

**Asbestos Hazard
Emergency
Response Act**

The rules adopted under the Asbestos Hazard Emergency Response Act (AHERA) (15 U.S.C. 2641-2656) require a district to identify asbestos-containing material (ACM) in schools by visually inspecting school buildings for such materials, sampling such materials if they are not assumed to be ACM, and having samples analyzed by appropriate techniques; submit management plans; and implement the plans in a timely fashion. Districts are required to use persons who have been accredited to conduct inspections, re-inspections, develop management plans, or perform response actions. The rule includes recordkeeping requirements.

Delegation

Districts may contractually delegate their duties, but they remain responsible for the proper performance of those duties.

40 C.F.R. 763.80(a)

Duties

A district shall:

1. Ensure that the activities of any persons who perform inspections, re-inspections, and periodic surveillance, develop and update management plans, and develop and implement response actions, including operations and maintenance, are carried out in accordance with 40 C.F.R. 763.80–.99 and appendices (Subpart E).
2. Ensure that all custodial and maintenance employees are properly trained as required by Subpart E and other applicable federal and/or state regulations (e.g., the Occupational Safety and Health Administration asbestos standard for construction, the Environmental Protection Agency [EPA] worker protection rule, or applicable state regulations).
3. Ensure that workers and building occupants, or their legal guardians, are informed at least once each school year about inspections, response actions, and post-response action activities, including periodic reinspection and surveillance activities that are planned or in progress.
4. Ensure that short-term workers (e.g., telephone repair workers, utility workers, or exterminators) who may come in contact with asbestos in a school are informed of the locations of asbestos-containing building material (ACBM) and suspected ACBM assumed to be ACM.
5. Ensure that warning labels are posted in accordance with 40 C.F.R. 763.95 (see Warning Labels, below).
6. Ensure that management plans are available for inspection, and notification of such availability has been provided as specified in the management plan under 40 C.F.R. 763.93(g).

7. Designate a person to ensure that requirements under 40 C.F.R. 763.84 are properly implemented and ensure that the designated person receives adequate training to perform duties assigned.
8. Consider whether any conflict of interest may arise from the interrelationship among accredited asbestos personnel and whether that should influence the selection of accredited personnel to perform activities under Subpart E.

40 C.F.R. 763.84

Management Plan

Each district shall develop an asbestos management plan for each school, including all buildings that they lease, own, or otherwise use as school buildings, and submit the plan to the Texas Department of State Health Services (TDSHS). Each district shall maintain and update its management plan to keep it current with ongoing operations and maintenance, periodic surveillance, inspection, reinspection and response action activities. All provisions required to be included in the management plan shall be retained as part of the management plan, as well as any information that has been revised to bring the plan up-to-date. *40 C.F.R. 763.93(a), (d)*

The management plan shall be developed by an accredited management planner and shall include:

1. A list of the name and address of each school building and whether it contains friable ACBM, nonfriable ACBM, and friable and nonfriable suspected ACBM assumed to be ACM.
2. Specific information for each inspection conducted before December 14, 1987.
3. Specific information for each inspection and reinspection conducted under 40 C.F.R. 763.85.
4. The name, address, and telephone number of the person designated under 40 C.F.R. 763.84 to ensure that the duties of the district are carried out, and the course name, and dates and hours of training taken by that person to carry out the duties.
5. The recommendations made to the district regarding response actions, under 40 C.F.R. 763.88(d), the name, signature, state of accreditation of each person making the recommendations, and if applicable, his or her accreditation number.

6. A detailed description of preventive measures and response actions to be taken, including methods to be used, for any friable ACM, the locations where such measures and action will be taken, reasons for selecting the response action or preventive measure, and a schedule for beginning and completing each preventive measure and response action.
7. With respect to the persons who inspected for ACM and who will design or carry out response actions, except for operations and maintenance, a statement regarding the person's accreditation.
8. A detailed description in the form of a blueprint, diagram, or in writing of any ACM or suspected ACM assumed to be ACM that remains in the school once response actions are undertaken pursuant to 40 C.F.R. 763.90. This description shall be updated as response actions are completed.
9. A plan for reinspection under 40 C.F.R. 763.85, a plan for operations and maintenance activities under 40 C.F.R. 763.91, a plan for periodic surveillance under 40 C.F.R. 763.92, a description of the management planner's recommendation regarding additional cleaning under 40 C.F.R. 763.91(c)(2) as part of an operation's maintenance program, and the district's response to that recommendation.
10. A description of steps taken to inform workers and building occupants, or their legal guardians, about inspections, re-inspections, response actions, and post-response action activities, including periodic reinspection and surveillance activities that are planned or in progress.
11. An evaluation of the resources needed to complete response actions successfully and carry out reinspection, operations and maintenance activities, periodic surveillance, and training.
12. With respect to each consultant who contributed to the management plan, the name of the consultant and a statement regarding the person's accreditation.

40 C.F.R. 763.93(e); Occupations Code 1954.101 (License Required for Certain Activities)

Plan Availability

Upon submission of a management plan to TDSHS for review, a district shall keep a copy of the plan in its administrative office. The management plans shall be available, without cost or restriction, for inspection by representatives of EPA and the state, the public, including teachers, other school personnel and their representatives, and parents. The district may charge a reasonable cost to make copies of management plans.

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INSPECTIONS

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Each school shall maintain in its administrative office a complete, updated copy of the management plan for that school. Management plans shall also be available for inspection, without cost or restriction, to workers before work begins in any area of a school building. The school shall make management plans available for inspection to representatives of EPA and the state, the public, including parents, teachers, and other school personnel and their representatives, within five working days after receiving a request for inspection. The school may charge a reasonable cost to make copies of the management plan.

*Notice of
Availability*

Upon submission of its management plan to TDSHS and at least once each school year, a district shall notify in writing parent, teacher, and employee organizations of the availability of the management plans and shall include in the management plan a description of the steps taken to notify such organizations, and a dated copy of the notification.

40 C.F.R. 763.93(g)

Inspections

Each building leased or acquired to be used as a school building shall be inspected in accordance with 40 C.F.R. 763.85(a)(3) and (4) prior to use as a school building. In the event that emergency use of an uninspected building as a school building is necessitated, such buildings shall be inspected within 30 days after commencement of such use. At least once every three years after a management plan is in effect, each district shall conduct a reinspection of all friable and nonfriable known or assumed ACBM in each school building that they lease, own, or otherwise use as a school building. For each inspection and reinspection, the district shall have an accredited inspector provide a written assessment of all friable known or assumed ACBM in the school building. *40 C.F.R. 763.85, .88*

Response Actions

The district shall select and implement in a timely manner the appropriate response actions in 40 C.F.R. 763.90 consistent with the assessment. The response actions selected shall be sufficient to protect human health and the environment. The district may then select, from the response actions that protect human health and the environment, that action which is the least burdensome method. *40 C.F.R. 763.90(a)*

Periodic
Surveillance

At least once every six months after the management plan is in effect, each district shall conduct periodic surveillance in each building that it leases, owns, or otherwise uses as a school building that contains ACBM or is assumed to contain ACBM. *40 C.F.R. 763.92(b)*

SAFETY PROGRAM/RISK MANAGEMENT
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Operations and Maintenance Training	The district shall ensure, prior to the implementation of operations and maintenance provisions of the management plan, that all members of the maintenance and custodial staff who may work in a building that contains ACBM receive awareness training of at least two hours, whether or not they are required to work with ACBM. New custodial and maintenance employees shall be trained within 60 days after commencement of employment. Training shall include information specified in 40 C.F.R. 763.92(a)(1)(i)–(v). The district shall ensure that all members of its maintenance and custodial staff who conduct any activities that will result in the disturbance of ACBM shall receive training described above and 14 hours of additional training that includes information specified in 40 C.F.R. 763.92(a)(2)(i)–(iv). <i>40 C.F.R. 763.92(a)</i>
Warning Labels	The district shall attach a warning label immediately adjacent to any friable and nonfriable ACBM and suspected ACBM assumed to be ACM located in routine maintenance areas at each school building. This shall include friable ACBM that was responded to by a means other than removal and ACBM for which no response action was carried out. All labels shall be prominently displayed in readily visible locations and shall remain posted until the ACBM that is labeled is removed. The warning label shall read, in print which is readily visible because of large size or bright color, as follows: CAUTION: ASBESTOS. HAZARDOUS. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT. <i>40 C.F.R. 763.95</i>
Texas Asbestos Health Protection Act	<p>Texas Asbestos Health Protection rules are found in 25 Administrative Code Chapter 296.</p> <p>The executive commissioner of the Health and Human Services Commission adopts by reference and enforces, except as otherwise provided in this paragraph, 40 C.F.R. Part 763, Subpart E, (relating to Asbestos-Containing Materials in Schools) adopted under AHERA. The executive commissioner does not adopt from Appendix C (relating to Asbestos Model Accreditation Plan), the EPA's recommended project monitor accreditation category in its Asbestos Model Accreditation Plan. <i>25 TAC 296.2</i></p> <p>For purposes of enforcing the federal regulations adopted to implement AHERA, 25 Administrative Code Chapter 296 applies to districts. <i>25 TAC 296.1(b)(4), .21(51)</i></p> <p>A district must ensure compliance with AHERA for all schools under its administrative control. A TDSHS representative may enter any regulated school building to inspect and investigate conditions to determine compliance in accordance with Occupations Code 1954.060, Texas Health and Safety Code 12.018, and 25 Administrative Code 296.271(c) (relating to Inspections and Investigations).</p>

TDSHS may take enforcement action as described in 25 Administrative Code Chapter 296, Subchapter Q (relating to Compliance) for violations of AHERA. *25 TAC 296.4*

Asbestos- Related
Activity

An “asbestos-related activity” means the removal, encapsulation, or enclosure of asbestos; the performance of an asbestos survey; the development of an asbestos management plan or response action; the collection or analysis of an asbestos sample; or the performance of another activity for which a license is required under Occupations Code Chapter 1954 (the Texas Asbestos Health Protection Act). *Occupations Code 1954.002, .101 (License Required for Certain Activities)*

The public building owner or the owner's delegated agent must engage persons licensed as required in 25 Administrative Code Chapter 296 to perform any asbestos-related activity. *25 TAC 296.21(74), .211(a)*

Note: For public building owner responsibilities for asbestos management, see 25 TAC 296.191

Notice of Certain
Activities

A person engaged in removing asbestos from or encapsulating or enclosing asbestos in a public building shall notify TDSHS in writing at least ten days before the date the person begins the removal, encapsulation, or enclosure project according to applicable laws. A person may give the required notice orally if the removal, encapsulation, or enclosure project is of an emergency nature. *Occupations Code 1954.252*

TDSHS must be notified of any demolition of a public building whether or not asbestos has been identified. TDSHS must be notified of any asbestos abatement within a public building. Notification must be submitted as required in 25 Administrative Code 296.151.

Responsibility

It is the responsibility of the public building owner and delegated agent (such as a licensed asbestos abatement contractor, asbestos consultant, or demolition contractor) to submit a notification to TDSHS for each project. When the task to notify is delegated, the building owner's delegation and the name of the delegated agent must be specified on the notification form. The building owner and the delegated agent are responsible for the accuracy and timeliness of the notification and one or both may be found in violation for failing to accurately and timely notify TDSHS of a project.

25 TAC 296.251(a)(1), (b)(1)

Records

Recordkeeping requirements are set out in 40 C.F.R. 763.94.