



Texas Asbestos Health Protection Rules

Texas Department of State Health Services Asbestos Program

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TEXAS ASBESTOS HEALTH PROTECTION RULES

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§295.31 GENERAL PROVISIONS

(a) **Problem.** In more than 25 years of research into the relationship between airborne asbestos fibers and the diseases such exposure can cause, the bodily mechanism by which inhaled asbestos fibers initiate cancer or asbestosis is still not understood, no effective treatment has been found, and the only means of preventing asbestos disease depends entirely on limiting the exposure of the individual to asbestos fibers.

(b) **Purpose.** The purpose of these sections is to establish the means of control and minimization of public exposure to airborne asbestos fibers, a known carcinogen and dangerous health hazard, by regulating asbestos related activities in public and commercial buildings and facilities as defined by these sections.

(c) **Scope.**

(1) For the purposes of licensure and procedures in public buildings:

(A) **Rules application.** These sections apply to all buildings which are subject to public occupancy, or to which the general public has access, and to all persons disturbing, removing, encapsulating, or enclosing any amount of asbestos within public buildings for any purpose, including repair, renovation, dismantling, demolition, installation, or maintenance operations, or any other activity that may involve the disturbance or removal of any amount of asbestos-containing building material (ACBM) whether intentional or unintentional. Also included in these rules are the qualifications for licensure of persons, requirements for compliance with these sections and all applicable standards of the United States Environmental Protection Agency as adopted in §295.33 of this title (relating to Adoption by Reference of Federal and Other Standards) and those of the United States Occupational Safety and Health Administration as adopted and referenced in these rules.

(B) **Exclusions.** Private residences and apartment buildings with no more than four dwelling units are excluded from coverage by these rules. Except as provided in subsection (c)(2) and (c)(3) of this section, industrial or manufacturing facilities, in which access is controlled and limited principally to employees therein because of processes or functions dangerous to human health and safety, federal buildings and military installations are excluded from coverage by these rules.

(2) For the purposes of Federal National Emission Standards for Hazardous Air Pollutants (NESHAP) enforcement only: §§295.32; 295.34(a), (b)(1)-(3), (c), and (f); 295.61; 295.67-68; 295.70; and 295.71 of this title (relating to Texas Asbestos Health Protection) apply to all facilities. These sections shall apply to the extent necessary to allow the department to adopt and enforce the federal NESHAP. For facilities which are not otherwise subject to this title as public buildings, the department will apply and enforce these sections in a manner consistent with the NESHAP.

(3) For purposes of enforcing the Environmental Protection Agency (EPA) Asbestos Model Accreditation Plan (MAP) in commercial buildings, §§295.31, 295.32, 295.33, 295.34(c), (e) and (g), 295.57, 295.64 (except (f)-(h)), 295.66, 295.67, 295.68 and 295.70 of this title (relating to Texas Asbestos Health Protection) apply. For buildings which are not otherwise subject to this title as public buildings, the department will apply and enforce these sections in a manner consistent with the MAP.

(4) For the purposes of the Asbestos Hazard Emergency Response Act (AHERA) of 1986, U.S.C. 2605, 2607(c), 2643, and 2646, enforcement only: §§295.32 and 295.63 of this title (relating to Definitions and Asbestos Hazard Emergency Response Act (AHERA) Compliance) apply to all LEAs. Sections 295.32 and 295.63 of this title shall apply to the extent necessary to allow the department to adopt and enforce the federal AHERA.

(d) **Severability.** Should any section or subsection in this chapter be found to be void for any reason, such finding shall not affect all other sections.

(e) **License possession requirements.** Anyone engaged in asbestos-related activities in a public building must provide proof of a current license to any inspecting official from the Texas Department of Health (department), to an employer, or to a prospective employer upon request. All licensed individuals must have the Identification Card issued by the department on the work site at all times while engaged in any asbestos-related activity. For individuals, this is the only proof of a valid license.

§295.32 DEFINITIONS. The following words and terms, when used with these sections, shall have the following meaning, unless the context clearly indicates otherwise.

(1) Accredited person--A person who has attended and passed, within the last year, the appropriate asbestos course, as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses) offered by an asbestos training provider licensed by the department or one that has been approved by another state, that has the authority from EPA to approve courses, or that has been approved directly by EPA.

(2) Act--The Texas Asbestos Health Protection Act, as amended, Chapter 1954, Texas Occupations Code, effective June 1, 2003, formerly, Texas Civil Statutes, Article 4477-3a.

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

(4) AHERA--Asbestos Hazard Emergency Response Act of 1986, Public Law 99-519. The act amends the Federal Toxic Substances Control Act, 15 United States Code, §2641, et seq., by requiring an inspection of all school buildings (Grades K-12), all school administrations to develop plans for controlling asbestos in or removing asbestos from school buildings, and providing penalties for non-compliance.

(5) AIHA--The American Industrial Hygiene Association.

(6) Airlock--A system for permitting ingress and egress to and from the containment, consisting of doors and/or curtains that control air-flow patterns in the doorway such that no air escapes to the outside of the containment.

(7) Air monitoring--The collection of airborne samples for analysis of fibers.

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

(9) Asbestos abatement--The removal, the encapsulation or the enclosure of asbestos for the purpose of, or that has the effect of, reducing or eliminating airborne concentrations of asbestos fibers or amounts of asbestos-containing building material.

(10) Asbestos abatement activity--Asbestos abatement, or any on-site preparations or clean-up related to the abatement.

(11) Asbestos abatement contractor--A person who undertakes to perform asbestos removal, enclosure, or encapsulation for others under contract or other agreement.

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

(13) Asbestos consulting activities--Consulting activities in public buildings include: the designing of asbestos abatement projects; the survey for asbestos-containing building materials; the evaluation and selection of appropriate asbestos abatement methods and project layout; the preparation of plans, specifications and contract documents; the review of environmental controls and abatement procedures for personal protection that are to be employed every day of the asbestos abatement activity, from the start through the completion dates of the project; the design of air monitoring of the project; any survey, management planning, air monitoring, or project management performed by or for the consultant or consulting agency; consultation regarding compliance with various regulations and standards; recommending abatement options; and representing the consultant agency or consultant in obtaining consulting work.

(14) Asbestos-containing building material (ACBM)--Surfacing asbestos-containing material, thermal system insulation asbestos-containing material, or miscellaneous asbestos-containing material that is found in or on interior structural members or other parts of a public or commercial building.

(15) Asbestos-containing material (ACM)--Materials or products, including any single material component of a structure or any layer of a material sample, that contain more than 1.0% of any kind or combination of asbestos, as determined by the

Environmental Protection Agency recommended methods as listed in EPA/600/R-93/116, July 1993, "Method for the Determination of Asbestos in Bulk Building Materials".

(16) Asbestos-containing waste material--Includes mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of 40 CFR Part 61, Subpart M. 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 regulated asbestos-containing materials, and materials contaminated with asbestos including disposable equipment and clothing.

(17) Asbestos exposure--Airborne asbestos fiber concentrations resulting from disturbance or deterioration of asbestos or asbestos-containing building material.

(18) Asbestos project design--Asbestos abatement project design includes the inspection of public buildings for asbestos-containing building material, the evaluation and selection of appropriate asbestos abatement methods, project layout, the preparation of plans, specifications and contract documents, and the review 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.

(19) Asbestos-related activity--The disturbance (whether intentional or unintentional), removal, encapsulation, or enclosure of asbestos, including preparations or final clearance, the performance of asbestos surveys, the development of management plans and response actions, asbestos project design, the collection or analysis of asbestos samples, monitoring for airborne asbestos, or any other activity required to be licensed under the Texas Asbestos Health Protection Act.

(20) Asbestos removal--Any action that dislodges, strips, or otherwise takes away asbestos-containing building material.

(21) Asbestos reporting unit (ARU)--An asbestos reporting unit is 160 square feet or 260 linear feet or 35 cubic feet of asbestos-containing building material in public buildings or regulated asbestos-containing material in facilities, as defined under National Emissions Standards for Hazardous Air Pollutants.

(22) Board--The Texas Board of Health or its successor.

(23) Building owner--The owner of record of any building. A building owner may hire a contractor or other agent such as an architect, engineer, or property manager who may assume certain tasks as outlined in §295.34(b)(5) - (6) of this title (relating to Asbestos Management in Facilities and Public Buildings). (See also the definition of facility owner.)

(24) Category I nonfriable asbestos-containing material (ACM)--Asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1.0% asbestos as determined using Polarized Light Microscopy.

(25) Category II nonfriable asbestos-containing material (ACM)--Any material, excluding Category I nonfriable asbestos-containing material, containing more than 1.0% asbestos as determined using Polarized Light Microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

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

(27) Commissioner--The Texas Commissioner of Health.

(28) Commercial asbestos--Any material containing asbestos that is extracted from ore and has value because of its asbestos content (National Emissions Standards for Hazardous Air Pollutant definition, 1990).

(29) Commercial Building--The interior space of any industrial, federal-government-owned building, 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 residential buildings having four or fewer dwelling units). Interior space includes exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space.

(30) Competent person--The individual designated as the competent person by the United States Occupational Safety and Health Administration regulations in 29 CFR §1926.1101. For an asbestos National Emissions Standards for Hazardous Air Pollutant (NESHAP) project, this is a person with asbestos NESHAP training.

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

(32) Contractor--A person who constructs, repairs, or maintains a public building as an independent contractor, or is under contract to perform a service with wage or income reporting and tax responsibility to the state or federal government. The term includes a subcontractor.

(33) Demolition--The wrecking or removal of any load-supporting structural member of a public building or facility or the intentional burning of any public building or facility.

(34) Department--The Texas Department of Health or its successor.

(35) Designated person--The individual designated under 40 CFR Part 763 Subpart E to oversee all asbestos activities including compliance with all laws, regulations, and rules.

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

(37) Employee--A person who is paid a salary, wage, or remuneration by an entity for services performed and has a relationship with the entity that would result in the entity being liable for that person's acts or judgments.

(38) Encapsulation--A method of control of asbestos fibers in which the surface of asbestos-containing material is penetrated by or covered with a liquid coating prepared for that purpose.

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

(40) Environmental Protection Agency regulations--Regulations found in 40 Code of Federal Regulations at 40 CFR Parts 61-62 and Parts 700-789.

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

(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 residential buildings having four or fewer dwelling units); any ship; and any active or inactive disposal site. Any structure, installation or building that was previously subject to 40 CFR Part 61, Subpart M is not excluded, regardless of its current use or function.

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

(44) Federal-government owned building--Any building, which is not a school building as defined by 40 CFR 763.83, owned by the United States Federal Government.

(45) Friable material--Materials that when dry can be crumbled, pulverized, or reduced to powder by hand pressure, and includes previously nonfriable material after such previously nonfriable material becomes damaged to the extent that, when dry, it may be crumbled, pulverized, or reduced to powder by hand pressure.

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

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

(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. The person must not be employed by the abatement contractor to analyze any area samples collected during the abatement projects being monitored or the clearance samples subject to the provisions of §295.37 of this title (relating to Licensing and Registration: Conflicts of Interests).

(49) Individual--A person acting on his or her own behalf.

(50) Industrial building--Any building where industrial or manufacturing operations or processes are conducted and to which access is limited principally to employees and contractors of the facility operator or to invited guests under controlled conditions.

(51) Inspection--An activity undertaken in a school building, public building, or commercial building to determine the quantity, presence or location, or to assess the condition of, friable or non-friable asbestos-containing building material or suspected asbestos-containing building material, whether by visual or physical examination, or by collecting samples of such material. This term includes reinspections of friable and non-friable known or assumed asbestos-containing building material which has been previously identified. The term does not include the following:

(A) periodic surveillance of the type described in 40 CFR §763.92(b) solely for the purpose of recording or reporting a change in the condition of known or assumed asbestos-containing building material;

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

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

(52) Installation--A building or structure, or group of buildings or structures, at a single demolition or renovation site controlled by the same owner or operator (National Emissions Standards for Hazardous Air Pollutant definition, 1990).

(53) 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.

(54) License--Any license or registration, or any provisional license or registration, issued under this chapter.

(55) Licensee--A person who meets all qualifications and has been issued a license or registration by the Texas Department of Health in accordance with these sections.

(56) Local Education Agency (LEA)--means:

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

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

(C) the term includes an elementary or secondary school funded by the Bureau of Indian Affairs but only to the extent that such inclusion makes such school eligible for programs for which specific eligibility is not provided to such school in another provision of law and such school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this chapter with the smallest student population, except that such school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs; and

(D) the owner or governing authority of any nonpublic, nonprofit elementary, or secondary school building.

(57) Major Fiber Release Episode--Any uncontrolled or unintentional disturbance of ACBM, resulting in a visible emission, which involves the falling or dislodging of more than 3 square or linear feet of friable asbestos-containing building material.

(58) Management plan--A written plan describing appropriate actions for surveillance and management of asbestos-containing material.

(59) Minor Fiber Release Episode--Any uncontrolled or unintentional disturbance of ACBM, resulting in a visible emission, which involves the falling or dislodging of 3 square or linear feet or less of friable asbestos-containing building material.

(60) Model accreditation plan--A United States Environmental Protection Agency plan which provides standards for initial training, examinations, refresher training courses, applicant qualifications, decertification, and reciprocity, as described in Title 40, CFR, Part 763, Subpart E, Appendix C.

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

(62) NESHAP--The United States Environmental Protection Agency National Emissions Standards for Hazardous Air Pollutants, as described in Title 40 CFR, Part 61.

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

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

(65) NVLAP--The National Voluntary Laboratory Accreditation Program.

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

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

(68) Operations and maintenance (O&M) manual--A record of operations and maintenance activities in a public building.

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

(70) OSHA Regulations--Regulations found in 29 Code of Federal Regulations, particularly 29 CFR §1926.1101, which governs asbestos in construction.

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

(72) PAT--Proficiency Analytical Testing.

(73) PCM--Phase-contrast microscopy, a method of analysis for overall airborne fiber counts using an optical microscope.

(74) PEL--Permissible Exposure Limit as defined by Occupational Safety and Health Administration regulations (29 CFR §1926.1101).

(75) Person--A person is:

(A) an individual;

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

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

(76) Plans and specifications--Site-specific asbestos abatement description which includes drawings, floor plans or equivalent of sufficient size and detail, that display the location of asbestos abatement activities, the location of regulated area(s), and a clear and understandable written description of the work to be performed.

(77) PLM--Polarized-light microscopy, a method of analysis for detection of the presence and type of asbestos.

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

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

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

(C) removal of any item from a space within a public building, once an asbestos abatement contractor takes control of that space for the purpose of asbestos abatement. Control occurs when the area has been established by the asbestos abatement contractor as a regulated area.

(79) Public building--The interior space of a building used or to be used for purposes that provide for public access or occupancy, including schools, hospitals, prisons and similar buildings. Interior space includes exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space. The term includes any such interior space during a period of vacancy, including the period during preparations prior to actual demolition. The term does not include:

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

(B) a federal 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 limited to workers and invited guests under controlled conditions;

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

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

(80) 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.

(81) Regulated area--The demarcated area in which asbestos abatement activity takes place, and in which the possibility of exceeding the permissible exposure limits for the concentrations of airborne asbestos exists.

(82) Regulated asbestos-containing material (RACM)--means:

(A) Friable asbestos material;

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

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

(D) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of the demolition or renovation operations regulated by 40 CFR Part 61, Subpart M.

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

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

(85) Responsible person--The individual that is designated by the licensed asbestos abatement contractor, asbestos operations and maintenance contractor, asbestos laboratory, asbestos consultant agency, or asbestos management planner agency, as responsible for their operations and compliance with these rules.

(86) School--Any public or private, non-profit, elementary or secondary (kindergarten through grade 12) school as defined in the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

(87) School building--Any structure suitable for use as a classroom, including a school facility such as a laboratory, library, school eating facility, or facility used for the preparation of food. Any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education. Any other facility used for the instruction or housing of students or for the administration of educational or research programs. Any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in this definition of "school building." Any portico or covered exterior hallway or walkway. Any exterior portion of a mechanical system used to condition interior space.

(88) Small-scale, short-duration activities (SSSD)--Tasks such as, but not limited to, removal of asbestos-containing insulation on pipes; removal of small quantities of asbestos-containing insulation on beams or above ceilings; replacement of an asbestos-containing gasket on a valve; installation or removal of a small section of drywall; or installation of electrical conduits through or proximate to asbestos-containing materials. Small-scale, short-duration activities can be further defined as the following.

(A) Removal of small quantities of asbestos-containing material only if required in the performance of another maintenance activity not intended as asbestos abatement.

(B) Removal of asbestos-containing thermal system insulation not to exceed amounts greater than those which can be contained in a single glove bag.

(C) Minor repairs to damaged thermal system insulation which do not require removal.

(D) Repairs to a piece of asbestos-containing wallboard.

(E) Repairs, involving encapsulation, enclosure, or removal, to small amounts of friable asbestos-containing building material 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. Such a containment shall conform spatially and geometrically to the localized work areas, in order to perform its intended containment function.

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

(A) asbestos abatement start date--For the purpose of notification to the department in accordance with §295.61 of this title (relating to Operations: 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/renovation start date--The date on which the demolition or renovation process begins.

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

(A) asbestos abatement stop date (completion date)--For the purpose of notification to the department in accordance with §295.61 of this title (relating to Operations: Notifications), the date on which air monitoring clearance of asbestos abatement is achieved. For removal of the resilient floor covering material in accordance with §295.36 of this title (relating to Licensing and Registration: Emergency), the date that the asbestos-containing building materials are removed from the substrate and properly containerized as specified for the project. For National Emissions Standards for Hazardous Air Pollutant projects, the date that all regulated asbestos-containing building material is removed from the substrate and properly containerized.

(B) demolition/renovation stop date--For demolition, the last date on which the wrecking and/or removal operations of load-bearing structural components are completed. For renovation, the last date that interior surfaces are altered or final clearance is obtained.

(91) Survey--An activity undertaken in a school building, public building, or commercial building to determine the quantity, presence or location, or to assess the condition of, friable or non-friable asbestos-containing building material or suspected asbestos-containing building material, whether by visual or physical examination, or by collecting samples of such material. This term includes reinspections of friable and non-friable known or assumed asbestos-containing building material which has been previously identified. The term does not include the following:

(A) periodic surveillance of the type described in 40 CFR §763.92(b) solely for the purpose of recording or reporting a change in the condition of known or assumed asbestos-containing building material;

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

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

(92) TEM--Transmission electron microscopy. A method of analysis for detection of the presence and type of asbestos.

(93) Transportation of asbestos-containing material (ACM)--Moving asbestos materials from one site to another or from one site to an off-site storage facility or disposal site, but not to temporary storage or staging area within the same site.

(94) Working days--Monday through Friday including holidays which fall on those days.

§295.33 ADOPTION BY REFERENCE OF FEDERAL AND OTHER STANDARDS

(a) **Adoption by reference.** The Texas Department of Health (department) adopts by reference the following federal laws and regulations, as amended, in the Code of Federal Regulations (CFR). To the extent that the Department has delegated authority, these laws and regulations are part of the state regulations and are enforced by the department:

(1) 40 CFR Part 61, Subpart M, titled, "National Emission Standard for Asbestos" (NESHAP), July 1, 1997, as amended; and

(2) 40 CFR Part 763, Subpart E, and Appendices A, B, C, and D, titled, "Asbestos" July 1, 1997, as amended.

(b) **Availability.** Copies of the documents in subsection (a) of this section are available for review at any department licensed training provider or the Texas Department of Health, Toxic Substances Control Division, Austin, Texas, department regional office, or local health program under contract to the asbestos branch, and may be reviewed during normal business hours.

(c) **State versus federal standards.** In certain instances the state requirements in the Texas Asbestos Health Protection Act and/or these sections are more stringent than the federal standards listed in subsection (a) of this section. In such cases the state requirements shall prevail.

§295.34 ASBESTOS MANAGEMENT IN FACILITIES AND PUBLIC BUILDINGS

(a) **General.** Building owners are required to inform all persons in writing, or document oral communication between the owner (or their authorized representative) and those who perform any type of maintenance, custodial, renovation, or demolition work, of the presence and location of asbestos-containing building materials (ACBM) prior to the start of any asbestos-related activity.

(1) Demolition and/or renovation of a facility or commercial building. Before performing any demolition or renovation activity in a facility or commercial building, building owners or operators shall ensure that all friable asbestos-containing material (ACM) or asbestos-containing materials which may become friable (i.e. Category II nonfriable ACM) are inspected and abated in accordance with 40 CFR Part 61, Subpart M.

(2) Demolition and/or renovation of a public building. Before performing any demolition in a public building, building owners shall ensure that all friable asbestos-containing material (ACM) or ACM which may become friable (i.e. Category II nonfriable ACM) are surveyed and abated in accordance with 40 CFR Part 61, Subpart M. Before performing any renovation in a public building, building owners are required to survey and perform asbestos abatement for all asbestos-containing building material (ACBM) that could foreseeably be disturbed in the area to be renovated in accordance with these rules. The asbestos survey and abatement for the demolition and/or renovation shall be conducted by persons licensed in accordance with these rules, and according to the standards for removal specified in §§295.58 - 295.60 of this title.

(b) **Statement of responsibility.** The building owner retains the primary responsibility for compliance with these rules for the presence, condition, disturbance, renovation, demolition, and disposal of any asbestos encountered in the construction, operations, maintenance, or furnishing of that building or facility, including:

(1) the responsibility for the periods of vacancy, and for all preparations prior to actual demolition; all regulated asbestos-containing material (RACM) must be removed prior to demolition in accordance with the National Emission Standards for Hazardous Air Pollutants (NESHAP), and in a public building, comply with §295.60 of this title (relating to Operations: Abatement Practices and Procedures);

(2) the obligation to inform those who enter the building or facility for purposes of construction, maintenance, installation, repairs, etc., of the presence and location of asbestos that could be disturbed by those activities, and to arrange for proper handling of any asbestos that would be disturbed or dislodged by such activity;

(3) the responsibility for periods when the building or facility is under management by others;

(4) the responsibility to ensure licensees have in effect workers' compensation insurance issued by a company authorized and licensed to issue workers' compensation insurance in this state and written in this state on the Texas form, or evidence of self-insurance, if workers' compensation insurance is required by the specifications or owner;

(5) the responsibility to hire a contractor at the building owner's discretion to oversee certain tasks. Only a contractor engaged in asbestos-related activities, as described in these sections, must be licensed. The building owner retains primary responsibility for compliance with these rules. The building owner may delegate the following duties to a contractor:

(A) preparing bid documents, which do not include plans and specifications as defined in §295.32(76) of this title (relating to Definitions);

(B) entering into contracts for asbestos-related activities with qualified licensees;

(C) overseeing the work performance of a licensee, as it relates to contractual obligations; and

(D) paying for asbestos related activities on behalf of the owner; and

(6) the responsibility to hire an agent other than a contractor in accordance with the responsibility provisions of paragraph (5) of this subsection subject to the conflict of interest limitations of §295.37 of this title (relating to Licensing and Registration: Conflicts of Interests).

(c) **Conditions requiring a mandatory asbestos survey for ACBM.** Prior to any renovation or dismantling within a public building, commercial building, or facility, including preparations for partial or complete demolition, as required by 40 CFR, §61.145, owners must have a thorough survey performed. The work area and all immediately surrounding areas which could foreseeably be disturbed by the actions necessary to perform the project must be inspected and sampled as applicable prior to renovations or demolition. A copy of the survey report must be produced upon request by the Texas Department of Health (department). If a survey cannot be performed before demolition or renovation is started due to the building being structurally unsound and unsafe to enter, all material must be presumed to contain asbestos and must be treated as ACBM.

(1) In a public building the inspection must be performed by a person appropriately licensed in accordance with these rules. Criteria to rebut the presence of ACBM in a public building shall be based upon surveys which conform to generally accepted industry standards such as the protocol specified in §763.85, commonly referred to as the "AHERA" rules, which are the required method for schools. Other factors should be taken into consideration when deciding on the best method to determine the location, extent and condition of the ACBM in a non-school building. Multi-story buildings may require investigation of the systems in the building in order to identify all possible ACBM. Under no circumstances will less than three samples for each suspect homogeneous area be collected for purposes of rebutting the presence of ACBM. During the construction of or renovation in a public building, a person appropriately licensed in accordance with these rules, Texas-registered architect or Texas-licensed professional engineer may compile the information from material safety data sheets (MSDS) of all products used in the construction of the building and, finding no asbestos in any of those products, prepare a signed written certification that he has reviewed the MSDSs for all products used in the construction and that none of those products contain ACBM and; therefore, the building materials do not contain asbestos. This certification, together with copies of the MSDSs and copies of any previous asbestos surveys, may be used as an asbestos survey.

(2) In a commercial building the inspection must be performed by an accredited inspector. This person is not required to be licensed but must have the applicable Model Accreditation Plan training.

(3) In a facility the inspection must conform with 40 CFR §61.145.

(4) Asbestos surveys remain acceptable if the asbestos survey was done in compliance with the Texas Asbestos Health Protection Rules (TAHPR) in effect at the time the asbestos survey was completed, and if the asbestos survey continues to represent accurately the suspect asbestos-containing building materials, location(s) of the materials surveyed, and any asbestos conditions in the building.

(d) **Asbestos control and abatement.** A public building owner has the following options for managing the asbestos found in his/her buildings.

(1) Building owners may hire a licensed asbestos abatement contractor to conduct asbestos abatement.

(2) Building owners may hire or retain a licensed asbestos abatement contractor or a licensed asbestos Operations and Maintenance (O&M) contractor to conduct small-scale, short-duration work activities or cleanup affecting asbestos. When utility work is to be performed, the building owner shall either have the affected asbestos-containing material removed prior to the work of a utility contractor, or require the utility contractor to be licensed to handle asbestos-containing materials.

(3) Building owners may conduct asbestos O&M activities within public buildings with their own employees for their own account if they obtain an asbestos operations and maintenance contractor (restricted) license, according to §295.43 of this title (relating to Licensure: Asbestos Operations and Maintenance Contractor (Restricted)), have a licensed supervisor according to §295.44 of this title (relating to Licensure: Asbestos Operations & Maintenance Supervisor (Restricted)), and have registered workers according to §295.42 of this title (relating to Registration: Asbestos Abatement Workers).

(4) Building owners may conduct asbestos abatement projects, including asbestos O&M activities, if they obtain an asbestos abatement contractor's license, as set forth in §295.45 of this title (relating to Licensure: Asbestos Abatement Contractor).

(e) **Prohibition.** The owner of a public building and any other person who contracts with or otherwise permits any person without appropriate valid license, registration, accreditation, or approved exemption to perform any asbestos-related activity is subject to administrative or civil penalty under the Texas Health Protection Act (Act), not to exceed \$10,000 a day for each violation, or criminal penalty not to exceed \$25,000, confinement in jail for not more than two years, or both.

(f) **Mandatory notification.** Notification is required in accordance with §295.61 of this title (relating to Operations: Notifications) under the following conditions.

(1) Notification is required for any demolition of a facility or public building, whether or not asbestos has been identified.

(2) In a public building, a notification to abate any amount of asbestos must be submitted to the Texas Department of Health (department) by the public building owner and/or operator. In a facility, a notification to abate amounts described in NESHAP must be submitted to the department by the facility owner and/or operator.

(g) **Mandatory abatement project design.** A project design, with respect to friable ACBM, must be prepared by either a licensed consultant (for a school or public building) or an accredited project designer (for a commercial building) for all projects which involve any of the following activities:

(1) A response action other than a SSSD activity,

(2) a maintenance activity that disturbs friable ACBM other than a SSSD activity, or

(3) a response action for a major fiber release episode. Abatement projects which have a combined amount of non-friable asbestos exceeding 160 square feet of surface area, or 260 linear feet of pipe length, or 35 cubic feet of material to be removed from a public building shall require that the project be designed by a licensed asbestos consultant. The exception to this requirement is for floor tile removed in accordance with §295.36 of this title (relating to Licensing and Registration: Exemptions; Emergency). In a commercial building, non-friable material does not require a design but must be treated in accordance with 40 CFR Part 61, Subpart M.

(h) **Requirement for survey and management plan.** If, in the opinion of the department following a site inspection of a public building, there appears to be a danger or potential danger from asbestos-containing building materials in poor condition to the workers or occupants of the building or the general public, the department shall, by written request, require the building owner or authorized representative to complete an immediate survey and asbestos management plan by a licensed asbestos inspector and licensed management planner or licensed consultant. A copy of the management plan shall be submitted for review and approval to the department within 90 days of receipt of the written request. Copies of the plan shall be on file with the owner or management agency, and in the possession of the supervisor in charge of building operations and maintenance.

(i) **A person may not install building materials or replacement parts as stated in subsection (j) of this section, in a public building unless:**

(1) the person obtains a required MSDS showing that the materials or replacement parts contain 1.0% or less of asbestos; or

(2) the materials or replacement parts, according to the MSDS, contain more than 1.0% asbestos but there is no alternative material or part as demonstrated by the building owner or contractor.

(j) A MSDS shall be obtained for the following building materials or replacement parts including but not limited to:

(1) surfacing materials:

(A) acoustical plaster;

(B) decorative plaster/stucco;

(C) textured paint/coating;

- (D) spray applied insulation;
 - (E) blown-in insulation;
 - (F) fireproofing insulation;
 - (G) joint compound; and
 - (H) spackling compounds.
- (2) thermal system insulation:
- (A) taping compounds (thermal);
 - (B) HVAC duct insulation;
 - (C) boiler insulation;
 - (D) breaching insulation;
 - (E) pipe insulation; and
 - (F) thermal paper products.
- (3) miscellaneous material:
- (A) cement pipes;
 - (B) cement wallboard/siding;
 - (C) asphalt/vinyl floor tile;
 - (D) vinyl sheet flooring/vinyl wall coverings;
 - (E) floor backing;
 - (F) construction mastic;
 - (G) ceiling tiles/lay-in ceiling panels;
 - (H) packing materials;
 - (I) high temperature gaskets;
 - (J) laboratory hoods/table tops;
 - (K) fire blankets/curtains;
 - (L) elevator equipment panels;
 - (M) elevator brake shoes;
 - (N) ductwork flexible fabric connections;
 - (O) cooling towers;

- (P) heating and electrical ducts;
- (Q) electrical panel partitions;
- (R) electrical cloth/electrical wiring insulation;
- (S) chalkboards;
- (T) roofing shingles/tiles;
- (U) roofing felt;
- (V) base flashing;
- (W) fire doors;
- (X) caulking/putties;
- (Y) adhesives/mastics; and
- (Z) wallboard.

(k) The department may exempt a demolition or renovation project from the TAHPA/NESHAP rules relating to demolition and renovation activities if:

(1) the project has received an exemption from the United States Environmental Protection Agency exempting the project from federal regulations; or

(2) the board 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 under board rule for the abatement or removal of asbestos; and

(B) the project does not violate federal law.

(l) Survey Required.

(1) In this section, "permit" means a license, certificate, approval, registration, consent, permit, or other form of authorization that a person is required by law, rule, regulation, order, or ordinance to obtain to perform an action, or to initiate, continue, or complete a project, for which the authorization is sought.

(2) 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:

(A) evidence acceptable to the municipality that an asbestos survey, as required by this Act, of all parts of the building affected by the planned renovation or demolition has been completed by a person licensed under this Act to perform a survey; or

(B) a certification from a licensed engineer or architect, stating that:

(i) the engineer or architect has reviewed the material safety data sheets for the materials used in the original construction, the subsequent renovations or alterations of all parts of the building affected by the planned renovation or demolition, and any asbestos surveys of the building previously conducted in accordance with this Act; and

(ii) in the engineer's or architect's professional opinion, all parts of the building affected by the planned renovation or demolition do not contain asbestos.

§295.35 LICENSING AND REGISTRATION: CONDITIONS

(a) **Licensing requirement.** A person must be appropriately licensed or registered in compliance with these sections to engage in asbestos abatement or any asbestos-related activity within the scope of these sections. Individuals not eligible for employment in the United States will not be licensed or registered. Contractors (i.e., electrical, mechanical, plumbing) who will disturb asbestos when installing new utility lines or structures shall be licensed as Operations and Maintenance (O&M) contractors (restricted) as a minimum.

(b) **Age requirement.** Each individual desiring to be licensed or registered under these sections must be 18 years old prior to submitting an application for such purpose.

(c) **Term and expiration.** Prior to January 1, 2005, the term of all licenses, including the registration of asbestos workers, is one year and expires on the anniversary of the effective date, unless renewed. The term of license and registration renewals with expiration dates during odd numbered months of 2005 is one year. The term of license and registration renewals with expiration dates during even numbered months of 2005 is two years. The term of all new licenses and registrations with issue dates of January 1, 2005, or after, is two years. A license holder is in violation of these sections if the holder allows qualifications for that license (such as accreditations, physical or insurance requirements) to expire and practices with that license.

(d) **Provision for change.** The terms and conditions of all licenses or registration shall be subject at any time to revision, amendment, or modification by rules or orders issued by the Texas Department of Health.

(e) **Condition of issuance.** No license or registration issued under these sections may be sold, assigned, or transferred. Individual licenses (Identification (ID) Card issued by the department) must be present at the work site any time the individual is engaged in asbestos activities. ID Cards issued by the department are the property of the individual until they expire or are revoked by the department. Any cards which have been altered may be revoked.

(f) **Responsibilities of licensees.** Licensees who become aware of violations of these sections must report these violations within 24 hours to the department if the violations are not immediately corrected by the responsible party. A notice of violation reporting procedure developed by the department shall be posted at the entrance to the regulated area in accordance with §295.58(j) of this title (Relating to Operations: General Requirements).

(g) **License application.** Each license application must be complete. Documentation submitted for an application will be considered for that application only, regardless of any other applications submitted at the same time. All blanks on the application form are required to be completely filled in or the application will be deficient for lack of information.

(h) **Penalties.** Penalties for fraudulent applications for licenses, attempting to bribe, or threatening a state employee are as follows. It is a violation of criminal law to alter documents for the purpose of obtaining an asbestos license, to submit a fraudulent application for such a license, or to alter original documents in order to qualify for asbestos activities. It is also a violation to attempt to bribe a state employee to issue a license, to disregard an illegal activity, or to threaten an employee. The foregoing may be a second degree felony with a maximum penalty of 20 years in prison and a \$10,000 fine for each violation. Notices of violation and citations, state or federal, become a part of the licensing records for the individuals involved and must be reported with subsequent license applications.

(i) **Examination.** Each applicant for an individual license must take and pass an accreditation examination in accordance with §295.41 of this title (relating to Licensure: State Licensing Examination) administered by the department in the category for which an individual wishes to be licensed. For further information regarding the testing requirements, refer to §295.41 of this title.

(j) **Responsible person.** The individual that is designated by the licensed Asbestos Abatement Contractor, Asbestos Operations and Maintenance Contractor, Asbestos Laboratory, Asbestos Consultant Agency, or Asbestos Management Planner Agency, as responsible for their operations and compliance with rules, shall not be the responsible person for another licensee with the same category of license.

(k) **TexasOnline fees.** The department is authorized to collect subscription and convenience fees, in amounts determined by the TexasOnline Authority, to recover costs associated with processing license or registration applications specified under this subchapter through TexasOnline, in accordance with the Texas Government Code, Chapter 2054, §2054.111 (relating to Use of TexasOnline Project).

§295.36 LICENSING AND REGISTRATION: EXEMPTIONS; EMERGENCY

(a) **Exemption.** Those who remove resilient floor covering materials in public buildings are exempt from the licensing and registration requirements of these sections, provided that:

(1) if the floor covering materials and/or adhesives have been sanded, ground, mechanically chipped, drilled, abraded or cut (includes sawing but does not include shearing, slicing or punching) prior to the start of the project, then an appropriately licensed person must be used for the abatement;

(2) upon initiating the RFCI work practices, the flooring material does not become friable, is not made into RACM, remains intact (as defined in 29 CFR 1926.1101), or is not sanded, ground, mechanically chipped, drilled, abraded or cut (includes sawing but does not include shearing, slicing or punching). Failure to stop the project under these circumstances is a violation of this section and §295.34(a) of this title (related to Asbestos Management in Facilities and Public Buildings), and subjects the contractor and the building owner to penalties in accordance §295.70 of this title (relating to Compliance: Administrative Penalty);

(3) all those engaged in removal of resilient floor coverings shall have received training in an eight-hour course which covers the elements described in the document titled, "Recommended Work Practices for Removal of Resilient Floor Coverings," published by the RFCI in 1998;

(4) in addition to the training in §295.36(a)(3), employees of schools (kindergarten through 12th grade) who elect to use this exempt method must first complete the 16-hour custodial training, as required by federal regulations adopted under authority of the Asbestos Hazard Emergency Response Act of 1986 (AHERA). Possession of a valid worker registration or supervisor license eliminates the individual's need for the 16-hour training;

(5) the actual removal of floor coverings and adhesive under this exemption is limited to the exempted methods of removal and must be conducted according to the work practices published for distribution by the RFCI in 1998, or as directed by the commissioner of health; and

(6) the asbestos activity permitted by the exemption is limited to the removal of resilient floor covering and adhesives, and does not apply to any other asbestos-related activity, nor does the training or experience gained from such practices qualify for any other asbestos-related activity. The exemption is strictly limited to flooring materials maintained in a non-friable state. RFCI guidelines are to be used; however, the permissible exposure limit (PEL) may not be exceeded. If the flooring materials become friable or the PEL is exceeded either before or during the removal, then:

(A) the person removing the floor covering is required to be licensed; and

(B) removal under RFCI exempted methods must cease, and abatement activity must conform to the requirements of these sections.

(b) **Notification required.** The Texas Department of Health shall receive written notification that has been postmarked or hand delivered at least ten working days prior to commencing any removal of floor coverings from public buildings permitted under the terms of this exemption, as required in §295.61 of this title (relating to Operations: Notifications). Telephone facsimile (FAX) is not acceptable.

(c) **Failure to comply.** Persons who fail to comply with subsection (a)(1)-(6) of this section are subject to an administrative penalty of not more than \$10,000 per violation per day. Persons who fail to comply with notification requirements, or other applicable sections of the Texas Asbestos Health Protection Act (Act) or rules, are subject to administrative, civil, or criminal penalties.

(d) **Abatement emergency.** In an abatement emergency affecting public health or safety that results from a sudden, unexpected event that is not a planned renovation or demolition the department, on notification, may waive the requirement for a license. Call the servicing department regional office, environmental and consumer health division or (512) 834-6600 for consultation about emergencies.

§295.37 LICENSING AND REGISTRATION: CONFLICT OF INTERESTS

(a) **Independent third-party air monitoring.** Third-party area monitoring and project clearance monitoring for airborne concentrations of asbestos fibers during an abatement project shall be performed by a person under contract to the public building owner to collect samples by and for the owner of the public building being abated. Such persons must not be employed or subcontracted by the asbestos abatement contractor hired to conduct the asbestos abatement project, except that:

(1) this restriction in no way applies to personal samples taken to evaluate worker exposure, as required by the Occupational Safety and Health Administration (OSHA) regulations; and

(2) an air monitoring technician providing the service for the contractor meeting his/her responsibilities under OSHA regulations must also be licensed to perform that function; and

(3) those who are licensed to perform asbestos abatement for their own account in their buildings shall employ an independent third-party air monitor for the purpose of obtaining area monitoring and final clearance.

(b) **Licensee conflict of interest.** Any person licensed according to these sections to perform an asbestos-related activity in a public building is subject to the following limitations on the same project in order to avoid a potential conflict of interest. These limitations apply whether the licensee is acting in his or her own capacity or as the agent of the building owner except as noted:

(1) a consultant who performs asbestos inspections or surveys, writes management plans, or designs asbestos abatement projects, may not hire an asbestos abatement contractor to engage in asbestos abatement on a project that the consultant has inspected or designed or in a building for which the consultant has written the management plan;

(2) an abatement contractor who engages in asbestos abatement may not hire a consultant to perform asbestos inspections or surveys, write management plans, or design asbestos abatement projects unless he is a building owner who is also licensed to engage in asbestos abatement and is acting as the abatement contractor in his own buildings in accordance with §295.34(d)(4) and (g) of this title (relating to Asbestos Management in Facilities and Public Buildings) on a project for which he is the abatement contractor;

(3) an abatement contractor who engages in asbestos abatement may not hire an air monitor to perform baseline, ambient or clearance air monitoring unless the exceptions in subsection (a)(1) or (a)(3) of this section apply; and

(4) certain conflict of interest provisions under this subsection do not apply to municipalities as indicated in subsection (c) of this section.

(c) **Municipalities exemption.** Municipalities are exempt from certain conflict of interest requirements. They may retain a licensed person who may perform asbestos inspections and surveys, write management plans, design abatement projects and abate asbestos in the same building or facility. This exemption does not allow a licensee who engages in these activities to conduct air monitoring or abatement project clearance procedures on the same project, which includes performing visual inspection and air samples for clearance in accordance with §295.58(i)(3) of this title (relating to Operation: General Requirements). Air monitoring activities must be performed by an independent third party who is not an employee of the municipality.

(d) An individual instructor shall not train himself/herself, nor shall an individual give himself/herself a physical examination in order to qualify for a license.

§295.38 LICENSING AND REGISTRATION: APPLICATIONS AND RENEWALS

(a) **General requirements.** Applications for a license or worker registration under these sections must be made on forms provided by the Texas Department of Health (department), shall be signed by the applicant, and must be accompanied by a check or money order for the amount of the license or renewal fee. Only applications which are complete shall be considered by the department.

(b) **Inquiries.** Potential applicants who wish to discuss or obtain information concerning qualification requirements may call the department's Asbestos Programs Branch at (512) 834-6610 or (800) 572-5548.

(c) **Denials.** The department may deny an application for licensing to those who fail to meet the standards established by these rules, including, but not limited to the provisions of §295.69(c) of this title (relating to Compliance: Reprimand, Suspension, Revocation, Probation).

(d) **Penalties.** In accordance with §§295.69 - 295.70 of this title, penalties such as suspension, revocation or an administrative penalty may be assessed for fraud or misrepresentation in obtaining, attempting to obtain, or renewing a license or registration.

(e) Processing applications and renewals.

(1) Time periods. Applications for licensure shall be processed in accordance with the following time periods: the time from the receipt of a written application to the date of issuance by the department of a written notice of deficiency outlining the reasons why the application is deficient is 30 days; failure of the applicant to submit the required information and/or documentation within 90 days of issuance of a written notice of deficiency from the department will result in the application being denied; and the license will be issued within 60 days of the department receiving all necessary information and documents from the applicant.

(2) Reimbursement of fees. Initial application or renewal fees will be refunded only if the department does not process a completed application in the time period specified in paragraph (1) of this subsection, if fee amounts are paid in excess of the correct fee amount, or if there is a double payment. Otherwise, fees for applications and renewals are not eligible for refund. A \$30 administrative fee may be deducted from refunds for double payments or excess fees.

(3) Appeal. If the request for full reimbursement authorized by this section is denied, the applicant may then appeal to the commissioner of health for a resolution of the dispute. The applicant shall give written notice to the commissioner by writing to the administrator, asbestos licensing program, the designated representative of the commissioner, requesting full reimbursement of all filing fees paid because his/her application was not processed within the adopted time period. The program administrator shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner will determine the final action and provide written notification of his/her decision to the applicant and the program administrator.

(4) Contested case hearing. If at any time during the processing of the application, a contested case proceeding arises, a hearing may be requested in writing by the applicant within 30 days of the date on the letter from the department denying the registration or license. The hearing will be conducted in accordance with the Administrative Procedures Act, Texas Government Code Chapter 2001, and the department's formal hearing rules in Chapter 1 of this title (related to the Board of Health).

(5) Late fees. Those persons renewing a license or registration are subject to the following fees and conditions.

(A) A person whose license has been expired for 90 days or less may renew the license by meeting all qualifications to renew the license, and paying to the department a renewal fee of 1-1/2 times the fee for that license for the renewal term determined in accordance with §295.35(c) of this title (relating to Licensing and Registration: Conditions).

(B) A person whose license has been expired for more than 90 days but less than one year may renew the license by meeting all qualifications to renew the license, and paying to the department a renewal fee of 2 times the fee for the renewal term determined in accordance with §295.35(c).

(f) **Renewal notices.** At least 30 days before a license expires the department, as a service to the licensee, shall send a renewal notice to the licensee or registrant, by first-class mail to the last known address of the licensee. It remains the responsibility of the licensee to keep the department informed of their current address, or change of address for all license categories, and to take action to renew their certificate whether or not they have received the notification from the department. The renewal notice will state:

- (1) the type of license requiring renewal;
- (2) the time period allowed for renewal; and
- (3) the amount of the renewal fee.

(g) **Renewal requirements.** No sooner than 60 days before the license or registration expires, it may be renewed for an additional term providing that the licensee or worker:

- (1) is qualified to be licensed or registered;
- (2) pays to the department the proper amount of the nonrefundable renewal fee;
- (3) submits to the department a renewal application on the prescribed form along with all required documentation;
- (4) completes successfully the requirements for renewal and examination, if required;
- (5) has complied with all final orders resulting from any violations of these sections; and
- (6) submits the required current training certificates.

(h) **Prohibition.** To practice with lapsed licenses and registrations is prohibited. A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license. If a license holder makes a timely and sufficient application for the renewal of a license, the current license in his/her possession does not expire until the application has been finally granted or denied by the department.

(i) **Replacements.** A licensee or registrant may obtain a replacement certificate by submitting such request in writing along with the reissuance fee of \$20.

(j) **Retention of control.** The department may, at any time after the filing of any application and before the expiration of any license or registration, require:

- (1) additional written information and assurances; and
- (2) cooperation with any inspections initiated by the department, or the production of any documentary or other evidence that the department considers necessary to determine whether the license or registration should be granted, delayed, denied, modified, suspended, or revoked.

(k) **Provisional Licenses.** A holder of a provisional license issued in accordance with §295.39(g) of this title (relating to Licensing and Registration: Out-of-State Applicants and Out-of-State Training) can apply for a license or registration if the applicant has completed a minimum of three hours training given by a department-licensed training provider covering Texas law and regulations as indicated in §295.39(d) of this title, paid the appropriate licensing fee in addition to the non-refundable fee listed in paragraphs (1) - (4) of this section for a provisional license, and met the following requirements:

- (1) asbestos abatement worker. Qualifications as stated in §295.42(e) of this title (relating to Registration: Asbestos Abatement Workers) and provisional fee payment of \$30;
- (2) asbestos inspector. Qualifications as stated in §295.50(d) of this title (relating to Licensure: Asbestos Inspector) and provisional fee payment of \$60;

(3) individual asbestos management planner. Qualifications as stated in §295.51(e) of this title (relating to Licensure: Asbestos Management Planner) and provisional fee payment of \$120; or

(4) asbestos abatement supervisor. Qualifications as stated in §295.46(d) of this title (relating to Licensure: Asbestos Abatement Supervisor) and provisional fee payment of \$300.

§295.39 LICENSING AND REGISTRATION: OUT-OF-STATE APPLICANTS AND OUT-OF-STATE TRAINING

(a) **Terms of reciprocity.** Persons may enter the state for purposes of asbestos abatement or other asbestos-related activity under the Texas Asbestos Health Protection Act (Act) provided they are licensed according to the terms of these sections prior to soliciting business or commencing such activities.

(b) **Applicant status.** All persons residing in other states, applying for any category of license, must comply with all licensing requirements which would be imposed on a Texas resident.

(c) **Acceptance of qualifying documents.** Out-of-state education, experience, training, and physical examinations can be accepted for the purpose of qualifying for Texas licenses provided that they are valid and are verifiable by the department. The burden of proof in such matters is the responsibility of the applicant; the department must reject unverifiable documentation.

(d) **Compulsory training.** All out-of-state licensees and registrants or Texas resident applicants who have received all of their training out-of-state must complete a minimum of three hours training given by a department licensed training provider on Texas law and regulations concerning asbestos prior to applying for licenses or commencement of any asbestos-related activity. The Texas law course must be completed within 60 days prior to applying for a department license. Licensee organizations must have at least one officer complete this training.

(e) **Required documents.** To conduct business in Texas, an out-of-state corporation or other business entity must:

(1) submit a letter or certificate from the Texas secretary of state authorizing the conduct of business in this state;

(2) submit a sales tax account identification number obtained from the Texas Comptroller of Public Accounts;

(3) submit a certificate of insurance for liability coverage written by a Texas-approved carrier if the applicant is an asbestos abatement contractor, asbestos consultant, asbestos inspector, asbestos laboratory, or asbestos transporter performing work for hire as required by §295.40 of this title (relating to Licensing and Registration: Insurance Requirements); and

(4) provide proof of workers' compensation insurance issued by a company authorized and licensed to issue workers' compensation insurance in this state and written in this state on the Texas form, or evidence of self-insurance, if workers' compensation insurance is required by contract specifications or owner; see §295.34(b)(4) of this title (relating to Asbestos Management in Facilities and Public Buildings).

(f) **Exemption.** An out of state corporation that engages only in interstate commerce and has no documentation described in subsection (e)(1) of this section may qualify as not transacting business in Texas under §8.01 of the Business Corporation Act and may request an exemption from the requirements of subsection (e)(1) - (2) of this section if the corporation submits a sworn affidavit from a corporate officer claiming the exemption.

(g) **Provisional License and Registration.** A person may request a provisional license for an asbestos inspector, individual asbestos management planner, asbestos abatement supervisor, or asbestos abatement worker registration.

(1) A provisional license or registration is valid until the date the department 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.

(2) Non-refundable provisional license or registration fees are as follows:

- (A) asbestos abatement worker--\$30;
- (B) asbestos inspector--\$60;
- (C) individual asbestos management planner--\$120; and
- (D) asbestos abatement supervisor--\$300.

(3) A person may receive a provisional license issued by the department if the following criteria are met:

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

(B) for the following licenses, the person requesting the provisional license has passed a national or other examination recognized by the department relating to the provisional license requested:

- (i) asbestos abatement worker;
- (ii) asbestos inspector;
- (iii) individual asbestos management planner; and
- (iv) asbestos abatement supervisor; and

(C) the person requesting the provisional license or registration is sponsored by a company that meets the insurance requirements of §295.40 of this title (related to Licensing and Registration: Insurance Requirements), with whom the provisional license or registration holder will practice during the time the person holds a provisional license or registration. The department may waive the requirement of sponsorship for an applicant if the department determines that compliance with that subsection would be a hardship to the applicant.

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

§295.40 LICENSING, TRAINING AND REGISTRATION: INSURANCE REQUIREMENTS

Persons required to have insurance must obtain policies for required coverage in the amounts specified in these sections. Self-insurance is allowed for governmental agencies and for persons who meet the self-insurance requirements under the insurance laws of Texas and receive written approval from the Texas Department of Insurance or Texas Workers' Compensation Commission. Proof of approval by the appropriate authority as required for non-governmental persons must be submitted with the application. Liability insurance shall include pollution liability for asbestos exposure. Additional requirements are as follows:

(1) Applicants for licenses or renewal of licenses must provide to the department the certificate of insurance required. The policy must be currently in force and must be written by:

- (A) an insurance company authorized to do business in Texas;
- (B) an eligible Texas surplus lines insurer as defined in the Texas Insurance Code, Article 1.14-2;
- (C) a Texas registered risk retention group; or
- (D) a Texas registered purchasing group.

(2) The certificate of insurance must be complete, including all applicable coverages and endorsements, and must name the Texas Department of Health, Toxic Substances Control Division, as a certificate holder. Each required policy shall be endorsed to provide the department with at least a ten day notice of cancellation.

(3) In the event of policy cancellation by either the licensee or the insurance company, the licensee shall notify the department not later than 10 days prior to the cancellation effective date.

(4) In the event of policy cancellation or expiration, the policy shall promptly be replaced or renewed without any lapse in coverage. A certificate of the renewal policy must be provided to the department upon receipt by the licensee. In no event shall a licensee fail to have the required coverage at the time of engaging in asbestos activities. Failure to become reinsured when required may result in the imposition of an administrative penalty and/or revocation of the license.

§295.41 LICENSURE: STATE LICENSING EXAMINATION

(a) **General.** The Texas Department of Health (department) shall administer an examination to individuals seeking a license and who have successfully completed the required training from a training provider licensed or approved by the department. A copy of the training certificate shall be submitted with the application. All individuals, except workers, seeking a license in a specific category shall pass the examination for that category. For example, an individual seeking a license as an asbestos inspector must pass the department's inspector accreditation examination. Individuals receiving their training from training providers outside of Texas must complete the approved three-hour Texas law course prior to applying for the accreditation exam.

(b) **Testing requirements.** Beginning January 1, 1999, an applicant for a license will be required to pass a state examination to qualify for the original license. The application for the examination and the required fee may be included with the initial license application form or the applicant may register for the exam before applying for the license. Examinations shall be based upon the requirements for the license category for which an individual is applying. The examination will cover the topics included in the training course for that license category. Out-of-state applicants must take the test for their respective category following completion of the required three-hour course in Texas law. Misconduct or dishonesty during the examination, or an individual taking the examination other than the individual scheduled, will constitute grounds for the issuance of a failing grade and revocation or denial of a license.

(c) **Fees.** There will be an examination fee of \$25 for the initial test or for any re-examination at department administered test locations. A fee of \$50 shall be paid for examinations to be administered by the department at locations and times other than the published schedule. A request to the department must be submitted in sufficient time to permit scheduling and administration of the examination. Fees must be paid to the department prior to the taking of the examination. The required fee may not be paid at the examination location, but must be mailed to the department.

(d) **Scheduling and registration.** Annually, a schedule of examination dates and locations will be published by the department, listing the schedule for the monthly testing. Each month, make-up examinations will be available in Austin, Texas at a location and time specified in the published schedule. Registration must be submitted by mail or phone and must be received by the department no later than five days prior to the desired test date. Walk-ins will be tested at any time at Department of Health regional offices listed in the examination schedule. Examinees will be required to call for an appointment to ensure availability of the examination and persons to administer it. Entrance into the test site will be allowed only upon presentation of a valid photo ID card from a training provider. Schedules will be provided by the training providers as a part of their instruction. Assistance is available by calling the department's asbestos training section. Companies with 30 or more individuals to be tested may call the department to arrange an additional examination date.

(e) **Grading and reporting of examination scores.** A grade of 70% must be achieved in order to pass the examination. Scores will be reported only by mail no later than 30 working days after the date the test is taken; the notification will, if appropriate, contain information regarding re-examination.

(f) **Re-examination.** An individual may take only two re-examinations after failing the initial examination. Following the third failure, the applicant must repeat the initial training course required for the license for which he/she is applying, submit a new application for the department test, and provide a copy of the training certificate for the additional training. Re-examination questions will be different from the initial examination.

(g) **Request for information concerning exam.** If requested in writing by a person who fails a licensing examination, the department shall furnish the person with an analysis of the person's performance on the examination.

(h) **Testing service.** If the examination is graded or reviewed by a testing service:

(1) the department shall notify the person of the results of the examination not later than the 14th day after the date the department receives the results from the testing service;

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the department shall notify the person of the reason for the delay before the 90th day; and

(3) the department may require a testing service to notify a person of the results of the person's examination.

§295.42 REGISTRATION: ASBESTOS ABATEMENT WORKERS

(a) **Registration requirement.** Individuals must be registered as asbestos abatement workers in compliance with these sections to perform asbestos abatement work in a public building, including, but not limited to, performing any maintenance, repair, installation, renovation, or cleaning that dislodges, breaks, cuts, abrades, or impinges on asbestos material.

(b) **Fee.** The fee for a two-year registration term is \$65.

(c) **Applications and renewals.** Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-state applicants must comply with §295.39(a) and (d) of this title (relating to Licensing and Registration: Out-of-State Applicants).

(d) **Annual renewal.** Annual renewal may be accomplished by submitting the following documentation:

(1) current worker's refresher training certificate;

(2) current physician's written statement on the specified Texas Department of Health (department) form; and

(3) the required license fee.

(e) **Qualifications.** Applicants for registration as asbestos abatement workers shall provide:

(1) a certificate of training from a training provider approved by or acceptable to the department indicating successful completion within the past 12 months of the approved training course for abatement workers or the annual refresher training course, as described in §295.64(d) of this title (relating to Training: Required Asbestos Training Courses). Evidence of successful completion of the contractor/supervisor course may be substituted for the initial worker course.

(2) an acceptable written opinion of a physical examination of the applicant within the past 12 months that was performed by a physician in accordance with Occupational Safety and Health Administration of the United States Department of Labor (OSHA) regulations in 29 Code of Federal Regulations (CFR), §1926.1101(m), or Environmental Protection Agency (EPA) regulations in 40 CFR, §763.121(m), relating to medical surveillance. This opinion must be submitted on the Texas Department of Health (department) "Physicians Written Statement" form only, must be signed by the doctor and include certification of the following elements:

(A) completion and review of the applicant's standardized medical questionnaire and work history with special emphasis directed to the pulmonary, cardiovascular, and gastrointestinal systems per 40 CFR §1926.1101 Appendix D;

(B) if applicant is employed, the employer must have provided, and a review made of, the description of the employee's duties as they relate to asbestos exposure, the anticipated exposure level, the personal protective and respiratory equipment to be utilized by the employee, and information from previous medical examinations of the affected employee that is not otherwise available to the physician;

(C) a physical examination with emphasis upon the pulmonary, cardiovascular, and gastrointestinal systems;

(D) the pulmonary function tests of forced vital capacity (FVC) and forced expiratory volume at one second (FEV 1) in accordance with NIOSH and ATS standards;

(E) a chest roentgenogram, posterior-anterior, 14x17 inches, or current film on file with interpretation in accordance with 29 CFR §1926.1101 Appendix E. (Note: According to 29 CFR §1926.1101(m)(2)(ii)(C), it is up to the discretion of the physician whether or not a chest x-ray is required); and

(F) the employee was informed by the physician of the results of the exam and of any medical conditions that may result from asbestos exposure, including the increased risk of lung cancer attributable to the combined effect of smoking and asbestos exposure;

(3) a copy of the wallet-size photo-identification card from the training course, as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). Persons submitting out-of-state training certificates with their applications may obtain the necessary photo-identification when attending the mandatory course on Texas asbestos rules, as required in accordance with §295.64(h) of this title; and

(4) a current one-inch by one-inch photograph of the face. The photograph submitted to the department for licensing purposes must have a white background.

(f) **Responsibilities.** A registered asbestos abatement worker shall:

(1) comply with standards of operation, including Environmental Protection Agency (EPA) regulations, adopted by reference in §295.33 of this title (relating to Adoption by Reference of Federal and Other Standards) and Occupational Safety and Health Administration (OSHA) regulations as adopted and referenced in certain sections of these rules;

(2) comply with additional work practices, as described in §295.60 of this title (relating to Operations: Abatement Practices and Procedures);

(3) comply with standards and practices for operations and maintenance activities, as described in §295.59 of this title (relating to Operations: Operations and Maintenance (O&M) Requirements); and

(4) cooperate with department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.68 of this title (relating to Compliance: Inspections and Investigations).

(g) **Prohibitions.** The following specific prohibitions apply to registered asbestos abatement workers.

(1) Asbestos abatement workers are prohibited from performing asbestos abatement or O&M activities affecting asbestos except under the direct supervision of a qualified licensed supervisor.

(2) Asbestos abatement workers are prohibited from engaging in any asbestos-related activity as a supervisor or contractor.

§295.43 LICENSURE: ASBESTOS OPERATIONS AND MAINTENANCE CONTRACTOR (RESTRICTED)

(a) **Licensing requirement.** Persons must be licensed as asbestos abatement contractors or as asbestos operations and maintenance (O&M) contractors (restricted) to conduct asbestos O&M activities. Building owners that would have their own employees perform such activities for their buildings shall be licensed according to this section.

(b) **Restrictions.**

(1) Asbestos O&M activities are restricted to small-scale, short-duration work practices and engineering controls for tasks that result in the disturbance, dislodgment, or removal of asbestos in the course of performing repairs, maintenance, renovation, installation, replacement, or cleanup operations, as adopted in §295.33(a) of this title (relating to Adoption of Standards).

(2) Whenever asbestos abatement is the primary or principal purpose of any asbestos activity in a public building it must be performed by an asbestos abatement contractor licensed under these sections.

(3) Those who solicit or conduct asbestos operations and maintenance activities within a public building under contract or other hire agreement must be licensed as asbestos abatement contractors or asbestos O&M contractors.

(4) Employees who perform asbestos O&M activities for asbestos abatement contractors or asbestos O&M contractors must be registered as asbestos abatement workers, and under the supervision of employees who are trained and licensed as asbestos O&M supervisors or asbestos abatement supervisors.

(5) EPA regulatory requirements for small-scale, short duration activities affecting asbestos are explained in detail in 40 CFR, Part 763, Appendix B to Subpart E, as amended. The same regulatory requirements of OSHA for these activities are explained in 29 CFR §1926.1101. The restricted asbestos activities of licensed O&M contractors, O&M supervisors, and asbestos workers shall be confined to the work practices and procedures therein.

(c) **Fee.** The fee for a two-year license term is \$260.

(d) **Applications and renewals.** These are subject to the provisions of §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(e) **Qualifications.** Applicants for licensing as asbestos operations and maintenance contractors shall provide:

(1) a certificate of training from a training provider approved by or acceptable to the Texas Department of Health (department), indicating successful completion within the past 12 months of the approved training course for asbestos abatement contractors and supervisors or the annual refresher training, as described in §295.64(c) of this title (relating to Training: Required Asbestos Training Courses). An applicant organization shall designate at least one individual as their responsible person who will comply with this training requirement. This person must be responsible for asbestos operations and compliance with all asbestos rules and regulations;

(2) a State of Texas sales tax account number for the applicant organization;

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

(4) a description of the protective clothing and respirators which will be used;

(5) a description of the site decontamination procedures;

(6) a description of the procedures for handling waste containing asbestos;

(7) a description of the removal and encapsulation methods;

(8) a description of the air-monitoring procedures;

(9) a description of final cleanup procedures;

(10) a description of the provisions for recordkeeping;

(11) a list of operations and maintenance projects completed in the past year;

(12) a copy of all disposal manifests for projects completed in the past year;

(13) a list of asbestos inspections performed by other agencies;

(14) copies of all citations issued;

(15) proof of successfully passing the department examination for asbestos abatement contractors and supervisors;

(16) a copy of the wallet-size photo-identification card of the responsible person from the training course, as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). Persons submitting out-of-state training certificates with their applications shall submit the necessary photo-identification they obtain when attending the mandatory course on Texas asbestos rules, as required in accordance with §295.64(h) of this title; and

(17) a current one-inch by one-inch photograph of the face of the responsible person. The photograph submitted to the department for licensing purposes must have a white background.

(f) **Responsibilities.** O&M contractors who obtain restricted licenses shall be responsible for:

(1) complying with standards of operation, as described in §295.58 of this title (relating to Operations: General Requirements) and §295.59 of this title (relating to Operations: Operations and Maintenance Requirements) and with the plans and specifications for the asbestos activity being performed;

(2) complying with federal standards of operation, including EPA and OSHA regulations, which are adopted by reference, as follows:

(A) OSHA regulations in 29 CFR, §1926.1101(g)(9), titled "Work Practices and Engineering Controls for Class III Asbestos Work"; or

(B) EPA regulations in 40 CFR, Part 763, Subpart E, Appendix B, titled "Work Practices and Engineering Controls for Small-Scale, Short-Duration Operations, Maintenance and Repair (O&M) Activities Involving ACM";

(3) employment of at least one licensed operations and maintenance (O&M) supervisor (restricted) to supervise or perform operations or maintenance activities. An individual licensed as an asbestos abatement supervisor may be substituted for the O&M supervisor. Employees who are registered asbestos abatement workers shall perform O&M activities only under the direct supervision of either category of supervisors named in this section;

(4) complying with recordkeeping requirements, both the central office and work site locations, as described in §295.62 of this title (relating to Operations: Recordkeeping);

(5) complying with the requirement to notify the department about impending abatement projects, changes requiring re-notification, and emergency notification, as described in §295.61 of this title (relating to Operations: Notification);

(6) complying with the requirement to supply and train employees who perform asbestos-related activities in the use of personal protection equipment, and to maintain the current training status of each employee according to §295.64 of this title (relating to Training: Required Asbestos Training Courses);

(7) acquiring and maintaining in good working condition and free of asbestos contamination the necessary equipment for performing O&M activities, as prescribed by the department;

(8) assisting department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.68 of this title (relating to Licensing Operations: Inspection and Investigations); and

(9) providing for the proper temporary storage and for the final disposal of waste asbestos, which must be disposed of within 30 days of project completion or when receiving container is full, whichever is sooner.

(g) **Prohibitions.** Asbestos O&M licensees shall not engage in any activity for which the primary purpose is asbestos abatement.

§295.44 LICENSURE: ASBESTOS OPERATIONS AND MAINTENANCE SUPERVISOR (RESTRICTED)

(a) **Licensing requirement.** Individuals employed by licensed operations and maintenance (O&M) or abatement contractors to directly supervise personnel and work practices limited to the conduct of O&M activities affecting asbestos-containing building materials (ACBM) shall be licensed as asbestos O&M supervisors (restricted).

(b) **Fee.** The fee for a two-year license term is \$225.

(c) **Applications and renewals.** Applications and renewals shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-state applicants must comply with the applicable provision of §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(d) **Qualifications.** The applicant for an O&M supervisor (restricted) license shall provide:

(1) a certificate of training from a training provider approved by or acceptable to the Texas Department of Health (department) indicating successful completion within the past 12 months of the approved training course for abatement contractors and project supervisors, or the annual refresher training as described in §295.64(c) of this title (relating to Training: Required Asbestos Training Courses);

(2) a physician's statement of the required physical examination submitted on the department "Physicians Written Statement" form only done within the past year as described in §295.42(e)(2) of this title (relating to Registration: Asbestos Abatement Workers);

(3) a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). Persons submitting out-of-state training certificates with their application may obtain the necessary photo-identification when attending the mandatory course on Texas asbestos rules, as required in accordance with §295.64(h) of this title;

(4) a current one-inch by one-inch photograph of the face. The photograph submitted to the department for licensing purposes must have a white background; and

(5) proof of successfully passing the department examination, if required.

(e) **Responsibilities.** The asbestos O&M supervisor (restricted) shall:

(1) comply with the Environmental Protection Agency (EPA) and Occupational Safety and Health Administration of the United States Department of Labor (OSHA) regulations for standards of small-scale, short-duration work practices which are adopted by reference in §295.33 of this title (relating to Adoption by Reference of Federal Standards);

(2) comply with the additional work practices, as described in §295.59 of this title (relating to Operations: Operations and Maintenance Requirements);

(3) maintain records at both the central office and work site locations, as described in §295.62 of this title (relating to Operations: Recordkeeping);

(4) supply and maintain personal protection equipment, as specified by the department, and train employees who perform asbestos-related activities in the use of equipment, and to supervise their compliance;

(5) comply with standards and practices for O&M activities as described in §295.59 of this title (relating to Operations: Operations and Maintenance (O&M) Requirements); and

(6) cooperate with department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.68 of this title (relating to Compliance: Inspections and Investigations).

(f) **Restrictions and prohibitions.** Licensing as an asbestos O&M supervisor is specifically restricted, as follows.

(1) The licensee may be employed or retained only by a licensed O&M contractor or by a licensed asbestos abatement contractor to supervise O&M activities within public buildings, or to perform such work.

(2) The licensee may also seek employment as an asbestos abatement worker but may not engage in any other asbestos-related activity for which a license is required.

(3) The licensee shall not supervise asbestos abatement projects, which are larger than small scale, short duration or which have the sole purpose of removing ACBM, or act as a contractor.

(4) The licensee shall not supervise any activity for which the primary purpose is asbestos abatement.

§295.45 LICENSURE: ASBESTOS ABATEMENT CONTRACTOR

(a) **Licensing requirement.** Persons must be licensed as asbestos abatement contractors in compliance with these sections to engage in asbestos abatement or removal in a public building. This requirement does not apply to the removal of asbestos samples taken during an inspection or survey by someone licensed to inspect.

(b) **Licensee authorization.** Asbestos abatement contractor licensees are specifically authorized to employ asbestos abatement supervisors and asbestos abatement workers who are currently licensed under these sections to carry out asbestos abatement or removal procedures. They may employ licensed operations and maintenance (O&M) supervisors for building O&M activities, or as workers. Licensees are cautioned to observe the prohibited acts in §295.37 of this title (relating to Licensing and Registration: Conflict of Interests).

(c) **Fee.** The fee for a two-year license term is \$1,070.

(d) **Applications and renewals.** Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(e) **Qualifications.** Applicants for licensing as asbestos abatement contractors shall provide:

(1) a certificate of training from a training provider approved by or acceptable to the department, indicating successful completion within the past 12 months of the approved training course for asbestos abatement contractors and project supervisors or the continuing annual refresher training, as described in §295.64(c) of this title (relating to Training: Required Asbestos Training Courses). An applicant shall designate at least one individual for the purpose of complying with this training requirement. This individual must be responsible for asbestos operations and compliance with all asbestos rules and regulations;

(2) if the applicant is situated outside the State of Texas, a certificate of authority issued by the Secretary of State, authorizing the corporation to do business in the state;

(3) a State of Texas sales tax account number for the applicant organization;

(4) evidence of asbestos abatement liability insurance as required in §295.40 of this title (relating to Licensing and Registration: Insurance Requirements), in the amount of \$1 million, when doing work for hire;

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

(6) a description of the protective clothing and respirators which will be used;

(7) a description of the site decontamination procedures;

(8) a description of the procedures for handling waste containing asbestos;

- (9) a description of the removal and encapsulation methods;
- (10) a description of the air-monitoring procedures;
- (11) a description of final cleanup procedures;
- (12) a description of the provisions for recordkeeping;
- (13) a list of abatement projects completed in the past year;
- (14) a copy of all disposal manifests for projects completed in the past year;
- (15) a list of asbestos inspections performed by other agencies;
- (16) copies of all citations issued;
- (17) proof of successfully passing the department examination for asbestos contractors, if required;
- (18) a copy of the wallet-size photo-identification card of the responsible person from the training course, as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). Persons submitting out-of-state training certificates with their applications shall submit the necessary photo-identification they obtained when attending the mandatory course on Texas asbestos rules, as required in accordance with §295.64(h) of this title; and
- (19) a current one-inch by one-inch photograph of the face of the responsible person. The photograph submitted to the department for licensing purposes must have a white background.

(f) **Responsibilities.** The asbestos abatement contractor shall be responsible for:

- (1) standards of operation, including Environmental Protection Agency (EPA) and Occupational Safety and Health Administration of the United States Department of Labor (OSHA) regulations, referenced in §295.33 of this title (relating to Adoption by Reference of Federal Standards);
- (2) additional work practices, as described in §295.60 of this title (relating to Operations: Abatement Practices and Procedures);
- (3) recordkeeping requirements, at both central office and work site locations, as found in §295.62 of this title (relating to Operations: Recordkeeping);
- (4) required notification to the department about impending abatement projects, changes requiring re-notification, and emergency notifications, as described in §295.61 of this title (relating to Operations: Notifications);
- (5) the requirement to supply and train employees who perform asbestos-related activities in the use of personal protection equipment, and to supervise their compliance;
- (6) maintenance of the current training status of each employee, as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses), and the annual physical examinations;
- (7) standards and practices for O&M activities, as conducted by a contractor, as described in §295.59 of this title (relating to Operations: Operations and Maintenance (O&M) Activities);
- (8) assisting department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.68 of this title (relating to Compliance: Inspections and Investigations);
- (9) maintenance of liability insurance, as described in §295.40 of this title (relating to Licensing and Registration: Insurance Requirements);

(10) proof of workers' compensation insurance issued by a company licensed to do business in this state, and written in this state on a Texas form, or evidence of self-insurance, if workers' compensation insurance is required by the specifications or owner; see §295.34(b)(4) of this title; and

(11) providing for the proper temporary storage and for the final disposal of waste asbestos within 30 days of project completion or when receiving container is full, whichever is sooner.

§295.46 LICENSURE: ASBESTOS ABATEMENT SUPERVISOR

(a) **Licensing requirement.** An individual must be licensed as an asbestos abatement supervisor in compliance with these sections to engage in the supervision of an asbestos abatement project conducted in a public building.

(b) **Fee.** The fee for a two-year license term is \$645.

(c) **Applications and renewals.** Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(d) **Qualifications.** Applicants for licensing as asbestos abatement supervisors are required to provide:

(1) written documentation of at least 90 days of verifiable work experience as a trained and registered worker performed within the past 24 months. Qualifying experience includes:

(A) project site preparation and establishing the abatement containment for friable asbestos-containing building material (ACBM);

(B) use of respirators and protective equipment, personal hygiene, decontamination procedures, interpretation of air sampling results, and methods to reduce airborne fiber levels;

(C) use of engineering controls, abatement work methods and practices, and final cleanup procedures;

(D) handling of waste asbestos as part of an abatement project;

(E) removal, enclosure, or encapsulation of asbestos;

(F) work performed in an administrative capacity relating to asbestos abatement projects such as project manager, consultant, or designated person may be accepted as qualifying experience;

(G) experience as an asbestos air monitoring technician, which includes personal air sampling, regulated-area airborne asbestos sampling, aggressive sampling for final cleanup, plus on-site project record keeping documenting daily operations, controlling entry and exit from the containment, etc., may be accepted as qualifying experience, subject to time-period limitations, minimum number of abatement projects (five), or work experience. No more than 30 days may be counted as qualifiable experience under this category;

(H) work performed as an asbestos abatement supervisor or worker licensed in another state; and

(I) the burden of proof for all points of the qualifying experience is on the individual applicant. Applicants for abatement supervisor licenses must furnish contacts or sources that can fully verify the documented experience. Descriptions of abatement projects are not acceptable if the personal involvement of the applicant cannot be determined by the reviewer. If, in the opinion of the reviewing staff members, applicant experience cannot be properly and sufficiently verified, such experience must be rejected;

(2) a certificate of training from a training provider approved by or acceptable to the Texas Department of Health (department) indicating successful completion within the past 12 months of the approved course for abatement contractors

and supervisors, or the current annual refresher training, as described in §295.64(c) of this title (relating to Training: Required Asbestos Training Courses);

(3) a physician's statement of the required physical examination done within the past year as described in §295.42(e)(2) of this title (relating to Registration: Asbestos Abatement Workers) and submitted on the department "Physician's Written Statement" form only;

(4) a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). Persons submitting out-of-state training certificates with their applications may obtain the necessary photo-identification when attending the mandatory course on Texas asbestos rules, as required in accordance with §295.64(h) of this title;

(5) a current one-inch by one-inch photograph of the face. The photograph submitted to the department for licensing purposes must have a white background; and

(6) proof of successfully passing the department examination for asbestos contractors and supervisors, if required.

(e) **Responsibilities.** The asbestos abatement supervisor shall:

(1) comply with standards of operation, including Environmental Protection Agency (EPA) and Occupational Safety and Health Administration of the United States Department of Labor (OSHA) regulations, which have been adopted by reference in §295.33 of this title (relating to Adoption by Reference of Federal Standards);

(2) comply with additional work practices, as described in §295.60 of this title (relating to Operations: Abatement Practices and Procedures);

(3) maintain records at both the central office and the work site locations, as described in §295.62 of this title (relating to Operations: Recordkeeping);

(4) supply personal protection equipment and train employees who perform asbestos-related activities in the use of equipment, and to supervise their compliance;

(5) comply with standards and practices for O&M activities, as conducted for hire, according to §295.59 of this title (relating to Operations: Operations and Maintenance (O&M) Activities); and

(6) cooperate with department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.68 of this title (relating to Compliance: Inspection and Investigations).

(f) **Other duties.** Abatement supervisors may also assume the duties of asbestos abatement workers or perform O&M activities affecting asbestos materials.

§295.47 LICENSURE: INDIVIDUAL ASBESTOS CONSULTANT

(a) **Licensing requirements.** An individual must be licensed as an asbestos consultant to design asbestos abatement projects. A company employing an individual asbestos consultant may not hire an inspector, project manager, air monitoring technician, or another individual asbestos consultant without obtaining an asbestos consultant agency license.

(1) Asbestos abatement project design includes the survey of public buildings for asbestos-containing building material (ACBM); the evaluation and selection of appropriate asbestos abatement methods; project layout; the preparation of plans, specifications and contract documents; and the review of environmental controls, abatement procedures and personal protection equipment to be employed at any time during the asbestos abatement activity, from the start through the completion dates of the project. A consultant may be hired by a building owner or the owner's agent to perform asbestos project management. If performing asbestos project management, the consultant is responsible to ensure proper procedures are used from the time of arrival of the abatement contractor on site through the completion of the removal of the containment and the departure of the contractor from the project site. Alternative control methods as referred to in 29 CFR §1926.1101(g)(6), such as dry removal or no negative air, shall be reviewed and certified in writing as at least as protective of

the public health as the standard method described in §296.60 by a Certified Industrial Hygienist (CIH) or a Professional Engineer (PE) licensed in Texas and shall be approved in writing by the Chief of the Asbestos Programs Branch, Toxic Substances Control Division, prior to the start of abatement. The department will respond within 30 days of the department receiving the alternative control method with approval, notification of deficiencies, or denial.

(2) If an asbestos abatement project includes alterations to a building's structure, its electrical, mechanical, safety systems, or their components, a licensed individual consultant in conjunction with or who is a licensed Professional Engineer (PE) in Texas must prepare the appropriate plans and specifications as required by the Texas Engineering Practice Act, Article 3271a and the rules of the Texas State Board for Registration for Professional Engineers in addition to the requirement of paragraph (1) of this subsection.

(b) **Scope: Individual licenses.** In addition to the design of asbestos abatement projects, individual asbestos consultants are licensed to provide:

- (1) asbestos surveys and assessment of the condition of ACBM;
- (2) asbestos management planning, including response actions, instructions, and periodic surveillance recommendations for the control of asbestos and the conduct of operations and maintenance (O&M) programs;
- (3) the collection of bulk material samples, airborne substance samples, and the planning of sampling strategies;
- (4) owner-representative services for asbestos abatement projects or O&M programs, including air monitoring and project management;
- (5) consultation regarding compliance with various regulations and standards, recommending abatement options, and preparations for asbestos abatement projects, specifically including technical specifications and contract documents; and
- (6) the selection, fit testing, and appropriate use of personal protection equipment, and the development of engineering controls for asbestos-related activities.

(c) **Fees.** The fee for a two-year license term is \$645.

(d) **Applications and renewals.** Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(e) **Eligibility for licensing.** Verifiable evidence of current eligibility must be submitted with all applications for licensing as an individual asbestos consultant, which includes any one of the following:

- (1) current registration in the State of Texas as an architect or professional engineer; or
- (2) current highest full-qualification memberships in a national professional organization devoted to technical proficiency in environmental or occupational health protection, which includes:
 - (A) a published code of ethics;
 - (B) administration by an active board of directors; and
 - (C) admission requirements that specify college courses and other training, a bachelor's or higher degree, at least three years' experience in specified fields, and a qualification examination (examples include the American Academy of Industrial Hygiene and the Board of Certified Safety Professionals); or
- (3) possession of a bachelor's degree in architecture, engineering, physical or natural science from an accredited four-year college or university, and including four years' experience in areas affecting environmental or occupational health matters.

(f) **Qualifications.** To qualify as an individual asbestos consultant, individuals shall provide:

(1) verifiable documentation of their asbestos-related activity in conjunction with at least six asbestos abatement projects covering a period of at least a year within the past seven years. All asbestos work must be documented as having been performed under the applicable licensed or accredited rules or regulations;

(2) a physician's statement of the required physical examination done within the past year as described in §295.42(e)(2) of this title (relating to Registration: Asbestos Abatement Workers) and submitted on the Texas Department of Health (department) "Physician's Written Statement" form only;

(3) proof of having successfully completed the following training courses or the necessary annual refresher training within the past 12 months at an approved training facility:

(A) the approved training course for abatement project designers, or the current annual refresher, according to §295.64(b) of this title (relating to Training: Required Asbestos Training Courses);

(B) a modified three-day training course in sampling techniques and use of monitoring equipment, as required for air monitoring technician, or the current annual refresher training according to §295.64(g) of this title (relating to Training: Required Asbestos Training Courses). The initial course is not required of certified industrial hygienists; however, the refresher is required for license renewal or any subsequent reapplication for this license; and

(C) training in asbestos surveys, as required for both licensed asbestos building inspectors and management planners, or the current annual refresher, according to §295.64(e) and (f) of this title (relating to Training: Required Asbestos Training Courses).

(4) a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). Persons submitting out-of-state training certificates with their applications may obtain the necessary photo-identification when attending the mandatory course on Texas Asbestos rules, as required in accordance with §295.64(h) of this title (relating to Training: Required Asbestos Training Courses);

(5) a current one-inch by one-inch photograph of the face. The photograph submitted to the department for licensing purposes must have a white background; and

(6) proof of successfully passing the department examination for consultant/project designer, if required.

(g) **Insurance.** A licensed individual asbestos consultant performing work for hire must obtain professional liability coverage in the amount of \$1 million for errors and omissions, or be covered under the consultant's employer's policy, as specified in §295.40 of this title (relating to Licensing and Registration: Insurance Requirements).

(h) **Responsibilities.** The responsibilities of licensed asbestos consultants shall include the following:

(1) preserve public health and diminish or eliminate hazards or potential hazards caused by the presence of ACBM in public buildings;

(2) provide professional services to the building owner or management concerning asbestos building surveys, assessment of conditions of materials, planned operations and maintenance, compliance with work practices and standards;

(3) evaluate possible asbestos abatement projects and prepare plans, specifications, schedules, and contract options for abatement projects;

(4) represent the interests of the building owner during the conduct of an asbestos abatement project, including consultation with the abatement contractor personnel, requiring compliance with regulations and specifications, requiring remedy of infractions, providing monitoring services, maintaining progress records and photographs as necessary, waste disposal, designating in writing a project manager and specifying the manager's responsibilities and authority, and providing written assurance to the building owner or operator of the final clearance of the project; and

(5) advise on the selection and use of appropriate personal protective equipment for all asbestos-related activities.

(i) **Signature authority.** All asbestos abatement plans and specifications must be signed on every page that addresses the scope of work and all drawings related to the abatement work. The cover page shall also include the consultant's signature, license number and license expiration date. The plans and specifications bearing the consultant's original signature shall be provided to the building owner prior to the start of the asbestos abatement. Plans and specifications that are used by another consultant, or consultant agency, to monitor a project, shall be reviewed, deletions and/or additions made, and signed in the same manner, indicating acknowledgment of their adequacy and the assumption for the responsibility related to the content contained therein.

§295.48 LICENSURE: ASBESTOS CONSULTANT AGENCY

(a) **Scope:** Asbestos consultant agency licenses. A company, employing an individual asbestos consultant and one or more additional asbestos consultants, inspectors, project managers, or air monitor technicians must be licensed as an asbestos consultant agency. Consultant organizations desiring to be licensed as asbestos consultant agencies shall designate one or more individuals licensed as asbestos consultants as their responsible persons, who shall be either principals or employees, and who shall have responsibility for the organization's asbestos activity.

(b) **Authorization and conditions.** A licensed asbestos consultant agency is specifically authorized to employ asbestos consultants, asbestos project managers, asbestos inspectors and management planners, and air monitoring technicians who are currently licensed under these rules to assist in the conduct and fulfillment of the agency's asbestos consultation activity, as necessary. As a condition of licensure, an asbestos consultant agency must notify the department in writing of the addition or deletion of the designated individual asbestos consultant within 10 days of any changes.

(c) **Fee.** The fee for a two-year license term is \$430.

(d) **Applications and renewals.** Applications and renewals shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(e) **Qualifications.** Applicants for licensing as an asbestos consultant agency shall submit as applicable:

(1) professional liability insurance coverage for errors and omissions in the amount of \$1 million to cover the asbestos consultants and inspectors in its employ; and

(2) if the applicant is situated outside the State of Texas, a certificate of authority issued by the Texas Secretary of State, authorizing the corporation to do business in the state.

(f) **Responsibilities.** A licensed asbestos consultant agency shall be responsible for:

(1) employing generally accepted principles and practices in designing asbestos abatement projects;

(2) monitoring and observing asbestos abatement projects for general compliance with the contract documents, specifications, and relevant regulations;

(3) reviewing asbestos disposal documentation to account for and confirm adequate waste disposal; and

(4) complying with the responsibilities for the individual license as listed in §295.47(h) of this title (relating to Licensure: Individual Asbestos Consultant).

§295.49 LICENSURE: ASBESTOS PROJECT MANAGER

(a) **Licensing.** An individual must be licensed as an asbestos project manager and must be employed by a licensed asbestos consultant agency to perform in the capacity of the owner's representative to evaluate the quality of the work being performed during an asbestos abatement project. The asbestos project manager may:

(1) monitor the project to document the standards designed to protect project personnel and building occupants, and the adequacy of controls;

(2) observe that contractual requirements are being met by the abatement contractor; and

(3) consult with contractors on behalf of their clients on the selection and use of appropriate personal protective equipment related to the asbestos abatement activities.

(b) **Fee.** The fee for a two-year license term is \$320.

(c) **Applications and renewals.** Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registrations: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(d) **Qualifications.** To qualify for a license, an applicant must provide:

(1) a high school diploma or a GED certificate;

(2) a certificate of training from a training provider approved by or acceptable to the department indicating successful completion within the past 12 months of the approved course for abatement contractors and project supervisors or the annual refresher training as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses);

(3) a physician's statement of the required physical examination done within the past year as described in §295.42(e)(2) of this title (relating to Registration: Asbestos Abatement Workers) and submitted on the Texas Department of Health (department's) "Physician's Written Statement" form only;

(4) a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). Persons submitting out-of-state training certificates with their applications may obtain the necessary photo-identification when attending the mandatory course on Texas asbestos rules, as required in accordance with §295.64(h) of this title;

(5) a current one-inch by one-inch photograph of the face. The photograph submitted to the department for licensing purposes must have a white background; and

(6) proof of successfully passing the department examination for asbestos abatement contractors and project supervisors.

(e) **Responsibilities.** To verify these sections are complied with, it is required that the project manager be on the project site when abatement activities are being performed. Those responsibilities and duties that shall be assumed by the asbestos project manager include observance and monitoring of compliance with:

(1) licensing standards of operation, as described in §295.58 of this title (relating to Operations: General Requirements);

(2) standards of operation including EPA and OSHA regulations adopted by reference in §295.33 of this title (relating to Adoption by Reference of Federal Standards);

(3) additional work practices, as described in §295.60 of this title (relating to Operations: Abatement Practices and Procedures);

(4) standards covering maintenance of records at both the department central office and work site locations, as described in §295.62 of this title (relating to Operations: Recordkeeping);

(5) standards and practices for operations and maintenance activities, according to §295.59 of this title (relating to Operations: Operations and Maintenance (O&M) Activities); and

(6) assisting department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.68 of this title (relating to Compliance: Inspections and Investigations).

§295.50 LICENSURE: ASBESTOS INSPECTOR

(a) **Licensing.** An individual must be licensed as an asbestos inspector to conduct asbestos surveys in public buildings. To perform surveys, an asbestos inspector must be employed by a licensed asbestos consultant agency or licensed asbestos management planner agency. The scope of duties include the collection of bulk samples of suspected asbestos-containing building material (ACBM); determining the location and condition of ACBM and suspect ACBM in a public building; and documenting inspection results. This license is not required for a licensed management planner; however, the management planner must provide documentation of completion of the inspectors course or refresher when renewing a management planner license.

(b) **Fee.** The fee for a two-year license term is \$130.

(c) **Applications and renewals.** Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(d) **Qualifications.** To qualify for a license, an applicant must provide:

(1) a high school diploma or GED certificate;

(2) a certificate of training from a training provider approved by or acceptable to the department indicating successful completion of approved three-day training course for asbestos inspectors or the annual refresher training as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses);

(3) a physician's statement of the required physical examination done within the past year as described in §295.42(e)(2) of this title (relating to Registration: Asbestos Abatement Workers) and submitted on the department's "Physician's Written Statement" form only;

(4) proof of work experience includes participation in at least five asbestos surveys performed under the direct supervision of a licensed management planner, licensed asbestos inspector, or licensed asbestos consultant;

(5) a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). Persons submitting out-of-state training certificates with their applications may obtain the necessary photo-identification when attending the mandatory course on Texas asbestos rules, as required in accordance with §295.64(h) of this title;

(6) a current one-inch by one-inch photograph of the face. The photograph submitted to the department for licensing purposes must have a white background; and

(7) proof of successfully passing the department examination for asbestos inspector, if required.

(e) **Responsibilities.** The asbestos inspector shall:

(1) comply with standards of operation, as described in §295.58 of this title (relating to Operations: General Requirements);

(2) comply with guidelines for sampling schemes as presented in training course materials, or as required by consultant or management planner; and

(3) cooperate with department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.68 of this title (relating to Compliance: Inspections and Investigations).

(f) **Signature.** All asbestos building surveys or inspections must be signed by the licensed inspectors performing the inspections and the consultant or management planner.

§295.51 LICENSURE: ASBESTOS MANAGEMENT PLANNER

(a) **Licensing.** A person must be licensed under these sections to develop an asbestos management plan, which shall include a written schedule and procedures to protect occupants from asbestos health hazards in a public building. A company, employing an individual management planner, cannot hire an inspector nor another management planner without becoming an asbestos management planner agency. A licensed management planner is also a licensed inspector and shall fulfill all requirements for the inspector license as listed in §295.50 of this title (relating to Licensure: Asbestos Inspector) in addition to the requirements for a management planner license. Only the fee for the management planner license will be charged to the applicant.

(b) **Scope.** In addition to the development of management plans, a licensed management planner is licensed to perform surveys and assess the condition of asbestos-containing building material (ACBM), as provided in §295.50 of this title (relating to Licensure: Asbestos Inspectors).

(c) **Fee.** The fee for a two-year license term is \$260.

(d) **Applications and renewals.** Applications and renewals shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(e) **Qualifications.** To qualify for a license as an asbestos management planner, an applicant must demonstrate in a manner acceptable to the Texas Department of Health (department) that he or she meets the following applicable qualifications. The applicant must:

(1) have completed an Environmental Protection Agency (EPA) or state-approved inspector training course and the management planner course of instruction within the past 12 months, or has remained certified by completing annual refresher training for management planners and inspectors, as specified in §295.64 of this title (relating to Training: Required Asbestos Training Courses);

(2) have an associate's degree from an accredited college or university or successfully complete a minimum of 60 credit hours from an accredited college or university;

(3) have participated in the preparation of at least five management plans, under the direction of a licensed management planner or licensed asbestos consultant;

(4) provide a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). Persons submitting out-of-state training certificates with their applications may obtain the necessary photo-identification when attending the mandatory course on Texas asbestos rules, as required, in accordance with §295.64(h) of this title (relating to Training: Required Asbestos Training Courses);

(5) provide a current one-inch by one-inch photograph of the face. The photograph submitted to the department for licensing purposes must have a white background;

(6) provide proof of successfully passing the department examination for an individual management planner, if required;

(7) if the applicant is an asbestos management planner working for hire, provide proof of professional liability insurance coverage in the amount of \$1 million for errors and omissions, or be covered under an employer's policy as required by §295.40 of this title (relating to Licensing and Registration: Insurance Requirements); and

(8) a physician's statement of the required physical examination done within the past year as described in §295.42(e)(2) of this title (relating to Registration: Asbestos Abatement Workers) and submitted on the department "Physician's Written Statement" form only.

(f) **Responsibilities.** The asbestos management planner shall be responsible for:

- (1) the interpretation of the field notes and report of an asbestos building survey;
 - (2) the production of drawings which show the locations of asbestos materials, together with notes as to the extent and the condition of this ACBM;
 - (3) writing an asbestos report which includes information from paragraph (2) of this subsection together with a proposed schedule of actions to be taken to manage and control asbestos in the subject building; and
 - (4) advising clients about options for operations and maintenance or asbestos abatement.
- (g) **Signature.** All asbestos management plans must be signed by the licensed asbestos management planner or the licensed individual consultant preparing the plan.

§295.52 LICENSURE: AIR MONITORING TECHNICIAN

(a) **Licensing.** An air monitoring technician (AMT) must be licensed to perform air monitoring services for an asbestos abatement project or related activity in a public building. An air monitoring technician may obtain baseline, area, personal, and clearance samples. For purposes of asbestos abatement activities, a licensed air monitoring technician shall be an employee of an asbestos laboratory or an asbestos consultant agency when taking area or clearance samples, or an employee of or under contract to an asbestos abatement or O&M contractor, when taking personal samples.

(b) **Authority of air monitoring technicians.** Air monitoring technicians may obtain baseline, area, personal and clearance samples, if qualified in accordance with subsection (e) of this section, and may perform the analysis of airborne fibers in the field if employed by a licensed asbestos laboratory. An AMT employed by an abatement or O&M contractor is limited to taking personal samples for compliance with Occupational Safety and Health Administration (OSHA) regulations 29 CFR §1926.1101, which must be sent to a licensed laboratory for analysis.

(c) **Fee.** The fee for a two-year license term is \$110.

(d) **Applications and renewals.** Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(e) **Qualifications.** An applicant, in order to qualify for an air monitoring technician license, shall submit the following:

- (1) a high school diploma or GED certificate;
- (2) a certificate of training indicating successful completion within the past 12 months of the approved training course for air monitoring technicians or the current annual refresher training as described in §295.64(g) of this title (relating to Training: Required Asbestos Training Courses), the initial course is not required of certified industrial hygienists; however, the refresher is required for all subsequent license renewals;
- (3) a physician's statement of the required physical examination done within the past year as described in §295.42(e)(2) of this title (relating to Registration: Asbestos Abatement Workers) and submitted on the Texas Department of Health (department) "Physician's Written Statement" form only;
- (4) a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). Persons submitting out-of-state training certificates with their applications may obtain the necessary photo-identification when attending the mandatory course on Texas asbestos rules, as required, in accordance with §295.64(h) of this title (relating to Training: Required Asbestos Training Courses);
- (5) a current one-inch by one-inch photograph of the face. The photograph submitted to the department for licensing purposes must have a white background;

(6) proof of successfully passing the department examination for air monitoring technician, if required; and

(7) proof of performing air monitoring as an apprentice for 30 days of work under the direct supervision of a licensed air monitor technician working for a licensed laboratory or contractor or a licensed consultant.

(f) **Responsibilities.** The air monitoring technician shall:

(1) collect air samples as specified by appropriate sampling procedures;

(2) collect air samples in the number, location, and frequency necessary to adequately reflect airborne levels of fibers in compliance with these regulations;

(3) use appropriate sampling techniques during area clearance sampling; and

(4) conduct air monitoring duties in an impartial, unbiased manner, and report monitoring results accurately.

(g) **Limitations.** Only a laboratory technician may perform the analysis of airborne fibers in the field in accordance with §295.54(e)(3) of this title (relating to Licensure: Asbestos Laboratory) and must also be employed by a licensed asbestos laboratory.

§295.53 LICENSURE: ASBESTOS MANAGEMENT PLANNER AGENCY

(a) **Licensing.** A company, employing an individual management planner and one or more additional management planners or inspectors must be licensed as an asbestos management planner agency. An applicant desiring to be an asbestos management planner agency shall designate one or more individuals licensed as asbestos management planners as their responsible persons, who shall have responsibility for the asbestos activity.

(b) **Scope.** The agency may perform all responsibilities allowed an individual management planner and may also perform surveys if the appropriate individuals are licensed to do so.

(c) **Authorization and conditions.** A licensed management planner agency is specifically authorized to employ asbestos management planners and asbestos inspectors who are currently licensed under these sections to assist in the conduct and fulfillment of the agency's asbestos management planning activity, as necessary. As a condition of licensure, an asbestos management planner agency must comply with the following:

(1) any office, established within the state, that conducts asbestos management planning activities must have at least one licensed asbestos management planner in residence who is responsible for such activities. Offices that do not conduct asbestos management planning activities and do not advertise such services are exempt from this requirement;

(2) notify the department in writing of any additions or deletions of responsible individual asbestos management planners within 10 days of such occurrences;

(3) refrain entirely from asbestos management planning activity at any office during any period without the active employment of at least one responsible individual licensed as an asbestos management planner at that location; and

(4) refrain entirely from creating a conflict of interest by not performing as an asbestos abatement contractor doing asbestos abatement or operations and maintenance activities and acting as a management planner preparing the survey or management plans for the same public building project.

(d) **Fee.** The fee for a two-year license term is \$430.

(e) **Applications and renewals.** Applications and renewals shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(f) **Qualification for licensing.** Applicants for licensing as an asbestos management planner agency shall submit the following:

(1) professional liability insurance coverage for errors and omissions in the amount of \$1 million to cover the asbestos management planners and inspectors in its employ; and

(2) if the applicant is situated outside the State of Texas, a certificate of authority issued by the Texas Secretary of State, authorizing the corporation to do business in this state.

(g) **Responsibilities.** A licensed asbestos management planner agency shall be responsible for:

(1) employing generally accepted principles and practices in performing asbestos surveys and producing asbestos management plans;

(2) complying with standards of operation, as described in §295.58 of this title (relating to Operations: General Requirements); and

(3) complying with the responsibilities for the individual licenses as listed in §295.50 of this title (relating to Licensure: Asbestos Inspector) and §295.51 of this title (relating to Licensure: Individual Asbestos Management Planner).

§295.54 LICENSURE: ASBESTOS LABORATORY

(a) **Licensing requirement.** A person must be licensed in compliance with the provisions of this section to provide polarized-light microscopy (PLM), phase contrast microscopy (PCM), or transmission electron microscopy (TEM) analysis of bulk or air samples collected in public buildings. Branch offices, which perform laboratory analysis, must fulfill the same equipment and operational standards as the main office which has been licensed, and must be separately licensed and accredited in accordance with subsection (d) of this section for the type of analysis they will be performing. The license may not be transferred to another company which has bought the licensed laboratory. A new license must be applied for within 60 days of change of ownership. Laboratories which change their name must notify the department within 60 days of the change, send a processing fee of \$20 and a name change application. An applicant desiring to be an asbestos laboratory shall designate one or more individuals as their responsible persons, who shall have responsibility for the asbestos activity.

(b) **Fee.** The fee for a two-year license term is \$430.

(c) **Applications and renewals.** Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registrations: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(d) **Laboratory accreditation and proficiency.** To be eligible for licensure, applicants must submit evidences of accreditation or proficiency of at least one of the following:

(1) accreditation by the National Voluntary Laboratory Accreditation Program (NVLAP) for bulk analysis by polarized-light microscopy;

(2) accreditation by the NVLAP for analysis of airborne asbestos by transmission electron microscopy;

(3) accreditation as an industrial hygiene laboratory by the American Industrial Hygiene Association (AIHA) and participation in the Proficiency Analytical Testing (PAT) program for analysis of airborne fibers by phase-contrast microscopy (PCM);

(4) proficiency according to the standards of the AIHA PAT Program, which includes quarterly proficiency testing for airborne fibers by PCM and a quality assurance/quality control program as required by the NIOSH method 7400, issue 2, August 1994; or

(5) accreditation of the individual laboratory analysts through the AIHA Asbestos Analyst Registry (AAR) and a quality assurance/quality control program as required by the NIOSH method 7400, issue 2, August 1994.

(e) **Limitations.** Limits which are placed on the type of services that an asbestos laboratory can perform are as follows.

(1) A laboratory may analyze bulk samples only if so accredited by NVLAP.

(2) A laboratory may analyze samples by transmission electron microscopy (TEM) only if accredited by NVLAP.

(3) A laboratory enrolled in the AIHA PAT program may perform phase-contrast microscopy analysis under controlled laboratory conditions or under field conditions, if quality-control analysis is performed on at least 10% of the samples analyzed. Records must be kept in the laboratory indicating which samples were used to meet this 10% quality-control analysis. All phase-contrast analysis shall be performed by an analyst who has received National Institute for Occupational Safety and Health (NIOSH) 582 or NIOSH 582 equivalent training. The laboratory must maintain individual records for each analyst as required by NIOSH 7400 to document the individual analyst's coefficient of variation. These records must be available on site for review by the department.

(f) **Qualifications.** Applicants for licensing as an asbestos laboratory shall submit as applicable:

(1) evidence of laboratory accreditation and most recently available results of PAT rounds for PCM and/or most recently available results of NVLAP sponsored proficiency tests for TEM and/or PLM in accordance with subsection (d) of this section;

(2) if the applicant is situated outside the State of Texas, a certificate of authority issued by the Texas Secretary of State, authorizing the corporation to do business in the state; and

(3) evidence of professional liability insurance for errors and omissions in the amount of at least \$1 million when doing work for hire as required by §295.40 of this title (relating to Licensing and Registration: Insurance Requirements).

§295.55 LICENSURE: ASBESTOS TRAINING PROVIDER

(a) **Licensing requirement.** A person must be licensed as an asbestos training provider in accordance with these sections to offer and to conduct asbestos training for fulfillment of specific training requirements that are prerequisite to licensing or registration by the Texas Department of Health (department).

(b) **Fee.** The fee for a two-year license term is \$1,070.

(c) **Applications and renewals.** Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registrations: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(d) **Qualification.** To qualify for a license, an applicant must demonstrate to the department that they meet the applicable requirements. Documentation required of applicants for licensing as asbestos training providers is as follows.

(1) **Organization.** There shall be a clear written description of the organization, including the address of its central office and the names and addresses of its principals, and a statement of intent concerning the courses and services to be offered. If the organization is affiliated with or the subsidiary of another, a complete description of this arrangement is also required. The organization shall designate a staff member as director in charge of asbestos training.

(2) **Equipment.** There shall be a description of the items of instructional equipment and accessories available for the conduct of courses. The provider shall furnish adequate equipment in good working order for each training session.

(3) **Advertising.** Printed bulletins, brochures, or other promotional literature must specify course prerequisites for admission, the content of the course, and requirements for successful completion.

(4) **Refund and cancellation policy.** Each training provider must have a written policy concerning refunds and cancellations in both Spanish and English that is made available to applicants prior to acceptance of fees for enrollment, and shall include the procedure for notification by the trainee desiring to cancel.

(5) Information requirements. The training provider shall discuss and inform each prospective trainee of the requirements for the category of license being sought, and of necessary qualifications he/she must have. The training provider shall refund any course-related fees a prospective trainee may have incurred due to a failure to provide this information to the student. Necessary qualifications include the following.

(A) Individuals not eligible for employment in the United States will not be licensed.

(B) Eligibility for refresher training courses is dependent on the effective date of the initial training.

(C) Certain asbestos training courses require the successful completion of other training courses as a condition for admission.

(6) Maximum trainee-instructor ratio. The maximum number of trainees in a lecture session shall be 40. Hands-on training groups shall have no more than 15 trainees and must be so arranged that each trainee is given individual attention.

(7) Attendance and course completion standards. Attendance and course completion standards are as follows.

(A) Attendance records in asbestos training courses shall be taken at the beginning of each four-hour segment of course instruction. Control of exits and entrances shall be maintained. A master attendance record shall be maintained for each session.

(B) A trainee is not eligible to complete a given course if more than 10% of the session has been missed, and the qualifying exam shall not be offered in such instances. The 10% includes being absent from the course at times other than allotted break periods. The records of that session shall be marked by the instructor to this effect.

(C) A training provider must certify each examination taken by a trainee as to whether a minimum score of 70% correctly answered questions was achieved. The training provider shall have a written policy concerning the administration of written examinations including allowing only one written re-examination per student for each course. The use of the same questions for both the original and re-examination is not allowed. Oral examinations are not allowed although the written examination questions and possible answers may be read to a student who must mark his answer on an answer sheet. If a student fails the written re-examination the student will have to repeat the course and pass the new examination.

(8) Training facilities. Training facilities used will be those commonly used and accepted as classrooms or conference rooms. Classrooms must have restrooms available for the students. Unacceptable classrooms are rooms which by their arrangement or contents would readily distract students, or rooms open to the general public.

(9) Training requirements. A training provider must provide each course as a separate entity, as follows.

(A) Initial training courses shall not be combined with refresher courses.

(B) Courses shall be conducted in only one language and not combined with courses taught in another language, i.e., English or Spanish. All courses shall be taught in English, except the worker course. The worker course may be taught in another language, provided the instructor is fluent in the language, and books, training materials, and examinations are in the same language.

(C) Basic or refresher courses shall be conducted in only one discipline and not be combined with courses of other disciplines, i.e., an abatement worker course and a contractor/supervisor course cannot be taught as a combined course. This prohibition against combined training applies to hands-on training sessions as well as other aspects of the course.

(10) Methods of instruction. Standard methods of instruction are as follows.

(A) At least 50% of the classroom instruction and 100% of the hands-on instruction will be conducted with instructors presenting the material.

(B) Training films and video tapes may be used to enhance understanding, but they may not be used as a substitute for the formal class conducted by a certified instructor or the Model Accreditation Program required hands-on training. Any of these materials must support and convey the understanding of the subject to the student.

(11) Hours of operation. Classes will be conducted during scheduled hours as noted in subsection (e)(2) of this section. More than eight hours of training in a calendar day shall not be authorized.

(12) The applicant must submit the following with the application:

(A) publications listed in §295.65(d)(3) of this title (relating to Training: Approval of Training Courses); and

(B) if the applicant is a resident outside the State of Texas, a certificate of authority issued by the Texas Secretary of State authorizing the corporation to do business in the state.

(e) **Conditions of issuance.** The following conditions and agreements shall apply to issuance of licenses under this section.

(1) There shall be an agreement to send at least one course instructor to any meeting held by the department for the purpose of ensuring quality training courses in asbestos abatement and related topics. There will be no more than two such meetings per year.

(2) Course schedules shall be provided to the department 14 calendar days prior to the start of any course on the schedule. Requests for exceptions to the 14 calendar day rule shall be submitted in writing to the Asbestos Programs Branch Training Coordinator along with a written justification why the notice could not be submitted earlier. Approval for shorter notice will be granted, if appropriate, in writing. The minimum time for course notification, when an exception is granted, is 72 hours prior to the start of the course. If there is a cancellation of a scheduled course, the department shall be notified in writing at least 24 hours in advance. Facsimiles of cancellation notices will be accepted, but the training provider must follow-up with an original cancellation notice with the signature of an authorized representative of the training provider. In the event the instructor cannot provide written notice of cancellation at least 24 hours in advance, the instructor shall notify the department not later than two hours after the scheduled class start time and provide a written explanation of the cancellation.

(3) There shall be a description and an example of numbered certificates issued to students who attend the course and pass the examination. The uniquely numbered certificate must be in conformance with 40 CFR, Part 763, Subpart E, Appendix C, and must show the school's name, address, telephone number, name of accredited person, discipline of the training course completed, name of instructor, dates of the training course, expiration date of one year after the date upon which the person successfully completed the course or examination, as applicable, and a statement that the student passed the examination and the date it was taken. The certificate must include the signature of the instructor and the signature of the course director, principal officer, owner, or CEO, and a statement that the person receiving the certificate has completed the requisite training for asbestos accreditation under TSCA Title II. Refresher certificates require all of the above except the examination date.

(4) Trainers may present other courses or seminars relevant to asbestos activities including, but not limited to, courses on respirator training and compliance, airborne sample analysis (NIOSH 582 or equivalent), sample analysis by polarized light microscopy, construction safety (29 CFR Part 1926), hazard communications (Texas or OSHA), hazardous materials response worker (29 CFR §1910.120), local education agency-asbestos coordinator, two-hour and 16-hour AHERA awareness course or advanced hands-on for worker and supervisor, or floor tile removal. Such courses will not be accredited by the department. Any federal accreditation requirements will be complied with by the provider. Such courses and seminars may not be used for refresher training credit.

(f) **Approval of course instructors and guest speakers.** Course instruction must be provided by EPA or State-approved instructors. The training provider shall submit a resume of each instructor and guest speaker who will participate in the conduct of any asbestos training course to be approved by the department. Prior approval of instructors and guest speakers is required. The training provider will notify the department of additions and deletions to their instructor roster within 15 working days of actual occurrence.

(1) Instructor qualifications. Training instructors shall be qualified in any one of the categories in subparagraphs (A) - (D) of this paragraph. Training qualifications must be fully documented, and verifiable by the department. Instructors shall have current accreditation training from an Environmental Protection Agency (EPA) approved course for the discipline in which

the instructor desires to teach. Instructors shall have current training from a Texas Department of Health (department) approved course for Air Monitor Technician (AMT) to teach the AMT course. The categories include:

(A) at least two years of actual hands-on experience in asbestos-related activities (abatement or consulting) with current training accreditation from Environmental Protection Agency (EPA) asbestos courses for the subject which the instructor will teach, and a high school diploma and completion of at least one teacher education course in vocational or industrial teaching;

(B) graduation from an accredited college or university with a bachelor's degree in natural or physical sciences or a related field, with one year's hands-on experience in asbestos-related activities (abatement or consulting), and current accreditation in at least one EPA asbestos course;

(C) at least three years teaching experience in Hazmat or HazWoper or EPA approved asbestos courses, and completion of one or more teacher education courses in vocational or industrial teaching from an accredited junior college or university; or

(D) a vocational teacher with certification from the Texas Education Agency with one year's hands-on experience in asbestos related activities (abatement or consulting) and current accreditation in at least one EPA asbestos course.

(2) Professional references. Each instructor application shall include three professional references attesting to teaching experience and asbestos-related qualifications. No more than one reference will be accepted from an employee of the same company as the applicant. References will be submitted on a form provided by the department which will be completed by the person providing the reference and mailed directly to the department for inclusion with the instructor application.

(3) Guest speaker qualifications. Guest speakers must be qualified on an individual basis of professional expertise for the purpose of teaching their specialty, such as law, medicine, insurance, etc.

(4) Complete applications. The department shall not accept any instructor or guest speaker application until it is complete. The department shall reject any such application that does not contain sufficient references to be fully verifiable.

(5) Responsibilities. The asbestos training provider shall be responsible for:

(A) complying with standards of operation, as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses);

(B) presenting to students all course material as outlined in syllabus and as represented to the department for approval;

(C) providing a teaching environment, training, and testing as specified;

(D) cooperating with department personnel in the discharge of their official duties to conduct inspections and investigations as described in §295.68 of this title (relating to Compliance: Inspections and Investigations); and

(E) taking an aggressive approach in meeting the needs of the student to include providing course review in preparation for the examination and specialized attention to enhance comprehension.

(6) Revocation or suspension of approval. The department may revoke or suspend instructor approval if field site inspections or classroom audits indicate an instructor is not providing training that meets the requirements of the Model Accreditation Plan or these sections. Training course sponsors shall permit department representatives to attend, evaluate, and monitor any training course instructor without charge. The inspection staff is not required to give advance notice of their inspections.

(g) Record keeping Requirements for Training Providers. All records shall be kept in accordance with §295.62(b) of this title (relating to Operations: Record keeping).

§295.56 LICENSURE: ASBESTOS TRANSPORTERS

(a) **Licensing.** A person must be licensed as an asbestos transporter in compliance with these sections to engage in the transport of asbestos removed from a public building. The requirement for licensure does not apply to the removal of flooring materials done in accordance with §295.36 of this title (relating to Licensing and Registration: Exemption; Emergency).

(b) **Fee.** The fee for a two-year license term is \$430.

(c) **Applications and renewals.** Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registrations: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(d) **Qualifications.** To qualify for a transporter license, an applicant must submit the following:

(1) if the applicant is situated outside the State of Texas, a certificate of authority issued by the Texas Secretary of State authorizing the corporation to do business in the state;

(2) pollution liability insurance in the amount of \$1 million as required by §295.40 of this title (relating to Licensing and Registration: Insurance Requirements), when transporting asbestos-containing building material (ACBM) for hire; and

(3) a copy of the emergency response plan in accordance with 29 CFR §1910.120(q)(1).

(e) **Responsibilities.** An asbestos transporter shall:

(1) comply with federal regulations in 49 Code of Federal Regulations (CFR), Parts 100-199 titled "Hazardous Materials Regulations," 40 CFR, Part 61 titled "National Emission Standards for Hazardous Air Pollutants (NESHAP)," specifically the provisions concerning asbestos transport, and, where applicable, 40 CFR, Part 763, Subpart E, Appendix D, titled "Transport and Disposal of Asbestos Waste";

(2) qualify all employees who will be transporting, loading and unloading asbestos, in accordance with 49 CFR Parts 171-177;

(3) train and supply employees who will handle asbestos with personal protective equipment and training for its use, and supervise their compliance;

(4) establish and maintain records of transporting asbestos to disposal sites, and report annually to the department on the quantity transported to each disposal site destination;

(5) comply with department personnel in the discharge of their official duties to conduct inspections and investigations, as set forth in §295.68 of this title (relating to Compliance: Inspections and Investigations);

(6) train employees in compliance with OSHA regulations in 29 CFR, §1910.120(a)(1)(v) or 49 CFR 172 Subpart H, as applicable, in anticipation of possible spills of asbestos;

(7) ensure asbestos-containing waste material is properly labeled; and

(8) in Texas, deliver all asbestos-containing waste material for disposal to a facility from the approved list provided by the Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. If transporting out-of-state, follow the regulations of the receiving state.

§295.57 ACCREDITATION: ASBESTOS ABATEMENT IN COMMERCIAL BUILDINGS

(a) In a federal government owned school building (as defined in 40 CFR §763.83), or a commercial building, unless a person is appropriately accredited as a worker, contractor/supervisor, project designer, or inspector, the person may not engage in:

(1) work, supervision, or design to carry out any of the following activities:

(A) a response action other than a SSSD activity;

(B) a maintenance activity that disturbs friable ACBM other than a SSSD activity; or

(C) a response action for a major fiber release episode.

(2) conducting inspections for asbestos;

(3) project management to observe abatement activities performed by accredited contractors, serving as the commercial building owner's representative to ensure that abatement work is completed according to specification and in compliance with all relevant statutes and regulations.

(b) A person must be accredited in order to perform asbestos related activities in commercial buildings in Texas. Licensed persons meet this requirement since accreditation is a prerequisite to obtaining a license under these regulations.

(c) Accreditation is received by attending and passing the appropriate asbestos course, as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses) offered by an asbestos training provider licensed by the department or one that has been approved by another state, that has the authority from EPA to approve courses, or that has been approved directly by EPA. Evidence of accreditation is shown by possession of an accreditation certificate or accreditation ID card of successful completion of the appropriate asbestos course. This documentation must be at the jobsite where the accredited person is working. All disciplines shall receive refresher training annually for reaccreditation. A person has a 12-month grace period in which to take refresher training once their accreditation certificate has expired. After that grace period, initial training must be completed again to become accredited again.

(d) Work practices and accreditation requirements for asbestos related activities under this section shall be at least as stringent as applicable federal laws and regulations relating to the MAP and 40 CFR Part 61, Subpart M.

§295.58 OPERATIONS: GENERAL REQUIREMENTS FOR PUBLIC BUILDINGS

(a) **Responsibility.** It is the responsibility of owners of public buildings or their designated agents to engage persons licensed under the provisions of these sections to perform any asbestos-related activity.

(b) **Supervision.**

(1) Every asbestos abatement project undertaken by a licensed contractor in a public building shall be supervised by at least one licensed asbestos abatement supervisor.

(2) Abatement supervisors shall remain on the job site and in immediate contact with those under their supervision during all periods of asbestos abatement activity.

(3) During every day of the asbestos abatement activity, from the start date and through the completion date of the project, an abatement supervisor shall be stationed within the containment area at least 25% of the time for the purpose of supervising the abatement work.

(4) Every small-scale, short-duration maintenance or repair activity that involves asbestos-containing material (ACM) in a public building shall be supervised by at least one restricted-license operations and maintenance (O&M) supervisor. Restricted-activity supervisors shall be at the job site during all periods of asbestos disturbance activity.

(5) Abatement contractors or building management licensees may also employ licensed abatement supervisors to supervise small-scale, short-duration operations and maintenance activities.

(6) Supervisors with either restricted or unrestricted licenses may be employed as asbestos abatement workers.

(7) All licensed supervisors are responsible for respirator fit testing, personal protection of the workers, security, and control of access at the job site.

(8) Supervisors licensed under these sections shall require that operations at the asbestos job site cease whenever hazardous or unlawful situations are detected, so as to effect a remedy.

(c) **Employees.** Each employee or agent of any licensee who must intentionally disturb, handle, or otherwise work with asbestos-containing building material (ACBM), or who shall engage in an asbestos abatement project, asbestos O&M activities or other asbestos-related activity shall have an annual physical examination, respirator fit-test, be properly equipped and trained, and be licensed or registered in accordance with these sections.

(d) **Records.** Each licensee shall keep a complete record of each asbestos related activity or operation in public buildings to the extent of his or her participation. Such records shall be kept for 30 years. Each licensee shall also keep a copy of all violations issued against him by the Environmental Protection Agency (EPA), Occupational Safety and Health Administration of the United States Department of Labor (OSHA), or a state agency. All required records shall be made available, upon request, for inspection and review by the department. See §295.62 of this title (relating to Operations: Recordkeeping) for specific requirements.

(e) **Compliance inspections.** Each licensee shall assist and cooperate with all properly identified representatives of the department in the conduct of asbestos inspections or investigations at all reasonable or necessary times, with or without prior notice. Such inspections may be made at proposed, actual, or former sites of asbestos-related activities, or of the premises, records, equipment and personnel of licensees or applicants, or of those who have held active licenses previously. It is a violation to interfere with or delay an inspection or investigation conducted by a department representative. A licensee may not deny entry to a properly identified representative of the department.

(f) **Respiratory protection program.** Each employer licensee shall be responsible for establishing and maintaining a written respiratory protection program, as required by OSHA regulations in 29 Code of Federal Regulations (CFR) §1910.134, as amended. Each employer shall maintain a current copy of the respiratory protection program at all project locations. A copy of 29 CFR §1910.134 is not acceptable as a written respiratory protection program. Respirators shall be properly worn at all times in containment during asbestos abatement activity.

(g) **Individual respirator fit.** The licensee must maintain in safe working condition a sufficient number of respirators of the types and styles approved by the National Institute of Occupational Safety and Health (NIOSH) to meet all anticipated requirements of his/her employees; and any employee whose facial characteristics, hair, mustache, or beard preclude a tight fit of a negative-pressure respirator shall not be allowed to enter the containment of an asbestos operation using this type of respirator.

(h) **Sampling for asbestos.** Building materials that have not been surveyed in accordance with this subsection and are suspect asbestos-containing material shall be treated as asbestos-containing material. At a minimum, three samples from each homogeneous area must be analyzed to rebut the presence of ACBM for abatement or operations and maintenance (O&M) activities, regardless of the protocol used. A survey performed by a licensed asbestos inspector must use accepted standards such as the Asbestos Hazard Emergency Response Act (AHERA) protocol specified in 40 CFR §§763.85-763.88. Only laboratories licensed by the State of Texas may be used to evaluate samples taken from within public buildings in Texas. Building materials that have not been surveyed in accordance with this subsection and are suspect asbestos-containing material shall be treated as containing asbestos.

(1) Composite sample analysis in a public building is not allowed.

(2) Results obtained by counting of asbestos samples supersede and replace the initial PLM analysis results. Results of TEM/gravimetric analysis of asbestos samples supersede and replace PLM and point counting.

(3) Each sample analyzed by visual PLM as greater than one percent asbestos is regarded as ACBM, unless that sample result is rebutted through additional analysis (i.e., point counting).

(i) **Project monitoring.** The asbestos consultant shall specify the protocol for monitoring the project. This will include the duties and responsibilities of the project manager and the air monitoring requirements. Only one cassette may be placed on a pump at a time.

(1) Baseline.

(A) The asbestos consultant shall insure that baseline samples are collected. This requirement shall be made a part of the specifications for an asbestos project. Air samples for analysis by Phase-contrast Microscopy will be collected under normal building conditions for any abatement activity prior to the disturbances of asbestos-containing building material (ACBM) as a part of the activity. A minimum of three samples shall be collected on 0.8 micron mixed cellulose ester (MCE) filters loaded in conducting cassettes with extension cowls. Sampling and analysis will be in accordance with the latest edition of NIOSH 7400 protocol, counting rules A. The minimum sample volume will be 1,250 liters.

(B) These samples may be analyzed or archived at the consultant's discretion. The samples shall be preserved for no less than 60 days following achieving clearance.

(2) Ambient.

(A) Ambient samples will be collected every day of the asbestos abatement activity, from the start date and through the completion date of the project and analyzed in accordance with the latest edition of NIOSH 7400 protocol, counting rules A.

(B) Ambient samples will be collected: inside containment; outside containment but inside the building (if applicable); the negative air unit discharge; immediately outside the entrance to the decontamination facility (representative of the air being drawn into the facility); outside the bag out facility; and any other locations required by the specifications.

(3) Clearance.

(A) All project activities, except O&M, shall be cleared by using aggressive air sampling. Aggressive air sampling is the use of an air blower, such as a leaf blower with the force of air unaltered and operating as it comes from the factory, directed at all surfaces in order to cause loose asbestos fibers to become airborne. The maximum levels of residual fibers shall be as cited in subparagraph (C) of this paragraph.

(B) A visual inspection of the abatement area shall be made upon completion of ACBM removal but before the containment is removed to determine if the project has been properly conducted in accordance with the specifications and with applicable state and federal regulations and confirm that all ACBM has been properly removed, encapsulated, or maintained. A final visual will be performed by the asbestos consultant, or project manager delegated by the asbestos consultant, once the abatement contractor has removed all containment and other materials from the project site.

(C) For all projects, samples may be collected and analyzed by NIOSH 7400 protocol, counting rules A, Phase-contrast Microscopy (PCM) as amended. Clearance samples shall be collected at a rate of at least 0.5 less than 16 liters per minute on 0.8 micron MCE filters in conducting cassettes with extension cowls. Minimum sample volume will be 1,250 liters. Clearance will be achieved if no sample is reported greater than 0.01 f/cc by the analysis report from the licensed laboratory. Asbestos Hazard Emergency Response Act (AHERA) protocol will be used in schools. A licensed asbestos consultant shall design the air monitoring scheme and may deviate from this subsection only if public health is maintained in accordance with all regulations. The asbestos consultant shall, upon request by the department, provide documentation and justification to support deviations and must be able to demonstrate that the design meets the requirements and intent of the applicable regulations.

(D) The visual inspection must be conducted by a properly licensed asbestos consultant. The asbestos consultant may delegate the visual inspection responsibility in writing to a licensed asbestos project manager considered experienced enough to properly perform this duty.

(E) All samples, including clearance samples, may be collected by licensed air monitoring technicians or a licensed consultant. The sample pumps will be monitored during the sampling period by the person collecting the samples, or some other means of control will be established to ensure the integrity of the samples and prevent tampering.

(j) **Posting of documents.** The following documents are required to be posted conspicuously by licensees involved in the project to be visible at the entrance to the regulated area and must not be covered by any other documents:

(1) the asbestos information poster issued by the department; and

(2) copies of any violations issued as evidenced by an order from the federal or state asbestos-regulating authorities within the preceding 12 months from any asbestos project.

(k) **Documents required to be on-site are as follows:**

(1) all current licenses and registrations, and copies of accreditation certificates, current "Physician's Written Statements", and current respirator fit-test records. The department licensed company is responsible for its employees' documents to be on-site;

(2) EPA "Green Book" for O&M work;

(3) appropriate publications as listed in §295.33 of this title (relating to Adoption by Reference of Federal Standards) for the asbestos activity which is being performed;

(4) a copy of the "Recommended Work Practices for the Removal of Resilient Floor Coverings," published by the Resilient Floor Covering Institute, if removing floor coverings using this method.

(l) **Prohibitions.**

(1) Solvents with a flash point of 140 degrees Fahrenheit or below shall not be used.

(2) Disposal of improperly labeled or classified asbestos-containing waste material as defined in 40 CFR Part 61, Subpart M is prohibited.

§295.59 OPERATIONS: OPERATIONS AND MAINTENANCE (O&M) REQUIREMENTS FOR PUBLIC BUILDINGS

(a) **Restrictions.** O&M activities involving asbestos-containing building materials (ACBM) are restricted to small-scale, short-duration activities, according to 40 CFR Part 763, Subpart E, Appendix B, titled, "Work Practices and Engineering Controls for Small-Scale, Short-Durations Operations Maintenance and Repair (O&M) Activities Involving ACM," July 1, 1997, as amended. Asbestos O&M licensees shall not engage in any activity for which the primary purpose is asbestos abatement unless otherwise licensed to perform such activity.

(b) **Work practices.** Work practices shall include the following requirements.

(1) Employers shall be responsible for furnishing and requiring the use of respirators, protective clothing, high-efficiency particulate air filter (HEPA) vacuum machines, glove bags, and other necessary equipment for all who perform O&M activities.

(2) Only licensed persons, responding emergency personnel (police, fire, EMS, etc.), specialists required for assistance as determined by the consultant, or appropriate governmental inspectors are allowed to enter the containment, decontamination, bag-out, and temporary storage areas.

(3) Physical barriers shall be used to limit access to the work area.

(4) A mini-containment shall be constructed for containment of asbestos fibers, or a glove bag technique may be used for removal or repair of ACBM on pipes or ducts as described the references in §295.43(f)(2) of this title (relating to Licensure: Asbestos Operations and Maintenance Contractor (Restricted)).

(5) Asbestos material must be wetted with amended water and remain wet throughout the work operation.

(6) Asbestos exposed as a result of spot repairs shall be suitably enclosed or encapsulated.

(7) HEPA vacuuming or wet cleaning shall be used to decontaminate work areas and equipment until there is no visible debris.

(8) Asbestos shall be double bagged by placing asbestos-containing waste material into bags that meet the dart impact test as specified in §295.60(j)(1) of this title (relating to Operations: Abatement Practices and Procedures for Public Buildings), and shall be disposed of in accordance with §295.60 of this title and 40 CFR Part 61, Subpart M.

(9) Air clearance and visual inspections shall be performed before removing any mini-containment.

(10) The O&M book or manual developed for the building on which O&M is being performed shall be on site during all O&M operations.

§295.60 OPERATIONS: ABATEMENT PRACTICES AND PROCEDURES FOR PUBLIC BUILDINGS

(a) **General provisions.** The following general work practices are minimum requirements for protection of public health, and do not constitute complete or sufficient specifications for an asbestos abatement project. More detailed requirements in plans and specifications for a particular abatement project, or requirements that address the unusual or unique circumstances of a project, may take precedence over the provisions of this section. The specifications written for the abatement project shall also include the required air clearance procedures.

(1) Federal work practices for asbestos abatement are referenced in 40 Code of Federal Regulations (CFR) §61.145, Environmental Protection Agency (EPA) titled "Standard for Demolition and Renovation," as amended.

(2) An asbestos project consultant, who is licensed under §295.47 of this title (relating to Licensure: Individual 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 and are clearly described in the project notification submitted to the Texas Department of Health (department). The burden of proof for establishing equivalent protection rests with the asbestos consultant. Alternative control methods as referred to in 29 CFR §1926.1101(g)(6), such as dry removal or no negative air, shall be reviewed and certified in writing as at least as protective of the public health as the standard method described in this section by a Certified Industrial Hygienist (CIH) or a Professional Engineer (PE) licensed in Texas and shall be approved in writing by the Chief of the Asbestos Programs Branch, Toxic Substances Control Division, prior to the start of abatement. An applicant should allow 30 days from the date of submitting an alternative control method until final department approval or denial is issued.

(3) If asbestos-containing building material (ACBM) is to be removed or encapsulated, it must be within a regulated area.

(4) Only licensed persons, responding emergency personnel (police, fire, EMS, etc.), specialists required for assistance as determined by the consultant, or appropriate governmental inspectors are allowed to enter the containment, decontamination, bag-out, and temporary storage areas.

(b) **Critical barriers.** Regulated areas within which asbestos abatement is to be conducted shall be separated from adjacent areas by impermeable barriers such as plastic sheeting attached securely in place. All openings between containment areas and adjacent areas, including but not limited to windows, doorways, elevator openings, corridor entrances, ventilation openings, drains, ducts, grills, grates, diffusers, and skylights, shall be sealed. All penetrations that could permit air infiltration or air leaks through the barrier shall be sealed, with exceptions of the make-up air provisions and the means of entry and exit.

(c) **Movable objects.** All movable objects shall be removed from the containment area. Cleaning of contaminated items shall be performed if the items are to be salvaged or reused. Otherwise, they shall be properly disposed of as asbestos waste. All non-movable objects that remain in the containment area shall be covered with a minimum of four-mil plastic sheeting, secured in place.

(d) **Floor and wall preparation.** Floor sheeting shall completely cover all floor surfaces and consist of a minimum of two layers of sheeting with at least a dart impact of 270 grams and tear resistance of machine direction (M.D.) 512 grams and

transverse direction (T.D.) of 2067 grams or at least six-mil true thickness. Floor sheeting shall extend up sidewalls at least 12 inches and be sized to minimize the number of seams. No seams shall be located at wall-to-floor joints. Sealing of all floor penetrations against water leakage is mandatory. Wall sheeting shall completely cover all wall surfaces and consist of a minimum of two layers of four-mil sheeting. Wall sheeting shall be installed so as to minimize joints and shall extend beyond wall/floor joints at least 12 inches. No seams shall be located at wall-to-wall joints. Where a fire hazard exists, all plastic sheeting will be certified by the Underwriters Laboratory (UL) as being fire retardant. Where feasible, when containment walls which exceed 260 linear feet must be constructed, 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. The window shall be constructed of plexiglass which measures approximately 18 inches by 18 inches. The bottom of the window will be at a reasonable viewing height from the outside floor.

(e) **Decontamination system.** A worker decontamination system in the regulated area shall be used, consisting of a clean room, shower room, and equipment room, each separated from the other and from the containment area by airlocks accessible through doorways. Except for the doorways and the make-up air provisions for the containment, the worker decontamination system shall be sealed against leakage of air. All personnel must exit the containment area through the shower before entering the clean room. No asbestos-contaminated individuals or items shall enter the clean room. The abatement contractor shall ensure that workers and supervisors:

- (1) remove all gross contamination and debris from their protective clothing before leaving the containment area;
- (2) remove their protective clothing in the equipment room and deposit the clothing in impermeable bags or containers labeled in accordance with subsection (j)(1) of this section;
- (3) do not remove their respirators in the equipment room;
- (4) shower prior to entering the clean room; and
- (5) enter the clean room before changing into street clothes.

(f) **Heating, ventilation, and air conditioning system equipment (HVAC).** All HVAC equipment in or passing through the work area shall be shut down, and preventative measures taken to prevent accidental start-ups. All intake and exhaust openings and any seams in system components shall be sealed with at least six-mil sheeting and/or tape. All old filters shall be disposed of as asbestos waste.

(g) **Warning signs.** Danger signs in accordance with 29 CFR §1926.1101, shall be displayed, in both the Spanish and English languages, at all entrances to regulated areas, and on the outside of critical barriers.

(h) **High-efficiency particulate air (HEPA) cleaning.** Except with prior written approval from the department, cleaning procedures shall use wet methods and HEPA vacuuming. A working HEPA vacuum shall remain on-site every day of the asbestos abatement activity, from the start date and through the completion date of the project, and the unit shall have proper HEPA filter(s) in place.

(i) **Containment-area ventilation.** Units with HEPA filtration, and in sufficient number to provide a negative pressure of at least 0.02 inches of water column differential between the containment and outside, as measured by manometric measurements, and a minimum of four containment air changes per hour, shall be operated continuously for the duration of the project. The duration of the asbestos abatement project for the purpose of this requirement shall be considered from the time a regulated area is established through the time acceptable final clearance air-monitoring results are obtained in accordance with §295.58(i)(3) of this title relating to Operations: General Requirements for Public Buildings). These units shall exhaust filtered air to the outside of the building wherever technically feasible.

(j) **Requirements for removal.** The requirements for removing ACBM are that:

- (1) all ACBM shall be adequately wetted prior to removal or other handling; the bags (or other suitable containers) of ACBM shall be marked per the applicable Occupational Safety and Health Administration (OSHA) and the National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations and double bagged by placing asbestos-containing waste material into bags with true 6 mil thickness or may be placed in a bag or fiberboard drum that meets the following

criteria: tear resistance of M.D. 300 grams, T.D. 2,068 grams, and dart impact of 216 grams. Documentation from the manufacturer shall be on site;

(2) in order to double bag the asbestos-contaminated waste material, the inner bag shall be no more than half full, excess air must be evacuated out while in containment. The top of the inner bag must be twisted closed, folded over and sealed with duct tape. The inner bag must be rinsed off or HEPA vacuumed to remove asbestos contamination and placed inside another bag (or in a fiberboard drum). If an outer bag is used, excess air shall be evacuated while in containment and the outer bag twisted closed, the top folded over and sealed with duct tape;

(3) the exterior bag or fiberboard drum shall have warning and generators labels applied as specified in 40 CFR §61.150(a)(1)(iv)-(v). Fiberboard drums shall require the application of a self-adhesive placard identifying the contents as asbestos-containing material. If a fiberboard drum is used, the top shall be sealed. It is a violation of these rules to have a container leak or break due to overfilling. Labeling of asbestos-containing waste material containers must be done prior to removal from the regulated area;

(4) in the event of a bag or fiberboard drum leak, the drum or bag shall be placed into a third bag or wrapped in a minimum of one layer of 6-mil polyethylene plastic and be sealed and labeled as stated in subsections (j)(2) and (j)(3) of this section;

(5) any additional bags or wrapping must be properly identified as being asbestos-contaminated and shall have proper generator labels attached;

(6) labeling of asbestos-containing waste material containers must be done prior to removal from the regulated area;

(7) asbestos-covered components that are going to be removed from the building may either be stripped in place and cleaned (and pass a visual inspection by the consultant), or the ACBM may be adequately wetted and the entire component wrapped in two layers of six-mil plastic or a single layer of plastic with a tear resistance of no less than M.D. 512 grams, T.D. of 2,068 grams, and a dart impact of no less than 297 grams as measured using American Society for Testing and Materials (ASTM) methods D1709, D1922, and D882, labeled and sealed, providing that:

(A) components such as sections of metal lath that cannot be safely lowered to the floor shall be stripped in place;

(B) any component that cannot be lowered or handled without presenting an excessive fiber release or safety hazard shall be stripped in place;

(C) sharp edges of components shall be protected to preclude tearing the plastic wrapping and causing injury; and

(8) ACBM shall be removed in small sections and containerized while wet. At no time shall material be allowed to accumulate on the floor or become dry. Structural components and piping shall be adequately wetted prior to wrapping in plastic sheeting for disposal;

(9) proper temporary storage of asbestos-containing waste material shall be provided (e.g., a roll-off box, dumpster or storage room lined with plastic sheeting). Final disposal of asbestos-containing waste material shall be within 30 days of project completion or when receiving container is full, whichever is sooner.

(k) Requirements for the encapsulation of ACBM.

(1) Prior to encapsulation, loose and hanging ACBM shall be removed.

(2) Filler material applied to gaps in existing material must contain no asbestos, shall adhere well to the substrate, and shall provide an adequate base for the encapsulating agent.

(3) Encapsulant shall be applied using only airless spray equipment with the nozzle pressure and tip size set according to the manufacturer's recommendations.

(4) Encapsulated materials shall be specifically designated by signs, labels, color coding, or some other mechanism to warn individuals who may in the future be required to disturb the material.

(l) Requirements for the enclosure of ACBM.

(1) Acceptable enclosure shall be airtight and of permanent construction, so that the area behind them is inaccessible.

(2) All areas of ACBM shall be wetted if they are to be disturbed during the installation of hangers, brackets, or other portions of the enclosure.

(3) Prior to enclosure, loose and hanging ACBM shall be removed.

(4) Filler material applied to gaps in existing materials shall contain no asbestos, and shall adhere well to the substrate.

(5) Enclosures for ACBM shall be specifically designated by signs, labels, color coding, or some other mechanism to warn individuals who may in the future be required to disturb the material.

(m) Safety requirements. The following safety requirements shall 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) shall be placed within each abatement project containment for every 3,000 square feet, or fraction thereof, of containment area. Each fire extinguisher shall be maintained in a fully charged and operable condition.

(2) Electrical safety. All active electrical service lines within the regulated and containment areas shall be connected through ground-fault circuit interrupter (GFCI) units.

(3) Air monitoring. Air monitoring shall include personal samples according to 40 CFR Part 763, Subpart G or 29 CFR §1926.1101, base line sampling, area sampling, and clearance sampling according to §295.58(i) of this title.

§295.61 OPERATIONS: NOTIFICATIONS

(a) General provision. The Texas Department of Health (department) shall be notified on a form specified by the department of any asbestos abatement activity, renovation or operations and maintenance (O&M) activity affecting asbestos-containing building materials (ACBM), or any demolition in facilities or public buildings. Notification shall be made to the department no less than ten working days (not calendar days) prior to commencement of the activity and shall be submitted on the form specified by the department. It is a requirement that the department notification form be filled out completely and properly. Blanks which do not apply shall be marked N/A. The designation of N/A will not be accepted for references requiring identification of the work site, building description, building owner, abatement and transportation companies, individuals required to be identified on the notification form, or start and completion dates in compliance with 40 CFR §61.145, and this section. National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements apply equally to both the NESHAP and Texas Asbestos Health Protection Act (TAHPA) notification requirements. An original signature is required on each notification form. A copied signature is not acceptable. An invoice for the required fee for notifications will be sent from the department to the building owner.

(1) Public buildings. The department shall be notified of any demolition of a public building whether or not asbestos has been identified. The department shall be notified of other abatement projects, disturbances, or renovations involving the abatement of any amount of asbestos within a public building.

(2) Facilities. For all facilities which are not otherwise subject to this title as public buildings, the department shall be notified of any demolition of a facility, whether or not asbestos has been identified. The department shall be notified of any abatement project, disturbance, or renovation involving the abatement of asbestos within a facility, as required by and in accordance with NESHAP.

(b) Responsibility for Proper Notification. It is the responsibility of the facility owner and/or operator to notify the department under this section. In a public building, this task may be delegated to the owner's agent such as a licensed asbestos abatement contractor or consultant and must be delegated in writing. In a demolition where a licensed abatement

contractor or consultant is not required, the task may be delegated in writing to the demolition contractor or other agent. The notification must be filed on the form specified by the department. The notification shall have all information completed with no blocks left blank. The facility owner, and the agent to whom the task of notification has been delegated, are jointly and severally responsible for the accuracy and timeliness of the notification.

(c) **Timeliness of notification.** Written notifications of asbestos abatement activity or demolition must be hand delivered, express mailed, or postmarked at least 10 working days (not calendar days) before asbestos abatement or any other activity begins that will disturb asbestos. Notifications must be delivered by United States Postal Service, commercial delivery service, or by hand delivery. Telephone facsimile (FAX) is not permitted.

(d) **Start-date change to later date.** When asbestos abatement activity, demolition, renovation or O&M will begin later than the date contained in the notice, the department shall:

(1) be notified (Asbestos Programs Branch or Regional Office) of the changed start date by telephone as soon as possible but prior to the original start date. An amended notification is required in writing immediately following the foregoing notification; and

(2) be provided with a written notice of the new start date as soon as possible before, but no later than the original start date. Delivery of the updated notice by the United States Postal Service, commercial delivery service, or hand delivery is acceptable.

(e) **Start-date change to earlier date.** When asbestos abatement, demolition, renovation, or O&M will begin on a date earlier than the date contained in the notice, the department shall be provided with a written notice of the new start date at least ten working days before the start of work.

(f) **Start-date/stop-date (completion date) requirement.** In no event shall asbestos abatement, demolition, operations and maintenance (O&M), or renovation, as covered by this section, begin or be completed on a date other than the date contained in the written notice except for operation covered under subsection (g) of this section. Amendments to start date changes are to be submitted as required in subsections (d) and (e) of this section. An amendment is required for any stop dates which change by more than one work day for each week (seven calendar day period) for which the project has been scheduled and notification submitted. The building owner, or his/her delegated agent, shall provide schedule changes to the department no less than 24 hours prior to the change or completion of the project. Changes less than 10 days in advance shall be confirmed with the regional office telephonically and followed up in writing to the central office located in Austin, Texas.

(g) **Consolidated notifications of small operations.** Notifications involving a series of small, separate asbestos O&M or abatement operations (each less than 160 square feet or 260 linear feet or 35 cubic feet in size) may be combined by listing the information on a single notification form. Predict the combined additive amount of asbestos to be removed or stripped during a calendar year of January 1 through December 31. If the total amount is less than one asbestos reporting unit per subsection (j) of this section, and the facility is not a public building, a notification is not required. If the facility is a public building, a notification is required for any amount. The department shall be notified at least 10 working days (not calendar days) before the end of the calendar year preceding the year for which notice is being given.

(1) The building owner shall keep records of the individual O&M projects in an O&M manual. An amendment of the annual notification shall be submitted if the amount of asbestos that is abated surpasses that amount of asbestos that was predicted in the original notification by 20%. Fees will be based upon the annual notification and any amendments. The fee that is calculated for the amended notification will only be for the amount of asbestos (number of ARUs) that increased from the original notification. The \$55 administrative fee will not be reassessed.

(2) The department during a routine inspection shall review the O&M manual for the amount of asbestos that has been abated and compare the amount to the amount estimated on the annual notification. If the amount of asbestos that has been abated exceeds the amount estimated in the annual notification by more than 20%, the notification will be improper.

(h) **Provision for emergency.** In the event of emergency renovations made necessary by an unexpected or unplanned asbestos incident, notification will be made as soon as practicable, but not later than the following work day after the occurrence of the incident. Initial notification can be made by telephone, followed by formal notification on the department's notification form. Emergencies shall be documented to the extent that the need for the emergency is evident. An emergency

renovation operation means a renovation operation that was not planned, but results from a sudden, unexpected event. This event, if not immediately attended to, presents a public health or safety hazard, and is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden. This term includes operations necessitated by non-routine failures of equipment. This term does not include immediate renovations resulting solely from a lack of adequate planning for foreseeable asbestos abatement activity.

(i) **Demolition notifications.** The department shall be notified of all demolitions regardless of size. If the facility is being demolished under an order of a state or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse, then the department notification must be delivered as early as possible before, but not later than, the following working day of the commencement of demolition. The judgment that a structure is in danger of imminent collapse or that it is unsafe for anyone to enter shall be made by a professional engineer, registered architect, or government official. Emergencies shall be documented to the extent that the need for the emergency is evident. Public health and safety or unavoidable economic concerns are the qualifications for an emergency rather than expediency.

(j) **Asbestos notification fees.**

(1) **Applicability.** The building owner shall remit to the department a fee that is based upon the amount of asbestos removed.

(2) **Payment.** An invoice for the required fee will be sent to the building owner after the notification has been received by the department. Fee amounts, address, and fund numbers are included on the form. Payment must be remitted in the manner instructed on the invoice. The facility owner is responsible for the payment of the required notification fee. The task may be delegated to an agent but the facility owner is solely responsible for timely and sufficient payment.

(3) **Basis for fees.** The fees shall be based on the total amount of the regulated asbestos-containing material (RACM) reported to be removed as defined in 40 CFR §61.141 or asbestos-containing building material (ACBM) reported to be removed as defined in §295.31(c) of this title (relating to General Provisions) and notified in accordance with §295.34(f) of this title (relating to Asbestos Management in Facilities and Public Buildings), and subsection (a) of this section. The fee shall be calculated at the rate of \$30 per asbestos reporting unit (ARU). The number of ARUs associated with the removal activity is determined by dividing the number of linear feet by 260, the number of square feet by 160, and the number of cubic feet by 35 and adding these individual results. The sum of this addition, minus any fraction, shall then be multiplied by the \$30 rate to calculate the notification fee. The minimum fee shall be a \$55 administration fee per original notification. The maximum fee shall be \$3,210 per notification, except for schools, which shall be \$320 per notification. The fee shall be assessed only for the amount of asbestos to be removed. If no asbestos is removed or if the amount of asbestos removed is less than two ARUs, only the minimum administrative fee shall be assessed. Annual notifications of maintenance activities subject to 40 CFR, Part 61, Subpart M and subsection (g) of this section, are included in the fee requirement. If less than the reported amount will be removed, a notification amendment should be provided to the department no later than five working days following the completion of the project. A refund request must be sent with the amended notification. A new invoice will be sent to the building owner which will reflect a new fee based upon the actual amount of asbestos that was removed. If the fee has been paid, refunds will be made, when appropriate, minus a \$55 administrative fee. Revision of the form will require an additional fee only if the amount of reportable asbestos to be removed is increased.

(4) **Nonpayment of fees.** Failure to pay the required fee after an invoice has been sent shall be considered a violation and may subject the building owner to administrative penalties as listed in §295.70 of this title (relating to Compliance: Administrative Penalty). The building owner and his agent may also be subject to criminal penalties if applicable. Governmental organizations may submit a copy of the interagency transfer document or a statement that a check has been requested and is in processing. Payment must then be received no later than 60 working days following date of the invoice.

§295.62 OPERATIONS: RECORD KEEPING

(a) **Record retention.** Records and documents required by this section shall be retained for a period of 30 years from the date of project completion unless otherwise stated in this section. Such records and documents shall be made available to the department upon request. Persons ceasing to do business, shall notify the Texas Department of Health (department) in writing within 30 days of such event. The department, on receipt of such notification may instruct that the records be surrendered and may specify a repository for such records. The persons shall comply with the department's instructions within 60 days.

(b) **Training providers.** Licensed training providers shall comply with the following minimum record-keeping requirements.

(1) Training course materials. A training provider must retain copies of all instructional materials used in the delivery of the classroom training such as student manuals, instructor notebooks and handouts.

(2) Instructor qualifications. A training provider must retain copies of all instructors' resumes, and the documents approving each instructor issued by the department or EPA. Instructors must be approved by the department before teaching courses for accreditation purposes. A training provider must notify the department in advance whenever it changes course instructors. Records must accurately identify the instructors that taught each particular course for each date that a course is offered together with the course student roster.

(3) Examinations. A training provider must document that each person who receives an accreditation certificate for an initial training course has achieved a passing score on the written examination in accordance with §295.64(j) of this title (relating to Training: Required 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 under this section shall be available for inspection by the department immediately upon conclusion of the course and administration of the examination.

(4) Accreditation certificates. The training providers shall maintain records that document the names of all persons who have been awarded certificates, their certificate numbers, the disciplines for which accreditation was conferred, training and expiration dates, and the training location. The training provider shall maintain the records in a manner that allows verification of the required information by telephone.

(5) Verification of certificate information. Training providers of refresher training courses for accreditation must reasonably confirm that their students possess valid accreditation before granting course admission. Training providers offering the initial management planner training course must reasonably confirm that students have met the prerequisite of possessing valid inspector accreditation at the time of course admission. A valid accreditation certificate to receive refresher training would be one in the same course and not expired over 12 months.

(6) Records retention and access.

(A) The training provider shall maintain all required records for a minimum of three years.

(B) The training provider must allow the department reasonable access to all of the records required by the MAP, and to any other records which may be required by the department for the approval of asbestos training providers or the accreditation of asbestos training courses.

(C) If a training provider ceases to conduct training, the training provider shall notify the department and provide reasonable opportunity for the department to take possession of that provider's asbestos training records.

(c) Asbestos contractors.

(1) Central location. The following records and documents shall be maintained by asbestos contractors at a central location at the principal place of business for a period of 30 years and shall be made available to the department upon request:

(A) records and documents required by 29 CFR §1910, and 29 CFR §1926.1101, as amended;

(B) name, address, and asbestos certificate number of each employee, past and present, including dates of employment, and description of each employee's involvement in each asbestos project while employed by the contractor, including name, address, location, and duration of project;

(C) copies of all regulatory agency correspondence including letters, notices, citations received and notifications made by the building owner or operator;

(D) records and documents required to be maintained under any other applicable federal, state, or local law, regulation, or ordinance;

(E) receipts and documentation of disposal of asbestos waste showing dates, locations, and amounts of asbestos waste disposed including the identification of the source of the asbestos waste and the transporter (company name or driver name, if an employee of the contractor);

(F) copies of laboratory reports and sample analysis documenting workplace and personal exposure levels, including copies of consultant's reports provided to the contractor regarding employee or clearance level monitoring; and

(G) copies of all specifications of contracts awarded for asbestos abatement projects.

(2) On site. Records and documents shall be maintained on-site at the asbestos project location for the duration of the project. Records and documents with personal references shall be made available to all persons employed at the site upon request. All on-site records and documents shall be made available to the department upon request. The records and documents covered by this paragraph include:

(A) all current licenses, registrations and accreditation certificates;

(B) a current copy of the work practice requirements;

(C) a copy of the contract or technical specifications governing the project or if no contract, location and description of operations and description of abatement procedures;

(D) a listing of all employees, by name, social security number and certificate number working on the project;

(E) a listing of each of the contractors, subcontractors and consultants on the project;

(F) a daily sign-in/out log which identified persons by name and the length of time each spent at the site;

(G) records of all on-site air monitoring;

(H) a written respirator program which conforms to requirements of 29 CFR §1910.134(b), as amended;

(I) name and address of the contractor or building owner-operator;

(J) name and address of project supervisor(s);

(K) description of personal safety practices;

(L) name and address of waste disposal site;

(M) dates of participation in the operation;

(N) a roster of registered asbestos workers employed; and

(O) current copies of the "Physician's Written Statement" and respirator fit-tests of individuals who enter a regulated area.

(d) **Analytical services.** Licensed providers of asbestos analytical services shall maintain copies of all records and documents for 30 years, which are required by these sections and copies of all analyses performed, including the sample identification number and analytical results, and make such documents available to the department for inspection upon request. Samples which have been taken as part of an inspection are required to be retained by the analyzing laboratory for ten days after the completion of the project or for 30 days, whichever is longer.

(e) **Consultants.** Licensed consultants shall maintain client files pertaining to surveys, sampling, assessment, and clearance level monitoring and copies of daily construction logs pertaining to contractor work practices and make such documents

available to the department for inspection upon request. Logs for completed projects shall be maintained at the consultant's principal place of business. Logs for current projects shall be kept at the asbestos project work site until final cleanup has been certified.

(f) **Operations and maintenance manual.** The public building owner shall record each individual operations and maintenance activity in the manual, including the date of activity, the persons performing the activity, complete description of the activity, including methods used to prevent the emission of asbestos fibers, and the amount of asbestos removed. An updated total of the amount of asbestos abated shall be kept as a comparison to the amount estimated in the annual consolidated notification. The manual shall be made available to the department upon request.

§295.63 ASBESTOS HAZARD EMERGENCY RESPONSE ACT (AHERA) COMPLIANCE

(a) **Authority.** The Texas Department of Health (department) adopts by reference federal rules 40 CFR, Part 763, Subpart E, regarding AHERA in accordance with §12(c) of the Act.

(b) **Scope.** A Local Education Agency shall assure compliance with AHERA for all schools under its jurisdiction.

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

(d) **Enforcement.** The department will enforce the provisions of the AHERA in accordance with §295.70 of this title (relating to Compliance: Administrative Penalty).

§295.64 TRAINING: REQUIRED ASBESTOS TRAINING COURSES

(a) **General provisions.** Persons working with asbestos must be appropriately accredited to perform as a worker, contractor/supervisor, inspector, management planner, or project designer. In a commercial building, only EPA accreditation is required as specified in this section. In a public building, licensing is also required. Applicants for licensing or renewal must submit evidence of fulfillment of specific training requirements acceptable to the Texas Department of Health (department) under these sections. Course content, hours of instruction, refresher training, etc., are subject to change or modification. At the conclusion of each training course, the instructor shall provide the student a copy of the registration form for the state licensing examination and a copy of the examination schedule. The training provider shall also assist the applicant if needed to complete the application to include listing any special requirements of the student, such as an accommodation for a disability covered by the Americans With Disabilities Act.

(1) The provisions of the Environmental Protection Agency (EPA) Model Accreditation Plan (MAP) reaffirm the principle that each of the accredited training disciplines is distinct from the others, because each reflects a different functional job role. Training courses for all disciplines shall be in accordance with the MAP.

(2) Each initial and refresher training course offered for accreditation must be specific to a single discipline, and not combined with training for any other discipline. This prohibition against combined training also applies to hands-on training sessions.

(3) Training courses shall be conducted by training providers licensed by the department. Persons trained within the confines of this State by unlicensed providers shall not be licensed by the department.

(4) Valid training courses performed in other states, in the past 12 months, by EPA approved training providers shall be accepted by the department provided that applicants have completed an approved course in Texas asbestos law and rules from a training provider licensed by the department.

(5) The one-year period of validity following the effective date of a required asbestos course may be extended by completing the appropriate annual refresher training. Failure to complete annual refresher training within two years of the most recent training shall require that the original course be repeated.

(6) A day of training shall consist of eight hours of classroom instruction, hands-on practical training sessions, and field trips in any suitable combination, including lunch and break periods. A total of 80 minutes in lunch and breaks are authorized

for each training day as determined by the instructor. A trainee is not eligible to complete a given course if more than 10% of the session has been missed. The 10% includes being absent from the course at times other than allotted break periods. No more than eight hours of instruction as described in this paragraph are authorized within a calendar day.

(7) Courses requiring hands-on practical training must be presented in an environment that permits the trainees individually to have actual experience performing tasks associated with the appropriate asbestos activity studied. Hands-on training sessions shall maintain a student to instructor ratio of not more than 15 to one. Demonstrations and audio-visuals shall not substitute for required hands-on training.

(b) **Asbestos project designer training.** The project designer training course shall be at least three days in length. Persons seeking to be licensed as an asbestos consultant or accredited as a project designer under these sections shall complete the approved project design training course as described in this subsection. For work in public buildings, see also the other training required for asbestos consultants in §295.47(f)(3) of this title (relating to Licensure: Individual Consultant). Successful completion of the course shall be demonstrated by achieving a score of at least 70% correct on the written course examination. The course shall adequately address:

- (1) background information on asbestos;
- (2) potential health effects related to asbestos exposure;
- (3) overview of abatement construction projects to include clearance of the project area;
- (4) safety system design specifications, including written sampling rationale for air clearance;
- (5) field trip;
- (6) employee personal protective equipment;
- (7) additional safety hazards;
- (8) fiber aerodynamics and control;
- (9) designing abatement solutions and written project design;
- (10) budgeting/cost estimation;
- (11) writing abatement specifications;
- (12) preparing abatement drawings;
- (13) contract preparation and administration;
- (14) legal/liabilities/defenses;
- (15) replacement;
- (16) role of other consultants;
- (17) occupied buildings;
- (18) how to accomplish a complete visual inspection;
- (19) relevant federal, Texas, and local regulatory requirements; and
- (20) course review.

(c) **Contractor/supervisor training.** The contractor/supervisor course shall consist of at least five days of training. Persons seeking to be licensed as an asbestos abatement contractor, asbestos abatement supervisor, project manager, or operations and maintenance (O&M) (restricted) contractor/supervisor or accredited as an asbestos abatement contractor or supervisor, shall successfully complete an approved contractor/supervisor training course as described in this subsection. The course may be substituted for the asbestos abatement worker course; this substitution also applies to annual refresher training. This training shall include lectures, demonstrations, audio-visuals and hands-on training, including individual respirator fit testing, course review, and a written examination of 100 multiple-choice questions. Each trainee must score at least 70% correct on this written exam to successfully complete the course. The course shall adequately address:

- (1) physical characteristics of asbestos and asbestos-containing building material (ACBM);
- (2) potential health effects related to asbestos exposure;
- (3) employee personal protective equipment;
- (4) state-of-the-art work practices;
- (5) personal hygiene;
- (6) additional safety hazards;
- (7) medical monitoring;
- (8) air monitoring;
- (9) relevant federal, state, and local regulatory requirements;
- (10) establishment of respiratory protection programs and medical surveillance programs;
- (11) 14 hours of hands-on training, including work area preparation, decontamination chamber construction, cleaning and disposal, and respirator fit testing and maintenance;
- (12) insurance and liability issues;
- (13) recordkeeping for asbestos abatement projects;
- (14) supervisory techniques for asbestos abatement activities;
- (15) contract specifications; and
- (16) course review and manual.

(d) **Asbestos abatement worker training.** The worker training course shall consist of at least four days of training. Persons seeking registration or accreditation as asbestos abatement workers shall successfully complete the approved training course, as described in this subsection. Successful completion of the contractor/supervisor training course shall also be acceptable as qualification for asbestos worker applicants. Worker training courses are required to have a classroom student-instructor ratio of not more than 25 to 1 (25:1). The worker training course shall include lectures, demonstrations, hands-on training including individual respirator fit testing, course review, and a written examination consisting of 50 multiple-choice questions. Successful completion of the course shall be demonstrated by achieving a score of at least 70% correct on the written examination. The course shall adequately address:

- (1) physical characteristics of asbestos and ACBM;
- (2) potential health effects related to asbestos exposure;
- (3) employee personal protective equipment;

- (4) state-of-the art work practices;
- (5) personal hygiene;
- (6) additional safety hazards;
- (7) medical monitoring;
- (8) air monitoring;
- (9) relevant federal, state, and local regulatory requirements;
- (10) establishment of respiratory protective programs and medical surveillance programs;
- (11) 14 hours of hands-on training, including work area preparation, decontamination chamber construction, cleaning and disposal, and respirator fit testing and maintenance; and
- (12) course review and manual.

(e) **Asbestos inspectors.** The inspector course shall consist of at least three days of training. Persons seeking to be licensed or accredited as asbestos inspectors shall successfully complete the approved training course as described in this subsection. The inspector training course shall 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 shall be demonstrated by achieving a score of at least 70% correct on the written examination. The course shall adequately address:

- (1) background information of asbestos;
- (2) potential health effects related to asbestos exposure;
- (3) functions/qualifications and role of inspectors;
- (4) legal liabilities and defenses;
- (5) understanding of building systems;
- (6) public/employee/building occupant relations;
- (7) pre-inspection planning, and review of previous survey records;
- (8) inspecting for friable and non-friable ACBM;
- (9) assessing of the condition of friable ACBM;
- (10) bulk sampling/documentation of asbestos;
- (11) air monitoring;
- (12) employee personal protective equipment;
- (13) record keeping and writing of the survey report;
- (14) regulatory review;
- (15) field trip, to include a building walk-through inspection at a suitable location outside of the classroom; and

(16) course review and manual.

(f) **Management planners.** The management planner course shall consist of at least two days of training, and has as a prerequisite, the three-day asbestos inspector course. Persons seeking to be licensed as management planners shall successfully complete the training program for inspectors, as described in subsection (d) of this section, plus the approved asbestos management planner training course, as described in this subsection. The management planner course shall include lectures, demonstration, course review and a written examination consisting of 50 multiple choice questions. Successful completion of the course shall be demonstrated by achieving a score of at least 70% correct on the written examination. The course shall adequately address:

- (1) course overview;
- (2) evaluation and interpretation of survey results;
- (3) hazard assessment;
- (4) legal implications;
- (5) evaluation and selection of control options;
- (6) role of other professionals;
- (7) developing an operations and maintenance (O&M) plan; and
- (8) regulatory review; and
- (9) recordkeeping for the management planner;
- (10) assembling and submitting of a management plan;
- (11) financing abatement actions; and
- (12) course review and manual.

(g) **Air monitoring technician.** Persons seeking to be licensed as air monitoring technicians shall successfully complete an approved three-day training course as described in this subsection. The air-monitoring technician course shall 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 shall be demonstrated by achieving a score of at least 70% correct on the examination. The course shall adequately address the:

- (1) health effects of asbestos;
- (2) asbestos regulations (state and federal);
- (3) asbestos sampling and evaluation methods;
- (4) calculating sampling times;
- (5) time weighted average calculation;
- (6) calibration of air sample pumps;
- (7) sample logs and records;
- (8) compliance testing;

(9) clearance testing; and

(10) clearance procedures.

(h) **Texas law and rules.** Persons seeking an asbestos license or worker registration with the department who submit out-of-state training as a means of qualification must successfully complete an approved three-hour course on Texas asbestos health protection law which shall be conducted by a training sponsor licensed by the department. This requirement shall be completed prior to commencing any licensed asbestos activity within the state.

(i) **Refresher training.** All disciplines shall receive refresher training annually. Satisfactory completion of such training shall be a condition of renewal, and evidence of satisfactory completion shall be included in the annual renewal application. No refresher training can be accredited if the training course for licensure or registration was never completed. Refresher training courses for all disciplines shall be in accordance with the MAP and shall adequately address and include:

(1) federal and Texas regulations;

(2) state-of-the-art developments for the topic specialty of the course; and

(3) review of the training manual and key aspects of the initial training course.

(j) **Examinations.** Each training provider shall administer a closed book written examination to persons seeking accreditation who have completed an initial training course. Demonstration testing may also be included as part of the written examination. A person seeking initial accreditation in a specific discipline must pass the written examination for that discipline in order to receive accreditation. For example, a person seeking accreditation as an abatement project designer must pass the written examination for an abatement project designer. Training providers shall develop written examinations that conform to the following requirements for accreditation under the Toxic Substances Control Act (TSCA) Title II.

§295.65 TRAINING: APPROVAL OF TRAINING COURSES

(a) **General provision.** Asbestos training courses shall be individually approved only for those training providers currently licensed by the Texas Department of Health (department). Applications for each course shall be made separately. The department shall consider prior teaching of the course applied for as a part of the approval process.

(b) **Contingent approval.** Contingent approval of an asbestos training course shall be granted to an applicant after all required information and documentation submitted has been found to meet the requirements set forth in these sections for approval of the course by the department. Once the department grants contingent approval, a training provider license will be issued and its status will be regarded as contingent.

(c) **Full approval.** Full approval of an asbestos training course and the training provider license shall be granted after the department has granted contingent approval, has had the opportunity to conduct an on-site observation and evaluation of the training course, its instructors and its facilities, and has determined that the applicant's asbestos training course meets the requirements set forth in these sections. Training course providers shall permit representatives of the department to attend, evaluate, and monitor any training course without charge. The department compliance inspection staff are not required to give advance notice of their inspections.

(d) **Applications.** An applicant for approval of an asbestos training course must submit an application in writing to the department. Within 30 working days after receiving an application, the department shall acknowledge receipt of the application and notify the applicant of any deficiency in the application. The department will approve or deny the application only upon receipt of the completed application which shall contain the following information:

(1) Initial Training Course Approval. The following minimum information is required for approval of initial training courses:

(A) the name and address of the licensed training provider who will present the course, and the name and phone number of the responsible individual;

(B) the type of course for which approval is being requested, including the length of training in days;

(C) a detailed outline of the course curriculum including the specific topics taught, the amount of time allotted to each topic, the amount and type of hands-on training, the name and qualifications of the individual developing the instruction program for each topic, and copies of all written materials to be distributed to the student;

(D) a description of the type of equipment owned which must be used in all full-length courses for demonstrations and/or "hands-on" exercises, including but not limited to, types of respirators, negative air units, water spray devices, protective clothing, construction materials, high efficiency particulate air (HEPA) vacuum, air purifying panel, glove bags, shower unit, water filter assembly;

(E) documentation, including photos and details of assurance that the number of instructors, the amount of equipment, and the facilities are adequate to provide the students with proper training;

(F) administration of a written multiple choice examination at the conclusion of the course. If copies of the exam are required by the department, measures to protect the confidentiality of the exam as proprietary information will be maintained by the department to the extent authorized by law;

(G) acknowledgement that the minimum grade which must be obtained on the exam for a trainee to successfully complete the course is 70% correct;

(H) a list of any other states that currently approve the training course;

(I) a copy of all course materials (student manuals, instructor notebooks, handouts, and other course related materials);

(J) a detailed statement about the development of the examination used in the course;

(K) names and qualifications of all course instructors. Instructors must have academic and/or field experience in asbestos abatement; and

(L) a description and example of the numbered certificates issued to students who attend the course and pass the examination.

(2) Refresher Training Course Approval. The following minimum information is required for approval of refresher training courses:

(A) the length of training in half-days or days.

(B) the topics covered in the course.

(C) a copy of all course materials (student manuals, instructor notebooks, handouts, and other course related materials).

(D) the names and qualifications of all course instructors. Instructors must have academic and/or field experience in asbestos abatement; and

(E) a description and an example of the numbered certificates issued to students who complete the refresher course and pass the examination, if required.

(3) Withdrawal of Training Course Approval. The following criteria are grounds for suspending or withdrawing approval from accredited training programs under §295.69 of this title (relating to Compliance: Reprimand, Suspension, Revocation). At a minimum, the criteria shall include:

(A) misrepresentation of the extent of a training course's approval by a State or EPA;

(B) failure to submit required information or notifications in a timely manner;

(C) failure to maintain requisite records;

(D) falsification of accreditation records, instructor qualifications, or other accreditation information;

(E) failure to adhere to the training standards and requirements of the EPA MAP or State Accreditation Program;

(F) an approved training course instructor, or other person with supervisory authority over the delivery of training that has been found in violation of other asbestos regulations in a manner that indicates a lack of ability, capacity or fitness to perform training duties and responsibilities. An administrative order under §295.69 of this title or §295.70 of this title (relating to Compliance: Administrative Penalty) constitutes evidence of a failure to comply with relevant statutes or regulations; or

(G) submittal of false information as a part of the self-certification required under Unit V.B. of the revised MAP.

(e) **Re-training (refresher) courses.** For all disciplines except inspectors, management planners, and air monitoring technicians, a state accreditation program shall include a one-day annual refresher training course for reaccreditation. Refresher courses for inspectors shall be a half-day in length. Management planners shall attend the inspector and management planner refresher courses. Consultants shall attend an approved two-day annual refresher training course, or four separate refreshers consisting of project designer, inspector, management planner, and air monitoring technician. The inspector, management planner, and air monitoring refresher courses shall each be four hours in length. For each discipline, the refresher course shall review and include: federal, state and local regulations; state-of-the-art developments; and a review of the key aspects of the initial training course.

(f) **Issuance of certificates.** All training certificates shall bear the name, address, and telephone number of the licensed training facility and the name of the instructor. The training provider shall:

(1) issue certificates that bear the school's name, address, telephone number, name of accredited person, discipline of the training course completed, name of instructor, expiration date of one year after the date upon which the person successfully completed the course or examination, as applicable, and a statement that the student passed the examination and the date it was taken. The certificate must include the signature of the instructor and the signature of the course director, principal officer, owner, or CEO. Refresher certificates require all of the above except the examination date;

(2) issue a wallet-size photo-identification card, including a description of the course completed, the effective date, and the social security number of the trainee;

(3) submit the names, social security numbers (or other identifiers if the student does not wish to provide his/her social security number), one-inch by one-inch photos, taken during the course, and a group photo of the class taken at the end of the course that identifies which students did and did not pass the course, to the department within 10 working days of the completion date of each course on a form provided by the department. Digital or scanned images will be accepted. The group photograph must be no smaller than a standard 3-1/2 inches x 4-1/4 inches print; and

(4) provide student with a current one-inch by one-inch photo attached to a department application for license/registration. The photograph submitted to the department for licensing purposes must have a white background.

(g) **Revocation or suspension of approval.** The department may revoke or suspend approval if field site inspections indicate a training course is not providing training that meets the requirements of the model accreditation plan or these sections. Training course sponsors shall permit department representatives to attend, evaluate, and monitor any training course without charge. The inspection staff may not give advance notice of their inspections.

(h) **Minimum number of instructors.** Each course requiring approval according to the model accreditation plan shall require at least the minimum number of instructors for that course as specified by EPA. Only one instructor is required for courses with five or fewer students. In cases where a second instructor is required, a guest speaker can substitute for one of the required instructors. The person acting as the second instructor shall teach a minimum of two hours. Two instructors are not required for worker courses or refresher courses.

§295.66 COMPLIANCE: DEACCREDITATION

(a) After notice to the accredited person of an opportunity for a hearing in accordance with subsection (c) of this section, the Texas Department of Health (department) may reprimand the accredited person or modify, suspend, suspend on an emergency basis, or revoke accreditation under the Texas Asbestos Health Protection Act.

(b) The department may reprimand any accredited person, or may suspend or revoke an accreditation for:

(1) performing work requiring accreditation at a job site without being in physical possession of initial and current accreditation certificates;

(2) permitting the duplication or use of one's own accreditation certificate by another;

(3) performing work for which accreditation has not been received; or

(4) obtaining accreditation from a training provider that does not have approval to offer training for the particular discipline from either EPA or from a State that has a contractor accreditation plan at least as stringent as the EPA MAP.

(c) The contested-case hearing provisions of the Administrative Procedure Act, Texas Government Code, Chapter 2001 shall apply to any enforcement action proposed to be taken under this section. The formal hearing procedures of the department in Chapter 1 of this title (relating to the Board of Health) shall also apply. The person charged with the violation shall be notified of the alleged violation; the grounds upon which the suspension, revocation, or withdrawal is based; the time period during which the suspension, revocation, or withdrawal is effective, whether permanent or otherwise; the conditions, if any, under which the affected entity may receive accreditation or approval in the future; any additional conditions which the Commissioner may impose; and the opportunity to request a hearing prior to final department action to suspend or revoke accreditation or suspend or withdraw approval.

(d) If an accreditation received under §295.57 of this title (relating to Accreditation: Asbestos Abatement in Commercial Buildings) has been suspended, the person(s) named in the suspension shall not be eligible to reapply for accreditation under this section for one year.

(e) If an accreditation received under §295.57 of this title has been revoked, the person(s) named in the revocation shall not be eligible to reapply for accreditation under these sections for three years.

§295.67 COMPLIANCE: POLICY OF THE TEXAS DEPARTMENT OF HEALTH

The department's policy is to gain compliance with these sections through voluntary efforts by all persons involved in asbestos-related activity in public buildings. Appropriate administrative or legal action will be taken for noncompliance with this chapter. The type of action to be taken is within the discretion of the department.

§295.68 COMPLIANCE: INSPECTIONS AND INVESTIGATIONS

(a) The Texas Department of Health (department) has the right to inspect or investigate the practices of any person involved with asbestos abatement or related activity in a facility, public or commercial building.

(b) Advance notice of inspections or investigations by the department is not required.

(c) A department representative, upon presenting the department identification (ID) card, shall have the right to enter at all reasonable times any area or environment, including but not limited to any containment work area, building, construction site, storage, vehicle, or office area to inspect and investigate for compliance with these sections, to review records, to question any person, or to locate, to identify, and to assess the condition of asbestos and asbestos-containing material.

(d) A department representative in pursuance of his/her official duties is not required to notify or seek permission to conduct inspections or investigations. It is a violation of this chapter for a person to interfere with, deny, or delay an inspection or investigation conducted by a department representative.

(e) Authority and responsibility for the qualifications, health status, and personal protection of department representatives resides with the department by law. A department representative shall not be impeded or refused entry in the course of his official duties by reason of any regulatory or contractual specification.

(f) All persons engaged in asbestos-related activities must have the department-issued ID Card present at the worksite except those persons working in a commercial building which must have their accreditation certificate or card.

§295.69 COMPLIANCE: REPRIMAND, SUSPENSION, REVOCATION, PROBATION

(a) After notice to the licensee or registrant of an opportunity for a hearing in accordance with subsection (e) of this section, the Texas Department of Health (department) may deny or shall reprimand the licensee or registrant or modify, suspend, suspend on an emergency basis, refuse to renew, or revoke a license or registration under the Texas Asbestos Health Protection Act.

(b) If the department suspends a license on an emergency basis, the suspension is effective immediately. The department shall then provide an opportunity for a hearing in accordance with subsection (e) of this section within 20 days after the date of the emergency suspension.

(c) The department may deny or shall reprimand any licensee or registrant, or shall modify, suspend, suspend on an emergency basis, refuse to renew, or revoke a license if the licensee, registrant, or applicant engages in the behavior listed below. If a license or application has been denied, revoked or suspended for the reasons listed below, the licensee/applicant named in the revocation is not eligible to reapply for licensing for the time periods listed. If the licensee or applicant:

(1) has fraudulently or deceptively obtained or attempted to obtain a license, registration, or a contract to perform an asbestos-related activity - ineligible to reapply for three years;

(2) fails at any time to meet the qualifications for a license - ineligible to reapply until qualifications are met;

(3) fails to comply with these rules - ineligible to reapply for three years;

(4) fails to comply with any applicable federal or state standard for licensed asbestos activities - ineligible to reapply for three years;

(5) fails to maintain the records required by a federal agency or by the department for the licensed asbestos activities - ineligible to reapply for one year;

(6) falsifies the records required by a federal agency or by the department for the licensed asbestos activities - ineligible to reapply for three years; or

(7) has been convicted within the past five years of a felony or misdemeanor arising from an asbestos-related activity - ineligible to reapply for three years.

(d) The contested-case hearing provisions of the Administrative Procedure Act, Texas Government Code, Chapter 2001, shall apply to any enforcement action proposed to be taken under this section. The formal hearing procedures of the department in Chapter 1 of this title (relating to the Board of Health) shall also apply.

(e) Probation. The department may place on probation a person whose license or registration is suspended. If a suspension is probated, the department may require the person:

(1) to report regularly to the department on matters that are the basis of the probation;

(2) to limit practice to the areas prescribed by the board; or

(3) to continue or review professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

§295.70 COMPLIANCE: ADMINISTRATIVE PENALTY

(a) If a person violates the Texas Asbestos Health Protection Act (Act), or a rule adopted or order issued under the Act, the Texas Department of Health (department) may assess an administrative penalty.

(b) The penalty shall not exceed \$10,000 a day per violation. Each day a violation continues will be considered a separate violation. The total penalty will be the sum of all individual violation penalties.

(c) In assessing administrative penalties, the department shall consider the:

- (1) history of previous violation(s);
- (2) seriousness of the violation(s);
- (3) hazard to the health and safety of the public; and
- (4) demonstrated good faith, and any other matter which justice may require.

(d) Individual violations may be reduced or enhanced based on the considerations listed in subsection (c) of this section, or any others that justice may require.

(e) A person is subject to double the initial penalty on second finding of violation of any provision of the act or rules. Third and subsequent violations of a provision are subject to five times the initial penalty.

(f) Violations shall be placed in one of the following severity levels.

(1) Critical violation. Severity Level I covers violations that are most significant and have a direct negative impact on public health and safety. This category shall include fraud and misrepresentation. The base penalty for a Level I violation, first occurrence will not exceed \$10,000 per day, per violation. Examples of Level I violations include, but are not limited to:

- (A) failure to establish effective containment during abatement of friable material;
- (B) permitting disposal of friable asbestos-containing building material (ACBM) at uncontrolled sites;
- (C) working without a license or with improper (forged, altered, etc.) license;
- (D) failure to adequately prevent public entry to potentially contaminated areas;
- (E) failure to maintain material in an adequately wet condition;
- (F) submitting a forged or altered training certificate in order to obtain a training provider or other license;
- (G) training providers training without a license or with an improper license;
- (H) training providers providing training certificates to persons who have not attended the required training course as specified by the department and/or the Model Accreditation Plan; and
- (I) failure to submit a notification.

(2) Serious violation. Severity Level II covers violations that are significant and which, if not corrected, could threaten public health and safety. The base penalty for Level II violations on a first occurrence will not exceed \$1,000 per day, per violation. Examples of Level II violations include, but are not limited to:

- (A) working with a lapsed or suspended license;
- (B) submitting an improper notification;

(C) a training provider failing to conduct a training course for the specified time period as specified in §295.64 of this title (relating to Training: Required Asbestos Training Courses);

(D) training with a lapsed training provider license. If this results in a suspension, the organization and its principals will not be allowed to be licensed for a period of one year;

(E) failure of a licensed person to maintain current training or physical; and

(F) failure to pay the required notification fee.

(3) Significant violation. Severity Level III covers violations that are of more than minor significance and, if left uncorrected, could lead to more serious circumstances. The base penalty for Level III violations on first occurrence will not exceed \$100 per day, per violation. Examples of Level III violations include, but are not limited to:

(A) failure to properly complete the notification form;

(B) failure to post required documents listed in §295.58(j) of this title (relating to Operations: General Requirements for Public Buildings);

(C) failure to have worker certificate on a job site;

(D) failure of a training provider to submit information to the department regarding training course schedules or to notify the department of cancellations within the specified time periods;

(E) failure of a training provider to submit course completion information within the specified time period as described in §295.65(f)(3) of this title (relating to Training: Approval of Training Courses);

(F) a training provider exceeding the maximum trainee-instructor ratio; and

(G) failure to pay the required notification fee within 60 days from the date of the invoice.

(g) The person charged with the violation will be given the opportunity for a hearing conducted in accordance with the applicable provisions of the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the department's formal hearing procedures in Chapter 1 of this title (relating to the Board of Health).

(h) The hearing regarding a proposed administrative penalty may be consolidated with another hearing on an administrative penalty.

(i) If the person charged with the violation fails to request a hearing within 30 days following receipt of a notice of violation, the commissioner of health or his/her designee may issue a default order assessing the administrative penalty.

§295.71 NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAP) COMPLIANCE

(a) **Authority.** The Texas Department of Health (department) adopts by reference rules regarding demolition and renovation activities covered under 40 Code of Federal Regulations (CFR), Part 61, Subpart M, §§61.140, 61.141, 61.145, 61.146, 61.148, 61.150, 61.152, and 61.157 (NESHAP) effective February 3, 1994.

(b) **Scope.** An owner or operator of a demolition or renovation activity (as defined in 40 CFR, Part 61, §61.141) shall assure compliance with NESHAP for all covered activities.

(c) **Inspections.** The department may enter any facility to inspect and investigate conditions to determine compliance.

(d) **Disposal.** The department has developed a memorandum of understanding with the Texas Commission on Environmental Quality (TCEQ) (formerly known as the Texas Natural Resource Conservation Commission (TNRCC)) concerning the

inspection of solid waste facilities that receive asbestos waste under §295.72 of this title (relating to Memorandum of Understanding Between Texas Commission on Environmental Quality and the Texas Department of Health for the Regulation of Asbestos).

(e) **Enforcement.** The department will enforce the provisions of the NESHAP in accordance with §295.70 of this title (relating to Compliance: Administrative Penalty).

§295.72 MEMORANDUM OF UNDERSTANDING BETWEEN THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) AND THE TEXAS DEPARTMENT OF HEALTH FOR THE REGULATION OF THE ASBESTOS

(a) The Texas Department of Health (department) adopts by reference a memorandum of understanding (MOU) with the Texas Commission on Environmental Quality (TCEQ) (formerly known as the Texas Natural Resource Conservation Commission (TNRCC)). The memorandum contains the agreement of TCEQ to inspect asbestos disposal sites under its jurisdiction for conformance with 40 Code of Federal Regulations (CFR), Part 61, Subpart M, §61.154, and to provide copies of inspection and enforcement documentation to the department. This effort will support the department in the regulation of emissions related to asbestos demolition and renovation activities per 40 CFR, Part 61, Subpart M.

(b) The MOU is adopted by rule in 30 Texas Administrative Code, Chapter 330, §330.733(a).

(c) The effective date of the MOU, with respect to the department, is the same as the effective date of this section.

§295.73 ASBESTOS ADVISORY COMMITTEE

(a) **The committee.** An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be the Asbestos Advisory Committee (committee).

(2) The committee is established under the Health and Safety Code, §11.016, which allows the Texas Board of Health (board) to establish advisory committees.

(b) **Applicable law.** The committee is subject to the Government Code, Chapter 2110, concerning state agency advisory committees.

(c) **Purpose.** The purpose of the committee is to provide advice to the board in the area of asbestos licensing and compliance.

(d) **Tasks.**

(1) The committee shall advise the board concerning rules relating to asbestos regulation.

(2) The committee shall advise the Texas Department of Health (department) concerning rules, fees, courses, and other topics necessary to administer the Texas Asbestos Health Protection Act.

(3) The committee shall carry out any other tasks given to the committee by the board.

(e) **Review and duration.** By September 1, 2007, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) **Composition.** The committee shall be composed of nine members appointed by the board. The composition of the committee shall include:

(1) three consumer representatives; and

(2) six nonconsumer representatives.

(g) **Terms of office.** The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.

(1) Members shall be appointed for staggered terms so that the terms of a substantial equivalent number of members will expire on August 31st of each odd-numbered year.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) **Officers.** The committee shall select from its members the presiding officer and an assistant presiding officer to begin serving on September 1 of each odd-numbered year.

(1) Each officer shall serve until the next regular election of officers.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will complete the unexpired portion of the term of the office of presiding officer.

(4) If the office of assistant presiding officer becomes vacant, it may be filled by vote of the committee.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) **Meetings.** The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

(4) Each member of the committee shall be informed of a committee meeting at least ten working days before the meeting. Proposed rules shall be sent to the committee at least ten working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) **Attendance.** Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(k) **Staff.** Staff support for the committee shall be provided by the department.

(l) **Procedures.** Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) **Subcommittees.** The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) **Statement by members.**

(1) The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the board, the department or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) A committee member should not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(4) A committee member should not disclose confidential information acquired through his or her committee membership.

(5) A committee member should not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.

(6) A committee member who has a personal or private interest in a matter pending before the committee shall publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(o) **Reports to board.** The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, and anticipated activities of the committee for the next year.

(2) The report shall identify the costs related to the committee's existence, including the cost of department staff time spent in support of the committee's activities and the source of funds used to support the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each September. It shall be signed by the presiding officer and appropriate department staff.

(p) **Reimbursement for expenses.** In accordance with the requirements set forth in the Government Code, Chapter 2110, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.



DEMOLITION / RENOVATION NOTIFICATION FORM INSTRUCTION GUIDE

The Department of State Health Services Demolition/Renovation Notification form combines the requirements of the National Emission Standards for Hazardous Air Pollutants, 40 CFR, Subpart M (NESHAP) and the Texas Asbestos Health Protection Rules (TAHPR). Both of these regulations require that written notification be submitted before beginning renovation projects which include the disturbance of any asbestos-containing building material in a public building or the disturbance of the NESHAP threshold amount of asbestos-containing material in a facility. A notification form is required before the demolition of a building or facility, even when no asbestos is present. This form must be used to fulfill either of these requirements. Please call either 512-834-6610 or 1-800-572-5548 (within Texas), or your local regional office for assistance in completing this form.

This form must be used whether you are notifying in accordance with NESHAP, TAHPR, or both. The notification form must be postmarked at least 10 working days (not calendar days) prior to the project start date (except for emergencies or ordered demolitions). Notifications that do not meet the 10-day requirement or are incomplete are considered to be "improper" and may result in enforcement proceedings. If an item on the form is not applicable to the project in question, you must write "N.A." in that space, which shows that you have considered the item, but it does not apply to your operation.

INSTRUCTIONS

- 1) The contractor's name, address, and office phone number must be provided. The Department of State Health Services (DSHS) Contractor License Number is required if the project falls under TAHPR. The contractor's address must match that which was submitted on the DSHS license application, if the company has more than one office. The site supervisor must be stated and the DSHS Supervisor License Number is only required for public building projects as defined in TAHPR. Two site supervisors may be listed, if there are two work shifts, etc. For a demolition in which the building does not contain asbestos, or in which the non-friable asbestos will not be removed prior to demolition, write "N.A." in the spaces provided for the abatement contractor information.

The trained on-site NESHAP individual and the certification date must be stated for NESHAP projects. The site supervisor and the trained on-site NESHAP individual may be the same person, if qualified. List the individual's name in both spaces. Since the DSHS License satisfies the requirements for NESHAP training, provide the supervisor's name and DSHS License Number and write "N.A." in the spaces for the NESHAP individual and certification date.

The demolition contractor's name, address, and office phone number must be provided for all demolition projects.

An amendment must be submitted if the abatement contractor, the abatement supervisor, or the demolition contractor is changed.

- 2) A DSHS licensed asbestos project consultant is required to design all asbestos response actions in public buildings. A DSHS licensed asbestos project consultant is also required to design all asbestos abatement projects which involve non-friable asbestos-containing building materials in quantities greater than 160 square feet, 260 linear feet, or 35 cubic feet, in accordance with TAHPR. Provide all other information. The consultant's address must match that which was submitted on the DSHS license application, if the company has more than one office. If the project is not in a public building, the general contractor, or any other person who controls the project site, may be listed as the "operator."
- 3) Provide information on the legal owner of the facility. The invoice for the notification fee will be sent to the owner of the building and the billing address for the invoice will be obtained from the information that is provided

in this section. The company's name should be written on the first line. A specific person's name should be written following "Attention..." on the second line. This person will be receiving the notification fee information.

- 4) Provide the name of the building or an identifying description. Example: vacant warehouse. A physical address must be provided (**not a post office box**) and a sufficient description must be provided to locate the site in the event that the address alone is inadequate. The **ZIP CODE** for the building **MUST** be provided. Detailed information must be provided in all spaces, including the age and size of the building or facility. The name of a contact person at the facility **MUST** be provided for inspection purposes, even if the building or facility is vacant. If the building does not have a phone, list the contact person's phone number. Check whether or not the facility is a kindergarten through 12th grade school.
- 5) One type of work must be checked. An asbestos-related activity (asbestos abatement project) is marked as a renovation. A project that includes the removal of load-bearing structural members is marked as a demolition. If the project involves both a renovation and demolition portion check the one which will be occurring last as far as project dates are concerned. An annual consolidated notification can be submitted for a calendar year of January 1 through December 31. The annual consolidated notification will predict all asbestos O&M operations and all small, separate abatement projects that are less than 160 square feet, 260 linear feet or 35 cubic feet. The predicted, additive amount of asbestos to be removed or stripped during the one-year period must be listed in the chart in Section 12.

A phased project classification can be added to the type of work; **it cannot be marked alone**. (The project may be a phased renovation or a phased demolition - the phased box **AND** either the renovation box or demolition box must be checked). A description of the phased project schedule must be sent to the appropriate DSHS or Local Program inspector. The DSHS policy regarding phased projects must be strictly followed, if that box is checked. (A copy of the phased project policy letter can be obtained by calling any DSHS inspector). The scheduled work time must be checked. A description of the work schedule must be provided, if the schedule varies from that listed as the project dates (Section 16 and/or Section 17). Example: If a project is scheduled to last one month, but the contractor will not be working on the weekends, a statement should be included that say "Working Monday - Friday." The statement must be accurate; an inspection will be based upon the provided information.

- 6) The type of building/facility must be checked. **Only one box may be checked**. An example of a NESHAP-Only Facility would be a house that was being demolished as part of a Texas Department of Transportation right-of-way project, or a ship. Check whether the building/facility is occupied. If the building/facility is vacant during the time of the renovation, but will later be re-occupied (not demolished), then indicate that the building/facility is occupied.
- 7) The notification type must be checked. An original must be postmarked 10 working days (Mon. - Fri.) prior to the start date. An amendment is required for any stop date, which changes by more than one working day for each week for which the project has been scheduled. An amendment must be submitted for any changes from the original notification and must be provided to DSHS no less than 24 hours prior to the change, including stop date changes. Please note these changes by circling or highlighting them on the form. Attach a **copy** of the original notification or previous amendment to the back of the amendment (Example: If you are sending in Amendment 2 attach a copy of Amendment 1 behind it. When marking which Amendment you are sending in, **do not** count the Original notification as Amendment 1. The start date can be any day **after** the 10th working day and must be specified in Section 16. A cancellation must be postmarked 24 hours or more prior to the scheduled start date. If asbestos abatement or demolition will begin earlier than scheduled, an amendment must be postmarked at least 10 working days prior to the new start date. If the start date is to be delayed, the amendment must be postmarked 24 hours prior to the scheduled original start date. **The appropriate DSHS Regional or Local Program inspector must be notified by phone of all start or stop date changes.**

The appropriate DSHS Regional or Local Program inspector should be contacted in the event of an emergency. All information regarding an emergency must be provided. Emergency notifications must be postmarked no later than the following working day after the emergency incident.

If the demolition is ordered, then all information in Section 15 must be provided. The appropriate DSHS Regional or Local Program inspector should be notified, by telephone or in person, prior to beginning the ordered demolition. Notifications for ordered demolition must be postmarked as soon as practicable, but no later than the following working day after the demolition. A copy of the demolition order must be submitted with the notification.

- 8) Provide adequate information to demonstrate that appropriate actions have been considered and can be implemented to control asbestos emissions adequately, including conformance with applicable work practice standards. This section must be completed, **even if no asbestos was discovered in the survey**. Example: stop work; contact owner/consultant and DSHS; demarcate area; secure critical barriers.
- 9) An asbestos survey/inspection must be performed prior to any renovation or demolition. A DSHS licensed inspector must perform the inspection if the project is in a public building. Provide the DSHS Inspector License Number, if required. If the survey/inspection was performed in a public building prior to January 1993, or if the project is not in a public building, "N.A." should be placed in the space for the DSHS License Number. The date that the survey was performed must be provided. The analytical method used to detect the presence of asbestos must be checked. TAHPR requires that a DSHS licensed laboratory perform the analysis of samples from public buildings. Provide the DSHS Laboratory Number if the samples are collected from a public building. If there was no suspect material discovered, such as a garage, built of concrete and steel only, indicate no suspect material found by the license number. The **assumption** of asbestos-containing building material (for renovations) in a public building must be made by a DSHS licensed inspector. The "yes" box would be checked, the date that the survey (assessment) was performed would be provided, the DSHS Inspector License Number would be provided, and the "assumed" analytical method box would be checked on the notification form, for an assumption of any asbestos-containing materials that would be abated during a renovation project. When an assumption of asbestos-containing material is done in a non-public building, all of the above must be completed except for the DSHS Inspector and Laboratory License Numbers (not required).
- 10) Include in this section the demolition and renovation techniques to be used and a description of the areas and types of facility components, which will be affected by this work. The specific type of asbestos-containing building material that will be abated must be listed. Example: Vinyl asbestos-containing floor tiles to be removed by wet methods recommended by the Resilient Floor Covering Institute.
- 11) Describe the work practices and engineering controls selected to ensure compliance with the requirements of the regulations, including both the asbestos removal and waste-handling emission control techniques. Example: describe a glove-bag procedure, including the use of a HEPA vacuum. Work practices that vary from the provisions of TAHPR, §295.60 must be clearly described in this section.
- 12) If asbestos is present, the chart must be completed. If no asbestos is present (as revealed by the survey), check the box provided. Category I non-friable ACBM includes floor tile, when removed intact, floor tile mastic, gaskets, and roofing material. Category II non-friable ACBM includes transite siding. Use the appropriate row to designate whether the "Category I or Category II non-friable ACBM to be removed" is located on the interior or exterior of the building. If Category I or II materials are to be sanded, ground, abraded, crumbled, pulverized, reduced to powder, or have the potential to become friable because of the abatement procedures, then list them with RACM. "Category I and II NOT removed" would be listed for demolitions or for enclosure or encapsulation. (Transite does not remain Category II during demolition and must be removed prior to demolition). "RACM NOT removed" would be listed for enclosure or encapsulation or in the event of a demolition under very specific conditions (such as the demolition of a structurally unsound building). RACM Off-Facility Component (material that is not attached to the facility) shall only be measured in cubic feet or cubic

meters. All other material must be measured in linear feet or meters (pipes) or in square feet or meters (surface material). If an abatement will be performed in a portico, or a HVAC system that conditions the inside of a public building, list the amount as “Interior Category I non-friable removed, Interior Category II non-friable removed, or RACM to be removed”, depending on the type of ACBM that will be removed. The amounts listed should always reflect the **TOTAL** amount removed during the project.

- 13) Provide all information for the waste transporter. The TAHPR requires that a DSHS Licensed Transporter transport ACBM from the public building removal site to the waste disposal site. Provide the license number if the project is a public building. If you are performing a demolition without ACBM you still need to list who will be transporting the waste from the project site. If two waste transporters are utilized, one to transport to a holding site and one to transport from the holding site to the waste disposal site, list the first transporter on the notification. However, the waste manifest must contain information for both transporters.
- 14) Provide all information for the waste disposal site. State regulations require that all waste disposal sites be permitted by the Texas Commission on Environmental Quality (TCEQ), including disposal sites located at industrial facilities. Provide the permit number.
- 15) All information must be provided if a building was ordered to be demolished. To qualify for a waiver of the 10-day notification requirement, the building **MUST** be determined to be structurally unsound and in danger of imminent collapse by a qualified person, as defined in the NESHAP rules. Attach a copy of the demolition order to the notification.
- 16) If ACBM is to be removed before a building is to be demolished or renovated, enter the removal dates (start and completion) in this section. Asbestos abatement work includes any activity which will disturb ACBM. The asbestos abatement start date is the date that asbestos will be disturbed. The asbestos abatement activity stop date is the date upon which air monitoring clearance has been achieved. **In no event shall an abatement start or be completed on a date other than the dates entered in this section (see Section 295.61(f)).** Refer to Section 7 for information on notifying of any change in the start and completion dates.
- 17) Enter the scheduled dates for the start and completion of the building demolition. **In no event shall a demolition start or be completed on a date other than the dates entered in this section.** Refer to Section 7 for information on notifying of any changes in the start or completion dates. When the building will not be demolished, but an abatement will be performed, the dates of the total renovation (remodeling) project can be provided in this section. The notification will remain active, if the renovation dates are provided.
- 18) **The notification for the abatement in a public building shall only be signed by the legal owner, his designated legal representative, the DSHS licensed abatement contractor or the DSHS licensed consultant.** The TAHPR allows for this task to be delegated to the DSHS licensed contractor or the DSHS licensed consultant **IN WRITING**, however, the responsibility continues to be shared with the owner. For a NESHAP abatement or demolition, the notification form may be signed by the legal owner or the operator of the site. The name must also be printed and the date and telephone number must be provided. The signature must be an original, a copied signature will not be accepted. Please Sign in blue or red ink to avoid confusion.

MAIL TO:

ENVIRONMENTAL HEALTH NOTIFICATIONS GROUP
DEPARTMENT OF STATE HEALTH SERVICES
PO BOX 143538
AUSTIN, TEXAS 78714-3538

An invoice for the notification fee will be sent to the facility owner (c/o the person identified in Section 3) after the project has been completed. DO NOT submit the fee with the notification. Revised 10/01/2004

FOR OFFICE USE ONLY
 TAHPA
 NESHAP
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 L
 VIOLATION?
 YES
 NO

DEMOLITION / RENOVATION NOTIFICATION FORM



NOTE: CIRCLE ITEMS THAT ARE AMENDED

NOTIFICATION# _____

1) Abatement Contractor: _____ DSHS License Number: **80-0000**
 Address : _____ City: _____ State: **TX** Zip: _____
 Office Phone Number: () - _____ Job Site Phone Number: () - _____
 Site Supervisor: _____ DSHS License Number: **80-0000**
 Site Supervisor: _____ DSHS License Number: **80-0000**
 Trained On-Site NESHAP Individual: _____ Certification Date: _____

Demolition Contractor: _____ Office Phone Number () - _____
 Address: _____ City: _____ State: **TX** Zip: _____

2) Project Consultant or Operator: _____ DSHS License Number: **10-0000**
 Mailing Address: _____
 City: _____ State: **TX** Zip: _____ Office Phone Number () - _____

3) Facility Owner: _____
 Attention: _____
 Mailing Address: _____
 City: _____ State: **TX** Zip: _____ Office Phone Number () - _____

****Note:** The invoice for the notification fee will be sent to the owner of the building at the address listed in this section after the project is completed.

4) Description or Facility Name: _____
 Physical Address : _____ County: _____ City: _____ Zip: _____
 Facility Phone Number () - _____ Facility Contact Person: _____
 Description of Area/Room Number: _____
 Prior Use: _____ Future Use: _____
 Age of Building/Facility: _____ Size: _____ sq ft Number of Floors: _____ School (K - 12): YES NO

5) Type of Work **(CHECK ONLY ONE): Demolition**
 Work will be during: Day Evening Night Phased Project
 Description of work schedule: _____

6) Type of Building **(CHECK ONLY ONE): Public Building** Is Building/Facility Occupied? YES NO

7) Notification Type: **Original (10 working days)**
 If this is an amendment, which amendment number is this?__ **(Enclose copy of original and/or last amendment)**
 If an emergency, who did you talk with at DSHS? _____ Emergency#: _____
 Date and Hour of Emergency (HH/MM/DD/YY): / /
 Description of the sudden, unexpected event and explanation of how the event caused unsafe conditions or would cause
 equipment damage (computers, machinery, etc _____

8) Description of procedures to be followed in the event that unexpected asbestos is found or previously non-friable asbestos material becomes crumbled, pulverized, or reduced to powder: _____

9) Was an Asbestos survey performed? **Yes** Date: _____ DSHS Inspector License No: **00-0000**
 Analytical Method: **PLM** DSHS Laboratory License No: **30-0000**
 (For TAHPA (public building) projects: an assumption must be made by a DSHS Licensed Inspector)

10) Description of planned demolition or renovation work, type of material, and method(s) to be used: _____

11) Description of work practices and engineering controls to be used to prevent emissions of asbestos at the demolition/renovation: _____

12) ALL applicable items in the following table must be completed: **IF NO ASBESTOS PRESENT CHECK HERE**

Asbestos-Containing Building Material Type	Approximate amount of Asbestos		Check unit of measurement					
	Pipes	Surface Area	Ln Ft	Ln M	SQ Ft	SQ M	Cu Ft	Cu M
RACM to be removed			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
RACM NOT removed			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Interior Category I non-friable removed			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Exterior Category I non-friable removed			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Category I non-friable NOT removed			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Interior Category II non-friable removed			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Exterior Category II non-friable removed			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Category II non-friable NOT removed			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
RACM Off-Facility Component							<input type="checkbox"/>	<input type="checkbox"/>

13) Waste Transporter Name: _____ DSHS License Number: **40-0000**
 Address: _____ City: _____ State: **TX** Zip: _____
 Contact Person: _____ Phone Number: () - _____

14) Waste Disposal Site Name: _____
 Address: _____ City: _____ State: **TX** Zip: _____
 Phone Number: () - _____ TCEQ Permit Number: _____

15) For structurally unsound facilities, attach a copy of demolition order and identify Governmental Official below:
 Name: _____ Registration No: _____
 Title: _____
 Date of order (MM/DD/YY) _____ Date order to begin (MM/DD/YY) _____

16) Scheduled Dates of Asbestos Abatement (MM/DD/YY) Start: _____ Complete: _____

17) Scheduled Dates Demolition/Renovation (MM/DD/YY) Start: _____ Complete: _____

**** Note: If the start date on this notification can not be met, the DSHS Regional or Local Program office *Must* be contacted by phone prior to the start date. Failure to do so is a violation in accordance to TAHPA, Section 295.61.**

I hereby certify that all information I have provided is correct, complete, and true to the best of my knowledge. I acknowledge that I am responsible for all aspects of the notification form, including, but not limiting, content and submission dates. The maximum penalty is \$10,000 per day per violation.

 (Signature of Building Owner/ Operator or Delegated Consultant/Contractor) (Printed Name) (Date) () - (Telephone)
 () - (Fax Number)

MAIL TO: ENVIRONMENTAL HEALTH NOTIFICATIONS GROUP
 DEPARTMENT OF STATE HEALTH SERVICES
 PO BOX 143538
 AUSTIN, TX 78714-3538
 PH: 512-834-6612, 1-888-778-9440
Faxes are not accepted