course, completed as required in §296.93 of this chapter;

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

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

§296.52. Asbestos Inspector.

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

(b) Licensee scope of practice.

(1) Licensee 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 is ACM, as defined in §296.21(3) of this chapter (relating to Definitions); and

(iii) develop an asbestos survey report.

(B) An asbestos inspector may not:

(i) perform an asbestos survey in a public building if not employed by a licensed asbestos consultant agency or a licensed asbestos management planner agency;

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

(iii) engage in any act prohibited in §296.31 of this chapter (relating to Prohibited Activities for Licensees); or

(iv) engage in any act prohibited in §296.32 of this chapter (relating to Conflict of Interest).

(2) Licensee responsibilities. An asbestos inspector shall:

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

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

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

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

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

(III) the dates that each sample was collected;

(ii) a written description of:

(I) the manner used to determine sampling locations;

(II) the estimated amount of ACM in each homogeneous area;

(III) the type of material sampled;

(IV) the condition of the ACBM; and

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

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

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

(D) maintain 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 as required in §296.45 of this chapter (relating to Insurance Requirements); and

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

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

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

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

(B) copies of the current training certificates for the initial Asbestos Inspector course and any refresher training courses to show current accreditation under §296.93 of this chapter (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 2-inch, color photograph of the face (without tinted glasses, hats, bandanas, or other articles that may obscure the head or any part of the face) with a white background, taken within the past 12 months, and submitted either on photo quality paper or in digital format;

(E) proof of a high school diploma or equivalent;

(F) proof of passing DSHS’s Asbestos Inspector examination, as required Subchapter G of this chapter (relating to State Licensing Examination); 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 as required in §296.45 of this chapter; and

(H) written documentation of verifiable work experience that includes participation in at least five asbestos surveys performed under the in-person, direct, and immediately proximate supervision of a licensed asbestos inspector, licensed management planner, or licensed asbestos consultant, and work experience must be gained after completion of training required for licensure as an asbestos inspector under this chapter.

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

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

(B) a current training certificate for the Asbestos Inspector course, completed as required in §296.93 of this chapter;

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

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

(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 as required in §296.45 of this chapter.

§296.53. Asbestos Project Manager.

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

(b) Licensee scope of practice.

(1) Licensee practice and limitations.

(A) An asbestos project manager must be employed by a licensed asbestos consultant agency to evaluate, on behalf of the building owner, the quality of the work being performed during an asbestos abatement project.

(B) An asbestos project manager may:

(i) monitor an asbestos abatement project;

(ii) document whether the asbestos abatement contractor is complying with the asbestos abatement specifications and plans and this chapter;

(iii) report observations to the asbestos abatement contractor and asbestos consultant;

(iv) recommend to the asbestos consultant changes to the asbestos abatement specifications or plans, and any changes to specifications or plans that the licensed asbestos consultant makes must be made in writing and must be available on-site; and

(v) 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 any act prohibited in §296.31 of this chapter (relating to Prohibited Activities for Licensees).

(2) Licensee responsibilities. An asbestos project manager shall, consistent with the scope of the project manager’s delegated authority in accordance with subsection (a) of this section, and unless the activity is personally performed by the delegating licensed asbestos consultant:

(A) provide documented monitoring and assessment of compliance with regulations adopted by reference in §296.2 of this chapter (relating to Reference of Federal Standards);

(B) provide documented monitoring and assessment of compliance with standards of operation, as required in §296.211 of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building);

(C) provide documented monitoring and assessment of compliance with standards of operation, and implementation of asbestos abatement controls for the asbestos abatement activity being performed, as required in §296.212 of this chapter (Standard Asbestos Abatement Practices and Procedures in a Public Building);

(D) provide documented monitoring and assessment of 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;

(E) be on the project site at all times when asbestos abatement activities are being performed and when ACWM is being loaded for transport;

(F) maintain records at both the central office and on-site locations, as required in §296.291 of this chapter (relating to Recordkeeping); and

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

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

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

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

(B) copies of training certificates for the initial Asbestos Contractor/Supervisor course and any refresher training courses to show current accreditation under §296.93 of this chapter (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 2-inch, color photograph of the face (without tinted glasses, hats, bandanas, or other articles that may obscure the head or any part of the face) with a white background, taken within the past 12 months, and submitted either on photo quality paper or in digital format;

(E) proof of a high school diploma or equivalent;

(F) proof of passing DSHS’s Asbestos Contractor/Supervisor examination, as required in Subchapter G of this chapter (relating to State Licensing Examination); and

(G) written documentation of verifiable work experience on at least three asbestos abatement projects for a total of at least 15 days of qualifying work experience gained within the past 24 months that includes:

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

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

(I) work experience as a licensed asbestos consultant, project manager (during previous Texas or out-of-state licensure), air monitoring technician, asbestos abatement supervisor, or asbestos abatement worker, and work experience must have been gained while the qualifying license was current and active, as required under this chapter or the applicable licensing state agency;

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

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

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

(III) work experience performing project management responsibilities under the in-person, direct, and immediately proximate supervision of a licensed asbestos consultant or asbestos project manager working for a licensed laboratory or asbestos consultant agency, and work experience must have been gained after completion of training required for licensure as an asbestos project manager under this chapter.

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

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

(B) a copy of the current training certificate for the Asbestos Contractor/Supervisor course, completed as required in §296.93 of this chapter;

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

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

(d) Project manager licensed before the effective date of this section. A project manager who is issued a license before the effective date of this section may continue to perform work with and renew that license based upon the eligibility and renewal requirements of the Texas Asbestos Health Protection rules that were in effect when the license was issued. If the licensed asbestos project manager fails to timely renew the license and the license remains expired for one year or more without being renewed, the license may not be renewed. The former asbestos project manager may re-apply for an initial license by meeting all education, work experience, and other application requirements for initial licensure under this section.

§296.54. Asbestos Management Planner.

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

(b) Licensee scope of practice.

(1) Licensee 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, as required in §296.55 of this chapter (relating to Asbestos Management Planner Agency), or an asbestos consultant agency, as required in §296.57 of this chapter (relating to Asbestos Consultant Agency);

(ii) perform an asbestos survey or develop a management plan if any required training or medical examination has expired;

(iii) engage in any act prohibited in §296.31 of this chapter (relating to Prohibited Activities for Licensees); or

(iv) engage in any act prohibited in §296.32 of this chapter (relating to Conflict of Interest).

(2) Licensee responsibilities. An asbestos management planner shall:

(A) maintain 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 as required in §296.45 of this chapter (relating to Insurance Requirements);

(B) prepare any management plan as required in §296.191(m) of this chapter (relating to Asbestos Management in a Public Building, Commercial Building, or Facility), which must include, at a minimum:

(i) the date of the asbestos survey;

(ii) a copy of the asbestos survey report prepared as required in §296.52(b)(2)(B) of this chapter (relating to Asbestos Inspector)

(iii) a description of assessments, which:

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

(II) in a school, must be done in accordance with 40 CFR §763.88 (relating to Assessment), and provide a written assessment of material identified as friable ACBM, or as friable suspected ACBM assumed to be ACM;

(iv) for each person making the assessment:

(I) the person’s name and signature; and

(II) Texas license number;

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

(vi) 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

(C) prepare asbestos survey reports, as required in §296.52(b)(2)(B) of this chapter;

(D) 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;

(E) sign, date, and print the asbestos management planner’s name and license number on all drawings and on the cover page of every asbestos survey report and management plan; and

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

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

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

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

(B) copies of the training certificates for the initial Asbestos Inspector and Asbestos Management Planner courses and any refresher training courses to show current accreditation under §296.93 of this chapter (relating to Asbestos Training Courses);

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

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

(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 DSHS’s Asbestos Management Planner examination, as required in 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 as required in §296.45 of this chapter; and

(H) written documentation of verifiable work experience that includes:

(i) participation in the development of at least five management plans as a licensed asbestos consultant or a licensed asbestos management planner (during previous Texas or out-of-state licensure), or under the in-person, direct, and immediately proximate supervision of a licensed asbestos management planner or licensed asbestos consultant; and

(ii) participation in conducting five asbestos surveys, including development of asbestos survey reports, as a licensed asbestos inspector or licensed asbestos consultant, or under the in-person, direct, and immediately proximate supervision of a licensed asbestos inspector, licensed asbestos management planner, or licensed asbestos consultant; and

(I) work experience developing a management plan and participating in the asbestos survey on the same project may be used to satisfy one management plan and one asbestos survey work experience requirement; and

(II) work experience must be gained after completion of training required for licensure as an asbestos management planner under this chapter.

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

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

(B) copies of the current training certificates for the Asbestos Inspector and Asbestos Management Planner courses, completed as required in §296.93 of this chapter;

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

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

(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 as required in §296.45 of this chapter.

§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) Licensee scope of practice.

(1) Licensee 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, and the duties of a licensed asbestos consultant employed by an asbestos management planner agency must be limited to those of a management planner; and

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

(B) An asbestos management planner agency may not:

(i) engage in any act prohibited in §296.31 of this chapter (relating to Prohibited Activities for Licensees);

(ii) engage in any act prohibited in §296.32 of this chapter (relating to Conflict of Interest);

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

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

(2) Licensee responsibilities. An asbestos management planner agency shall:

(A) appoint at least one responsible person, as defined in §296.21(85) of this chapter (relating to Definitions), whom the asbestos management planner agency must hold accountable to:

(i) comply with the applicable training requirements as required in subsection (c)(1)(A) and (c)(2)(A) of this section;

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

(iii) ensure compliance with the applicable requirements of this chapter;

(B) hold its responsible person and any employee who performs an activity on behalf of the asbestos management planner agency accountable to comply with all applicable responsibilities for licensed asbestos inspectors, as required in §296.52 of this chapter (relating to Asbestos Inspector), and for licensed asbestos management planners as required in §296.54 of this chapter (relating to Asbestos Management Planner);

(C) hold its responsible person and any employee who performs an activity on behalf of the asbestos management planner agency accountable to comply with all applicable standards of operation, as required in §296.211 of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building);

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

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

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

(G) ensure that each employee who performs asbestos-related activities receives annual training as required in §296.93 of this chapter (relating to Asbestos Training Courses);

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

(I) at no cost to the employee, comply with personal protective equipment (PPE) requirements, including in 29 CFR §1910.132(h) (relating to General requirements), 29 CFR §1926.1101(h) and (i) (relating to Asbestos), and 40 CFR §763.122 (relating to What does this subpart require me to do?) under 40 CFR Part 763, Subpart G (relating to Asbestos Worker Protection), as applicable, for employees who perform asbestos-related activities. This includes:

(i) providing and maintaining PPE for employees;

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

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

(iv) documenting respirator inspections; and

(v) ensuring compliance with the use of PPE;

(J) acquire and provide its employees with the necessary equipment for performing asbestos-related activities and maintain equipment in good working condition;

(K) maintain professional liability insurance coverage for errors and omissions, if performing work for hire, and workers' compensation insurance, where required, each in accordance with §1954.105(c) of the Act and as required in §296.45 of this chapter;

(L) comply with recordkeeping requirements, as required in §296.291 of this chapter (relating to Recordkeeping); and

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

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

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

(A) a copy of the current training certificate for the management planner course for the appointed responsible person, completed as required in §296.93 of this chapter;

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

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

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

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

(iii) any verification relating to clause (i) or (ii) of this subparagraph that is requested by DSHS;

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

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

(i) documentation issued by the secretary of state that verifies:

(I) a domestic entity’s existence; or

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

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

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

(G) a taxpayer identification number;

(H) the applicant’s Texas sales tax permit number from the Texas Comptroller of Public Accounts, if applicable; and

(I) proof of professional liability insurance coverage for errors and omissions, if performing work for hire, and of workers' compensation insurance, where required, each in accordance with §1954.105(c) of the Act and as required in §296.45 of this chapter.

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

(A) a copy of the current training certificate for the management planner course for the appointed responsible person, completed as required in §296.93 of this chapter;

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

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

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

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

(iii) any verification relating to clause (i) or (ii) of this subparagraph that is requested by DSHS;

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

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

(i) documentation issued by the secretary of state that verifies:

(I) a domestic entity’s existence; or

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

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

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

(G) a taxpayer identification number;

(H) the applicant’s Texas sales tax permit number from the Texas Comptroller of Public Accounts, if applicable; and

(I) proof of professional liability insurance coverage for errors and omissions, if performing work for hire, and workers' compensation insurance, where required, each in accordance with §1954.105(c) of the Act and as required in §296.45 of this chapter.

§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) Licensee scope of practice.

(1) Licensee practice and limitations.

(A) An asbestos consultant may:

(i) prepare an asbestos abatement project design that includes engineering controls, project layout, and abatement methods;

(ii) collect bulk material samples and plan sampling strategies;

(iii) develop a management plan;

(iv) perform an asbestos survey, 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 an asbestos abatement project, and provide technical specifications and plans;

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

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

(ix) designate a project manager and delegate specific responsibilities and authority to the project manager in writing, for which the consultant, as well as the project manager performing the delegated responsibility, remains responsible; and

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

(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 in Texas, and the specifications and plans for such alterations must be prepared in accordance with all applicable requirements of Occupations Code, Chapter 1001 (relating to Engineers) and 22 TAC Part 6 (relating to Texas Board of Professional Engineers);

(ii) prepare an asbestos abatement project design that varies from the requirements of §296.212 of this chapter (relating to Standard Asbestos Abatement Practices and Procedures in a Public Building);

(iii) employ an asbestos inspector, asbestos project manager, asbestos air monitoring technician, asbestos management planner, or any additional asbestos consultant to work in the capacity of that individual’s license unless the asbestos consultant is licensed as an asbestos consultant agency as required in §296.57 of this chapter (relating to Asbestos Consultant Agency);

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

(v) perform a consulting activity if not properly insured in accordance with §1954.105(c) of the Act, and as required in this section, and §296.45 of this chapter (relating to Insurance Requirements);

(vi) engage in any act prohibited in §296.31 of this chapter (relating to Prohibited Activities for Licensees); or

(vii) engage in any act prohibited in §296.32 of this chapter (relating to Conflict of Interest).

(2) Licensee responsibilities. An asbestos consultant shall:

(A) when providing the following professional services to the building owner or operator who is the owner’s authorized representative:

(i) provide project air monitoring, as required in §296.51(b) of this chapter (relating to Asbestos Air Monitoring Technician);

(ii) provide any asbestos survey or assessment, as required in §296.52(b) of this chapter (relating to Asbestos Inspector);

(iii) provide any project management, as required in §296.53(b) of this chapter (relating to Asbestos Project Manager), either personally or through a project manager to whom the consultant has specifically delegated authority and responsibility as required in subsection (b)(1)(A)(ix) of this section;

(iv) provide any management plan, as required in §296.54(b) of this chapter (relating to Asbestos Management Planner);

(B) provide the building owner or operator who is the owner’s authorized representative with:

(i) a written report after completion of an asbestos survey, which must advise 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 activity;

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

(C) verify that ACWM is properly transported and disposed of by doing and maintaining documentation of each of the following:

(i) observing whether ACWM containers are properly labeled, in accordance with 40 CFR §61.150(a)(1)(iv) and (v) (relating to Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations); identifying any corrections that are needed; and confirming that corrections are made or reported as violations, if not corrected;

(ii) observing whether vehicles used to transport ACWM are marked, in accordance with 40 CFR §61.150(c); identifying any corrections that are needed; and confirming that corrections are made or reported as violations, if not corrected;

(iii) obtaining a copy of a waste shipment record (manifest) from the licensed asbestos contractor on a form as described for the waste generator in 40 CFR §61.150(d) before the waste is removed from the project site; and

(iv) confirming the building owner’s receipt of a manifest from the contractor, signed by the disposal site owner or operator, for each load of ACWM abated from the building;

(D) provide final close-out documents for each asbestos abatement project to the building owner or operator who is the owner’s authorized representative, which must include:

(i) baseline and area air monitoring results;

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

(iii) the signed manifest from the contractor;

(iv) copies of each required license, certification, or registration for all personnel involved in the asbestos abatement project; and

(v) daily logs;

(E) prepare any asbestos project design required for an asbestos abatement project and include, at a minimum:

(i) a survey report;

(ii) an evaluation and selection of the appropriate abatement methods;

(iii) the abatement project layout;

(iv) the abatement project specifications and plans;

(v) contract documents that apply directly to the abatement project;

(vi) a review of environmental controls, abatement procedures, and personal protection equipment;

(F) prepare specifications and plans, schedules, and contract options for asbestos abatement projects, as required in §296.211 of this chapter:

(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 asbestos abatement project for which the consultant is preparing documents as required under this subparagraph; and

(-a-) amend each page, 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, and 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;

(G) maintain professional liability coverage for error and omissions, if performing work for hire, or coverage under the employer's policy, in accordance with §1954.105(c) of the Act and as required in §296.45 of this chapter;

(H) consult with and monitor the asbestos abatement contractor to verify and document:

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

(ii) that corrections are made or reported as violations, if noncompliance issues exist and are not promptly corrected;

(I) 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 monitor and document that the containment is in compliance with this chapter, and with the specifications and plans, to identify any corrections needed, and to verify that any identified compliance issue is corrected before work proceeds;

(J) specify the selection and use of appropriate personal protective equipment for each asbestos abatement activity;

(K) monitor and document 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, final visual inspection of the project site, and loading of ACWM for transport, and address any identified issue of noncompliance as required in subparagraph (H) of this paragraph;

(L) remain on-site and in immediate proximity during all periods of asbestos abatement activity and when ACWM is being loaded for transport into a dumpster or other transport container or vehicle;

(M) receive written approval from DSHS for a design prepared for an asbestos abatement project that specifies work practices that vary from the requirements of §296.212(a)(1) of this chapter before releasing specifications and plans to the asbestos abatement contractor;

(N) supervise any clearance-level assessment that is performed under §296.233 of this chapter (relating to Alternative Asbestos Practices and Procedures for Small Projects and Repetitive Tasks in a Public Building), and this responsibility may not be delegated and must be performed as required under that section; and

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

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

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

(A) proof of one of the combinations of professional or educational achievement and work experience as required in paragraph (1)(H) of this subsection, and asbestos-related work experience must be gained after completion of any training that is required to perform the applicable asbestos-related activity and while the training is current;

(B) proof of passing DSHS’s Asbestos Consultant examination, as required in Subchapter G of this chapter (relating to State Licensing Examination);

(C) copies of the 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 under §296.93 of this chapter (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 2-inch, color photograph of the face (without tinted glasses, hats, bandanas, or other articles that may obscure the head or any part of the face) with a white background, taken within the past 12 months, and submitted either on photo quality paper or in digital format;

(F) a copy of DSHS’s Physician’s Written Statement form that documents a medical examination performed within the past 12 months, as required in §296.42(i) of this chapter; 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 as required in §296.45 of this title.

(H) written documentation of acceptable professional or educational achievement and work experience, and an applicant for an initial license shall submit written documentation of one of the following combinations of verifiable professional or educational achievement and work experience:

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

(I) must include the following:

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

(-b-) conducting at least three asbestos surveys that include collecting bulk samples as a licensed asbestos inspector or licensed asbestos management planner, or under the in-person, direct, and immediately proximate 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 10 days under the in-person, direct, and immediately proximate supervision of a licensed asbestos project manager or consultant; and

(-d-) performing air monitoring for at least 10 days under the in-person, direct, and immediately proximate supervision of a licensed air monitoring technician or a licensed asbestos consultant; and

(II) may include any of the following:

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

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

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

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

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

(II) at least 180 days of work experience performing asbestos-related activities in public buildings in accordance with applicable law in effect at the time of the work experience, and gained within the past four years, and the asbestos-related experience:

(-a-) must include the following:

(-1-) developing at least six specifications and plans under the in-person, direct, and immediately proximate supervision of a licensed asbestos consultant;

(-2-) conducting at least three asbestos surveys that includes collecting bulk samples as a licensed asbestos inspector or licensed asbestos management planner or under the in-person, direct, and immediately proximate supervision of a licensed asbestos inspector, licensed asbestos management planner, or licensed asbestos consultant;

(-3-) performing the duties of an asbestos project manager for at least 10 days under the in-person, direct, and immediately proximate supervision of a licensed asbestos project manager or consultant; and

(-4-) performing air monitoring for at least 10 days under the in-person, direct, and immediately proximate supervision of a licensed air monitoring technician or a licensed asbestos consultant; and

(-b-) may include any of the following:

(-1-) developing one or more management plans under the in-person, direct, and immediately proximate supervision of a licensed asbestos management planner or licensed asbestos consultant;

(-2-) having work experience as a licensed asbestos abatement supervisor; or

(-3-) having work experience as a licensed asbestos abatement worker, limited to no more than 30 days; or

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

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

(II) at least 250 days of work experience performing asbestos-related activities in public buildings in accordance with applicable law in effect at the time of the work experience, and gained within the past four years. The asbestos-related work experience:

(-a-) must include the following:

(-1-) developing at least six specifications and plans under the in-person, direct, and immediately proximate supervision of a licensed asbestos consultant;

(-2-) conducting at least three asbestos surveys that includes collecting bulk samples as a licensed asbestos inspector or licensed asbestos management planner or under the in-person, direct, and immediately proximate supervision of a licensed asbestos inspector, licensed asbestos management planner, or licensed asbestos consultant;

(-3-) performing the duties of an asbestos project manager for at least 10 days under the in-person, direct, and immediately proximate supervision of a licensed asbestos project manager or consultant; and

(-4-) performing air monitoring for at least 10 days under the in-person, direct, and immediately proximate supervision of a licensed air monitoring technician or a licensed asbestos consultant; and

(-b-) may include any of the following:

(-1-) developing one or more management plans under the in-person, direct, and immediately proximate supervision of a licensed asbestos management planner or licensed asbestos consultant;

(-2-) work experience as a licensed asbestos abatement supervisor; or

(-3-) having work experience as a registered asbestos abatement worker, limited to no more than 30 days.

(2) 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, completed as required in §296.93 of this chapter;

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

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

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

(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 as required in §296.45 of this chapter.

(d) Consultant licensed before the effective date of this section. An asbestos consultant who is issued a license before the effective date of this section and qualified for licensure with full-qualification membership in a national professional organization may continue to perform work with and renew that license under the eligibility and renewal requirements of the Texas Asbestos Health Protection rules that were in effect when the license was issued. If the asbestos consultant fails to timely renew the license and the license remains expired for one year or more without being renewed, the license may not be renewed. The former asbestos consultant may re-apply for an initial license by meeting all education, work experience, and other application requirements for initial licensure under this section.

§296.57. 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) Licensee scope of practice.

(1) Licensee practice and limitations.

(A) An asbestos consultant agency may:

(i) employ any asbestos consultant, asbestos management planner, asbestos inspector, asbestos project manager, or asbestos air monitoring technician who is currently licensed as required in this chapter and working in the capacity of that individual’s license; and

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

(B) An asbestos consultant agency may not:

(i) engage in any act prohibited in §296.31 of this chapter (relating to Prohibited Activities for Licensees);

(ii) engage in any act prohibited in §296.32 of this chapter (relating to Conflict of Interest);

(iii) perform an asbestos consulting activity if not properly insured, in accordance with §1954.105(c) of the Act, and as required in this section and §296.45 of this chapter (relating to Insurance Requirements); or

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

(2) Licensee responsibilities. An asbestos consultant agency shall:

(A) appoint at least one responsible person, as defined in §296.21(85) of this chapter (relating to Definitions), whom the asbestos consultant agency must hold accountable to comply with the applicable training requirements as required in subsection (c)(1)(A) and (c)(2)(A) of this section, oversee the operations for the asbestos consultant agency activities, and ensure compliance with the applicable requirements of this chapter;

(B) hold its responsible person and any other asbestos consultant or project manager with appropriate delegated authority and responsibility who is acting on behalf of the asbestos consultant agency on an asbestos abatement project accountable for monitoring the asbestos abatement project 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) hold its responsible person and any employee who performs an activity on behalf of the asbestos consultant agency accountable to comply with all applicable responsibilities for licensed asbestos project managers as required in §296.53 of this chapter (relating to Asbestos Project Manager), for licensed asbestos air monitoring technicians as required in §296.51 of this chapter (relating to Asbestos Air Monitoring Technician), and for licensed asbestos consultants, as required in §296.56 of this chapter (relating to Asbestos Consultant);

(D) hold its responsible person and any employee who performs an activity on behalf of the asbestos consultant agency accountable to comply with all applicable standards of operation, as required in §296.211 of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building);

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

(F) use generally accepted principles and practices in designing an asbestos abatement project;

(G) comply with the relevant requirements in §296.211 of this chapter;

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

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

(J) provide at no cost to the employee, an annual training as required in §296.93 of this chapter (relating to Asbestos Training Courses), to each employee who performs an asbestos-related activity;

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

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

(M) at no cost to the employee, comply with personal protective equipment (PPE) requirements, including in 29 CFR §1910.132(h) (relating to General requirements), 29 CFR §1926.1101(h) and (i) (relating to Asbestos), and 40 CFR §763.122 (relating to What does this subpart require me to do?) under 40 CFR Part 763, Subpart G (relating to Asbestos Worker Protection), as applicable, for employees who perform asbestos-related activities, and this includes:

(i) providing and maintaining PPE for employees;

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

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

(iv) documenting respirator inspections; and

(v) ensuring compliance with the use of PPE;

(N) acquire and provide its employees with the necessary equipment for performing asbestos-related activities and maintain equipment in good working condition.

(O) obtain a waste shipment record (manifest) from the licensed asbestos contractor on a form as described for the waste generator in 40 CFR §61.150(d) (relating to Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations);

(P) contact the asbestos abatement contractor 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 calendar days after the date the waste was accepted by the transporter;

(Q) report in writing to DSHS in accordance with 40 CFR §61.150(d)(4), if a copy of the manifest has not been received from the contractor within 45 calendar days after the date the waste was accepted by the transporter;

(R) maintain professional liability insurance coverage for errors and omissions, if performing work for hire, and workers' compensation insurance, where required, each in accordance with §1954.105(c) of the Act and as required in §296.45 of this chapter;

(S) comply with recordkeeping requirements, in accordance with §296.291 of this chapter (relating to Recordkeeping); and

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

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

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

(A) a copy of the current training certificate for the Asbestos Project Designer, Asbestos Inspector, Asbestos Management Planner, and Asbestos Air Monitoring Technician courses for the appointed responsible person, completed as required in §296.93 of this chapter;

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

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

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

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

(iii) any verification relating to clause (i) or (ii) of this subparagraph that is requested by DSHS;

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

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

(i) documentation issued by the secretary of state that verifies:

(I) a domestic entity’s existence; or

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

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

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

(G) a taxpayer identification number;

(H) the applicant’s Texas sales tax permit number from the Texas Comptroller of Public Accounts, if applicable; and

(I) proof of professional liability insurance coverage for errors and omissions, if performing work for hire, and of workers' compensation insurance, where required, each in accordance with §1954.105(c) of the Act and §296.45 of this chapter.

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

(A) a copy of the current training certificate for the Asbestos Project Designer, Asbestos Inspector, Asbestos Management Planner, and Asbestos Air Monitoring Technician courses for the appointed responsible person, completed as required in §296.93 of this chapter;

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

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

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

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

(iii) any verification relating to clause (i) or (ii) of this subparagraph that is requested by DSHS;

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

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

(i) documentation issued by the secretary of state that verifies:

(I) a domestic entity’s existence; or

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

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

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

(G) a taxpayer identification number;

(H) the applicant’s Texas sales tax permit number from the Texas Comptroller of Public Accounts, if applicable; and

(I) proof of professional liability insurance coverage for errors and omissions, if performing work for hire, and of workers' compensation insurance, where required, each in accordance with §1954.105(c) of the Act and as required in §296.45 of this chapter.

§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) Licensee scope of practice.

(1) Licensee 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 any act prohibited in §296.31 of this chapter (relating to Prohibited Activities for Licensees).

(2) Licensee responsibilities. An asbestos transporter shall:

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

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

(C) maintain asbestos liability coverage, including pollution liability coverage, to transport for hire ACM for purposes of disposal, and workers' compensation insurance, where required, each in accordance with §1954.105(c) of the Act and as required in §296.45 of this chapter (relating to Insurance Requirements);

(D) at no cost to the employee, comply with personal protective equipment (PPE) requirements, including in 29 CFR §1910.132(h) (relating to General requirements) and 29 CFR §1926.1101(h) and (i) (relating to Asbestos), and 40 CFR §763.122 (relating to What does this subpart require me to do?) under 40 CFR Part 763, Subpart G (relating to Asbestos Worker Protection), as applicable, for employees who will handle asbestos, and this includes:

(i) providing and maintaining PPE for employees;

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

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

(iv) documenting respirator inspections; and

(v) ensuring employees use PPE properly;

(E) acquire and maintain the necessary equipment for performing asbestos-related activity, and equipment must be in good working condition;

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

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

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

(I) 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 applicable to delivery of the ACWM to an out-of-state disposal facility; and

(J) provide a copy of the manifest signed by the owner or operator of the designated disposal site to the asbestos abatement contractor or the building owner within 14 calendar days after the date the ACWM was accepted for disposal.

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

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

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

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

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

(iii) any verification relating to clause (i) or (ii) of this subparagraph that is requested by DSHS;

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

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

(i) documentation issued by the secretary of state that verifies:

(I) a domestic entity’s existence; or

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

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

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

(E) a taxpayer identification number;

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

(G) the physical address of the office where asbestos records required by§296.291 of this chapter (relating to Recordkeeping) to be kept at a central location are maintained;

(H) proof of liability insurance coverage, including pollution liability coverage to transport for hire ACM for purposes of disposal, and workers' compensation insurance, where required, each in accordance with §1954.105(c) of the Act and as required in §296.45 of this chapter; and

(I) a copy of the company’s emergency response plan, prepared in compliance with, if applicable, or as described in 29 CFR §1910.120(q), which must address, without limitation:

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

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

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

(iii) any verification relating to clause (i) or (ii) of this subparagraph that is requested by DSHS;

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

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

(i) documentation issued by the secretary of state that verifies:

(I) a domestic entity’s existence; or

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

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

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

(E) a taxpayer identification number;

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

(G) the physical address of the office where asbestos records required by§296.291 of this chapter to be kept at a central location are maintained; and

(H) proof of liability insurance coverage, including pollution liability coverage to transport for hire ACM for purposes of disposal, and workers' compensation insurance, where required, each in accordance with §1954.105(c) of the Act and as required in §296.45 of this chapter.

§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 a bulk or air sample collected in a public building.

(b) Licensee scope of practice.

(1) Licensee practice and limitations.

(A) Each branch office of a licensed asbestos laboratory must be separately licensed and accredited for each type of analysis 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 a bulk sample; or

(ii) TEM analysis of an air sample.

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

(i) in the laboratory, if accredited by the American Industrial Hygiene Association (AIHA); if the laboratory’s individual analysts performing the analysis are listed on the AIHA Asbestos Analyst Registry (AAR); or if the laboratory is enrolled and proficient in the AIHA Proficiency Analytical Testing (PAT) Program, as required in subsection (c)(1)(A)(iii) of this section; 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 any act prohibited in §296.31 of this chapter (relating to Prohibited Activities for Licensees).

(2) Licensee responsibilities. An asbestos laboratory shall:

(A) employ one individual as the responsible person as defined in §296.21(85) of this chapter (relating to Definitions) who is responsible for the asbestos laboratory’s operations and compliance with this chapter, and any change of the responsible person must be reported in writing to DSHS within 10 working days after the change;

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

(C) maintain professional liability insurance for errors and omissions, if performing work for hire, and workers' compensation insurance coverage where required, each in accordance with §1954.105(c) of the Act and as required in §296.45 of this chapter (relating to Insurance Requirements); and

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

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

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

(A) the following proof applicable to each type of analysis for which the applicant is applying for a license to perform:

(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; or

(iii) if the laboratory is applying for a PCM air analysis license, proof of at least one of the following:

(I) accreditation by the AIHA Industrial Hygiene Laboratory Accreditation Program and AIHA’s most recent PCM proficiency testing results for the laboratory;

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

(III) proficiency of the individual laboratory analysts through the AIHA AAR, and the most recent proficiency testing results;

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

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

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

(iii) any verification relating to clause (i) or (ii) of this subparagraph that is requested by DSHS;

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

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

(i) documentation issued by the secretary of state that verifies:

(I) a domestic entity’s existence; or

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

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

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

(F) a taxpayer identification number;

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

(H) the physical address of the principal place of business where asbestos samples are analyzed and asbestos records are maintained, as required in §296.291 of this chapter; and

(I) proof of professional liability insurance for errors and omissions, if performing work for hire, and of workers' compensation insurance, where required, each in accordance with §1954.105(c) of the Act and as required in §296.45 of this chapter.

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

(A) the following proof applicable to each type of analysis for which the applicant is applying for a license to perform:

(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; or

(iii) if the laboratory is applying for a PCM air analysis license, proof of at least one of the following:

(I) accreditation by the AIHA Industrial Hygiene Laboratory Accreditation Program and the most recent proficiency testing results;

(II) 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 in accordance with the NIOSH 7400 method; or

(III) proficiency of the individual laboratory analysts through the AIHA AAR and, the most recent proficiency testing;

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

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

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

(iii) any verification relating to clause (i) or (ii) of this subparagraph that is requested by DSHS;

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

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

(i) documentation issued by the secretary of state that verifies:

(I) a domestic entity’s existence; or

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

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

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

(F) a taxpayer identification number;

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

(H) the physical address of the principal place of business where asbestos samples are analyzed and asbestos records are maintained, as required in §296.291 of this chapter; and

(I) proof of professional liability insurance for errors and omissions, if performing work for hire, and of workers' compensation insurance, where required, each in accordance with §1954.105(c) of the Act and as required in §296.45 of this chapter.

TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION

SUBCHAPTER E LICENSE AND REGISTRATION FEES

§296.71. Fees.

(a) All applicable fees must be paid to DSHS before DSHS issues a registration or license.

(b) For all applications and renewal applications, DSHS is authorized to collect subscription and convenience fees, in amounts determined by the Department of Information Resources pursuant to Texas Government Code §2054.252 (relating to State Electronic Internet Portal Project), to recover costs associated with electronic application and renewal application processing.

(c) The fees, not including subscription and convenience fees, are as follows:

(1) asbestos abatement contractor initial or renewal--$1,070;

(2) asbestos abatement supervisor initial or renewal--$400;

(3) asbestos abatement worker initial or renewal--$65;

(4) asbestos air monitoring technician initial or renewal--$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--$750;

(16) asbestos transporter initial or renewal--$430;

(17) reimbursement processing for fee overpayment--$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;

(24) special examination request--$50;

(25) provisional asbestos abatement supervisor--$185

(26) provisional asbestos abatement worker--$30;

(27) provisional asbestos inspector--$60; and

(28) provisional asbestos management planner--$120.

§296.72. Late Fees.

A person who does not submit a timely renewal application shall pay the late fee, as required under paragraph (1) or (2) of this section, as applicable, if the person is eligible to renew the license under §296.42(e) of this title (relating to Initial and Renewal Applications). A renewal application is considered timely if the application, fee, and all required documents are received by DSHS or postmarked before the license expires. If the application, fee, or required documents are deficient and the deficiency is not cleared before the license expires, the renewal is not timely and is subject to the following late fees:

(1) If the person’s license has been expired for one to 90 days, the person’s renewal application must be accompanied by a late fee that is equal to 1.5 times the normally required renewal fee.

(2) If the person’s license has been expired for more than 90 days, but less than a year, the person’s renewal application must be accompanied by a late fee that is equal to two times the normally required renewal fee.

§296.73. Dishonored Payment Device.

(a) An application is incomplete if an applicant submits the application fee by a payment device that is not honored by the issuing financial institution. No later than 30 days after the date of DSHS’s notice of the dishonored payment, the applicant must submit to DSHS a money order or cashier’s check in the amount of the dishonored payment device, plus the fee of $30 for each dishonored payment device.

(b) If DSHS has issued a license obtained with a dishonored payment device and the person does not pay the full amount due by the 30-day payment deadline specified in DSHS’s notice, the person is in violation of this chapter and subject to enforcement action, including license revocation and administrative penalties, as described in Subchapter Q of this chapter (relating to Compliance).

(c) If an applicant has taken an examination, DSHS must receive full payment of all applicable fees before releasing the examination score or approving the initial license.

§296.74. Reimbursement of Fees.

(a) Application fees paid to DSHS are not transferable and may be reimbursed only if:

(1) fee amounts are paid in excess of the required fee, including as a result of an error in the online payment system, and DSHS deducts an administrative fee as specified in §296.71(c)(17) of this chapter (regarding Fees), and subscription and convenience fees as specified in §296.71(b) of this chapter from an excess payment before issuing a refund; or

(2) an application is not processed within the time periods described in §296.42(b) of this chapter (relating to Initial and Renewal Applications).

(A) In that event, the applicant has the right to request a timely resolution of any dispute arising from the delay, and to request reimbursement of the application fee.

(B) A request must be submitted in writing and may be denied if DSHS does not agree that the applicable time period has been exceeded, or finds that there was good cause for exceeding the time period and good cause exists if:

(i) the number of license applications exceeds by 15% or more the number of applications processed in the same calendar quarter of the preceding year;

(ii) DSHS relies on another public or private entity to process all or part of the application process, and that entity causes the delay; or

(iii) any other condition, such as a contested case involving a violation of this chapter, exists that gives DSHS good cause for exceeding the time period.

(b) If DSHS denies a request for reimbursement under subsection (a)(2) of this section, the applicant may appeal in writing to the commissioner that DSHS exceeded the applicable time period without good cause. If the commissioner determines that DSHS exceeded the applicable processing time period without good cause, the applicant is entitled to reimbursement of all application fees paid after being notified in writing of the decision.

TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION

SUBCHAPTER F TRAINING PROVIDERS, INSTRUCTORS, AND COURSES

§296.91. Asbestos Training Provider.

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

(b) Licensee scope of practice.

(1) Licensee practice and limitations.

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

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

(ii) the Asbestos Air Monitoring Technician course as required in §296.93 of this chapter (relating to Asbestos Training Courses); and

(iii) the Texas Asbestos Law and Rules course as required in §296.93 of this chapter.

(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, such as the Asbestos Abatement Worker course and the Asbestos Contractor/Supervisor course that may not be taught in a combined course;

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

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

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

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

(vii) engage in acts prohibited in §296.31 of this chapter (relating to Prohibited Activities for Licensees); or

(viii) allow an unlicensed instructor to teach an asbestos training course after six months of the effective date of §296.92 of this chapter (relating to Asbestos Training Instructor).

(2) Licensee responsibilities. An asbestos training provider shall:

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

(B) provide training taught by only licensed asbestos training instructors who:

(i) are licensed by DSHS 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:

(i) that individuals who are not eligible for employment in the United States will not be licensed;

(ii) what requirements and qualifications apply to the category of license being sought under this chapter;

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

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

(II) the initial training must be completed again after the 12-month grace period in order to obtain accreditation; and

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

(D) ensure that each licensed asbestos training instructor employed by the asbestos training provider:

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

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

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

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

(F) provide for training in an environment that is conducive to learning and without excessive or avoidable external distractions and a classroom may not be utilized for other purposes while training is being conducted, and facilities must have the following:

(i) adequate lighting;

(ii) adequate seating and workspace for each trainee;

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

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

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

(H) record each trainee’s examination score;

(I) comply with requirements for each asbestos training course for which the asbestos training provider is licensed, as required in §296.93 of this chapter, including requiring and verifying that the trainee-to-instructor 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;

(J) appoint a responsible person as defined in §296.21(85) of this chapter (relating to Definitions) whom the asbestos training provider must hold accountable to comply with the applicable requirements of this chapter, and any change of the responsible person must be reported in writing to DSHS within 10 working days after the change;

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

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

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

(N) permit DSHS representatives to observe, evaluate, and monitor any training course;

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

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

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

(R) submit a training course roster to DSHS within 10 working days after the completion date of each course, and the course roster must include:

(i) the name of each trainee;

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

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

(iv) an attached color group photograph of all trainees who successfully completed the course, taken at the end of the training course, and of sufficient size and clarity to identify each trainee; and

(S) comply with course notification requirements in subsection (c) of this section.

(c) Course notification requirements.

(1) Course notifications. An asbestos training provider shall notify DSHS of each scheduled course. DSHS must receive the notification at least 10 working days before the start date of the course. A notification may include multiple courses. The notification must include:

(A) the name, license number, and contact phone number of the asbestos training provider;

(B) the name, license number, and contact phone number of the asbestos training instructor;

(C) the name of the course, with the language in which the course will be conducted specified in the course name for the Asbestos Abatement Worker course;

(D) the physical location (address and room number or name of the conference room) where the training will be held, including all off-site field trip locations;

(E) the start and end dates for the training course; and

(F) the start and end times for each day of training.

(2) Amendments. Notified courses may be amended by notifying DSHS by email or fax at least five working days before the start date of the course.

(A) Amendments are accepted for the following changes:

(i) instructor;

(ii) location;

(iii) time; and

(iv) date.

(B) Amendments are not accepted for the following changes:

(i) name of the training course; or

(ii) language of the course.

(C) Notified courses may not be amended fewer than five working days before the start date of the course. The course must be cancelled as soon as possible, but no later than two hours after the scheduled start time and may be notified as an emergency request if it meets the conditions in paragraph (3) of this subsection.

(3) Emergency notifications. A training provider may request emergency approval of a course if unforeseen circumstances prevent the asbestos training provider from meeting the 10-working-day notification requirement. The emergency notification must be submitted to DSHS by email or fax and must include a justification of why the 10-working-day notification requirement could not be met, and must contain the information required in subsection (c)(1)(A)-(F) of this section. The emergency notification must be submitted at least three working days before the start date of the course. The training provider must receive written approval from DSHS before conducting the course.

(4) Cancellation notifications. A training provider shall notify DSHS of a course cancellation by email or fax as soon as possible, but no later than two hours after the scheduled start time of the course.

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

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

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

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

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

(iii) any verification relating to clause (i) or (ii) of this subparagraph that is requested by DSHS;

(B) a copy of the applicant’s assumed name certificate, with proof of required filing, if the applicant transacts business or renders professional services under an assumed name (commonly referred to as a DBA or “doing business as”);

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

(i) documentation issued by the secretary of state that verifies:

(I) a domestic entity’s existence; or

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

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

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

(E) a taxpayer identification number;

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

(G) the name and mailing address of each owner;

(H) a list of each course to be offered that includes the name and license number of each licensed asbestos instructor that will teach each course;

(I) the name of any guest speaker and the speaker’s topics;

(J) the name of the responsible person as required in subsection (b)(2)(J) of this section;

(K) a description of any equipment and accessories that will be used for course instruction (such as hands-on items, audiovisual aids, brochures);

(L) the applicant’s refund and cancellation policies, and if the applicant will provide the Asbestos Abatement Worker course in a language other than English, the refund and cancellation policies must be submitted in each language in which the course will be offered;

(M) a detailed course outline for each day that includes start and end times for each topic covered, scheduled break times, and specific hands-on training activities for each course;

(N) training manuals and related course materials that include all required elements listed in §296.93 of this chapter for each initial and refresher training course to be offered; and

(i) if the applicant will provide the Asbestos Abatement Worker course in a language other than English, the training manuals and all related course materials must be submitted in each language in which the course will be offered; and

(ii) if the applicant will use an EPA-developed manual, the applicant may submit a statement attesting to its use in place of submitting the manual;

(O) the applicant’s policy regarding the administration of the multiple-choice examination to be given at the conclusion of training, in accordance with §296.93 of this chapter, and if licensed, the applicant shall implement and follow the policy and its required components, which at minimum, must state the following:

(i) each trainee must obtain a passing score of at least 70% on the multiple-choice examination before receiving a training certificate;

(ii) one multiple-choice re-examination is allowed per trainee for each course;

(iii) questions from the original examination 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 testing accommodation under the Americans with Disabilities Act of 1990, 42 USC 12101 et seq., and is a qualified individual with a disability;

(P) a copy of each examination and re-examination that will be administered at the end of each course, and if the applicant will provide the Asbestos Abatement Worker course in a language other than English, examinations must be submitted in each language in which the course will be offered;

(Q) a sample of the training certificate that will be issued to each trainee who completes the course and passes the final course examination, and the certificate must include:

(i) a unique certificate number;

(ii) the licensed asbestos training provider's name and license number, phone number, and address;

(iii) the printed name of the accredited person;

(iv) the discipline (name) of the training course completed;

(v) the printed name, license number, and signature of the licensed asbestos instructor;

(vi) the start and end dates of the training course;

(vii) the expiration date of one year after the date upon which the person successfully completed the training course;

(viii) the printed name and signature of the responsible person, principal officer, owner, or chief executive officer of the licensed asbestos training provider; and

(ix) a statement, as applicable, that the trainee:

(I) “has successfully completed the requisite training for asbestos accreditation under Title II of the Toxic Substances Control Act, 15 USC, Chapter 53, Subchapter II, and meets the requirements of the Texas Asbestos Health Protection rules” (applicable to a MAP training course for which accreditation is issued); or

(II) “has successfully completed training that meets the requirements of the Texas Asbestos Health Protection rules” (applicable to the Asbestos Air Monitoring Technician course or the Texas Asbestos Law and Rules course); and

(R) a sample of the training ID card, which must be issued to each trainee who completes the course and passes the final course examination, and the training ID card must include:

(i) the name of the licensed asbestos training provider;

(ii) a color photo of the trainee’s face (without tinted glasses, hats, bandanas, or other articles that may obscure the head or any part of the face) taken on a white background;

(iii) the name of the accredited person;

(iv) the discipline of the training course completed;

(v) the effective date of the accreditation;

(vi) the unique certificate number shown on the training certificate for the accredited person; and

(vii) the name, license number, and signature of the licensed asbestos instructor.

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

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

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

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

(iii) any verification relating to clause (i) or (ii) of this subparagraph that is requested by DSHS;

(B) a copy of the applicant’s assumed name certificate, with proof of required filing, if the applicant transacts business or renders professional services under an assumed name (commonly referred to as a DBA or “doing business as”);

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

(i) documentation issued by the secretary of state that verifies:

(I) a domestic entity’s existence; or

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

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

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

(E) a taxpayer identification number;

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

(G) a copy of all policies, training resources, training certificates, or training manuals that the applicant seeks approval to amend, with a detailed description of the specific changes, and all amendments must be approved before the training provider may implement the changes; and

(H) a list of all licensed asbestos instructors and guest speakers the training provider intends to use in the asbestos training courses, and the list must include each course that each instructor will teach and the topics that each guest speaker will present.

(e) Approval of additional training courses.

(1) A licensed training provider must request approval to provide any additional training course that was not submitted as part of the initial application for the training provider’s license. To apply for approval, the training provider shall submit:

(A) an Asbestos Course Approval Application for each course;

(B) the fee as outlined in §296.71 of this chapter (relating to Fees);

(C) training manuals and related course materials that include all required elements listed in §296.93 of this chapter for each initial and refresher training course to be offered; and

(i) if the applicant will provide the Asbestos Abatement Worker course in a language other than English, the training manuals and all related course materials must be submitted in each language in which the course will be offered; and

(ii) if the applicant will use an EPA-developed manual, the applicant may submit a statement attesting to its use in place of submitting the manual;

(D) a detailed course outline for each day that includes start and end times for each topic covered, scheduled break times, and specific hands-on training activities for each course;

(E) a copy of each required examination that will be administered at the end of each course, and if the applicant will provide the Asbestos Abatement Worker course in a language other than English, examinations must be submitted in each language in which the course will be offered;

(F) the name and license number of the licensed asbestos instructor who will teach each additional course; and

(G) the name of any guest speaker and the speaker’s topics.

(2) DSHS provides written notice to the licensed training provider whether DSHS 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 without approval by DSHS.

(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, but may not present more than 15% of any course. 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 copies of any applicable academic transcript or diploma specifying the guest speaker’s major;

(B) technical experience;

(C) a verifiable resume; and

(D) relevant, verifiable work experience.

(2) Revocation or suspension of approval. DSHS 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 an asbestos training course for a licensed asbestos training provider, except as provided by subsection (d) of this section.

(b) Licensee scope of practice.

(1) Licensee practice and limitations.

(A) An asbestos training instructor must:

(i) teach only DSHS-approved asbestos training courses for which the instructor holds current MAP accreditation or, for an Asbestos Air Monitoring Technician (AMT) course, holds a Texas AMT training certificate;

(ii) teach each DSHS-approved asbestos training course in accordance with the MAP and as required in this subchapter; and

(iii) 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 a course for accreditation under the MAP or a course required for a license from DSHS:

(I) independent of a licensed training provider;

(II) that DSHS has not approved;

(III) without possessing current MAP accreditation for that course; an AMT training certificate for an Asbestos AMT course; or a Texas Asbestos Law and Rules training certificate for a Texas Asbestos Law and Rules course; and

(IV) without submitting notification to DSHS, in accordance with §296.91(c) of this chapter (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 chapter (relating to Prohibited Activities for Licensees).

(2) Licensee responsibilities. An asbestos training instructor shall:

(A) confirm with each trainee that the training provider has informed the trainee of each required information item, as required in §296.91(b)(2)(C) of this chapter;

(B) inform each trainee of the following:

(i) for an initial training course, each trainee must achieve a score of at least 70% on the course examination to receive a training certificate;

(ii) if a trainee fails the course examination, a second examination will be administered; and

(iii) a trainee must retake the initial training course if the trainee does not achieve a score of at least 70% on the second examination;

(C) coordinate with the responsible person to verify that there is documented confirmation that:

(i) each trainee possesses valid accreditation, or is within the 12-month grace period for accreditation renewal, before granting admission to a refresher training course;

(ii) necessary training equipment is on-site and in good working order; and

(iii) the required trainee-to-instructor ratio, as required in §296.93 of this chapter (relating to Asbestos Training Courses) is not exceeded;

(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) implement and enforce attendance and course completion requirements;

(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, as required under the policy and practices required under §296.91(d)(1)(O) of this chapter;

(J) record each trainee’s examination score;

(K) comply with requirements for training courses as required in §296.93 of this chapter;

(L) present all course materials as outlined in the syllabus and as presented to DSHS for approval;

(M) provide a course review to improve and reinforce comprehension before administering the examination;

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

(O) provide instructions for locating the registration form for the state licensing examination and examination schedule on DSHS’s website.

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

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

(A) verifiable documentation that the applicant has 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 or post-secondary education level, or in teaching adult learners at a vocational school, a trade school, or other similar setting approved by DSHS;

(ii) a bachelor’s degree with at least six months of experience performing asbestos-related activities with any required licensure or accreditation, and at least three months of teaching experience at the secondary or post-secondary education level, or in teaching adult learners at a vocational school, a trade school, or other similar setting approved by DSHS;

(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 or post-secondary education level, or in teaching adult learners at a vocational school, a trade school, or other similar setting approved by DSHS; or

(iv) a high school diploma or equivalent with at least two years of experience performing asbestos-related activities with any required licensure or accreditation; and:

(I) at least three months of teaching experience at the secondary or post-secondary education level;

(II) at least three months of teaching adult learners at a vocational school, a trade school, or other similar setting approved by DSHS; or

(III) successful completion of a train-the-trainer course approved by DSHS;

(B) acceptable documentation of the relevant education, work, and teaching experience, as described in subparagraph (A) of this paragraph, which must include each of the following, or an equivalent alternative approved by DSHS:

(i) an official academic transcript or diploma that verifies the major;

(ii) a description of experience performing asbestos-related activities that includes:

(I) the project name and location;

(II) the start and end date;

(III) a description of duties performed; and

(IV) the name and contact information of the individual or office that can verify the experience;

(iii) a description of the applicant’s teaching experience that includes:

(I) the course title and description;

(II) the start and end date;

(III) the location or institution; and

(IV) the name and contact information of the individual or office that can verify the teaching experience; and

(iv) proof of licensure or accreditation or both to verify that work was performed in accordance with applicable laws and rules; and

(C) training certificates for the initial asbestos training courses and all subsequent refresher training courses to show current and valid accreditation for each course the instructor is applying to teach.

(2) Renewal requirements. An applicant for a renewal license shall submit proof of current and valid accreditation for each course the applicant is applying to teach.

(d) Instructors approved before the effective date of this section. An instructor who, as of the effective date of this section, has been approved to teach a DSHS-approved training course, may continue to teach the course for up to six months from the effective date of this section without a license. Within six months after the effective date of this section, 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 additional education, work experience, and teaching experience required under subsection (c) of this section that was not required when the instructor was approved. An instructor seeking a license under this subsection must show proof of current accreditation for each course the instructor is applying to teach. Current accreditation for the Texas Law and Rules course is not required to teach that course until six months after the effective date of this section. If, within six months after the effective date of this section, the instructor has not applied for and received a license, the instructor may not continue teaching under the instructor’s prior approval. Any future application for an initial license will be subject to the education, work experience, and teaching experience otherwise required for initial licensure under this section.

§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 DSHS-approved courses and not MAP courses. To be applied toward DSHS license requirements, each course must be conducted by a DSHS-licensed asbestos training provider.

(4) The training certificate expires one year after the date upon which the person successfully completed the course. A person whose training certificate has expired may not engage in an activity for which a current training certificate is required under the MAP or this chapter until the training certificate is renewed. Training must be renewed annually by completing the appropriate refresher training course. The initial training course must be repeated if the refresher training course is not completed within one year after the expiration date of the training certificate.

(5) Initial 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) a maximum of 80 minutes for breaks and lunch, and 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 after 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) a maximum of 80 minutes for breaks and lunch, and no more than four hours of instruction may be given without at least a 30-minute break;

(B) one-half day of training must be a minimum of four hours and include:

(i) at least 3 hours and 40 minutes of classroom instruction; and

(ii) a maximum of 20 minutes for breaks.

(7) A trainee may not complete the course if the trainee misses more than 10% of a training course.

(8) During hands-on training, each trainee must physically perform simulated activities specific to the asbestos training discipline. The simulated activities must not be asbestos-related activities for which licensure is required. Demonstrations and audiovisuals are not substitutes for required hands-on training.

(9) The student to instructor ratio during each course 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 effectively in that language, and training materials and examinations are in that same language.

(b) Initial training course requirements.

(1) Asbestos Abatement Worker course. The Asbestos Abatement Worker course must be at least four training days. This course must include lectures, demonstrations, at least 14 hours of hands-on training, individual respirator fit-testing, course review, and a written examination of 50 multiple-choice questions. Successful completion of the course will require passing the examination with a score of at least 70%. The course must adequately address the following in accordance with the MAP:

(A) the physical characteristics of asbestos, ACBM, and other ACM;

(B) potential health effects related to asbestos exposure;

(C) employee personal protective equipment;

(D) state-of-the-art work practices;

(E) personal hygiene;

(F) additional safety hazards;

(G) medical monitoring;

(H) air monitoring;

(I) relevant federal, Texas, and local regulatory requirements, procedures and standards;

(J) establishment of respiratory protection programs and medical surveillance programs;

(K) hands-on training that includes work area preparation, decontamination chamber construction, cleaning and disposal, and respirator fit-testing and maintenance; and

(L) course review.

(2) Asbestos Contractor/Supervisor course. The Asbestos Contractor/Supervisor course must be at least five training days. The course must include lectures, demonstrations, at least 14 hours of hands-on training, individual respirator fit-testing, course review, and a written examination of 100 multiple-choice questions. Successful completion of the course will require passing the examination with a score of at least 70%. The course must adequately address the following in accordance with the MAP:

(A) the physical characteristics of asbestos, ACBM, and other ACM;

(B) potential health effects related to asbestos exposure;

(C) employee personal protective equipment;

(D) state-of-the-art work practices;

(E) personal hygiene;

(F) additional safety hazards;

(G) medical monitoring;

(H) air monitoring;

(I) relevant federal, Texas, and local regulatory requirements and standards;

(J) establishment of respiratory protection programs and medical surveillance programs;

(K) hands-on training that includes work area preparation, decontamination chamber construction, cleaning and disposal, and respirator fit-testing and maintenance;

(L) insurance and liability issues;

(M) recordkeeping for asbestos abatement projects;

(N) supervisory techniques for asbestos abatement activities;

(O) contract specifications; and

(P) course review.

(3) Asbestos Air Monitoring Technician course. The Asbestos Air Monitoring Technician course must be at least three training days. The course must include lectures, demonstrations, hands-on individual respirator fit-testing, course review, and a written examination consisting of 50 multiple-choice questions. Successful completion of the course will require passing the examination with a score of at least 70%. The course must adequately address the following:

(A) the health effects of asbestos exposure including:

(i) the nature of asbestos-related diseases;

(ii) routes of exposure;

(iii) no known safe exposure level;

(iv) the synergistic effect between cigarette smoking and asbestos exposure;

(v) the latency periods for asbestos-related diseases; and

(vi) a discussion of the relationship of asbestos exposure to asbestosis, lung cancer, mesothelioma, and cancers of other organs;

(B) the following OSHA regulations:

(i) 29 CFR §1910.134 (relating to Respiratory protection);

(ii) 29 CFR §1910.1001, Appendix A (relating to OSHA Reference Method--Mandatory);

(iii) 29 CFR §1910.1001, Appendix B (relating to Detailed Procedure for Asbestos Sampling and Analysis--Non-mandatory);

(iv) 29 CFR §1910.1200 (relating to Hazard communication); and

(v) 29 CFR §1926.1101 (relating to Asbestos), OSHA’s asbestos standard for the construction industry;

(C) the following sections of this chapter:

(i) §296.21 of this chapter (relating to Definitions);

(ii) §296.51 of this chapter (relating to Asbestos Air Monitoring Technician);

(iii) §296.211 of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building);

(iv) §296.212 of this chapter (relating to Standard Asbestos Abatement Practices and Procedures in a Public Building);

(v) §296.213 of this chapter (relating to Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building); and

(vi) §296.291 of this chapter (relating to Recordkeeping);

(D) 40 CFR Part 763, Subpart E, Appendix A (relating to Interim Transmission Electron Microscopy Analytical Methods--Mandatory and Nonmandatory--and Mandatory Section To Determine Completion of Response Actions), overview of AHERA air monitoring requirements and AHERA sampling;

(E) asbestos air sampling methods, including:

(i) calibration of air sampling pumps;

(ii) air sample volume calculations;

(iii) sampling strategies for clearance monitoring;

(iv) types of air samples (personal breathing zone versus fixed-station area);

(v) sampling location and objectives (pre-abatement, during abatement, and clearance monitoring);

(vi) number of samples to collect;

(vii) minimum and maximum air volumes in accordance with the NIOSH 7400 method;

(viii) period of sampling;

(ix) aggressive clearance sampling;

(x) interpretations of sampling results;

(xi) quality assurance methods (for example, Z-test); and

(xii) special sampling problems (crawl spaces, unacceptable samples for laboratory analysis, sampling in occupied buildings);

(F) evaluation methods, including:

(i) transmission electron microscopy (analysis feedback affecting flow rates, EPA’s recommended technique for analysis of final air clearance samples);

(ii) phase contrast microscopy;

(iii) AHERA’s limits on the use of phase contrast microscopy;

(iv) what each technique measures (phase contrast microscopy versus transmission electron microscopy);

(v) analytical methodologies;

(vi) AHERA transmission electron microscopy protocol;

(vii) NIOSH 7400 method;

(viii) OSHA reference method (non-clearance); and

(ix) EPA recommendation for clearance (transmission electron microscopy);

(G) sampling equipment, including:

(i) sampling pumps (low volume versus high volume, battery versus plug-in);

(ii) flow regulating devices;

(iii) sampling media;

(iv) types of filters;

(v) types of cassettes and how to prepare for each type of analysis;

(vi) filter orientation;

(vii) storage and shipment of filters;

(viii) calibration techniques;

(ix) primary and secondary calibration standards;

(x) temperature and pressure effects;

(xi) environmental conditions that prohibit analysis; and

(xii) frequency of calibration;

(H) calculating sampling times, including:

(i) documenting start time and end time; and

(ii) calculating total time;

(I) time weighted average (TWA) calculation including 8-hour TWA and TWA formula;

(J) calibration of air sampling pumps, including:

(i) primary versus secondary calibration standards;

(ii) soap film flowmeter;

(iii) in-line and inlet rotameter positioning;

(iv) rotameter calibration worksheet;

(v) electronic calibrators;

(vi) temperature and pressure correction and effects on sample integrity;

(vii) high volume air sampling pumps and calibration; and

(viii) critical orifices;

(K) air sampling logs and records, including:

(i) data elements;

(ii) air sample labeling;

(iii) chain of custody forms;

(iv) shipping and handling methods;

(v) cassette labeling; and

(vi) recordkeeping and field work documentation;

(L) types of air sampling, including:

(i) baseline;

(ii) area;

(iii) personal;

(iv) clearance;

(v) area sampling during glove bag operations; and

(vi) upwind and downwind; and

(M) course review.

(4) Asbestos Inspector course. The Asbestos Inspector course must be at least three training days. The course must include lectures, demonstrations, 4 hours of hands-on training, individual respirator fit-testing, course review, and a written examination consisting of 50 multiple choice questions. Successful completion of the course will require passing the examination with a score of at least 70%. The course must adequately address the following in accordance with the MAP:

(A) background information on asbestos;

(B) potential health effects related to asbestos exposure;

(C) functions/qualifications and role of inspectors;

(D) legal liabilities and defenses;

(E) understanding building systems;

(F) public/employee/building occupant relations;

(G) pre-survey planning, and review of previous survey records;

(H) inspecting for friable and nonfriable ACM;

(I) assessing the condition of friable ACM;

(J) bulk sampling/documentation of asbestos;

(K) respiratory protection;

(L) personal protective equipment;

(M) hands-on training that includes a pre-field-trip simulated asbestos survey with bulk sampling of non-ACBM, and respirator fit-testing and maintenance;

(N) recordkeeping and writing the asbestos survey report;

(O) federal, state, and local regulations;

(P) field trip that includes a building walk-through at a suitable location outside of the classroom; and

(Q) course review.

(5) Asbestos Management Planner course. The Asbestos Management Planner course must be two training days. The prerequisite for admission to the course is to provide a copy of a current 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, including discussion of removal, encapsulation, and enclosure methods and asbestos waste disposal;

(J) final clearance process, including discussion of the need for a written sampling rationale for aggressive final air clearance; requirements of a complete visual inspection; and the relationship of the visual inspection to final air clearance;

(K) budgeting and cost estimating;

(L) writing abatement specifications and plans;

(M) preparing abatement drawings;

(N) contract preparation and administration;

(O) legal/liabilities/defenses;

(P) replacement of asbestos with asbestos-free substitutes;

(Q) role of other consultants;

(R) occupied buildings, special design procedures required in occupied buildings, education of occupants, extra monitoring recommendations, staging of work to minimize occupant exposure, and scheduling of renovation to minimize exposure;

(S) how to accomplish a complete visual inspection;

(T) relevant federal, Texas, and local regulatory requirements; and

(U) course review.

(7) Texas Asbestos Law and Rules course. The Texas Asbestos Law and Rules course must be three hours. The course must adequately address the law and rules for the following:

(A) asbestos management in public buildings;

(B) notification requirements for public buildings;

(C) operations and maintenance (O&M) requirements for public buildings;

(D) abatement practices and procedures for public buildings;

(E) asbestos licensing requirements;

(F) recordkeeping requirements;

(G) exemptions; and

(H) conflicts of interest.

(c) Refresher training course requirements.

(1) An annual refresher training course is required for each discipline to maintain accreditation or licensure. Each refresher training course must adequately address the following:

(A) federal, state, and local regulations;

(B) developments in state-of-the-art procedures; and

(C) key aspects of the initial training course.

(2) A refresher training course must consist of at least the following amount of training, as specified for the applicable refresher training course:

(A) asbestos abatement worker--one day of training;

(B) asbestos contractor/supervisor--one day of training;

(C) asbestos inspector--one half-day of training;

(D) asbestos management planner--one half-day of training;

(E) asbestos project designer--one day of training; and

(F) asbestos air monitoring technician--one half-day of training.

TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION

SUBCHAPTER G STATE LICENSING EXAMINATION

§296.111. General Examination Provisions.

(a) Each license applicant, except an asbestos abatement worker applicant, must pass the examination for the license type for which the applicant is applying to qualify for a license.

(b) A passing examination score may not be used to obtain more than one license.

(c) An applicant must submit all documents and fees necessary to complete the licensing process within three years after passing the required examination. If the applicant does not complete the application process within three years, the applicant must prepare and submit a new application with the application fee and retake the examination.

(d) DSHS approval to take an examination lapses and is no longer valid if an applicant:

(1) fails to show for a scheduled examination; or

(2) does not take an examination within six months after submitting the application.

(e) An applicant who is a qualified person with a disability may request a reasonable testing accommodation by submitting to the Asbestos program a “Reasonable Modification Request for Licensing or Certification Examinations” form and other required documentation, in accordance with the Health and Human Services System’s Circular C-039, “Reasonable Modifications in the Licensing and Certification Examination Process.” Applicants may contact DSHS for additional information.

§296.112. Examination Schedule.

DSHS publishes all scheduled examination dates and locations on its website. DSHS may cancel or reschedule examinations when necessary. A request to take an examination on a date not listed on the schedule must be submitted to DSHS in writing with the applicable fee for a special examination request, as required in §296.71 of this chapter (relating to Fees). DSHS may approve or deny the request at its discretion.

§296.113. Examination Qualifications.

(a) An individual must complete all required training courses from a DSHS-licensed training provider, or a training provider approved by another state that administers training in accordance with the MAP, before applying to take an examination.

(b) An individual who has completed all required training in another state must meet the requirements in §296.44 of this chapter (relating to Out-of-State Applicants).

(c) A copy of all required initial and refresher training certificates proving current accreditation must be submitted with the examination application.

§296.114. Examination Registration and Confirmation.

(a) To apply to take an examination, an applicant must submit a completed examination application, the examination fee outlined in §296.71 of this chapter (relating to Fees), and documentation of all required training courses at least 15 calendar days before the desired examination date.

(b) Submission of an application does not guarantee approval or admission for a specific examination. If the applicant meets all requirements to take the applicable examination, DSHS will attempt to schedule the applicant for the requested date and location, but space limitations may require DSHS to offer an examination date and location other than the preferred or requested selection.

(c) Upon approval of an examination request, DSHS will email, fax, or mail an examination confirmation letter to the applicant with the date, location, and time of the examination.

§296.115. Examination Admittance and Conduct.

(a) To enter the test site, the examinee must present the examination confirmation letter from DSHS and a government-issued photo identification.

(b) If an examinee fails to follow the proctor’s instructions regarding conduct, the proctor may terminate that individual’s examination by collecting the examination materials and asking the individual to leave. The examination fee is not refundable. An examination that has been terminated as a result of an examinee’s inappropriate conduct counts as a failed examination attempt.

(c) If an examinee’s conduct involves an act of dishonesty, DSHS may withdraw the examination confirmation letter, impose administrative penalties, revoke any license the examinee holds under this chapter, or deny the license application that applies to the examination.

§296.116. Grading Examinations and Reporting Scores.

(a) A grade of 70% must be achieved for an examinee to pass the examination.

(b) DSHS notification to the examinee of the examination result of an examination graded or reviewed by DSHS is sent to the examinee no later than 30 working days after the examination is administered.

(c) DSHS notification to the examinee of the examination result of an examination graded or reviewed by a testing service is sent to the examinee no later than 14 days after DSHS receives the result. If DSHS does not receive notice of the examination result from the testing service within 30 working days after the examination is administered, DSHS notification of the reason for the delay is sent to the examinee no later than 90 days after the examination is administered. DSHS may require a testing service to notify an examinee of the results directly.

(d) Instructions regarding re-examination accompany DSHS notice to the examinee of a failing grade.

§296.117. Re-examination.

An individual applying for re-examination must submit a new examination application and pay the required fee. An applicant may take a maximum of two re-examinations after failing the initial examination. Re-examination must occur within one year after the previous examination. An applicant who fails the state examination three times per license category must repeat the initial training course or courses, as applicable, for the intended license and submit a new examination application.

§296.118. Analysis of Examination Performance.

An examinee may obtain an analysis of the examinee’s performance on a failed examination upon written request to DSHS. The request must be made within one year after the examination date.

TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION

SUBCHAPTER H LICENSE AND REGISTRATION PROVISIONS RELATED TO MILITARY SERVICE MEMBERS, MILITARY VETERANS, AND MILITARY SPOUSES

§296.131. Military Service Members, Military Veterans, and Military Spouses.

(a) This subchapter establishes licensing procedures for military service members, military veterans, and military spouses in accordance with Occupations Code, Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses.

(b) An applicant under this section shall provide documentation of the applicant’s status as a military service member, military veteran, or military spouse, as those terms are defined in Occupations Code §55.001. Acceptable documentation includes a copy of official documents, such as an applicable military service order, marriage license, or military discharge record. The applicant who fails to provide appropriate documentation under this subchapter is not eligible to be processed under this subchapter and is subject to routine licensing requirements under Subchapter D of this chapter (relating to License and Registration).

(c) Upon request, an applicant 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 service member, military veteran, or military spouse, and who holds a current license issued by another jurisdiction that has substantially equivalent licensing requirements to the Texas license for which the applicant is applying shall complete and submit an application form and fee.

(f) In accordance with Occupations Code, §55.004(c), DSHS may waive any prerequisite to obtaining a license after reviewing the credentials of an applicant who is eligible to apply under subsection (e) or (g) of this section. A DSHS license is issued as soon as practicable to any qualified applicant who applies under subsection (e) or (g) of this section. Renewal of the license is subject to the requirements of subsection (h) of this section.

(g) A military service member, military veteran, or military spouse who, within the five years preceding the application date, held a Texas license that expired while the applicant lived in another state for at least six months, is qualified for the same license based on the previously held license, if there are no unresolved complaints against the applicant and there is no other bar to licensure, such as noncompliance with a DSHS order. The applicant must prove current accreditation.

(h) If DSHS issues an initial license to an applicant who is a military service member, military veteran, or military spouse who applies under subsection (e) of this section, the applicant is also notified in writing or by electronic means whether the applicant has met all the licensing requirements of Texas by virtue of the current license issued by another jurisdiction, including any licensing requirements still required to be completed in order to renew the license. If the applicant has not met all licensing requirements of Texas for the applicable license type, the applicant must provide proof of completion before applying for license renewal. The license is not eligible for renewal unless the applicant provides proof of completion of all Texas licensing requirements for the applicable license.

(i) The term of a license issued under this subchapter is two years. The license expires on the second anniversary of the issue date. The term of a renewal license issued under this subchapter is two years after the previous expiration date.

(j) Examination and license application fees otherwise required to be paid to DSHS are waived for:

(1) a military service member or military veteran applicant whose military service, training, or education substantially meets all applicable requirements for the license under this chapter; or

(2) a military service member, military veteran, or military spouse applicant who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license under this subchapter.

(k) An individual who holds a license under this chapter is exempt from any increased fee or other penalty imposed for failing to renew the license in a timely manner if the individual establishes to DSHS’s satisfaction that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

(l) A military service member who holds a license under this chapter is entitled to two years of additional time beyond the expiration date of the license to complete:

(1) any continuing education requirements; and

(2) any other requirement related to the renewal of the military service member’s license.

TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION

SUBCHAPTER I ACCREDITATION

§296.151. 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, asbestos project manager, 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) the conduct of an asbestos survey; or

(3) project management:

(A) to observe, on behalf of the commercial building owner, an abatement activity performed by an accredited contractor/supervisor; and

(B) to observe and evaluate, report and document that abatement work is completed according to specifications and plans, and in compliance with all relevant statutes and regulations.

(b) Accreditation course. A person receives accreditation by successfully completing the appropriate asbestos training course in accordance with the MAP. The applicable asbestos training course must:

(1) be approved by DSHS and offered by a DSHS-licensed asbestos training provider;

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

(3) be approved directly by EPA.

(c) Proof of accreditation. A person performing an asbestos-related activity must provide proof of current accreditation at the work site by having one of the following:

(1) a government-issued photo identification (ID) with either a Texas training course certificate from a Texas-licensed asbestos training provider or an accreditation certificate from another state; or

(2) a training ID card from a Texas-licensed asbestos training provider or an accreditation photo ID card from another state.

(d) Reaccreditation. Annual refresher training is required for reaccreditation. A person whose accreditation certificate has expired may not engage in an activity for which a current accreditation certificate is required under the MAP or this chapter unless the person has been reaccredited. An accredited person has a 12-month grace period after the expiration date of the accreditation certificate in which to complete a refresher training course for reaccreditation. After that grace period, initial training must be repeated to become reaccredited.

(e) Standards. Work practices and accreditation for any asbestos-related activity described in this section must meet or exceed applicable federal laws and regulations relating to the MAP and NESHAP.

TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION

SUBCHAPTER J EXEMPTIONS

§296.171. Removal of Resilient Floor-Covering Material.

The license and registration requirements in this chapter do not apply to a person who is performing or supervising resilient floor-covering material removal in a public building using work practices for that activity published by the Resilient Floor Covering Institute (RFCI work practices) or other methods determined by the commissioner to provide public health protection from asbestos exposure, and who otherwise complies with §1954.104 of the Act and §296.231 of this chapter (relating to Alternative Practices and Procedures for Removal of Asbestos-Containing Resilient Floor-Covering Material in a Public Building). This includes the removal of an asbestos-containing mastic that is adhered to non-asbestos-containing flooring material.

§296.172. Emergency Abatement.

In a catastrophic emergency affecting public health or safety that results from a sudden, unexpected event that is not a planned renovation or demolition, where asbestos abatement is required, DSHS, on receipt of oral or written notification of the emergency as required in §296.251 of this chapter (relating to Notifications), may waive the requirement for a license for that emergency abatement.

TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION

SUBCHAPTER K ASBESTOS MANAGEMENT IN A PUBLIC BUILDING, COMMERCIAL BUILDING, OR FACILITY

§296.191. Asbestos Management in a Public Building, Commercial Building, or Facility.

(a) Public building owner responsibilities. The public building owner is responsible for compliance with this chapter in relation to the presence, condition, disturbance, renovation, demolition, and disposal of any ACBM and ACWM that is encountered in the construction, operations, maintenance, or furnishing of that building, including when the building is under management by others. Before operations and maintenance, renovation, or demolition, the building owner is required to have an inspection performed and have the ACBM abated in as required in this chapter. The building owner or the building owner’s authorized representative shall inform anyone who performs any type of construction, maintenance, installation, repairs, custodial services, renovation, or demolition work in the owner's building of the presence and location of ACBM before the start of any asbestos-related activity. The building owner or authorized representative may provide the information in writing or through documented oral communication. The building owner shall also fulfill the following obligations, either personally or through an authorized representative, including when the building is under management by others:

(1) hire or otherwise permit only a person holding a license applicable to the asbestos-related activity performed by that person to perform any such asbestos-related activity in the building;

(2) require each person described under paragraph (1) of this subsection to comply with all applicable requirements;

(3) ensure compliance with this chapter during periods of vacancy;

(4) inform those who enter the building for purposes of construction, maintenance, installation, repairs, custodial services, renovation, or demolition work, of the presence and location of ACBM that could be disturbed or dislodged by those activities, and arrange for its proper handling; and

(5) confirm that the regulated area meets the clearance level of 0.01 f/cc before reoccupancy of that area.

(b) Commercial building owner responsibilities. The commercial building owner is responsible for compliance with this chapter in relation to the presence, condition, disturbance, renovation, demolition, and disposal of any asbestos that is encountered in the construction, operations, maintenance, or furnishing of that commercial building, including when the building is under management by others. Before operations and maintenance, renovation, or demolition, the commercial building owner is required to have an inspection performed and to have the ACM abated in accordance with NESHAP. The commercial building owner shall also ensure compliance with this chapter during periods of building vacancy.

(c) Facility owner responsibilities. The facility owner is responsible for compliance with this chapter in relation to the presence, condition, disturbance, renovation, demolition, and disposal of any asbestos that is encountered in the construction, operations, maintenance, or furnishing of that facility, including when the facility is under management by others. Before operations and maintenance, renovation, or demolition, the facility owner is required to inspect for the presence of asbestos and to abate ACM in accordance with NESHAP. The facility owner shall also ensure compliance with NESHAP during periods of vacancy.

(d) Mandatory survey for ACBM before renovation or demolition.

(1) Before any renovation or dismantling outside of or within a public building, commercial building, or facility, including preparations for partial or complete demolition, the owner must have an asbestos survey performed.

(2) The work area and all immediately surrounding areas that could foreseeably be disturbed by the actions necessary to perform the project must be thoroughly surveyed and, as applicable, sampled before renovation or demolition.

(3) A copy of the asbestos survey report that includes the contents described in §296.21(97) of this chapter (relating to Definitions) must be produced upon request by DSHS within 10 working days after the request.

(4) A building may be demolished with RACM in place if a state or local government orders the demolition because the building is structurally unsound and in danger of imminent collapse, as determined by a professional engineer or a city, county, or state government official who is qualified to make that decision.

(A) The owner must maintain documentation of such order.

(B) If an owner is unable to obtain a survey because the building is structurally unsound and unsafe to enter, and the owner 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 DSHS to request a waiver from survey. Documentation supporting the inability to obtain an order must be submitted with the request.

(C) If a survey cannot be performed before demolition starts due to the building being structurally unsound and unsafe to enter, all suspect material must be treated as RACM in accordance with NESHAP requirements in 40 CFR §61.141 (relating to Definitions), §61.145(a)(3) and (c)(4)-(9) (relating to Standards for demolition and renovation), and §61.150(a)(3) (relating to Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations).

(5) Without otherwise limiting the scope of an asbestos survey, each survey for a public building must treat any building material listed in paragraph (n)(3) of this section as suspect ACBM and include all such materials in the asbestos survey if the materials could foreseeably be disturbed during the renovation or demolition activities.

(6) In a public building, the mandatory survey requirement may be met in one of the following two ways.

(A) A licensee appropriately licensed as required in this chapter and the Act performs a survey which conforms to generally accepted industry standards, such as the AHERA requirements specified in 40 CFR Part 763, Subpart E (relating to Asbestos-Containing Materials in Schools), §§763.85 - 763.88, which is the required method for schools. The licensee must prepare a survey report that includes the contents described in §296.21(97) of this chapter. To demonstrate that there is no ACBM, the licensed individual must collect a minimum of three samples from each suspect homogeneous area.

(B) A Texas-registered architect or a Texas-licensed professional engineer reviews the information from MSDSs and SDSs of the materials used in the original construction of the building, the subsequent renovations or alterations of all parts of the building affected by the planned renovation or demolition, and any asbestos survey reports of the building previously conducted as required in this chapter, and certifies that in the architect’s or engineer's or architect's professional opinion, all parts of the building affected by the planned renovation or demolition do not contain asbestos. This certification must also clearly identify the name of the building, the street address and specific area of the building that applies to the certification, the survey report date of each previous asbestos survey report reviewed, and the specific dates of completion of all original construction and subsequent renovations or alterations that apply to the certification.

(7) In a commercial building, only an accredited inspector who has completed the MAP inspector training may perform the asbestos survey. Except as provided under subsection (p) of this section, the accredited inspector does not need to be licensed to perform the asbestos survey.

(8) In a facility that is not a public or commercial building, the survey must conform to 40 CFR §61.145. OSHA regulations or other EPA regulations may apply.

(e) Asbestos survey.

(1) A limited asbestos survey may be performed to address a specific area of a building, such as an area identified for renovation. A limited asbestos survey may not be substituted for a thorough asbestos survey of the entire building.

(2) A comprehensive asbestos survey covering the entire building is required before demolition of a building.

(3) An asbestos survey report remains acceptable if the asbestos survey was done in compliance with the applicable law, including the Texas Asbestos Health Protection rules, in effect at the time the asbestos survey was completed, and if the asbestos survey addressed and continues to represent accurately for the building any ACBM that will be affected or other asbestos condition, including its location, type, and condition.

(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. The survey and survey report must identify, including its location, type, and condition, all ACBM that is found to be ACM, as defined in §296.21(3) of this chapter. To assess the presence of ACBM and determine the need for any O&M activity or abatement, the licensed asbestos inspector must collect a minimum of three samples from each homogeneous area. The samples must be evaluated by a licensed asbestos laboratory. If one sample from a homogeneous area is found to be ACM, the remaining samples from that homogeneous area do not have to be analyzed. Building materials that have not been surveyed as required in this subsection and are suspected of containing asbestos must be treated as ACBM.

(1) When conducting core sample analysis, each layer must be analyzed and reported separately. Core sample analysis in a public building may not be reported as an average or a composite result.

(2) A result of visual estimation by polarized light microscopy (PLM) analysis of 0% asbestos or no asbestos detected does not require further analysis for the detection of asbestos in friable or nonfriable suspect materials.

(3) A result of visual estimation by PLM analysis of greater than 0% and less than 10% asbestos may be demonstrated to be material that is not ACBM only if the material is further analyzed using other analysis, based upon the hierarchy and terms in subparagraphs (A)-(C) of this paragraph.

(A) The result of point counting by PLM analysis of a sample supersedes and replaces the initial result of visual estimation by PLM.

(B) The result of gravimetric preparation, followed by point counting or transmission electron microscopy (TEM) visual estimation analysis of a sample, supersedes and replaces the result of visual estimation by PLM and the result of point counting by PLM.

(C) Point counting may be used to analyze either a friable or nonfriable material. Nonfriable materials, such as mastics and floor tile, where fibers are occluded by a binding matrix, must be processed using a technique that renders the material friable, such as acid washing and ashing outlined in EPA/600/R-93/116.

(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 as required in this section.

(1) Demolition or renovation of a public building. Before performing any demolition in a public building, the building owner shall ensure that all suspect ACBM is surveyed and RACM is abated in accordance with NESHAP and as required in this chapter. Before performing any renovation in a public building, the building owner shall ensure that all suspect ACBM that could foreseeably be disturbed in the area to be renovated is surveyed, and ACBM is abated as required in this chapter.

(2) Demolition or renovation of a commercial building. Before performing any demolition, renovation, or O&M activity in a commercial building, the owner or operator shall ensure that all suspect ACBM is surveyed and RACM is abated in accordance with NESHAP and the MAP.

(3) Demolition or renovation of a facility. Before performing any demolition, renovation, or O&M activity in a facility, the owner or operator shall ensure that all suspect ACBM is surveyed and RACM is abated in accordance with NESHAP.

(4) Demolition or renovation of a residential building that contains four or fewer dwelling units. Two or more residential buildings that contain four or fewer dwelling units and 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 NESHAP requirements.

(A) Two or more residential buildings that contain four or fewer dwelling units are subject to NESHAP if they are on the same site and under the control of the same owner or operator, or owner or operator under common control, as part of the same renovation or demolition project. Residential buildings are considered to be on the same site if they are within 660 feet of each other. Demolitions planned at the same time or as part of the same planning or scheduling period, which is often a calendar year or fiscal year or the term of a contract, are considered to be part of the same project. Each owner or operator of the residential buildings 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 NESHAP, and each owner or operator shall ensure that all suspect ACM in the residential building, as well as in the other building types, is surveyed and RACM is abated in accordance with NESHAP. If one residential building that contains four or fewer dwelling units is the only building being demolished, NESHAP regulations do not apply.

(C) Nuisance residence demolition is subject to NESHAP if the residence contains greater than four dwelling units or if it meets the conditions described in subparagraphs (A) or (B) of this paragraph.

(h) Demolition with ACM left in place.

(1) Category I nonfriable ACM may be left in place if it is not in poor condition, has not become friable, and will not become RACM during demolition.

(2) Category II nonfriable ACM may be left in place if the probability is low that the material will become RACM, or be crumbled, pulverized, or reduced to a powder during demolition.

(3) RACM may be left in place if the total amount of RACM is under the NESHAP threshold in accordance with 40 CFR §61.145. All RACM must be removed before demolition if the NESHAP threshold is met or exceeded.

(i) Mandatory asbestos abatement project design for friable ACBM. An asbestos abatement project design is required, and must be prepared by either a licensed asbestos consultant (for a public building) or an accredited project designer (for a commercial building), for a project that involves any of the following activities:

(1) a response action other than an SSSD activity;

(2) a maintenance activity that disturbs friable ACBM other than an SSSD activity or a small project or repetitive task described in §296.233 of this chapter (relating to Alternative Asbestos Practices and Procedures for Small Projects and Repetitive Tasks in a Public Building); or

(3) a response action for a major fiber release episode.

(j) Mandatory asbestos abatement project design for nonfriable ACBM. An asbestos abatement project design is required, and must be prepared by a licensed asbestos consultant, for an abatement project in a public building that has a combined amount of nonfriable ACBM to be removed in excess of 160 square feet of surface area, 260 linear feet of pipe length, or 35 cubic feet of material. Floor tile removed as required in §296.171 of this chapter (relating to Removal of Resilient Floor-Covering Material), and any activity conducted as described in §296.234 of this chapter (relating to Alternative Practices and Procedures for Removal of Whole Components of Intact Asbestos-Containing Material (ACM) in a Public Building) does not require an asbestos abatement project design. 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. The public building owner must manage the asbestos found in the owner's building in accordance with the following requirements.

(1) The building owner may hire a licensed asbestos consultant or licensed asbestos management planner to perform a comprehensive asbestos survey of an entire building that may be used for O&M activities, renovation, or demolition.

(2) The building owner may hire a licensed asbestos abatement contractor to conduct:

(A) asbestos abatement in accordance with §296.212 of this chapter (Standard Asbestos Abatement Practices and Procedures in a Public Building); and

(B) asbestos abatement of nonfriable ACBM using the work practices described in §296.232 of this chapter (relating to Alternative Asbestos Abatement Practices and Procedures for Certain Nonfriable Asbestos-Containing Building Material (ACBM) in a Public Building), where applicable.

(3) The building owner may hire or retain a licensed asbestos abatement contractor or a licensed asbestos O&M contractor to conduct an SSSD activity or cleanup affecting asbestos in accordance with in §296.213 of this chapter (relating to Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building). When utility work is to be performed, the building owner shall either have the affected ACM removed before the work of a utility contractor, or require the utility contractor to be licensed to handle ACM.

(4) The building owner may hire a licensed asbestos abatement contractor or a licensed asbestos abatement supervisor to conduct:

(A) small projects or repetitive tasks involving the disturbance of friable ACBM, under the conditions and using the work practices described in §296.233 of this chapter; and

(B) an activity described in and conducted in accordance with §296.234 of this chapter.

(5) The building owner may conduct:

(A) an asbestos abatement project, if the owner obtains an asbestos abatement contractor's license, as required in §296.48 of this chapter (relating to Asbestos Abatement Contractor); and

(B) an asbestos O&M activity within a public building with the owner's own employees and for the owner's own account, if the owner obtains an asbestos O&M contractor license, as required in §296.50 of this chapter (relating to Asbestos Operations and Maintenance Contractor), and employs an asbestos O&M supervisor, who is licensed as required in §296.49 of this chapter (relating to Asbestos Operations and Maintenance Supervisor), and asbestos abatement workers, who are registered as required in §296.46 of this chapter (relating to Asbestos Abatement Worker).

(6) The building owner may hire an asbestos management planner to develop a management plan to control O&M, renovation, and demolition.

(l) Mandatory notification. Notification is required under §296.251 of this chapter (relating to Notifications) under the following conditions.

(1) Notification is required for any demolition of a facility or public building, whether or not asbestos has been identified.

(2) In a public building, a notification to abate any amount of asbestos must be submitted to DSHS by the public building owner or operator.

(3) In a facility, a notification to abate an amount described in NESHAP must be submitted to DSHS by the facility owner or operator.

(m) Requirement for survey and management plan. A building owner or the owner's authorized representative, if required by certified letter from DSHS, must immediately obtain an asbestos survey report and asbestos management plan completed by a licensed asbestos inspector, licensed asbestos management planner, or licensed consultant, if, in the opinion of DSHS following a site inspection of a public building, there appears to be a danger or potential danger from ACBM in poor condition to the workers or occupants of the building, or to the general public. A copy of the management plan must be submitted for review and approval to DSHS within 90 days after receipt of the certified letter. A copy of the plan must be on file with the owner or management agency, and in the possession of the supervisor in charge of building operations and maintenance.

(n) Installation of new materials.

(1) Except as provided in paragraph (2) of this subsection, a person must obtain an MSDS or SDS before installing any of the building materials or replacement parts designated in paragraph (3) of this subsection in a public building. A person may not install any part designated in paragraph (3) of this subsection for which a MSDS or SDS is required under this paragraph unless:

(A) the person obtains an MSDS or SDS for each such material proposed to be installed showing that the material or replacement part is not ACM, as defined in §296.21(3) of this chapter (relating to Definitions); or

(B) the material or replacement part, according to the MSDS or SDS, is ACM, but the building owner or contractor can demonstrate that there is no alternative material or part.

(2) A person is not required to obtain an MSDS or SDS under paragraph (1) of this subsection for a building material or replacement part designated in paragraph (3) of this subsection if a licensed inspector samples new materials before installation taking at least three samples of each homogeneous material, and based on laboratory results, certifies that the materials used for the building or renovation is free of asbestos.

(3) A person must obtain an MSDS or SDS before installing any of the following building materials or replacement parts:

(A) surfacing materials:

(i) acoustical plaster;

(ii) decorative plaster/stucco;

(iii) textured paint/coating;

(iv) spray applied insulation;

(v) blown-in insulation;

(vi) fireproofing insulation;

(vii) joint compound; and

(viii) spackling compounds;

(B) TSI:

(i) taping compounds (thermal);

(ii) HVAC duct insulation;

(iii) boiler insulation;

(iv) breaching insulation;

(v) pipe insulation; and

(vi) thermal paper products;

(C) miscellaneous material:

(i) cement pipes;

(ii) cement wallboard/siding;

(iii) asphalt/vinyl floor tile;

(iv) vinyl sheet flooring/vinyl wall coverings;

(v) floor backing;

(vi) construction mastic;

(vii) ceiling tiles/lay-in ceiling panels;

(viii) packing materials;

(ix) high temperature gaskets;

(x) laboratory hoods/table tops;

(xi) fire blankets/curtains;

(xii) elevator equipment panels;

(xiii) elevator brake shoes;

(xiv) ductwork flexible fabric connections;

(xv) cooling towers;

(xvi) heating and electrical ducts;

(xvii) electrical panel partitions;

(xviii) electrical cloth/electrical wiring insulation;

(xix) chalkboards;

(xx) roofing shingles/tiles;

(xxi) roofing felt;

(xxii) base flashing;

(xxiii) fire doors;

(xxiv) caulking/putties;

(xxv) adhesives/mastics;

(xxvi) wallboard; and

(xxvii) vermiculite.

(o) Application for exemption. An owner or licensee may apply to DSHS for an exemption of a demolition or renovation project from any rule under this chapter relating to demolition and renovation activities, which DSHS, in its sole discretion, may grant if the rule exemption is not inconsistent with the Act and if it meets one of the following conditions:

(1) the EPA has exempted the project from federal regulations; or

(2) DSHS determines that:

(A) the project will use 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 for municipal permit. 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:

(A) identifies the name of the building, the street address, and the specific area of the building that applies to the certification;

(B) certifies that the Texas-registered architect or Texas-licensed professional engineer has compiled and reviewed the information from:

(i) MSDSs and SDSs of all products used in the original construction of, and any renovations or alterations of, the building, in all parts of the building affected by the planned renovation or demolition, and has matched them by manufacturer to materials on-site in the construction; and

(ii) any previous asbestos survey reports of the building that were conducted as required at the time of the survey;

(C) certifies based upon review of the information in subparagraph (B) of this paragraph, that, in the architect’s or engineer's professional opinion, no part of the building affected by the planned renovation or demolition, and none of the building materials contain asbestos;

(D) specifies whether the relevant work was new construction or renovation; and

(E) specifies the dates when the work was completed.

TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION

SUBCHAPTER L GENERAL REQUIREMENTS, AND PRACTICES AND PROCEDURES FOR ASBESTOS ABATEMENT IN A PUBLIC BUILDING

§296.211. General Requirements for Asbestos Abatement in a Public Building.

(a) Responsibility. The public building owner or the owner’s delegated agent shall engage persons licensed as required in this chapter to perform any asbestos-related activity.

(b) Project supervision and monitoring.

(1) Every asbestos abatement project undertaken by a licensed asbestos contractor in a public building under this section must be supervised by at least one licensed asbestos abatement supervisor and monitored by a licensed asbestos consultant or the consultant’s designated project manager, who must be licensed. Except as described in subparagraphs (A)-(E) of this paragraph, these supervisory and monitoring requirements extend to all projects performed under Subchapter K of this chapter (relating to Asbestos Management in a Public Building, Commercial Building, or Facility), Subchapter L of this chapter (relating to General Requirements, and Practices and Procedures for Asbestos Abatement in a Public Building), and Subchapter M of this chapter (relating to Alternative Asbestos Practices and Procedures in a Public Building).

(A) A licensed asbestos consultant or a licensed project manager designated by the consultant is not required to monitor or assess any O&M activity conducted under §296.213 of this chapter (relating to Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building), except that, for a project involving the use of a mini-containment, visual clearance must be performed by a licensed asbestos consultant or a licensed project manager designated by the consultant, and third-party air clearance monitoring must be performed by a licensed air monitoring technician (AMT) or a licensed asbestos consultant before the mini-containment is removed.

(B) An asbestos supervisor, consultant, or designated project manager licensed under this chapter is not required to supervise, monitor, or assess, as applicable, a project conducted in accordance with §296.231 of this chapter (relating to Alternative Practices and Procedures for Removal of Asbestos-Containing Resilient Floor-Covering Material in a Public Building).

(C) A licensed asbestos consultant or licensed project manager designated by the consultant is not required to monitor or assess a project conducted in accordance with §296.232 of this chapter (relating to Alternative Asbestos Abatement Practices and Procedures for Certain Nonfriable Asbestos-Containing Building Material (ACBM) in a Public Building), except that third-party air monitoring is required to be conducted and analyzed on-site by either a licensed AMT or a licensed asbestos consultant who is employed by a licensed asbestos laboratory.

(D) A licensed asbestos consultant is required to design, and monitor the testing required to develop, a clearance-level assessment for any project to be conducted under §296.233 of this chapter (relating to Alternative Asbestos Practices and Procedures for Small Projects and Repetitive Tasks in a Public Building), but is not required to monitor or designate a licensed project manager to be on-site for the performance, based upon a qualifying clearance-level assessment of, a small project or repetitive task conducted under that section. A licensed asbestos supervisor must be in the containment directly performing the task or supervising the registered asbestos abatement worker for purposes of the clearance-level assessment. A licensed asbestos abatement supervisor must perform the visual inspection required for a project conducted under §296.233 of this chapter as required in subsection (d)(8) of that section.

(E) A licensed asbestos consultant or licensed project manager designated by the consultant is not required to monitor or assess an activity conducted under §296.234 of this chapter (relating to Alternative Practices and Procedures for Removal of Whole Components of Intact Asbestos-Containing Material (ACM) in a Public Building). A licensed asbestos abatement supervisor must perform the visual inspection required for a project conducted under §296.234 of this chapter as required in subsection (c)(4) of that section.

(2) Except as otherwise provided under paragraph (b)(1) of this subsection:

(A) An asbestos abatement supervisor and the asbestos consultant or the asbestos consultant’s project manager, each of whom must be licensed under this chapter, shall remain on-site and in immediate proximity to the abatement activity during all periods of that activity.

(B) A licensed 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.

(C) A licensed asbestos consultant or licensed project manager designated by the consultant shall enter and inspect the containment daily before the start of the asbestos abatement and throughout the day to observe, report and document that the containment is in compliance with this chapter and the specifications and plans, and to identify and document prompt correction of any identified issues of noncompliance.

(D) At least one asbestos O&M supervisor or asbestos abatement supervisor must supervise every O&M activity during all periods of asbestos abatement activity. Every O&M supervisor or asbestos abatement supervisor conducting such supervision must be licensed.

(c) Employees. If an employee or delegated agent of any licensee who is an employer must intentionally disturb, handle, or otherwise work with ACBM, or engage in an asbestos abatement project, asbestos O&M activity, or other asbestos-related activity, the employee must have an annual medical examination and respirator fit-test that meets the requirements stated in the asbestos regulations of the EPA or OSHA, and be properly equipped, trained, and licensed as required in this chapter.

(d) Records. Project records for each asbestos-related activity in a public building must be kept for 30 years from the date of project completion and made available for inspection and review upon request from DSHS. Project records include all violations issued against a licensee by the EPA, OSHA, or a state agency. The recordkeeping responsibilities for licensees are described in §296.291 of this chapter (relating to Recordkeeping).

(e) Inspections and investigations.

(1) Each licensee, RFCI contractor, and building owner shall assist and cooperate with all properly identified representatives of DSHS in the conduct of any asbestos inspection or investigation at any reasonable or necessary time, with or without prior notice. Such an inspection or investigation may:

(A) be made at any proposed, actual, or former site of an asbestos-related activity;

(B) be at the premises of a licensee or former licensee under this chapter; or

(C) be of any record, equipment, or personnel relevant to DSHS’s regulation of a licensee or former licensee or an asbestos-related activity.

(2) It is a violation of the Act and this chapter to interfere with or delay an inspection or investigation conducted by a DSHS representative.

(3) A licensee, RFCI contractor, or building owner or owner’s representative may not deny entry to a properly identified DSHS representative.

(f) Respiratory protection program. Each employer with one or more employees who perform any asbestos-related activity must comply with the requirements in 29 CFR §1910.134 (relating to Respiratory protection) for establishing and following a written respiratory protection program, with worksite-specific procedures, and in accordance with 29 CFR §1926.1101(h)(2) (relating to Asbestos), 29 CFR §1910.1001(g)(2) (relating to Asbestos), and 40 CFR Part 763, Subpart G (relating to Asbestos Worker Protection), whichever is applicable. Each employer shall maintain a current copy of the respiratory protection program at all project locations. Required respirators must be properly worn at all times in containment and otherwise during asbestos abatement activity.

(1) The employer shall provide for personal air monitoring to determine airborne concentrations of asbestos exposure to its employees in compliance with 40 CFR Part 763, Subpart G (relating to Asbestos Worker Protection), or 29 CFR §1926.1101, whichever is applicable, unless the employer has obtained a negative exposure assessment in compliance with 29 CFR §1926.1101.

(2) The employer must maintain, in a safe working condition, a sufficient number of respirators of the types and styles approved by NIOSH to meet all requirements for the employees. The employer and any representative of the employer shall not permit any person whose facial characteristics, hair, mustache, or beard preclude the tight fit of a negative-pressure respirator to enter the containment during any asbestos abatement activity, 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 as required in §296.191(f) of this chapter (relating to Asbestos Management in a Public Building, Commercial Building, or Facility).

(h) Project monitoring. The licensed asbestos consultant for an abatement project in a public building shall specify in writing the duties, responsibilities, and authority of the licensed project manager and air monitoring technician. When asbestos is abated under an alternative work practice established in Subchapter M of this chapter, the project monitoring requirements for the chosen work practice apply, and any air sampling and analysis must comply with the NIOSH 7400 requirements outlined in paragraph (1) of this subsection.

(1) Ambient air sampling. Air samples must be collected by a licensed asbestos air monitoring technician or asbestos consultant. The sample pumps must be monitored throughout the day during the sampling period by the person collecting the samples. For all projects, samples must be collected and analyzed using the NIOSH 7400 method, counting rules A, Phase-contrast Microscopy (PCM). Samples must be collected at a flow rate between 0.5 to 16 liters per minute on 0.8 micron mixed cellulose ester (MCE) filters in cassettes with electrically conductive extension cowls. Only one cassette may be placed on a pump at a time. PCM must be used in accordance with the NIOSH 7400 method to determine the fiber concentration present. 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 transmission electron microscopy (TEM) analysis in accordance with at least the mandatory provisions of Appendix A (relating to Interim Transmission Electron Microscopy Analytical Methods--Mandatory and Nonmandatory--and Mandatory Section to Determine Completion of Response Actions) of AHERA. The minimum sample volume for TEM is 1,200 liters of air.

(A) Baseline.

(i) Baseline air samples must be collected before the start of any asbestos abatement project that requires a design as described in §296.191(i) and (j) of this chapter. The samples must be collected from inside the space that will become the regulated area for the project before any asbestos abatement activity that disturbs ACBM begins. A minimum of three samples must be collected on 0.8 micron (MCE) filters loaded in cassettes with electrically conductive extension cowls. The locations from which baseline air samples are collected must provide suitable data for comparison with indoor air monitoring samples collected after asbestos abatement activities begin. Sampling and, if any, analysis must conform to the latest edition of the NIOSH 7400 method, counting rules A. For each sample, a sample volume of at least 1,250 liters must be drawn. Only one cassette may be placed on a pump at a time.

(ii) Baseline air samples must be kept for no fewer than 30 days after clearance is achieved.

(B) Air sampling during the project.

(i) Ambient air samples must be collected continually during asbestos abatement activity and analyzed in accordance with the NIOSH 7400 method, counting rules A.

(ii) Ambient air samples must be collected:

(I) inside containment adjacent to the abatement activities;

(II) outside containment but inside the building (if applicable);

(III) within 10 feet of the unobstructed exhaust fromthe negative air unit discharge, but not directly in the airstream;

(IV) immediately outside the entrance from the containment area to the decontamination area (representative of the air being drawn into the area);

(V) immediately outside the entrance of the bag-out area; and

(VI) at any other locations required by the specifications and plans and only one cassette may be placed on a pump at a time.

(iii) No later than the next notified project work day after the date of sampling, the applicable licensed contractor shall post, as required in subsection (i) of this section, the results of any ambient air samples which the licensed asbestos consultant or designated licensee takes during the abatement of friable or nonfriable ACBM, and which are analyzed on-site. No later than the third notified project work day after the date the sample is taken, the applicable licensed contractor shall post, as required in subsection (i) of this section, the results of any ambient air samples of friable ACBM taken during the abatement of such ACBM that are analyzed off-site. A deviation from the timeframes described in this clause are permissible only if a licensed asbestos consultant has specified a deviation from the required timeframe as required in paragraph (4) of this subsection.

(C) Clearance.

(i) Project clearance must consist of an initial visual inspection, followed by air clearance sampling, removal of containment, and a final visual inspection.

(ii) Clearance air samples must be collected inside the containment as specified by a licensed asbestos consultant, with a minimum of two samples per containment. Only one cassette may be placed on a pump at a time.

(iii) All project activities, except O&M, must be cleared by using aggressive air sampling as defined in §296.21(7) of this chapter (relating to Definitions). All air sampling and analysis must comply with the NIOSH 7400 requirements outlined in paragraph (1) of this subsection. Clearance is achieved if no sample is reported greater than 0.01 f/cc by the analysis report from the licensed laboratory.

(2) Personal air monitoring. Unless a negative exposure assessment has been made in compliance with 29 CFR §1926.1101(f)(2)(iii) (relating to Asbestos), personal air samples must be collected, monitoring conducted, and employees informed of results, in compliance with 40 CFR Part 763, Subpart G (related to Asbestos Worker Protection) or 29 CFR §1926.1101 (relating to Asbestos), whichever is applicable, and subsection (f) of this section.

(3) Other monitoring requirements.

(A) Initial visual inspection. The licensed asbestos abatement supervisor designated by the asbestos abatement contractor for a project 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 supervisor shall ensure that all abatement-related items are removed from the containment, excluding negative air machines and equipment essential to maintain the containment and to perform the visual inspection. Once the abatement supervisor has confirmed that all specified ACM has been addressed, a licensed asbestos consultant, or a licensed project manager whom the asbestos consultant has given written authorization to perform the visual inspection, 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, except for projects conducted under §§296.231 - 296.234 of this chapter, which must be conducted as required in subsection (b)(1) of this section. The licensed asbestos abatement contractor shall abate all ACM and remove any ACWM discovered by the final visual inspection as required in this chapter.

(4) Deviations. A licensed asbestos consultant shall design the air monitoring strategies and may deviate from this subsection or from the timeframes required under §296.51(b)(2)(C) of this chapter and subsection (h)(1) of this section for reporting and posting, respectively, air sampling results, only if the consultant has designed a sampling strategy that deviates from the timeframe required and has demonstrated in writing that the engineering controls are at least as protective of public health as the requirements of this subsection and the deviation is documented on the notification form and described in the project specifications. The asbestos consultant shall, upon request by DSHS, provide documentation and justification to support any deviation and must be able to demonstrate that the design is as protective of public health as the requirements of this subsection, subsection (h)(1), or §296.51(b)(2)(C) of this chapter, as applicable, from which it provides for a deviation.

(i) Posting documents. Each licensed asbestos abatement contractor, licensed O&M contractor, and RFCI contractor shall post the following documents visible to the public at the entrance to the regulated area:

(1) the Violation Notification Procedure poster issued by DSHS;

(2) a copy of any asbestos-related order issued by DSHS or any other order from a federal or state asbestos-regulating authority, and each order must be posted for a period of 12 months after the effective date of the order; and

(3) the results of ambient air monitoring performed by the licensed asbestos consultant or designated licensee within the time periods required in subsection (h)(1)(B)(iii) of this section.

§296.212. Standard Asbestos Abatement Practices and Procedures in a Public Building.

(a) General provisions. The general work practices in this section are minimum requirements for protection of public health for standard projects using full containment in a public building, and do not constitute complete or sufficient specifications and plans for an asbestos abatement project. If an asbestos abatement project has specifications and plans for an asbestos abatement activity that are specific to that project or are more detailed or stringent than the requirements of this section or chapter, the specifications and plans, to the extent they do not conflict with this chapter or other applicable law, are required for that particular project and must be met as a requirement of this chapter. The general work practices described in this section must be used for asbestos removal as defined in §296.21(19) of this chapter (relating to Definitions) that does not meet the conditions required to use alternative methods described in Subchapter M (relating to Alternative Asbestos Practices and Procedures in a Public Building).

(1) An asbestos abatement project design must be prepared by a licensed asbestos consultant as required in §296.191 of this chapter (relating to Asbestos Management in a Public Building, Commercial Building, or Facility), unless it is a project conducted under §296.213 of this chapter (relating to Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building), §296.231 of this chapter (relating to Alternative Practices and Procedures for Removal of Asbestos-Containing Resilient Floor-Covering Material in a Public Building), §296.232 of this chapter (relating to Alternative Asbestos Abatement Practices and Procedures for Certain Nonfriable Asbestos-Containing Building Material (ACBM) in a Public Building), §296.234 of this chapter (relating to Alternative Practices and Procedures for Removal of Whole Components of Intact Asbestos-Containing Material (ACM) in a Public Building), or after a clearance-level assessment is completed as required in §296.233 of this chapter (relating to Alternative Practices and Procedures for Small Projects and Repetitive Tasks in a Public Building).

(A) Subject to the following conditions, and if otherwise consistent with other applicable federal and state law, a licensed asbestos consultant may specify work practices that vary from the requirements of this section as long as the work practices specified are at least as protective of public health.

(i) 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 DSHS. The request must include the licensed asbestos consultant’s certification that the design is as protective of public health as the work practices described in this section and the consultant’s basis for the conclusion. The request must include documentation that a certified industrial hygienist or a professional engineer licensed in Texas approved the design. The consultant may not begin the project without written approval from DSHS.

(ii) A licensed asbestos consultant who designs a project with work practices that differ from this section must document the variance on DSHS’s notification form. The licensee 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 on the notification form. If the varied work practice is not one for which pre-approval is required under clause (i) of this subparagraph, DSHS may nevertheless disapprove the proposed variation after receiving notice or documentation under this subparagraph or any other information related to the variation, including if DSHS does not or cannot determine that the alternative practices provide equivalent health protection to the requirements of this section.

(iii) The asbestos consultant shall, upon request by DSHS, provide documentation and justification to support any deviation and must be able to demonstrate that the design is as protective of public health as the requirements of this section.

(B) The requirements of a design that varies an asbestos practice in compliance with this paragraph and, is approved by DSHS, if pre-approval is required, or is not otherwise disapproved, must be followed to meet the requirement of this section.

(2) The specifications and plans written for an asbestos abatement project must include the air clearance procedures as required in §296.211 of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building).

(3) Notwithstanding any other provision of this section, abatement practices must be carried out in accordance with federal standards for asbestos abatement and waste disposal in 40 CFR §61.145 (relating to Standard for demolition and renovation) and §61.150 (relating to Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations).

(4) If ACBM is to be removed, encapsulated, or enclosed, it must be within a regulated area that is demarcated. Except as provided in §§296.213, 296.231, 296.232, and 296.234 of this chapter, or, after a clearance-level assessment is completed as required in §296.233 of this chapter, or approved by the department in accordance with paragraph (1) of this subsection, removal of ACBM must take place within a containment.

(5) Except as otherwise provided in this paragraph or by other applicable law, access to the regulated area must be limited to:

(A) licensees;

(B) emergency responders as defined in §296.21(36) of this chapter (relating to Definitions);

(C) licensed, registered, or accredited building professionals required for emergency situations, as determined by a licensed asbestos consultant;

(D) appropriate governmental inspectors; and

(E) authorized personnel, in accordance with 29 CFR §1926.1101(e) (relating to Asbestos).

(F) a building owner or the owner's representative, if authorized by the contractor, may enter a containment if accompanied by a licensed asbestos abatement supervisor, an individual licensed as an asbestos abatement contractor, or a licensed asbestos consultant. An owner or representative who enters containment must wear at a minimum the PPE required for workers performing the asbestos-related activity. The owner or representative must follow the specified decontamination procedures when exiting the containment.

(b) Containment construction.

(1) Plastic sheeting. When specified by a licensed asbestos consultant that fire retardant plastic sheeting must be used, it must be certified by the Underwriters Laboratory (UL) as being fire retardant.

(2) Objects within containment. All movable objects must be removed from the containment before the start of asbestos abatement. Contaminated non-porous items that are to be salvaged or reused must be decontaminated. Porous items that are contaminated must be disposed of as ACWM. All non-movable objects that remain in the containment must be decontaminated and covered with a minimum of 4-mil thick plastic sheeting, attached securely in place.

(3) Critical barriers. A regulated area within which asbestos abatement is to be conducted must be separated from adjacent areas by a minimum of one impermeable barrier, such as plastic sheeting attached securely in place. All openings between containments and adjacent areas must be sealed, including windows, doorways, elevator openings, corridor entrances, ventilation openings, drains, ducts, grills, grates, diffusers, skylights, and lay-in suspended ceiling grid systems where the space above the grid is open to other rooms. Any HVAC system must be isolated from the regulated area as required in (b)(9) of this subsection. All penetrations of the sheeting that could permit air infiltration or any air leak through the barrier must be sealed, except the make-up air provision 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. 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. Where feasible, a viewing window will be included in the wall for each 260 linear feet or fraction of that distance which will permit the viewing of at least 51% of the abatement work area. At least one viewing window must be included in the wall, unless a licensed asbestos consultant specifies a viewing window is not feasible. The window must be constructed of a transparent, shatter-resistant panel, also called acrylic or acrylic glass, which measures approximately 18 inches by 18 inches. The bottom of the window must be at a reasonable height for viewing.

(6) Bag-out area. A licensed asbestos consultant shall specify when a bag-out area is required as part of containment. At a minimum, a bag-out area is a two-stage area connected to the containment, separated by airlocks, with a rinse station separated from the bagging-room. A bag-out area may not be used to decontaminate personnel.

(7) Prohibited activities in a regulated area. 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.

(8) Decontamination area. The containment must include an attached personnel decontamination area. The area must consist of a clean room, shower room, and equipment room. Each room must be at least 30 inches by 30 inches wide and 75 inches tall. Each room must be separated from the other and from the containment by airlocks so that air does not escape outside the containment and that air flows from the outside to the inside of containment through the decontamination area. The shower room must be provided with soap and water and, where feasible, hot and cold water where the temperature can be adjusted by the user. A licensed asbestos consultant shall specify a remote decontamination area when it is not feasible to attach the decontamination area to the containment. The consultant shall specify procedures for minimizing the migration of fibers from the containment to the remote decontamination area. Except where remote decontamination area is specified, all persons must exit the containment through the shower before entering the clean room. No asbestos-contaminated individual or item may enter the clean room. A licensed asbestos abatement supervisor shall ensure that the decontamination area is fully operational before and during any asbestos abatement activity. Any person exiting containment shall:

(A) remove all gross contamination and debris from protective clothing before entering the equipment room;

(B) remove protective clothing in the equipment room and deposit the clothing in impermeable plastic bags or containers labeled as required in subsection (c)(4) of this section;

(C) not remove respirators in the equipment room;

(D) shower before entering the clean room; and

(E) enter the clean room before changing into street clothes.

(9) HVAC equipment. All HVAC systems must be isolated from the regulated area. All supply and return openings and any seams in system components must be sealed with either impermeable plastic sheeting or tape, or both. All old filters must be disposed of as asbestos waste.

(10) Warning signs. Warning signs that comply with 29 CFR §1926.1101, must be displayed at all entrances to regulated areas, which include critical barriers that can be used to gain entrance to the containment, such as doors, windows, and hallways. To protect the public from accidental entry, warning signs must be displayed, at minimum, in both Spanish and English at the same locations. Asbestos caution tape may not be substituted for warning signs.

(11) Cleaning. Cleaning procedures must include wet methods and HEPA vacuuming. A HEPA vacuum designed and equipped with a HEPA filter must remain on-site during any asbestos abatement activity. HEPA vacuums must be operated and maintained in accordance with the manufacturer's instructions.

(12) Containment-area ventilation. HEPA filtration units must be operated continuously from the time containment is established through the time acceptable final air clearance is achieved. There must be HEPA units in sufficient number to provide negative pressure within the containment relative to the non-containment area, as indicated by a water column differential that produces a manometric instrument reading of at least -0.02 inches inside the containment. HEPA units must, in combination, 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.

(c) Removal of ACBM.

(1) All ACBM must be adequately wetted before removal or other handling using amended water. A consultant may specify the use of water without surfactant if it is at least equally protective of public health. The ACBM must then be placed in bags (or other suitable containers) that must be marked in accordance with applicable NESHAP regulations, and in compliance with applicable OSHA regulations, as required in paragraph (4) of this subsection. All ACWM must be double-bagged into 6-mil thick plastic bags or placed into a leak-tight drum.

(2) A bag must not be filled to a level that tears or breaks the bag. Excess air in a bag must be removed before entering the bag-out area. The top of the bag must be twisted closed, folded over, and sealed with duct tape. The bag must be rinsed off or HEPA-vacuumed in the bag-out area to remove asbestos contamination and placed inside another bag or leak-tight drum. If an outer bag is used, excess air must be removed, and the bag must be closed and sealed in the same manner as the inner bag.

(3) If a bag leaks, the bag must be placed into a third bag and sealed as required in paragraphs (1) and (2) of this subsection. If a drum leaks, the drum must be wrapped in a minimum of one layer of 6-mil thick plastic sheeting and sealed.

(4) The exterior bag, wrapping, or leak-tight drum must have warning and generator labels applied as specified in 40 CFR §61.150(a)(1)(iv) and(v) (relating to Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations). Generator labels must be printed in letters of sufficient size and contrast to be readily visible and legible. All required labeling of ACWM containers must be done before removal from the regulated area. Any container or wrapped component labeled as asbestos must be containerized and labeled as ACWM before removal from the regulated area.

(5) A component covered with, coated with, or containing ACM that is going to be removed from the building may either, after being adequately wetted, be stripped in place 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, labeled, and sealed, provided that:

(A) any component, such as a section of metal lath, that cannot be safely lowered to the floor must, after being adequately wetted, be stripped in place;

(B) any component that cannot be lowered or handled without presenting an excessive fiber release or safety hazard must be stripped in place; and

(C) sharp edges of any component must be protected to preclude tearing the plastic wrapping and causing injury.

(6) ACBM must be removed as a wrapped unit or in small sections and containerized while wet. Material must not be allowed to accumulate on the floor or become dry. Any structural component or piping must be adequately wetted before wrapping it in plastic sheeting for disposal.

(7) At the conclusion of the removal, the asbestos abatement contractor shall perform a visual inspection to confirm that all ACBM required to be removed has been removed and containerized, in accordance with this section, and that the containment is free of all residual dust and debris.

(8) Temporary storage of ACWM must be provided (for example, a dedicated roll-off box, dumpster, or storage room lined with 6-mil thick plastic sheeting). All temporary storage must be sealed in a manner that prevents unauthorized access and safeguards and keeps the storage container sealed and leak tight. Final disposal of ACWM must be within 30 days after project completion, or when the receiving container is full, whichever is sooner.

(9) Vehicles used to transport ACWM must be marked in accordance with 40 CFR §61.149(d)(1)(i)-(iii), (relating to Standard for waste disposal for asbestos mills) and §61.150(c) during the loading and unloading of ACWM so that the signs are visible.

(10) For all ACWM transported by a licensed asbestos transporter off the asbestos abatement project site, ACWM must be disposed of in accordance with 40 CFR §61.150(d).

(d) Requirements for the encapsulation of ACBM.

(1) Any product used for encapsulation must be clearly labeled or described in writing by the manufacturer as being designed to be used for the particular asbestos-related activity. A product that is not clearly labeled or described as an asbestos encapsulant must be tested, before use, and found to conform to ASTM E1494-12, as defined in §296.21(20) of this chapter (relating to Definitions), if the intended use is to encapsulate ACBM.

(2) Any encapsulations must be performed within a containment.

(3) Loose and hanging ACBM must be removed before encapsulation. Filler material applied to any gap in existing material must contain no asbestos, must adhere well to the substrate, and must provide an adequate base for the encapsulating agent.

(4) Encapsulant must be applied using only airless spray equipment with the nozzle pressure and tip size set according to the manufacturer's recommendations.

(5) Any encapsulated material must be specifically designated by sign, label, color coding, or some other mechanism to warn any individual who may in the future be required to disturb the material.

(e) Requirements for the enclosure of ACBM.

(1) Acceptable enclosure must be airtight and of permanent construction so that the material enclosed is inaccessible.

(2) Any area of ACBM that can be reasonably anticipated to be disturbed during the installation of hangers, brackets, or any other portion of the enclosure must be wetted within containment before such activity.

(3) Before building the enclosure, loose and hanging ACBM that may be disturbed must be removed.

(4) Any enclosure for ACBM must be specifically designated by sign, label, color coding, or some other mechanism to warn any individual who may in the future be required to disturb the material.

(f) Safety requirements and prohibitions. The following safety requirements must be in effect for an abatement project:

(1) Fire safety. A minimum of one fire extinguisher with a minimum National Fire Protection Association rating of 10BC (dry chemical) must be placed within each abatement project containment for every 3,000 square feet, or fraction thereof, of containment. One fire extinguisher must be placed at each entrance inside of the containment. Each fire extinguisher must be maintained in a fully charged and operable condition with a current annual inspection tag securely attached reflecting that maintenance was performed by an appropriately licensed individual. Where more than one fire extinguisher is required, they must be distributed proportionately throughout the containment and their locations clearly marked.

(2) Electrical safety. All active electrical service lines within a regulated area and containment must be connected through ground-fault circuit interrupter devices.

(3) Prohibitions. Use of any solvent with a flash point of 140 degrees Fahrenheit or below is prohibited.

§296.213. Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building.

(a) Restrictions. The practices and procedures described in this section may be utilized for O&M activities in a public building that involve friable and nonfriable ACBM and are SSSD activities, as defined in §296.21(92) of this chapter (relating to Definitions). These activities are subject to the following conditions:

(1) the practices and procedures must be performed by individuals licensed or registered to perform the applicable activity and supervised by a licensed O&M supervisor or a licensed asbestos abatement supervisor;

(2) an asbestos O&M licensee may perform or supervise, as applicable, an asbestos abatement activity under this section only if such activity is incident to another activity that has a primary purpose other than asbestos abatement;

(3) if the practices and procedures are supervised by an O&M supervisor, the public building must be under the control of the O&M supervisor's employer who is a licensed asbestos O&M contractor or a licensed asbestos abatement contractor;

(4) a larger project may not be broken down into smaller projects or tasks in order to qualify under this section as an O&M project to circumvent the restricted applicability of this section or other applicable requirements of this chapter;

(5) an activity conducted under, or a licensee or public building owner acting under, this section remains subject to all applicable requirements of §296.191 of this chapter (relating to Asbestos Management in a Public Building, Commercial Building, or Facility), including, without limitation, the requirement of an asbestos survey, performed by an individual licensed to conduct it, the requirement to provide DSHS with written notification before the project starts, as required in §296.251 of this chapter (relating to Notifications), and §296.211 of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building); and

(6) the practices and procedures described in this section do not limit, and may be used only to the extent that they are consistent with, the requirements of any other applicable law.

(b) Work practices. Work practices under this section must comply with the following requirements.

(1) Employers shall furnish and require the use of respirators, protective clothing, HEPA vacuum machines, glove bags, and other necessary equipment for any employee who performs an O&M activity.

(2) A regulated area must be established where asbestos O&M activity will be conducted and at minimum, caution tape must be used to demarcate the regulated area. Except as otherwise provided by other applicable law, access to the regulated area must be limited to:

(A) licensees;

(B) emergency responders as defined in §296.21(36) of this chapter (relating to Definitions);

(C) licensed, registered, or accredited building professionals required for emergency situations;

(D) appropriate governmental inspectors; and

(E) authorized personnel, in accordance with 29 CFR§1926.1101(e) (relating to Asbestos).

(3) Warning signs that comply with 29 CFR §1926.1101, must be displayed at all entrances to regulated areas. To protect the public from accidental entry, warning signs must be displayed, at minimum, in both Spanish and English at the same locations. Asbestos caution tape may not be substituted for warning signs.

(4) Before beginning work, moveable objects must be removed from the regulated area or covered with 4-mil polyethylene or equivalent. Any object that is already contaminated must:

(A) be cleaned with a HEPA-filtered vacuum or wet-wiped before removal; or

(B) be completely encased in two layers of 6-mil thick plastic sheeting and treated as ACWM.

(5) Asbestos material must be wetted with amended water or another wetting agent and remain wet throughout the work operation and until final disposal, unless wet methods are not feasible because the asbestos work is being performed on live electrical equipment, or in other areas where water will seriously damage materials or equipment.

(6) A small amount of ACM may be removed with the use of a glove bag, removal of the entire asbestos-covered pipe or structure, or the construction of a mini-containment, as appropriate, in accordance with the following procedures for the method utilized.

(A) Glove bags.

(i) A glove bag made of transparent 6-mil thick plastic, and seamless at the bottom, must be installed so that it completely covers the pipe or other structure where asbestos work is to be done. The open edges must be folded together and securely sealed with tape. All openings in the glove bag must be sealed with duct tape or equivalent material and the integrity of the bag must be maintained at all times.

(ii) Respirator use and selection must comply with 29 CFR §1910.134 (relating to Respiratory protection) and its required written respiratory protection program, in accordance with 29 CFR §1926.1101(h)(2), 29 CFR §1910.1001(g)(2) (relating to Asbestos), and 40 CFR Part 763, Subpart G (relating to Asbestos Worker Protection), whichever is applicable. Employees who are performing asbestos removal with a glove bag or are in close contact with the glove bag must properly wear required respirators at all times during asbestos O&M activity.

(iii) The ACM must be thoroughly wetted with amended water before it is removed from the pipe (applied with a sprayer through the precut port provided in most glove bags or applied through a small hole in the bag). A razor knife must be used to cut any painted canvas covering ACM and peel it away from the ACM. Nips, tin snips, or other appropriate tool must be used to cut and remove any wire mesh covering the ACM. If the ACM beneath the canvas or wire mesh is dry, it must be resprayed with a wetting agent. This includes any layer of dry material that is exposed beneath the mesh, the surface of the stripped underlying structure, and the inside of the glove bag.

(iv) Once the ACM is removed from the pipe it must be thoroughly wetted with amended water.

(v) After removal of the layer of ACM, the surface from which asbestos has been removed must be thoroughly cleaned with a wire brush and wet-wiped with a wetting agent until no traces of the ACM are visible.

(vi) Any asbestos-containing insulation edges that have been exposed as a result of the removal or maintenance activity must be encapsulated with a bridging encapsulant that creates a membrane over the surface before the glove bag is removed.

(vii) When the asbestos removal and encapsulation have been completed, the glove bag must be vacuumed with a HEPA-filtered vacuum by inserting the vacuum's hose into the glove bag through the port. Once the air has been removed from the bag, the bag, after being squeezed tightly as close to the top as possible and twisted, must be sealed with tape. Once the HEPA vacuum is then removed from the bag, the glove bag itself must be removed from the work area for proper disposal. A glove bag may only be used once and may not be moved.

(B) Mini-containments.

(i) A mini-containment, as defined in §296.21(58) of this chapter, must completely contain any disturbance or removal of ACM and must be constructed of 6-mil thick polyethylene plastic sheeting or its equivalent by:

(I) affixing the plastic sheeting to the walls with spray adhesive and tape;

(II) covering the floor with plastic, and sealing that plastic floor covering to the plastic on the walls; and

(III) sealing any penetrations, such as pipes or electrical conducts, with tape; or

(IV) using equivalent methods that effectively establish a leak-proof and puncture-resistant mini-containment; and

(V) constructing a change room, contiguous to the mini-containment, made of 6-mil thick polyethylene plastic, supported by 2-inch by 4-inch lumber, or equivalent, to which the plastic is attached with staples or spray adhesive and tape, or which otherwise complies with 29 CFR §1926.1101(j) and 40 CFR Part 763, Subpart G, whichever is applicable.

(ii) Before use, the mini-containment must be checked for leaks and any leaks sealed.

(iii) The mini-containment must be placed under negative pressure by means of a HEPA-filtered vacuum or similar ventilation unit.

(iv) Appropriate protective clothing and respiratory protection must be worn within the mini-containment.

(v) A visual inspection must be performed by a licensed O&M supervisor before removing any mini-containment.

(vi) If the mini-containment will be reused, the interior must be completely washed with amended water and HEPA-vacuumed. Air clearance must be performed by a licensed consultant or designated licensed AMT.

(vii) If the mini-containment will not be reused, it must be removed by sealing the door, collapsing the containment using a HEPA-equipped vacuum and disposal as ACWM.

(C) Removal of entire structures.

(i) Before removal in its entirety of an asbestos-insulated pipe or an asbestos-containing or covered structure, the structure must be wrapped with 6-mil polyethylene plastic and securely sealed with duct tape, or wrapped and sealed in a manner that provides equivalent protection.

(ii) If the entire structure cannot be removed without disturbing ACM, but a small section can be stripped of the ACM to allow for cutting and removal of the entire structure at the stripped sections, the glove-bag method described in subparagraph (A) of this paragraph must be used to strip the small section of ACM to allow for removal of the entire structure.

(7) Enclosure of ACM must be performed in accordance with the following requirements.

(A) To enclose a structure with ACM, rather than removing the ACM, a solid structure with airtight walls and ceiling must be built around the asbestos-covered structure. A suspended ceiling with laid-in panels does not constitute an airtight ceiling for purposes of this subparagraph.

(B) If enclosure is the control method used, electrical conduits, telephone lines, recessed lights, and pipes in the area to be enclosed must be moved before construction of the enclosure to ensure that the enclosure will not have to be re-opened.

(C) The enclosure must:

(i) be permanent;

(ii) be built of new construction materials;

(iii) be impact resistant; and

(iv) be airtight.

(D) Enclosure walls must be made of tongue-and-groove boards; boards with spine joints; or gypsum boards having taped seams. The underlying structure must be able to support the weight of the enclosure.

(E) All joints adjoining the walls and ceiling of the enclosure must be caulked.

(F) Tools used during the installation of the enclosure must be equipped with a HEPA-filtered vacuum.

(8) Asbestos exposed as a result of any spot repair must be properly enclosed or encapsulated.

(9) HEPA vacuuming, wet cleaning, or both must be used to decontaminate regulated areas and equipment until there is no visible debris.

(10) ACWM must be double-bagged into 6-mil thick plastic bags or sealed in leak-tight drums that must be marked in accordance with applicable NESHAP regulations, and in compliance with applicable OSHA regulations, as required in paragraph (13) of this subsection, and disposed of in accordance with NESHAP, and as required in paragraphs (15)-(17) of this subsection.

(11) A bag must not be filled to a level that tears or breaks the bag. Excess air in a bag must be removed before exiting a mini-containment or removing a glove bag. The top of the bag must be twisted closed, folded over, and sealed with duct tape. The bag must be rinsed off or HEPA-vacuumed in the regulated area to remove asbestos contamination and placed inside another bag or leak-tight drum. If an outer bag is used, excess air must be removed, and the bag must be closed and sealed in the same manner as the inner bag.

(12) If a bag leaks, the bag must be placed into a third bag and sealed as required in paragraphs (10) and (11) of this subsection. If a drum leaks, the drum must be wrapped in a minimum of one layer of 6-mil thick plastic sheeting and sealed.

(13) The exterior bag, wrapping, or leak-tight drum must have warning and generator labels applied as specified in 40 CFR §61.150(a)(1)(iv) and (v) (relating to Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations). Generator labels must be printed in letters of sufficient size and contrast to be readily visible and legible. All required labeling of ACWM containers must be done before removal from the regulated area. Any container or wrapped component labeled as asbestos must be containerized and labeled as ACWM before removal from the regulated area.

(14) ACBM must be removed as a wrapped unit or in small sections and containerized while wet. Material must not be allowed to accumulate on the floor or become dry. Any structural component or piping must be adequately wetted before wrapping it in plastic sheeting for disposal.

(15) Temporary storage of ACWM must be provided (for example, a dedicated roll-off box, dumpster, or storage room lined with 6-mil thick plastic sheeting). All temporary storage must be sealed in a manner that prevents unauthorized access and safeguards and keeps the storage container sealed and leak tight. Final disposal of ACWM must be within 30 days after project completion, or when the receiving container is full, whichever is sooner.

(16) Vehicles used to transport ACWM must be marked in accordance with 40 CFR §61.149(d)(1)(i)-(iii), (relating to Standard for waste disposal for asbestos mills) and §61.150(c) during the loading and unloading of ACWM so that the signs are visible.

(17) For all ACWM transported by a licensed asbestos transporter off the asbestos operations and maintenance abatement project site, ACWM must be disposed of in accordance with 40 CFR §61.150(d).

TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION

SUBCHAPTER M ALTERNATIVE ASBESTOS PRACTICES AND PROCEDURES IN A PUBLIC BUILDING

§296.231. Alternative Practices and Procedures for Removal of Asbestos-Containing Resilient Floor-Covering Material in a Public Building.

(a) General provisions. As specified in §296.171 of this chapter (relating to Removal of Resilient Floor-Covering Material), the licensing and registration requirements of this chapter do not apply to a person who is performing or supervising the removal of resilient floor-covering material in a public building as required in this section. Such removal must:

(1) be performed using work practices for that activity published by the Resilient Floor Covering Institute (RFCI work practices), and supervised by an individual (RFCI supervisor) who meets the requirements of subsection (c) of this section and who is responsible for ensuring that RFCI work practices and the requirements of this section are followed; or

(2) be performed using other methods determined by the commissioner to provide public health protection from asbestos exposure, in accordance with §1954.104 of the Act. DSHS will publish these methods on DSHS’s website.

(b) Scope and limitations.

(1) The removal activity allowed under this exemption is strictly limited to intact resilient floor-covering material as defined in §296.21(83) of this chapter (relating to Definitions) that is nonfriable; remains intact, as defined in §296.21(50) of this chapter; and have not been sanded, ground, mechanically chipped, drilled, abraded, cut, or sawed. Shearing, slicing, or punching the flooring does not, by itself, make this section inapplicable to the flooring material. Asbestos-containing resilient floor-covering material that does not meet the limitations of this paragraph is subject to paragraph (3) of this subsection.

(2) The removal activity must not become a response action.

(3) If, either before or during the removal, any of the resilient floor-covering material does not meet the limitations of paragraph (1) of this subsection, then:

(A) removal under RFCI work practices is prohibited and, if already begun, must immediately cease; and

(B) the area must be prepared and abated as required in §296.191 of this chapter (relating to Asbestos Management in a Public Building, Commercial Building, or Facility) and §296.212 of this chapter (relating to Standard Asbestos Abatement Practices and Procedures in a Public Building).

(4) An RFCI contractor or RFCI supervisor who fails to stop the project under the circumstances referenced in paragraph (3) of this subsection and to abate as required in paragraph (3)(B) of this subsection violates this section, applicable licensing requirements, and the provisions of this chapter which are then applicable to the continuing activity. Any such person, as well as the building owner, is subject to penalties as described in §296.318 of this chapter (relating to Administrative Penalty).

(5) A person who performs the RFCI removal under this section must:

(A) establish and maintain a regulated area with appropriate signage and demarcation to inform and protect the public from exposure as described in RFCI work practices and in compliance with OSHA in 29 CFR §1926.1101(e) and (k)(7) (relating to Asbestos);

(B) keep a copy of the current RFCI work practices and other records applicable to the removal activity on-site for the duration of the project, as required in §296.291 of this chapter (relating to Recordkeeping);

(C) double bag and label ACWM, as required in §296.212(c) of this chapter;

(D) upon completion of the project, have an RFCI supervisor confirm that all ACBM required to be removed has been removed and containerized as required in this chapter, and the abatement work area is free of all residual dust and debris;

(E) provide proper temporary storage of ACWM (for example, a dedicated roll-off box, dumpster, or storage room lined with 6-mil thick plastic sheeting). All temporary storage must be sealed in a manner that prevents unauthorized access and safeguards and keeps the storage container sealed and leak tight. Final disposal of ACWM must be within 30 days after project completion or when the receiving container is full, whichever is sooner, as required in §296.212(c)(9) and (10) of this chapter; and

(F) provide DSHS with written notification before the project starts, as required in §296.251 of this chapter (relating to Notifications).

(c) Training.

(1) An individual engaged in removal of resilient floor-covering material according to the RFCI work practices must have successfully completed training in an eight-hour RFCI course, and any required refresher course, in compliance with 29 CFR §1926.1101(k)(9), which covers the elements described in the RFCI work practices. The removal of resilient floor-covering material must be supervised by an RFCI supervisor who is a competent person, as defined under 29 CFR 1926.32(f) (relating to Definitions), and, except as provided in paragraph (4) of this subsection, has successfully completed an additional minimum four-hour training course, review and examination required to supervise the removal of resilient floor-covering material, which addresses the following topics:

(A) prework activities and considerations, including determination of asbestos-containing materials, methods of identification, walk through survey and bulk sampling, common building materials containing asbestos, and review of OSHA, EPA, Department of Transportation, and state and local regulations;

(B) assessment of the work area, including site preparation considerations conducting a negative exposure assessment, isolating the work area, adjacent areas, regulated areas, and safety hazards;

(C) notification, recordkeeping, and waste disposal, including recordkeeping requirements, notification requirements, warning signs, special equipment, and transport and disposal of asbestos waste; and

(D) supervising workers, including establishing goals, providing clear instructions, establishing expectations, use of supervisory authority, and motivating workers.

(2) An individual employed by a school who elects to use the RFCI work practices must first complete the 16-hour custodial training required by the EPA MAP, unless the individual holds a current asbestos abatement worker registration, asbestos O&M supervisor license, or asbestos abatement supervisor license.

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

(4) An individual licensed as an asbestos abatement supervisor or accredited as a Contractor/Supervisor under the MAP is not required to complete the additional four-hour training required under paragraph (1) of this subsection to supervise the removal of resilient floor-covering material.

§296.232. Alternative Asbestos Abatement Practices and Procedures for Certain Nonfriable Asbestos-Containing Building Material (ACBM) in a Public Building.

(a) Scope and limitations.

(1) The alternative work practices under subsection (b) of this section may be used for the removal of the following intact, nonfriable ACBM:

(A) any packing;

(B) any gaskets; and

(C) any cements and mastics.

(2) The work practices described in subsection (b) of this section must be followed in their entirety and may not be used if the ACBM listed in paragraph (1) of this subsection becomes friable during the removal project. Unless those work practices are followed, or if the ACBM becomes friable or is made into RACM, all abatement activity must be stopped, and the area must be prepared and abated in accordance with §296.213 of this chapter (relating to Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building), if applicable, or §296.212 of this chapter (relating to Standard Asbestos Abatement Practices and Procedures in a Public Building).

(3) Only those persons who are a licensed asbestos abatement contractor, licensed asbestos abatement supervisor, or registered asbestos abatement worker may conduct asbestos abatement of nonfriable ACBM using the work practices outlined in subsection (b) of this section. A licensed asbestos abatement supervisor must supervise any registered asbestos abatement worker. A licensed consultant is not required to design projects using this alternative method.

(4) Written notification must be provided before the project starts, as required in §296.251 of this chapter (relating to Notifications).

(b) Work practices.

(1) A regulated area must be established where asbestos abatement will be conducted, and at minimum, caution tape must be used to demarcate the regulated area. Except as otherwise provided by other applicable law, access to the regulated area must be limited to:

(A) licensees;

(B) emergency responders as defined in §296.21(36) of this chapter (relating to Definitions);

(C) licensed, registered, or accredited building professionals required for emergency situations;

(D) appropriate governmental inspectors; and

(E) authorized personnel, in accordance with 29 CFR §1926.1101(e) (relating to Asbestos).

(2) Warning signs that comply with 29 CFR §1926.1101, must be displayed at all entrances to regulated areas, which include critical barriers that can be used to gain entrance to the containment, such as doors, windows, and hallways. To protect the public from accidental entry, warning signs must be displayed, at minimum, in both Spanish and English at the same locations. Asbestos caution tape may not be substituted for warning signs.

(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, tape, or both.

(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, wet cleaning, or both must be used to decontaminate the regulated area and equipment until there is no visible debris.

(8) ACWM must be double-bagged into 6-mil thick plastic bags or sealed in leak-tight drums as required in §296.212(c) of this chapter, and disposed of as required in §296.212(c)(8)-(10) of this chapter.

(9) Ambient air must be monitored and analyzed on-site by a licensed asbestos consultant or a licensed asbestos air monitoring technician employed by a licensed asbestos laboratory, and as required in §296.211(h)(1) of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building). Samples must be taken throughout the regulated area and adjacent to any active asbestos abatement activity. All asbestos abatement activity must be stopped and cleanup conducted as described in subsection (a)(2) of this section if at any time the result of ambient air analysis exceeds a concentration of 0.01 f/cc (fibers per cubic centimeter) for any sample, when measured by phase contrast microscopy using the NIOSH 7400 method.

(10) A licensed asbestos abatement supervisor shall perform a visual inspection upon completion of the project to confirm that all ACBM required to be removed has been removed and containerized as required in this chapter, and that the abatement work area is free of all residual dust and debris.

§296.233. Alternative Asbestos Practices and Procedures for Small Projects and Repetitive Tasks in a Public Building.

(a) Purpose. The purpose of this section is to describe the requirements that must be met to permit a small project or repetitive task described under this section to be performed without containment in a public building.

(b) Scope and limitations.

(1) This section applies only to a maintenance or installation project or task:

(A) that is incident to another activity that has a primary purpose other than asbestos abatement;

(B) that disturbs 10 square feet or less of ACBM for each small project or task; and

(C) that is the same task performed by licensees without deviation from a documented procedure as described in subsection (c) of this section, and with material containing the same type and similar content of asbestos.

(2) A small project or repetitive task, as described, and limited under this section, may be performed without using a negative pressure glove bag, glove box, or mini-containment only if all requirements of this section are met and a clearance-level assessment has been conducted, as required in subsection (c) of this section, showing that the work practices will not result in a concentration of asbestos fibers in excess of 0.01 f/cc at any time during the duration of the project.

(3) A larger project may not be broken down into smaller projects or tasks in order to fall within the scope of this section or to circumvent the restricted applicability of this section or other applicable requirements of this chapter.

(4) A registered asbestos abatement worker may perform a small project or repetitive task that disturbs ACBM, as described in paragraph (2) of this subsection, using the work practices outlined in subsection (d) of this section only when supervised by a licensed asbestos abatement supervisor who is employed by the building owner or a licensed asbestos abatement contractor, and a clearance-level assessment has been done as required in subsection (c) of this section showing that the work practices will not result in a concentration of fibers in excess of 0.01 f/cc at any time during the duration of the project.

(5) A licensed asbestos abatement supervisor employed by the building owner or an asbestos abatement contractor may perform and supervise a small project or repetitive task that disturbs ACBM described in paragraph (2) of this subsection, using the work practices outlined in subsection (d) of this section.

(6) If a clearance-level assessment has been done as required in subsection (c) of this section showing that the work practices will not result in a concentration of fibers in excess of 0.01 f/cc at any time during the duration of the project, and the requirements and limitations of this section are otherwise met in performing a small project or repetitive task described in this section, a licensed consultant or the consultant’s designated project manager is not required to design or monitor the small project or repetitive task.

(7) Written notification must be provided before the project starts, as required in §296.251 of this chapter (relating to Notifications).

(c) Clearance-level assessment. A project or task may be performed under this section only if, within the previous 12-monthperiod, an assessment has been conducted on-site using a method permitted under paragraph (3) of this subsection, which demonstrates that the work practices used to perform the project or task will not result in a concentration of asbestos fibers in excess of 0.01 f/cc at any time during the duration of the project. The assessment method, and results must be documented, and clearly indicated on, and submitted with, the notification for the small project or repetitive task planned to be performed as described in this section.

(1) The clearance-level assessment must be completed in a negative pressure enclosure or mini-containment that complies with §296.212 of this chapter (relating to Standard Asbestos Abatement Practices and Procedures in a Public Building) and §296.213 of this chapter (relating to Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building), respectively, and by performing the project or task as it would be performed under this section.

(2) A person must hold any license required for those components of an assessment conducted for purposes of this subsection which the person performs. Without limiting this requirement:

(A) A licensed asbestos consultant must design and directly observe the performance of the project or task being assessed and the assessment methods and activities conducted under this subsection.

(B) During an assessment under this subsection, a licensed consultant or a licensed air monitoring technician must conduct air monitoring in accordance with §296.211 of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building).

(3) To establish, for purposes of this subsection, that clearance-level concentrations will be maintained throughout the project, the assessment method and results must be documented and submitted with the notification for the small project or repetitive task planned to be performed as described in this section. The documented assessment methods and results submitted must:

(A) be consistent with procedures described:

(i) for exposure assessments described under 29 CFR §1926.1101(f) (relating to Asbestos), including the engineering controls, work practices, and other safeguards described in connection with exposure assessments conducted under that subsection; or

(ii) in ASTM D7886; or

(B) be equivalent to a procedure described in subparagraph (A)(i) and (ii) of this paragraph, and capable of reliably determining whether clearance levels will be maintained throughout the project.

(4) A licensed asbestos supervisor must be in the containment directly performing the task or monitoring the registered asbestos abatement worker for purposes of the clearance-level assessment.

(d) Work practices. Without limiting the restrictions of 29 CFR §1926.1101, work practices must include the following:

(1) A regulated area must be established where asbestos abatement will be conducted and at minimum, caution tape must be used to demarcate the regulated area. Except as otherwise provided by other applicable law, access to the regulated area must be limited to:

(A) licensees;

(B) emergency responders as defined in §296.21(36) of this chapter (relating to Definitions);

(C) licensed, registered, or accredited building professionals required for emergency situations;

(D) appropriate governmental inspectors; and

(E) authorized personnel, in accordance with 29 CFR §1926.1101(e).

(2) Warning signs that comply with 29 CFR §1926.1101, must be displayed at all entrances to regulated areas. To protect the public from accidental entry, warning signs must be displayed, at minimum, in both Spanish and English at the same locations. Asbestos caution tape may not be substituted for warning signs.

(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, tape, or both.

(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, wet cleaning, or both must be used to decontaminate the regulated area and equipment until there is no visible debris.

(7) ACWM must be double-bagged into 6-mil thick plastic bags or sealed in leak-tight drums as required in §296.212(c) of this chapter, and disposed of as required in §296.212(c)(8)-(10) of this chapter and NESHAP. Final disposal of ACWM must be within 30 days after project completion or when the receiving container is full, whichever is sooner.

(8) A licensed asbestos abatement supervisor shall monitor the project or task and perform a visual inspection upon completion of the project or task to confirm that all ACBM required to be removed has been removed and containerized as required in this chapter, and the regulated area is free of all residual dust and debris.

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

(a) Restrictions. If the following conditions are met and the work practices required under subsection (c) of this section are followed, other requirements of §296.212 of this chapter (relating to Standard Asbestos Abatement Practices and Procedures in a Public Building) are not mandatory for an activity described in subsection (b) of this section:

(1) ACM must be in good condition, and removed as a whole component, keeping the component intact with no breakage or generation of dust during the removal or collection.

(2) ACM must not be RACM.

(3) If the ACM becomes RACM or cannot be removed as a whole component and kept intact, all abatement activities must be stopped, and the area must be prepared and abated as required in §296.213 of this chapter (relating to Asbestos Operations and Maintenance (O&M) Practices and Procedures for O&M Licensees in a Public Building) or §296.212 of this chapter, as applicable.

(4) Only a licensed asbestos abatement contractor or licensed asbestos abatement supervisor may perform an activity under this section. A registered asbestos abatement worker may perform an activity under this section only when supervised by a licensed asbestos abatement supervisor. A licensed consultant is not required to design or monitor a project that uses this alternative method and is conducted in accordance with the requirements and restrictions of this section.

(5) Written notification must be provided before the project starts, as required in §296.251 of this chapter (relating to Notifications).

(b) Eligible activities. If the conditions of subsection (a) of this section are met and the work practices required under subsection (c) of this section are followed, other requirements of §296.212 of this chapter are not mandatory for the following activities:

(1) removal of an asbestos cement sheet or wall panel by unbolting or unscrewing and removing the whole sheet or panel intact;

(2) removal of a lab-type asbestos cement desktop by either unbolting or unscrewing and removing the whole desktop intact;

(3) removal of a nonfriable countertop or backsplash by completely removing the whole unit intact;

(4) removal of a window unit with window glazing, if the window glazing is secured with tape or a similar material before removal, and the whole window unit with window glazing is removed intact;

(5) picking up one or more loose floor tiles that have become completely disassociated from the floor and are either whole or slightly broken, but which are still intact and not RACM;

(6) picking up a loose miscellaneous nonfriable item, such as a roll of linoleum, a loose gasket, or a loose shingle;

(7) removal of a fire door with asbestos-containing insulation from its hinges by removing the whole door, including its hardware, intact;

(8) removal of any other nonfriable building component by removing it as a whole component and keeping it intact; and

(9) removal of any packings, gaskets and mastics by removing them whole and intact, if not otherwise removed using the alternate method described in §296.232 of this chapter (relating to Alternative Asbestos Abatement Practices and Procedures for Certain Nonfriable Asbestos-Containing Building Material (ACBM) in a Public Building).

(c) Work practices. Work practices must include the following:

(1) A regulated area must be established where asbestos abatement will be conducted and at minimum, caution tape must be used to demarcate the regulated area. Except as otherwise provided by other applicable law, access to the regulated area must be limited to:

(A) licensees;

(B) emergency responders as defined in §296.21(36) of this chapter (relating to Definitions);

(C) licensed, registered, or accredited building professionals required for emergency situations;

(D) appropriate governmental inspectors; and

(E) authorized personnel, in accordance with 29 CFR §1926.1101(e) (relating to Asbestos).

(2) Warning signs that comply with 29 CFR §1926.1101, must be displayed at all entrances to the regulated area. To protect the public from accidental entry, warning signs must be displayed, at minimum, in both Spanish and English at the same locations. Asbestos caution tape may not be substituted for warning signs.

(3) Asbestos material must be kept wet during removal and disposal.

(4) Ambient air monitoring is not required. A licensed asbestos abatement supervisor must perform a visual inspection upon completion of the project or task to confirm that all ACBM required to be removed has been removed and containerized as required in this chapter, and the regulated area is free of all residual dust and debris. This paragraph does not affect otherwise applicable requirements for personal air monitoring.

(5) ACWM must be double-wrapped in 6-mil thick plastic sheeting, double-bagged into 6-mil thick plastic bags, or sealed in leak-tight drums, as required in §296.212(c) of this chapter, and disposed of as required in §296.212(c)(8)-(10) of this chapter and in accordance with NESHAP.

TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION

SUBCHAPTER N NOTIFICATIONS

§296.251. Notifications.

(a) General provisions. DSHS must be notified using DSHS’s online asbestos notification system on its website or on a form specified by DSHS of any asbestos abatement or demolition as required in paragraphs (1) and (2) of this subsection. Notification must be made to DSHS no fewer than 10 working days before commencement of the activity. Submitting the notification form online on DSHS’s website or by hard copy meets the requirements for notification to DSHS under both the NESHAP and this chapter. The notification form must be properly completed and submitted as required in this section.

(1) Public buildings. DSHS must be notified of any demolition of a public building whether or not asbestos has been identified. DSHS must be notified of any asbestos abatement within a public building. Notification must be submitted as required in this section.

(2) Facilities. For all facilities, including commercial buildings, which are not otherwise subject to this title as public buildings, DSHS must be notified of any demolition of a facility, whether or not asbestos has been identified. DSHS must be notified of any renovation operation if the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed meets or exceeds the NESHAP threshold, in accordance with 40 CFR §61.145 (relating to Standard for demolition and renovation), of 160 square feet of surface area, 260 linear feet of pipe length, or 35 cubic feet off facility components where the length or area could not be measured. Notification must be submitted in accordance with NESHAP.

(b) Responsibility for proper notification.

(1) Public buildings. It is the responsibility of the public building owner and delegated agent (such as a licensed asbestos contractor or asbestos consultant) to submit a notification to DSHS for each project. In a demolition where a licensed asbestos abatement contractor or asbestos consultant is not required, the notification task may be delegated in writing to the demolition contractor or other agent. When the task to notify is delegated, the building owner’s delegation and the name of the delegated agent must be specified on the notification form. The building owner and the delegated agent are jointly and severally responsible for the accuracy and timeliness of the notification.

(2) Facilities. It is the responsibility of the facility owner or operator to submit a notification to DSHS for each project. The facility owner and operator are jointly and severally responsible for the accuracy and timeliness of the notification.

(c) Completion of the notification form. The DSHS notification form must be completed fully and properly.

(1) No applicable form field as specified on the notification form and notification instructions may be left blank and form fields must contain accurate information. Form fields that are not applicable must be marked “NA”. The fields on the form for the work site, building description, building owner, abatement and waste transportation companies, or start or stop dates or times must be filled in. Use of the designation “NA” for any of these fields does not suffice to comply with the requirements of this section or 40 CFR §61.145 (relating to Standard for demolition and renovation).

(2) The building owner or the delegated agent, or the facility owner or operator, as applicable, must submit an amendment to the notification for any changes. The changes may include those for start and stop dates, phased schedule form, changes of at least 20% in amounts of asbestos to be removed, and cancellations. Amendments for a stop date that changes by one work day for each notified seven calendar days is not required.

(3) Forms not submitted online must contain an original signature. DSHS does not accept a copied signature.

(d) Submission of the notification form.

(1) The notification form must:

(A) be submitted online on DSHS’s website;

(B) be postmarked and delivered by the United States Postal Service (USPS);

(C) be date-stamped and delivered by commercial delivery service; or

(D) be delivered by hand during normal business hours.

(2) Printed notification forms 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 DSHS at least 10 working days before the asbestos abatement or demolition start date. If the initial notification is for asbestos abatement and demolition, then notification must be submitted 10 working days before either the asbestos abatement or demolition start date, whichever is earliest.

(2) If a project start date, stop date, phased project schedule, day, or time changes from the current notified date, schedule, day, or time, then an amended notification must be submitted to DSHS as required in subsections (f)-(j) and (q)(2) of this section.

(f) Start date change to an earlier date. When asbestos abatement or demolition will begin on a date earlier than the date contained in the notification:

(1) an amended notification must be submitted to DSHS at least 10 working days before the new start date as required in subsection (d) of this section;

(2) the appropriate DSHS regional office must be provided with a fax or email copy of the amended notice at least 10 working days before the new start date; and

(3) for notification not submitted online, the appropriate DSHS regional office must also be contacted by phone at least 10 working days before the new start date.

(g) Stop date change to an earlier date. An amendment is required for a stop date that changes by more than one work day for each notified seven calendar days. 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 as required in subsection (d) of this section to DSHS as soon as possible, but no later than the new stop date;

(2) the appropriate DSHS regional office must be provided with a fax or email copy of the amended notification as soon as possible, but no later than the new stop date; and

(3) for notification not submitted online, the appropriate DSHS regional office must also be contacted by phone of the new stop date as soon possible, but no later than the new stop date.

(h) Start date change to a later date. When asbestos abatement or demolition will begin later than the date contained in the notification:

(1) an amended notification with the new start date must be submitted as required in subsection (d) of this section to DSHS as soon as possible, but no later than the current notified start date;

(2) the appropriate DSHS regional office must be provided with a fax or email copy of the amended notice as soon as possible, but no later than the current notified start date; and

(3) for notification not submitted online, the appropriate DSHS regional office must also be contacted by phone of the new start date as soon as possible, but no later than the current notified start date.

(i) Stop date change to a later date. An amendment is required for a stop date that changes by more than one work day for each notified seven calendar days. When asbestos abatement or demolition will end on a date later than the current notified stop date:

(1) an amended notification of the new stop date must be submitted as required in subsection (d) of this section to DSHS as soon as possible, but no later than the current notified stop date;

(2) the appropriate DSHS regional office must be provided with a fax or email copy of the amended notice as soon as possible, but no later than the current notified stop date; and

(3) for notification not submitted online, the appropriate DSHS regional office must also be contacted by phone of the new stop date as soon as possible, but no later than the current notified stop date.

(j) Cancellation.

(1) When asbestos abatement or demolition is cancelled, the building owner or the delegated agent, or the facility owner or operator, as applicable, must:

(A) submit a notice of the cancellation as required in subsection (d) of this section to DSHS as soon as possible, but no later than the current notified start date;

(B) the appropriate DSHS regional office must be provided with a fax or email copy of the notice of cancellation as soon as possible, but no later than the current notified start date; and

(C) the appropriate DSHS regional office must also be contacted by phone of the cancellation before as soon as possible, but no later than the current notified start date.

(2) When asbestos abatement and demolition are notified on the same notification, and either the abatement or demolition will not occur, an amendment must be submitted to remove the abatement or demolition activity that will not occur on or before the notified start date for that activity.

(k) Consolidated notification of nonscheduled asbestos O&M activities in a public building.

(1) Notification of a series of nonscheduled, separate O&M activities involving ACBM, each of which does not meet or exceed a threshold of 160 square feet of surface area, 260 linear feet of pipe length, or 35 cubic feet volume off facility components where the length or area could not be measured previously, may be made annually. An individual project that meets or exceeds this threshold must be notified separately and may not be notified as part of the consolidated notification. The consolidated notification must include a prediction of the cumulative amount of asbestos to be removed, enclosed, or encapsulated from January 1 through December 31 of the calendar year for which consolidated notification is being given. Consolidated notifications must be submitted at least 10 working days before the calendar year for which notification is being given for a single building, or for a group of public buildings at one site under the control of one owner or operator. Consolidated notification must be submitted as required in subsection (d) of this section.

(2) The building owner or delegated agent must notify the appropriate DSHS regional office by fax, or email before each O&M activity for which notification is given in a consolidated notification under this subsection.

(3) The building owner shall keep records of the individual O&M activities. If, at any point during the calendar year for which consolidated notification was given, the amount of asbestos removed, enclosed, or encapsulated changes from the notified amount by 20% or more, then an amendment must be submitted within 10 working days thereafter.

(l) Consolidated notification of nonscheduled renovation operations in a facility that is not a public building.

(1) A notification is required when the combined amount of RACM for planned renovation operations of individual nonscheduled renovation operations, resulting from equipment failure, meets or exceeds the NESHAP threshold of 160 square feet of surface area, 260 linear feet of pipe length, or 35 cubic feet off facility components where the length or area could not be measured. To determine whether notification is required, the facility owner or operator must predict the combined additive amount of RACM to be removed from January 1 to December 31 of the calendar year for which consolidated notification is being given. These operations may be notified on a single consolidated notification form for each facility for which a consolidated notification is required under this paragraph. Consolidated notifications must be submitted at least 10 working days before the calendar year for which notice is being given. Consolidated notification must be submitted as required in subsection (d) of this section.

(2) Upon request by DSHS, the facility owner or operator must be able to demonstrate that the amount of RACM stripped or removed did not change from the notified amount by 20% or more. If, at any point during the calendar year for which consolidated notification was given, the amount of RACM stripped or removed changes from the notified amount by 20% or more, then an amendment must be submitted within 10 working days thereafter.

(3) If the facility owner or operator determines that the NESHAP threshold amount will be exceeded, and a consolidated notification was not previously submitted under this subsection, then a notification must be submitted at least 10 working days before the start date of the activity that will exceed the threshold.

(m) Notification of emergency renovation operations.

(1) An emergency notification must be submitted when the need for an emergency renovation operation as defined in §296.21(35) of this chapter (relating to Definitions) arises. A description of the sudden, unexpected event precipitating the emergency renovation operation must be documented on the form. Notification of an emergency renovation operation must be submitted as soon as possible, but no later than the first working day after the date of the incident that precipitates the emergency operation. Initial notification can be made by phone followed by formal notification. Formal notification must be made as required in subsection (d) of this section.

(2) The building owner or the delegated agent, or the facility owner or operator, as applicable, must also notify the appropriate DSHS regional office by phone and fax or email as soon as possible, but no later than the first working day after the date of the incident that precipitates the emergency renovation operation. The fax or email must include a description of the emergency and a copy of the notification form.

(n) Addition of asbestos abatement or demolition to an existing notification. If asbestos abatement or demolition is to be added to a notification submitted as required in subsection (d) and (e) of this section, and the notified abatement or demolition stop date has not passed, a notification amendment must be submitted to DSHS to add the asbestos abatement or demolition no fewer than 10 working days before commencement of the added abatement or demolition.

(o) Notification of ordered demolitions for structurally unsound buildings.

(1) If the facility is being demolished under an order of a state or local government agency or a court, issued because the facility is structurally unsound and in danger of imminent collapse, then the DSHS notification must be submitted as soon as possible, but no later than the first working day after the commencement date of the 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 as required in subsection (d) of this section. If an owner is unable to obtain a demolition order from a city, county, or state government official due to the building being structurally unsound and unsafe to enter, and has a letter from a professional engineer stating that the building is structurally unsound and in danger of imminent collapse, then the owner may contact DSHS to request a waiver from the 10 working day notification deadline. Documentation supporting the inability to obtain an order must be submitted with the waiver request.

(2) For structurally unsound buildings that are in danger of imminent collapse, the building owner or the delegated agent or the facility owner or operator must also notify the appropriate DSHS regional office by phone and fax or email as soon as possible but no later than the first working day after the commencement date of the demolition. The email must include a copy of the demolition order and notification form.

(p) Notification of asbestos abatement and demolition. In a public building or a facility, including a commercial building, when asbestos abatement and demolition are notified on the same notification form, and all asbestos abatement included in the notification concludes early, the demolition may start as early as the next calendar day when an amended notification is submitted as required in paragraphs (1) – (3) of this subsection. It is the responsibility of the person that submits the notification to amend the abatement stop date and demolition start date.

(1) An amended notification must be submitted to DSHS as soon as possible, but no later than the new abatement stop date as required in subsection (d) of this section.

(2) The appropriate DSHS regional office must be provided with a fax or email copy of the amended notice as soon as possible, but no later than the new abatement stop date.

(3) The appropriate DSHS regional office must also be contacted by phone of the amended notice as soon as possible, but no later than the new abatement stop date and demolition start date.

(q) Notification of a phased project for asbestos abatement, demolition, or abatement and demolition in a public building or facility.

(1) To qualify as a phased project, the project must have planned periods of inactivity, and all of the abatement and demolition work must be performed at one site. The site may contain more than one building, such as an office complex or university, if the buildings are under the control of one owner or operator. Notification of a phased project may not cover a period that exceeds 12 calendar months from the project start date. A completed Phased Project Schedule form must be submitted with each notification. The notification form must be submitted at least 10 working days before the start date of the first phase. The notification form must be submitted as required in subsection (d) of this section.

(2) When there is a change to the phased project schedule, the building owner or the delegated agent, or the facility owner or operator, as applicable, must:

(A) submit a notification amendment along with the revised Phased Project Schedule form to DSHS as soon as possible, but no later than the most recent notified date or the new proposed date, whichever is earlier; and

(B) also fax or email a revised Phased Project Schedule form to the appropriate DSHS regional inspector as soon as possible, but no later than the most recent notified date or the new proposed date, whichever is earlier.

(r) Asbestos notification fees.

(1) Applicability. The building owner or the delegated agent, or the facility owner or operator, as applicable, shall pay to DSHS an asbestos notification fee as required in this subsection. The fee is based upon the amount of asbestos removed and includes a subscription fee in an amount determined by the Texas Department of Information Resources to recover costs associated with the development and maintenance of Texas.gov services. The subscription fee is 3% of the total notification fee. The minimum fee for notification or the cancellation of a notification is $55.

(2) Payment.

(A) When a notification is submitted online, the user has the option to pay the notification fee at the time of submission or request to have an invoice mailed. DSHS mails an invoice to the building owner or the delegated agent, or the facility owner or operator, as applicable, within 30 working days after the completion of the notified project. Payment must be received by DSHS within 60 calendar days after the invoice date.

(B) When a notification is submitted by mail, DSHS mails an invoice to the building owner or the delegated agent, or the facility owner or operator, as applicable, within 30 working days after the completion of the notified project. Payment must be received by DSHS within 60 calendar days after the invoice date.

(3) Notification fees.

(A) Fees for asbestos abatement projects.

(i) Notification fees for asbestos abatement are based on the total amount of the RACM or ACBM reported on the notification form to be abated, as required in §296.191 of this chapter (relating to Asbestos Management in a Public Building, Commercial Building, or Facility) and this section. Fees for abatement are required to be paid based upon a $30 fee for each asbestos reporting unit (ARU).

(ii) The minimum asbestos abatement notification fee per notification is $55, and the maximum fee per notification is $3,210 for abatement projects of 107 ARUs or more, except that the maximum fee per notification for a school building is $320.

(iii) Notification fees are calculated by measuring the amount of RACM or ACBM to be abated in square feet, linear feet, or cubic feet.

(I) ARU calculation for square feet. The number of ARUs is determined by measuring the total amount of RACM or ACBM to be abated in square feet, dividing that number by 160, and, if applicable, rounding that total down to a whole number.

(II) ARU calculation for linear feet. The number of ARUs is determined by measuring the total amount of RACM or ACBM to be abated from pipes in linear feet, dividing that number by 260, and, if applicable, rounding that number down to a whole number.

(III) ARU calculation for cubic feet. The number of ARUs is determined by measuring the total amount of RACM or ACBM to be abated from off facility components where the length or area could not be measured previously, dividing that number by 35, and, if applicable, rounding that number down to a whole number.

(IV) Notification fee calculation. The notification fee is calculated by adding the total number of ARUs for each category (square feet, linear feet, and cubic feet) and multiplying the total number of ARUs by $30.

(B) Fees for demolition only projects. The fee per notification for demolition for which any RACM or ACBM will not be abated or will be left in place is $55.

(C) Fees for abatement and demolition projects. The fee per notification for abatement with demolition is based solely on the amount of RACM and ACBM removed during the abatement. If an abatement notification is amended to add demolition, no additional fee is required for adding the demolition to the notification.

(4) Reimbursement of notification fees. The building owner or the delegated agent, or the facility owner or operator, as applicable, may submit a request for reimbursement based upon cancellation of the abatement or demolition, or overestimation in calculating the number of ARUs of the amount of RACM or ACBM to be abated. If less than the reported amount will be removed, a notification amendment must be provided to DSHS with the reimbursement request. The written request must be received by DSHS within 10 working days after the notified project end date or its timely cancellation. DSHS deducts an administrative fee of $57 from any reimbursement for an excess payment of a notification fee. The requestor is not entitled to reimbursement of a notification fee for $62 or less.

(5) Nonpayment of fees. Failure to pay the required fee by the invoice due date is a rule violation under this chapter and may subject the building owner or the delegated agent, or the facility owner or operator, as applicable, to an administrative penalty under §296.318 of this chapter (relating to Administrative Penalty).

TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION

SUBCHAPTER O INSPECTIONS AND INVESTIGATIONS

§296.271. Inspections and Investigations.

(a) DSHS has the right to inspect or investigate the practices of any person involved with asbestos abatement or asbestos-related activity in a public building, commercial building, or facility.

(b) DSHS or a DSHS representative conducting official duties is not required to provide advance notice of, or seek permission to conduct, any asbestos-related inspection or investigation.

(c) In order to inspect and investigate for compliance with this chapter, a DSHS representative, upon presenting a DSHS identification (ID) card, has the right to:

(1) enter at all reasonable times any area or environment, including any containment, facility or building, construction site, storage area, vehicle, or office area;

(2) review records and make copies;

(3) interview any person;

(4) locate, identify, and assess the condition of ACM;

(5) take photographs; and

(6) collect bulk samples, air samples, or both.

(d) A person shall not interfere with, refuse, or delay an inspection or investigation conducted by a DSHS representative.

(e) DSHS is authorized to conduct any inspection or investigation to evaluate compliance under the Act and this chapter. A DSHS representative may not be impeded or refused entry to conduct official duties or contractual specification. A person shall not threaten or attempt to bribe or intimidate a DSHS representative during the course of an inspection or investigation, and is subject to applicable administrative, civil, and criminal sanctions for any violation.

TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION

SUBCHAPTER P RECORDKEEPING

§296.291. Recordkeeping.

(a) Recordkeeping requirements. Without limiting any federal or state requirement to which a licensee or record may otherwise be subject, a person regulated by this chapter shall maintain, retain, and make available to DSHS for inspection or produce, upon request, including for copying on or off-site, records and documents as required by this section and each applicable subsection. For purposes of this chapter, a person that ceases to do business shall notify DSHS in writing within 30 days after such event and shall make appropriate arrangements for retention and maintenance of records, as required under this section. The person shall provide DSHS with the details of such arrangement or comply with DSHS’s alternative instructions within 60 days after ceasing to do business or receiving instructions from DSHS, whichever is later.

(b) Asbestos abatement contractors, asbestos O&M contractors, and RFCI contractors.

(1) Central location. A contractor described in this subsection shall maintain the following records and documents for any project performed in a public building at a central location, at the contractor’s principal place of business, for a period of at least 30 years after the date of project completion, and must make them available to DSHS upon request:

(A) records and documents which comply with applicable recordkeeping requirements under 29 CFR Part 1910 (relating to Occupational Safety and Health Standards), 29 CFR §1926.1101 (relating to Asbestos), NESHAP and AHERA;

(B) the name, address, and asbestos certificate number of each employee, past and present, including dates of employment, and a description of each employee's involvement in each asbestos project while employed by the contractor, and records must include the name, physical address, and duration of each project;

(C) a copy of all regulatory agency correspondence, including each required asbestos abatement/demolition notification form, and each inspection form, letter, notice, and order;

(D) a copy of each waste shipment record (manifest), including a copy of the manifest, signed in accordance with 40 CFR §61.150(d)(5) (relating to Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations) by the owner or operator of the designated waste disposal site and each receipt and documentation of disposal of asbestos waste showing the date, location, and amount of asbestos waste disposed, and identifying each source of the asbestos waste and each transporter of the waste, including the company name or driver name, if the driver is an employee of the contractor;

(E) a copy of each laboratory report and sample analysis documenting required air monitoring for the project, including a copy of each consultant report provided to the contractor regarding project monitoring; and

(F) a copy of all contracts and project specifications and plans for each asbestos abatement project.

(2) On-site. Without limiting the retention requirements of paragraph (1) of this subsection, the records and documents described under this paragraph must be maintained on-site at the asbestos project location for the duration of the project. RFCI contractors and DSHS-licensed asbestos abatement and O&M contractors are responsible for their employees’ documents to be on-site. All on-site records and documents must be made available to DSHS upon request. The following records and documents, at a minimum, must be maintained on-site as required in this paragraph:

(A) each current applicable state-issued license or registration for every person conducting an asbestos-related activity on the project, and a full-sized copy of each applicable training certificate, which must be current, for each person;

(B) a copy of the current license for the asbestos contractor;

(C) a current copy of the contractor’s standard operating procedures;

(D) a copy of the asbestos project specifications and plans, or, if project specifications are not required, a scope of work that outlines the location and describes operations and abatement procedures for the project;

(E) a listing of each employee working on the project, by name, and all applicable asbestos license or registration numbers and training certificate numbers for each employee;

(F) name and address of each contractor, project supervisor, consultant, project manager, waste transporter, waste disposal site, and building owner on the asbestos project;

(G) a daily sign-in/sign-out log for the containment or the regulated area if no containment is present, and sign-in/sign-out logs must identify each person by name and the length of time each spent in the containment or regulated area;

(H) results of project air monitoring samples as required in §296.211(h) of this chapter (relating to General Requirements for Asbestos Abatement in a Public Building);

(I) a written respiratory protection program that complies with 29 CFR §1910.134(c) (relating to Respiratory protection);

(J) a description of personal safety practices;

(K) a current copy of DSHS’s Physician’s Written Statement form and each respirator fit-test performed within the past 12 months for any individual who enters a regulated area;

(L) a copy of the current asbestos abatement/demolition notification;

(M) a copy of this chapter;

(N) a copy of any federal regulation adopted by reference in §296.2 of this chapter (relating to Adoption by Reference of Federal Standards) that applies to the asbestos-related activity that is being performed;

(O) the EPA Publication for O&M activities entitled, “Managing Asbestos in Place: A Building Owner's Guide to Operations and Maintenance Programs” (also known as the EPA Green Book) if such activities are being performed;

(P) a copy of the recommended work practices for resilient floor-covering removal published by the Resilient Floor Covering Institute, if the project involves removal of resilient floor-covering materials using that method;

(Q) the Violation Notification Procedure poster issued by DSHS, which must be posted and visible to the public at the entrance to the regulated area as required in §296.211(i) of this chapter; and

(R) a copy of any asbestos-related order issued by DSHS, EPA, or OSHA, 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 as required in §296.211(i) of this chapter.

(c) Asbestos management planners. A licensed asbestos management planner who, in that capacity, undertakes and performs an activity as an individual, and independent of an agency, shall maintain each of the licensee’s asbestos survey reports, bulk sampling results, and management plans for that activity for 30 years after the date of project completion. These records and documents must be maintained at a central location and be made available to DSHS upon request.

(d) Asbestos management planner agencies. A licensed asbestos management planner agency shall maintain each of its asbestos survey reports, bulk sampling results, and management plans for 30 years from the date of project completion. These records and documents must be maintained at the management planner agency's principal place of business and be made available to DSHS upon request.

(e) Asbestos consultants. A licensed asbestos consultant who, in that capacity, undertakes and performs an activity as an individual, and independent of an agency, shall maintain for that activity each of the licensee’s asbestos survey reports, assessments, bulk sampling results, asbestos management plans, O&M plans, asbestos abatement designs, specifications and plans, air monitoring records, each written designation of a project manager and the project manager’s responsibilities and authority, and a copy of every other asbestos abatement project document for 30 years after the date of project completion. These records and documents must be maintained at a central location and be made available to DSHS upon request. While a project is in process and until final visual inspection has been completed, all asbestos abatement project documents for the project must be kept at the asbestos project site.

(f) Asbestos consultant agencies. A licensed asbestos consultant agency shall maintain each of its asbestos survey reports, assessments, bulk sampling results, asbestos management plans, O&M plans, asbestos abatement project designs, specifications and plans, air monitoring records, each written designation of a project manager and the project manager’s responsibilities and authority, and a copy of every other asbestos abatement project document for 30 years after the date of project completion. These records and documents must be maintained at a central location and be made available to DSHS upon request. While a project is in process and until final visual inspection has been completed, all asbestos abatement project documents for the project must be kept at the asbestos project site.

(g) Asbestos air monitoring technicians. A licensed air monitoring technicians (AMT) who performs phase contrast microscopy (PCM) analysis in the field as an employee of a licensed asbestos laboratory shall maintain on-site for the duration of the project:

(1) all analyzed slides, each labeled to provide identification of the project name, date and time of sample collection and analysis, and sample location;

(2) documentation of the AMT’s relative standard of deviation in accordance with the NIOSH 7400 method; and

(3) a copy of:

(A) the AMT’s NIOSH 582 or NIOSH 582 Equivalent training certificate and documentation of current participation in the American Industrial Hygiene Association (AIHA) Proficiency Analytical Testing Program; or

(B) documentation of current registration with the AIHA Asbestos Analyst Registry (AAR).

(h) Asbestos laboratories. A licensed asbestos laboratory shall maintain a copy of all analyses performed and all other records and documents required by this chapter for 30 years after the date of analysis, including the sample identification number and analytical results, and shall make such documents available to DSHS for inspection upon request.

(1) An analyzing laboratory must hold all samples from a public building received for analysis for 30 days following completion of the analysis. Sample grids must be maintained for one year after the date of the analysis.

(2) An analyzing laboratory must maintain a copy of individual records for each analyst to document the individual analyst's relative standard of deviation in accordance with the NIOSH 7400 method for three years after the date the calculation was made. Records must be kept in the laboratory indicating which samples were used to meet the 10% quality-control analysis requirement.

(i) Asbestos training providers.

(1) Central location. The following records and documents must be maintained at a central location at the principal place of business for a period of three years after the date of the course and made available to DSHS upon request:

(A) Training course materials. A licensed training provider must retain a copy of each instructional material used in the delivery of a classroom training, such as student manuals, instructor notebooks, and handouts. Each instructional material must be kept for three years after the conclusion date of the last training for which it was used.

(B) Training courses. Records must indicate the name of the course, date of the course, each instructor who taught the course, and list the students who attended the course. All records required to be maintained in accordance with this section must be available for inspection by DSHS upon request.

(C) Instructor qualifications. A licensed training provider must retain a copy of each instructor’s resume and the documents approving each instructor issued by DSHS or EPA for three years after the conclusion of their last classroom training.

(D) Examinations. A licensed training provider must document that each person who receives an accreditation certificate for an initial training course has achieved a minimum passing score of 70% correct on the written examination as required in §296.93(b) of this chapter (relating to Asbestos Training Courses). These records must include a copy of the exam and clearly indicate the date on which the exam was administered, the training course and discipline for which the exam was given, the name of the person who proctored the exam, and the name, examination answer sheet, and test score of each person taking the exam. All information from the training course and examination, including the topic and dates of the training course, must correspond to the information listed on each person's accreditation certificate. All records required to be maintained in accordance with this section must be maintained for three years after the date of the examination and, immediately upon conclusion of the course and administration of the examination, must be made available for DSHS inspection.

(E) Accreditation certificates. A licensed training provider shall maintain records that document the names of each individual who has been awarded one or more training certificate, the certificate number applicable to each certificate awarded to an individual, each discipline for which accreditation was conferred, each applicable training and expiration date, and the training location. All records required to be maintained in accordance with this section must be available for inspection by DSHS upon request.

(2) Records access. A licensed training provider must allow DSHS reasonable access to all of the records required by the MAP, and to any other records required by DSHS for the approval of an asbestos training provider or the accreditation of an asbestos training course.

TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 296 TEXAS ASBESTOS HEALTH PROTECTION

SUBCHAPTER Q COMPLIANCE

§296.311. Disciplinary Action.

DSHS has the authority to enforce this chapter, the Act, and an order issued under the Act. DSHS may:

(1) 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 or registration 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) revoke or withdraw approval of a training course;

(12) suspend approval of a training course; or

(13) suspend approval of a training course on an emergency basis.

§296.312. Action against an Accreditation.

(a) DSHS 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 another person’s duplicate accreditation certificate, permitting the duplication or use of one's own accreditation certificate by another, or failing to prevent duplication or unauthorized use of an accreditation certificate;

(3) performing work without accreditation that is required;

(4) obtaining accreditation from a training provider that does not have approval to offer training for the particular accreditation type from EPA or from a state that has a contractor accreditation plan at least as stringent as the MAP; or

(5) failing to pay a required or assessed fee as required in this chapter.

(b) An accreditation becomes void if DSHS finds, after notice and an opportunity for a hearing, as required in §296.320 of this chapter (relating to Notice and Hearing), or during the pendency of an Emergency Suspension under §296.314 of this chapter (relating to Emergency Suspension), that a person:

(1) has obtained the accreditation through fraudulent representation of training or examination documents;

(2) has obtained training documentation through fraudulent means;

(3) has gained admission to and completed refresher training through fraudulent representation of initial or previous refresher training documentation; or

(4) has obtained accreditation through fraudulent representation of accreditation requirements, such as education, training, professional registration, or experience.

(c) DSHS may modify an accreditation certificate or suspend an accreditation certificate on an emergency basis if the accredited person violates this chapter, the Act, or an order issued under the Act.

(d) If an accreditation has been suspended, the person whose accreditation has been suspended is not eligible for reaccreditation to be granted before one year after the date of the order imposing the suspension.

(e) If an accreditation has been revoked, the person whose accreditation is revoked is not eligible for reaccreditation to be granted before three years after the date of the order imposing the revocation.

§296.313. Denial, Suspension, or Revocation of License or Reprimand of Licensee.

(a) DSHS may take disciplinary action if it finds that a person regulated under the Act:

(1) has obtained or attempted to obtain a license, registration, or contract to perform an asbestos-related activity by fraud, deception, submission of a false statement or material misrepresentation, or submission of invalid documentation;

(2) has falsified a record, or submitted or allowed to be submitted, a falsified record required by a federal agency or by DSHS in connection with an asbestos-related activity or licensure, registration, or accreditation for such an activity;

(3) has refused to provide information requested by the licensing authority; or

(4) has been convicted within the past five years of a felony or misdemeanor arising from an asbestos-related activity;

(5) has violated a federal or state law, rule, standard or order regarding asbestos-related activities, including any violation of this chapter, the Act, or an order issued under the Act;

(6) has failed to maintain any record required by a federal agency or by DSHS in connection with an asbestos-related activity;

(7) has failed at any time to meet the qualifications for a license or registration;

(8) has failed to comply with the requirements of a probation period imposed under this subchapter; or

(9) has failed to pay a required or assessed fee as required in this chapter.

(b) DSHS may deny an application for a license or registration or may suspend or revoke a license or registration for a violation described in subsection (a)(1)-(9) of this section.

(1) A person who has had an application for a license or registration denied, or has had a license or registration suspended or revoked under subsection (a)(1)-(5), (8) or (9) of this section, is ineligible to reapply for a license or registration before three years after the date of the denial, suspension, or revocation order.

(2) A person who has had an application for a license or registration denied or has had a license or registration suspended or revoked under subsection (a)(6) of this section may reapply for a license once one year has elapsed after the date of the denial, suspension, or revocation order.

(3) A person who has had an application for a license or registration denied or has had a license or registration suspended or revoked under subsection (a)(7) of this section may reapply for a license or registration after the person meets all qualifications for a license.

(c) DSHS 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 a violation described in subsection (a)(1)-(6), (8), or (9) of this section.

§296.314. Emergency Suspension.

(a) DSHS may suspend a license, registration, accreditation, or approval of an asbestos training course on an emergency basis, as warranted, on any ground otherwise authorized under this chapter.

(b) An emergency suspension is effective immediately.

(c) The person whose license, registration, accreditation, or approval of an asbestos training course is suspended under subsection (a) of this section is entitled to an opportunity for a hearing no later than the 20th day after the date of the emergency suspension order, and in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§296.315. Suspension of License for Failure to Pay Child Support or Comply with a Court Order.

(a) Every license or registration of a person who is a licensee or registrant under this chapter is subject to suspension based upon a final order of a court or the Office of the Attorney General, Child Support Division under Texas Family Code, Chapter 232 (relating to Suspension of License), directing DSHS to suspend the person’s license or registration for overdue child support, failure to comply with a subpoena, or failure to comply with the terms of a court order providing for the possession of or access to a child.

(b) If DSHS receives an order described in subsection (a) of this section, DSHS immediately determines if a license has been issued to the individual named on the order. If a license has been issued, DSHS:

(1) records the suspension of the license in its records; and

(2) reports and provides notice of the suspension, as applicable and appropriate, to:

(A) the Office of the Attorney General, Child Support Division, or court from which it received the order suspending license;

(B) the licensee; and

(C) any current employer of the licensee or registrant, if known

(c) DSHS implements any final order described in subsection (a) of this section without additional review or hearing. DSHS is without authority to modify, remand, reverse, vacate, or stay, an order issued under Texas Family Code, Chapter 232, suspending a license or registration issued under this chapter and may not review, vacate, or reconsider the terms of such a final order suspending license.

(d) A licensee or registrant whose license is suspended based upon a final order suspending license described in subsection (a) of this section:

(1) is prohibited from engaging in any activity requiring a license, and is subject to disciplinary action for violation of this prohibition;

(2) must comply with normal renewal procedures to keep the license current, and a renewed license remains subject to the suspension until the suspension is lifted under subsection (f) of this section; and

(3) is not entitled to a refund for any fee paid to DSHS.

(e) DSHS may not issue a new license or registration to, or renew a license or registration held by, a licensee or registrant who is subject to a final order suspending license described in subsection (a) of this section until the court or the Office of the Attorney General, Child Support Division, renders an order vacating or staying the order suspending license.

(f) If the individual is otherwise qualified for, and has met the prerequisites for, issuance or re-activation of the affected license, as applicable, an individual who holds a license that has been suspended under subsection (a) of this section, or whose new or renewal license has been refused under subsection (c) of this section, is entitled to have the suspension lifted and any suspended license re-activated, or to issuance of the affected license, as applicable, upon DSHS’s receipt of an order vacating or staying an order suspending a license.

(g) DSHS may not grant any license or registration application or any renewal application if it receives notice from a child support agency, as defined in Family Code §101.004, concerning an applicant, licensee, or registrant who has failed to pay child support under a support order for six months or more, requesting that DSHS deny approval of any such application. DSHS may not grant any application with respect to which it has received such notice until the authority is notified by the child support agency that the applicable applicant has:

(1) paid all child support arrearages;

(2) made an immediate payment of not less than $200 toward child support arrearages owed and established with the agency a satisfactory repayment schedule for the remainder or is in compliance with a court order for payment of the arrearages;

(3) been granted an exemption from this subsection as part of a court-supervised plan to improve the obligor's earnings and child support payments; or

(4) successfully contested the denial of issuance or renewal of license under Texas Family Code, Chapter 232.

(h) DSHS may charge a fee to an individual who is the subject of an order described under subsection (a) of this section or who is refused approval of an application under subsection (d) of this section in an amount sufficient to recover the administrative costs incurred by the authority under Texas Family Code, Chapter 232.

§296.316. Probation.

DSHS may place on probation a person whose license or registration is suspended. If a suspension is probated, DSHS may require the person to:

(1) report regularly to DSHS on any matter that is the basis of the probation;

(2) limit practice to one or more areas prescribed by DSHS; or

(3) continue or review professional education until the person demonstrates that the person has attained a degree of skill satisfactory to DSHS in those areas that are the basis of the probation.

§296.317. Denial, Revocation or Withdrawal, or Suspension of Approval of a Training Course.

DSHS may deny, revoke or withdraw, or suspend approval for a training course offered or taught by a DSHS-licensed training provider or instructor if the training course does not meet the requirements of the MAP or for approval under this chapter, or if a training provider or instructor:

(1) makes a false statement, material misrepresentation, or is otherwise deceptive in connection with an application for course approval;

(2) makes a false statement or material misrepresentation of the extent of a training course's approval by DSHS, another state, or EPA;

(3) refuses to provide information requested by DSHS in connection with training or a training course;

(4) fails to submit required information or a required notification in a timely manner;

(5) fails to maintain required records;

(6) falsifies any accreditation record, instructor qualification, or other accreditation information, or otherwise submits invalid documentation;

(7) fails to adhere to any training standard or requirement of the MAP or an applicable State Accreditation Program;

(8) fails to pay a required or assessed fee as required under this chapter; or

(9) violates any provision of the Act or this chapter related to training or any training course, including any training duty or responsibility.

§296.318. Administrative Penalty.

(a) DSHS may impose an administrative penalty against a person who violates this chapter, the Act, or an order issued under the Act or this chapter.

(b) The maximum administrative penalty is $10,000 per day, per violation. DSHS may consider each day that a violation continues as a separate violation for purposes of imposing a penalty.

(c) To determine the amount of the administrative penalty, DSHS considers:

(1) the person’s history of previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) demonstrated good faith efforts to correct the violation and maintain compliance; and

(5) any other matter that justice may require for the violation.

(d) If there has been a previous finding against a person of a violation described under subsection (a) of this section, DSHS may impose up to five times the administrative penalty that would otherwise apply under subsection (e) of this section, up to the maximum administrative penalty of $10,000 per day, per violation.

(e) DSHS classifies a violation according to its level of severity.

(1) Severity Level I, critical violation. A critical violation has a direct negative impact on public health and safety. A Severity Level I violation includes fraud and misrepresentation that result in a negative impact on public health and safety.

(2) Severity Level II, serious violation. A serious violation threatens public health and safety.

(3) Severity Level III, significant violation. A significant violation has the potential to threaten public health and safety.

§296.319. Revocation of Asbestos Abatement Supervisor’s License.

(a) This section applies to an asbestos abatement supervisor against whom DSHS has issued one or more final orders containing findings arising from three complaints that the supervisor has violated the Act or this chapter.

(b) The license of an asbestos abatement supervisor described in subsection (a) of this section is subject to revocation as required in the Act and this chapter.

(c) When DSHS revokes a license as described in this section, DSHS issues a registration to the person that expires six months after the date of issuance.

(d) After the registration expires, the person may reapply for a license.

§296.320. Notice and Violation.

(a) Before DSHS takes final disciplinary action under §296.312 of this chapter (relating to Action against an Accreditation), §296.313 of this chapter (relating to Denial, Suspension, or Revocation of License or Reprimand of Licensee), §296.316 of this chapter (relating to Probation), §296.317 of the chapter (relating to Denial, Revocation or Withdrawal, or Suspension of Approval of a Training Course), or assesses an administrative penalty under §296.318 of this chapter (relating to Administrative Penalty) DSHS shall issue a notice of violation proposing enforcement action.

(b) A person may accept DSHS’s proposal in writing or may request a hearing in writing no later than 30 days after the date the person receives the notice. If the person accepts DSHS’s proposal, DSHS issues a final order finding that any alleged conduct and violation occurred, and imposing any proposed disciplinary action and administrative penalty. If the person requests a hearing, DSHS refers the matter to the State Office of Administrative Hearings for a contested case hearing.

(c) If the person named in a notice does not timely request a hearing, DSHS may find that any alleged conduct and violation occurred and issue a final order imposing any proposed disciplinary action and assessing any proposed administrative penalty by default.

(d) A hearing held under this chapter is governed by, and conducted under:

(1) the Administrative Procedure Act, Texas Government Code, Chapter 2001;

(2) the procedural rules of the State Office of Administrative Hearings in Title 1, Texas Administrative Code, Chapter 155 (relating to Rules of Procedure); and

(3) Chapter 1, Subchapter B of this title (relating to Formal Hearing Procedures).