STATE OF MINNESOTA

MINNESOTA DEPARTMENT OF HEALTH

THE MATTER OF PROPOSED
MINNESOTA RULES RELATING TO
ASBESTOS ABATEMENT,
PARTS 4620.3000 to 4620.3724,
GOVERNING ASBESTOS ABATEMENT
AND PART 4717.7000, SUBPART 1,
ITEM C GOVERNING VARIANCES

STATEMENT OF NEED
AND
REASONABLENESS

Amendments to Minnesota Rules, parts 4620.3000 to 4620.3724 and 4717.7000 are proposed to implement the Asbestos Abatement Act, Minnesota Statutes, sections 326.70 to 326.81. Part 4620.3100, subparts 2, 9, 10, 12, 15, 17, 18, 22, 26, 30; part 4620.3200, subparts 1 and 6; and parts 4620.3400; 4620.3500; 4620.3600; and 4620.3700 are proposed for repeal.

STATUTORY AUTHORITY TO ADOPT RULES

The authority for the commissioner of health to adopt rules regulating asbestos abatement is contained in Minnesota Statutes, sections 326.70 to 326.81 as amended by Laws of Minnesota 1995, chapter 165, sections 12 to 15; Laws of Minnesota 1995, chapter 185, section 6; and Laws of Minnesota 1995, chapter 186, section 119. General authority to establish standards for the protection of public health is contained in Minnesota Statutes, section 144.05. To establish fees, authority is contained in Minnesota Statutes, sections 144.122; 16A.1285; and 326.75 as amended in Laws of Minnesota 1995, chapter 165, section 13. Authority to establish procedures and criteria for variance requests to rules is found in Minnesota Statutes, section 14.05, subdivision 4.

NEED FOR REVISION OF RULES

The purpose of regulation of asbestos abatement by the Minnesota Department of Health (MDH) is to prevent unnecessary public exposure to asbestos when it is removed, enclosed or encapsulated. Exposure to asbestos can cause serious health problems if asbestos fibers are inhaled. Asbestos is classified as a carcinogen by the federal government and national health associations such as the International Agency for Research on Cancer (IARC, 1987), the Environmental Protection Agency (USEPA, 1993-IRIS), American Conference of Governmental Industrial Hygienists (ACGIH, 1994), and the Agency for Toxic Substances and Disease Registry (ATSDR, 1993). Although it is impossible to quantify the amount of asbestos in buildings statewide, it is prevalent. Asbestos has been widely used in many industries since the late nineteenth century for construction,

insulation, fire proofing and sound absorption. Disturbance of asbestos creates the potential for release of asbestos fibers into the air. The purpose of the existing and proposed rules is to prevent or minimize the release of asbestos fibers when asbestos is disturbed during removal, enclosure or encapsulation.

Neither the Asbestos Abatement Act nor Minnesota Rules parts 4620.3000 to 4620.3724 require asbestos to be removed from a building. Rather, when asbestos is to be removed, enclosed or encapsulated, it must be done in accordance with the requirements of the law and applicable rules.

The Minnesota Legislature began regulating asbestos in 1987 with passage of the Minnesota Asbestos Abatement Act, Minnesota Statutes, sections 326.71 to 326.81. This law regulated asbestos abatement in cumulative quantities greater than 260 linear feet or 160 square feet in non-residential settings and included licensure and certification requirements for companies and individuals working with asbestos; project notification and permit requirements for all asbestos related work; and allowed the commissioner of health to adopt administrative rules to implement various provisions of the law. Administrative rules related to work practices for asbestos abatement work, project notification, approval of training courses for asbestos abatement site supervisors and workers, licensure for asbestos abatement contractors, and certification for asbestos abatement site supervisors and workers were promulgated in 1988.

During the 1993 legislative session, substantial changes were made to Minnesota Statutes, sections 326.71 to 326.81. Minnesota law now requires the regulation of asbestos-related work in single or multifamily residences in quantities greater than 10 lineal feet of friable asbestos-containing material or greater than six square feet of friable asbestos-containing material. the law also added air quality monitoring to the definition of asbestos related work.

The main reason for revising and adding rules to parts 4620.3000 to 4620.3724 is to adopt rules to implement the statutory changes made to the Asbestos Abatement Act, Minnesota Statutes, 326.70 to 326.81 in Laws of Minnesota 1993, chapter 206, section 25; Laws of Minnesota 1993, chapter 303, sections 1 to 19; Laws of Minnesota 1993, first special session, chapter 1, article 9, section 73; Laws of Minnesota 1994, chapter 465, article 3, section 70; Laws of Minnesota 1994, chapter 567, sections 19, 20; and Laws of Minnesota 1995, chapter 165, sections 12 to 15; Laws of Minnesota 1995, chapter 185, section 6; and Laws of Minnesota, chapter 186, section 119. In addition, since the existing asbestos abatement rules (parts 4620.3000 to 4620.3700) have been in effect since 1989, the need to revise several rule parts for more effective enforcement has been indicated. The department has chosen to amend and add new rules to parts 4620.3000 to 4620.3724 at this time for clarification and reorganization.

The commissioner of health was required to certify asbestos inspectors, asbestos management planners and asbestos project designers; to regulate asbestos inspections, asbestos abatement management activity and asbestos project design; and to approve training courses for asbestos inspectors, asbestos management planners and asbestos project designers. Minnesota Statutes, sections 326.71 to 326.81 require the commissioner of health to write rules for certifying the new disciplines; approve training courses for those disciplines; establish certification fees and training course approval fees; specify work practices for asbestos abatement in residential

The proposed rule parts address issues related to the certification of asbestos inspectors, asbestos management planners and asbestos project designers. The approval procedures for training courses for asbestos inspectors, asbestos management planners and asbestos project designers have been developed so the State of Minnesota can meet the federal requirements for accreditation of programs for these asbestos disciplines. The state will apply for EPA accreditation based on these rules. The proposed rule parts also adds training course approval procedures for courses on air quality monitoring. These courses are needed to ensure that persons performing air quality monitoring, which is now included in the definition of asbestos related work in Minnesota Statutes, are properly trained.

The proposed rule parts on inspection and assessment of asbestos-containing materials, asbestos management plans and asbestos project design have been developed so the state can regulate all activities related to the management of asbestos. By regulating all activities related to the management of asbestos in public and commercial buildings, the state will be in a position to assume responsibility for enforcing the requirements under the federal AHERA and (Asbestos School Hazard Abatement Reauthorization Act (ASHARA). States are encouraged to apply for waiver status under Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.98, which would allow the state to assume the enforcement responsibility to control asbestos-containing material. To assume this responsibility, the state must have rules which are as stringent as the federal asbestos abatement rules and laws.

Rule part 4717.7000 is being amended because some of the new requirements in proposed parts are being made subject to variance.

EFFECT ON AGRICULTURAL LAND; FARMING OPERATIONS.

Amendments and additions to Minnesota Rules, parts 4620.3000 to 4620.3724 and 4717.7000, and the repeal of part 4620.3100, subparts 9, 10, 12, 15, 18, 22, 26; part 4620.3200, subpart 1; and part 4620.3400; 4620.3500; 4620.3600; and 4620.3700 will have no direct or substantial adverse impact on agricultural land. The proposed rules are not specifically designed to affect farming operations. An impact to an individual farm home or community farm building may occur, but that impact is no more than the impact to the community or residential structures in the state in general. No regulatory controls are directed at or triggered by farming operations per se- thus no additional action was taken by the Minnesota Department of Health under Minnesota Statutes, section 14.111.

SMALL BUSINESS CONSIDERATIONS

Minnesota Statutes, section 14.115 requires that an agency consider five factors for reducing the impact of proposed rules on small business. The proposed amendments will have an impact on a number of establishments that meet the definition of small business in 14.115. Because of the type of business which is involved in asbestos-related work, most of the regulated industry are small businesses. These small businesses had representatives present on the work group committee and participated in the drafting of these proposed rules.

The methods delineated in Minnesota Statutes, section 14.115 for reducing the impact of the rule on small business include:

a) the establishment of less stringent compliance or reporting requirements for small businesses;

b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

c) the consolidation or simplification of compliance or reporting for small businesses;

d) the establishment of performance standards for small businesses to replace design or operational standards required in rule; and

e) the exemption of small businesses from any or all the requirements of the rule.

The major purpose of these rules is to protect public health by preventing unnecessary exposure of individuals to asbestos.

a) The establishment of less stringent compliance or reporting requirements for small businesses is not reasonable because all the proposed rules are designed to ensure that public exposure to asbestos is minimized to the greatest extent possible by asbestos abatement work practices and training of individuals dealing with asbestos. Establishment of less stringent compliance or reporting may increase the potential for asbestos exposure and consequently endanger public health.

b) The establishment of schedules or deadlines for compliance or reporting requirements are proposed to protect the public health. Less stringent schedules or deadlines would compromise public health.

c) Further consolidation or simplification of compliance or reporting requirements for small businesses is not reasonable. All the proposed requirements are necessary to protect public health.

d) The establishment of performance standards for small businesses to replace design or operational standards required in rule is not reasonable. All the proposed design and operational standards in rule are necessary to protect public health.

e) The exemption of small businesses from any or all the requirements of the proposed rules would not be reasonable because all the proposed rules are necessary to protect public health. Specific exemption with respect to the size of a project was made in law. The department believes the issue of exception was addressed legislatively and further exemption is not warranted.

FISCAL IMPACT

Pursuant to Minnesota Statutes, section 14.11, subdivision 1, the fiscal impact of a rule must be addressed when the rule is expected to cause local public bodies expenditures of over $100,000.

It is not anticipated that these proposed rules will directly cause any fiscal impact of over $100,000 on local public bodies. The rules do not directly mandate that local bodies must perform asbestos related work. The decision to perform asbestos-related work is left to the discretion of the public bodies. These proposed rules simply direct how the asbestos-related work must be performed to ensure protection of public health when the public body has decided to perform asbestos-related work.

NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION; ADVISORY WORK GROUP

Three Notices of Intent to Solicit were published. Notice of Intent to Solicit Outside Opinion was published in Volume 18, Number 7, pages 583-584 of the State Register on Monday, August 16, 1993. Because of changes in the Asbestos Abatement Act, the second Notice of Intent to Solicit Outside Opinion was published in Volume 19, Number 25, pages 1372-1373 of the State Register on Monday, December 19, 1994. A third notice was published in the State Register, volume 20, number 12, pages 502 to 503, on September 18, 1995. The third notice incorporates changes to authority adopted by the 1995 legislature as well as new notice requirements passed in the revised Administrative Procedure Act. In addition to the notice being mailed to persons on the certified agency rule list, notices were mailed to a list of interested parties which included representatives of asbestos training course providers, builder's associations, asbestos contractors, the Minnesota Chamber of Commerce and Minnesota Business partnership, and professional interests in the areas of engineering, architecture and industrial hygiene.

The proposed rules were developed with the assistance of an advisory work group consisting of members from the asbestos abatement industry, environmental consultants, building contractors, state agencies with responsibilities for control of asbestos and the Minnesota Chamber of Commerce and Minnesota Business partnership. The Department met with the advisory work group between September 1993 and October 1995 to discuss rule provisions. A list of advisory group members is attached to this Statement of Need and Reasonableness (Appendix A).

All work group meetings were open to the public and all meetings were open to comment by persons outside of the work group. Throughout the process of drafting proposed rule language the department mailed copies of draft rule language and other applicable materials to anyone interested in this rule. The department has a list of individuals whom have expressed interest in the asbestos abatement rule and will send each person on that list a copy of the certified rule once it is published in the State Register.

REVIEW AND COMMENT FROM MINNESOTA DEPARTMENT OF FINANCE; NOTICE TO HOUSE AND SENATE

With regard to the requirements of Minnesota Statutes, section 16A.128 and 16A.1285, the

Minnesota Department of Health (MDH) submitted the proposed fees to the Minnesota Department of Finance for review and comment. A copy of the Department of Finance's comment is attached to this Statement of Need and Reasonableness as appendix B.

4620.3000 APPLICABILITY

This part is proposed for amendment to correlate rule parts 4620.3000 to 4620.3724 with "asbestos-related work," as defined under Minnesota Statutes, section 326.71, subdivision 4, for anyone performing that defined work.

4620.3100 DEFINITIONS

Subpart 1. **Scope.** The "scope" has been revised to reflect the addition of new rule parts to the proposed asbestos rule.

Subp. 1a. **Abatement.** This definition is necessary to differentiate the job duties of the asbestos abatement contractor who does only air monitoring and asbestos abatement contractor who removes, encapsulates or encloses asbestos-containing material. The definition is based on the definition of asbestos-related work as specified in Minnesota Statutes, section 326.71, subdivision 4. The definition of "abatement" excludes the air monitoring portion of asbestos-related work and is necessary for clarity in the rule when referring to the jobs performed by abatement contractors.

Subp. 2. **Abatement area.** [see repealer]

Subp. 2a. **Adequately wet.** The definition of "adequately wet" is necessary because the term is used throughout rule parts 4620.3571 to 4620.3582. The proposed definition is reasonable because it is based on the term as defined in Code of Federal Regulations, title 40, chapter I, subchapter R, part 61, subpart M, section 61.141 as part of the National Emission Standard for Asbestos which states that "adequately wet" means to "sufficiently mix or penetrate with liquid to prevent the release of particulate. 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." The advisory language from the definition in Code of Federal Regulations, title 40, chapter I, subchapter R, part 61, subpart M, section 61.141, part of the National Emission Standard for Asbestos, has been omitted. Further interpretation of this term is provided in the Environmental Protection Agency's document Asbestos/NESHAP Adequately Wet Guidance (USEPA, 1990).

Subp. 2b. **Alternative clearance standard.** The proposed definition of "alternative clearance standard" is necessary because if one chooses to use the alternative clearance standard, the samples for compliance with the clearance standard must be analyzed using transmission electron microscopy and the counting method outlined in part 4620.3598. Transmission electron microscopy is more accurate than phase contrast microscopy. Phase contrast microscopy does not positively distinguish asbestos fibers from all other fibers whereas transmission electron microscopy positively identifies asbestos fibers and types of asbestos fibers. The alternative

clearance standard is specified to delineate between the alternative clearance air standard and the alternative indoor air standard.

Subp. 2c. **Alternative indoor air standard.** The proposed definition of "alternative indoor air standard" is necessary to delineate the difference between the alternative indoor air standard and the alternative clearance standard. If one chooses to use the alternative clearance standard, the samples must be analyzed using transmission electron microscopy. The samples collected for establishing and complying with the alternative indoor air standard must be analyzed using phase contrast microscopy. This definition also specifies the monitoring requirements and subsequent analyses necessary for asbestos related work under part 4620.3597. The actual meaning and use of "alternative indoor air standard" has not been changed from existing Minnesota rules, however, the definitions and use of "alternative indoor air standard" and "alternative clearance standard" have been clarified so these terms will not be interchanged and mixed up with one another.

Subp. 3. **Asbestos.** This definition is the term as defined in Minnesota Statutes, section 326.71, subdivision 2. It is reasonable to refer to the statutory definition to ensure consistency between statute and rule.

Subp. 4. **Asbestos contractor.** The proposed definition of "asbestos contractor" has been changed from the term "asbestos abatement contractor" to reflect 1993 changes in Minnesota Statutes, section 326.71, subdivision 4 which incorporated "air quality monitoring as specified by rule" in the definition of asbestos-related work. Consulting firms usually supply the building owner with the air quality monitoring required by law, while the abatement firm performs asbestos removal, encapsulation or enclosure. Anyone performing asbestos-related work must be licensed as an asbestos contractor. Additionally, the word "employer," used in the definition of asbestos contractor, has been changed to "person" to reflect the change in Minnesota Statutes, section 326.71, subdivision 8.

Subp. 5. **Asbestos project plan.** The proposed definition of "asbestos project plan" revises the existing rule definition of "asbestos abatement plan" to incorporate changes in the proposed rule. The definition reflects rule changes to the permitted unit (see definition of "project"). An asbestos project plan is required under proposed rule part 4620.3560. This streamlined nine point plan replaces the 12 point plan now located in rule part 4620.3500. Rule part 4620.3500 is proposed for repeal.

Subp. 5a. **Asbestos site supervisor.** The definition of "asbestos site supervisor" is necessary to identify the individual who has the authority to represent the asbestos contractor at the asbestos work area.

Subp. 5b. **Asbestos work area.** The definition of "asbestos work area" is proposed to replace "abatement area" to reflect the air monitoring part of the rule which specifies the indoor air standard of 0.01 fibers per cubic centimeter or the alternative indoor air standard. The definition of "abatement area" in existing rule states that the contractor must establish the "abatement area". Generally this area is established by the "person performing asbestos-related work", and those individuals must be working for an asbestos contractor or be licensed as a

contractor themselves. The proposed subpart also refers to the air monitoring parts which provide further standards for the establishment of the indoor air standard or alternative indoor air standard.

Subp. 6. **Asbestos worker.** The word "employee" which is used in the definition of asbestos worker certified under part 4620.3300, has been changed to "individual" to reflect the change in Minnesota Statutes, section 326.73, subdivision 1. Reference to part 4620.3300 is made to specify where the requirements for certification as an asbestos worker can be found within the asbestos-related work rule.

Subp. 7. **Asbestos-containing material or ACM.** The definition of "asbestos-containing material" is the term as defined in Minnesota Statutes, section 326.71, subdivision 3. It is reasonable to refer to the statutory definition to ensure consistency between statute and rule.

Subp. 7a. **Asbestos inspection.** The definition of "asbestos inspection" is necessary to describe the duties of the asbestos inspector in part 4620.3460. The definition includes language found in the term "inspection" as defined in the Model Accreditation Plan (MAP) in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (A), subparagraph (3). The federal language referring to "school buildings, public and commercial buildings" has been changed to "facility" in the proposed state rules to be consistent with existing state rules and to encompass applicable references to these rules. The exemptions of the term "asbestos inspection" include the same exemptions in the term "inspection" within the MAP.

Subp. 7b. **Asbestos inspector.** The definition of "asbestos inspector" is the term specified in Minnesota Statutes, section 326.71, subdivision 4a. This definition clarifies that individuals must also meet the requirements of part 4620.3330 to be an asbestos inspector in Minnesota. It is reasonable to refer to the definition in statute for consistency with the law and proposed rules and to ensure that an asbestos inspector meets the requirements specified in both law and rules.

Subp. 7c. **Asbestos management plan.** The definition of "asbestos management plan" is necessary because it is used in the requirements for implementing an asbestos management plan in part 4620.3470. The definition is also consistent with the concept of "site-specific written programs" as used in Minnesota Statutes, section 326.71, subdivision 4b describing "asbestos management activity."

Subp. 7d. **Asbestos management planner.** The definition of "asbestos management planner" is the term as defined in Minnesota Statutes, section 326.71, subdivision 4c, and used in part 4620.3340. It is reasonable to refer to the definition in statute to maintain consistency between the law and with the proposed rule .

Subp. 7e. **Asbestos project design.** The definition of "asbestos project design" cites the rule part which describes what must be included in an asbestos project design and the parameters of the asbestos project design. It is reasonable to define "asbestos project design" because the design must be specific to the work site and the asbestos-related work project to be useful.

Subp. 7f. **Asbestos project designer.** The definition of "asbestos project designer" is the term defined in Minnesota Statutes, section 326.71, subdivision 4d, and is used in part 4620.3350. It is reasonable to refer to the definition in statute for consistency with the law and with the proposed rule.

Subp. 8. **Asbestos-related work.** This definition is the term as defined in Minnesota Statutes, section 326.71, subdivision 4, (1994) as amended by Laws of Minnesota 1995, Chapter 165, section 12 and chapter 185, section 6. It is reasonable to refer to the statute to ensure consistency between statute and rule.

Subp. 9. **Clearance air level.** [See repealer]

Subp. 10. **Clearance air sampling.** [See repealer]

Subp. 10a. **Clearance standard.** The definition "clearance standard" has the same meaning as the term "clearance air level" in existing rule part 4620.3500 which is proposed for repeal. The term has been changed from "air level" to "standard" to delineate between the terms "indoor air standard," which needs to be monitored for during the asbestos related work, and the "clearance standard," which needs to be monitored for after the asbestos removal has been completed. The term "clearance standard" is consistent with the use of "clearance air level" which is in existing rule.

Subp. 11. **Commissioner.** The definition "commissioner" is the term as defined in Minnesota Statutes, section 326.71, subdivision 5. It is reasonable to refer to the statute to ensure consistency between statute and rule.

Subp. 11a. **Containment.** The definition "containment" is proposed to clarify the term "asbestos work area". A "containment" is an "asbestos work area" which has been enclosed with polyethylene sheeting as described in part 4620.3568. An "asbestos work area" can also be the area immediately surrounding a "glove bag" or mini-containment operation.

Subp. 12. **Contingent EPA approval.** [See repealer]

Subp. 13. **Contracting entity.** The definition "contracting entity" is the term used in Minnesota Statutes, section 326.71, subdivision 6. It is reasonable to refer to the statute to ensure consistency between statute and rule.

Subp. 14. **Critical barriers.** The definition "critical barriers" is proposed for modification to be consistent with the proposed definition of "facility" in part 4620.3100, subpart 20a. The word "containment" has been dropped from the term "critical containment barriers" to ensure that this term is not confused with the term "containment" defined in subpart 11a of this proposed rule.

Subp. 14a. **Demolition.** The definition "demolition" is necessary because it is used in part 4620.3585. The proposed definition is reasonable because it is consistent with the term defined in Code of Federal Regulations, title 40, chapter I, subchapter R, part 61, subpart M, section

61.141 -- National Emission Standard for Asbestos which states:

> "Demolition" means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

This definition is understood by asbestos contractors and uses the term "facility" found in proposed rule part 4620.3100, subpart 20a.

Subp. 15. **Emergency demolition.** [See repealer]

Subp. 16. **Emergency project.** The proposed changes to this definition are necessary to define the type of event which would qualify a situation as one warranting asbestos-related work to be performed as an emergency. Additional language has been added to the definition to incorporate the potential safety or public health hazard and equipment damage as reasons which may constitute an emergency. The term "renovation" has been replaced with the term "project" to associate it with a term already defined in the proposed rule. This type of situation is addressed in part 4620.3420 of the proposed rule. It is reasonable to have procedures for emergency situations. Actions must be taken to protect the public health in cases where asbestos has been suddenly damaged. Asbestos-related work involving the restoration of heating and other utilities to buildings and residences must be done rapidly, especially during the winter. It is also reasonable to have procedures for those emergency situations which occur outside of the business hours of the MDH.

Subp. 17. **Employee.** [See repealer]

Subp. 18. **Employer.** [See repealer]

Subp. 19. **Encapsulation.** [See Minnesota Rules, part 4620.3100, subpart 19]

Subp. 20. **Enclosure.** [See Minnesota Rules, part 4620.3100, subpart 20]

Subp. 20a. **Facility.** The proposed definition of "facility" is necessary to clarify applicability of proposed rule parts 4620.3000 to 4620.3724. The proposed definition is based on the definition of this term in Code of Federal Regulations, title 40, chapter I, subchapter R, part 61, subpart M, section 61.141 of the National Emission Standard for Hazardous Air Pollutants (NESHAP). The NESHAP definition states:

> "Facility" means any institutional, commercial, public, industrial, or residential structure, or building (including any structure, 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 waste disposal site. For purposes of this definition, any building, or structure that contains a loft used as a dwelling is not considered a residential structure, or building. Any structure, or building that was previously subject to this subpart is not excluded, regardless of its current use or

function.

The residential exclusions which are present in the federal definition have been omitted to be consistent with Minnesota Statutes, section 326.71, subdivision 4, regarding the definition of "asbestos-related work" and incorporation of single and multifamily residences. Ships at dock in Minnesota are also covered because Minnesota borders Lake Superior and ships and shipyards have historically contained a great deal of asbestos. The definition does not include active or inactive waste disposal sites because the Minnesota Pollution Control Agency has jurisdiction over waste disposal sites.

Subp. 20b. **Facility component.** The proposed definition is necessary to clarify the applicability of proposed parts 4620.3000 to 4620.3724. This proposed definition is the term used in Code of Federal Regulations, title 40, chapter I, subchapter R, part 61, subpart M, section 61.141 of the National Emission Standard for Asbestos.

Subp. 21. **Friable asbestos material.** The existing rule definition is proposed for amendment to be consistent with Minnesota Statutes, section 326.71, subdivision 3 which states that "Asbestos-containing material means material that contains more than one percent asbestos by microscopic visual estimation by area." New language has been excerpted from the definition of "friable" in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.83 which states that friable material includes: "previously nonfriable material which becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure". This language has been added to the definition because non-friable asbestos containing material can become friable during removal, enclosure, or encapsulation of that material, causing gross contamination of surrounding areas. Mechanical means may cause the non-friable asbestos-containing material to become friable. The language is consistent with the federal definition and is needed for the protection of public health. It is reasonable that the Department chose to model the definition of "friable" to be consistent with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.83, because Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.83 is used as the basis for rule parts 4620.3460 and 4620.3470 on inspections and management plans.

Subp. 22. **Full EPA approval.** [See repealer]

Subp. 23. **Glove bag.** The existing rule definition of "glove bag" has been amended to specify the proposed rule part that applies to glove bag procedures. Now that part 4620.3500 is proposed for repeal, only proposed part 4620.3580 addresses glove bag procedures.

Subp. 24a. **Homogeneous area.** The proposed definition of "homogeneous area" is necessary because the term is used throughout proposed part 4620.3460. This definition is based on the definition of the term used in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.83, as part of the definitions for Asbestos-Containing Material in Schools; Final Rule and Notice which states:

"Homogenous area" means an area of surfacing material, thermal system insulation material, or miscellaneous material that is uniform in color and texture.

This term has been modified for clarification. The AHERA term requires one to examine uniformity of color and texture while the proposed definition requires one to examine materials many properties, including age, color and texture, to determine whether or not two materials are homogenous. The proposed definition is reasonable because one would expect to use all senses and knowledge about the building materials to determine sameness and homogeneity.

Subp. 24b. **Indoor air standard.** The definition "indoor air standard" has the same meaning as the term "indoor air standard" which is in existing rule part 4620.3500, subpart 2, and proposed for repeal. The term has been further defined to delineate between the term "indoor air standard," which needs to be monitored for during the asbestos related work, and the term "clearance standard," which needs to be monitored after asbestos removal has been completed. The term "indoor air standard" is consistent with the use of this air standard in existing rule. The definition of "indoor air standard" within this proposed rule will clarify the use of the this standard from the term "clearance standard".

Subp. 25. **Industrial facility.** This definition has been amended to reflect the updated version of the Standard Industrial Classification Manual and the new address for the State Law Library.

Subp. 25a. **Installation.** The definition of "installation" is consistent with the definition found in Code of Federal Regulations, title 40, chapter I, subchapter R, part 61, subpart M, section 61.141 of the National Emission Standard for Asbestos. The definition of "installation" is necessary because it is used in part 4620.3100, subpart 20a.

Subp. 25b. **Maintenance or maintenance activity.** The definition of "maintenance" and "maintenance activity" is necessary to describe the type of project allowed to be permitted under rule part 4620.3100, subpart 27b. This is reasonable because the definition was developed to clarify the types of asbestos-related work and was reviewed by the work group.

Subp. 26. **Minnesota-approved.** [See repealer]

Subp. 27. **Occupied area immediately adjacent to an asbestos work area.** This existing rule definition is proposed for modification because the word "persons" has been replaced with the word "individuals" to be consistent with the rest of the rule and to reflect changes in Minnesota Statutes, section 326.73, subdivision 1. This definition is also proposed for modification to replace the term "abatement area," which is proposed for repeal, to the term "asbestos work area" as defined in this proposed rule.

Subp. 27a. **Person.** This definition is the term as defined in Minnesota Statutes, section 326.71, subdivision 8. It is reasonable to refer to the statutory definition to ensure consistency between statute and rule.

Subp. 27b. **Project.** Minnesota rules have typically required a permit to do asbestos-related work. In Minnesota Statutes, section 326.71, subdivision 4, the payment of permit fees is

associated with a "project," which has not been previously defined. This term needs to be defined for clear administration of the permit fee program. The references to "if linear feet or square feet cannot be measured, less than 35 cubic feet of asbestos-containing material" have been added to be consistent with Minnesota Statutes, section 326.71, subdivision 4.

Item A is necessary because large quantities of asbestos may be disturbed during the area preparation, the enclosure, removal, or encapsulation operations for quantities of asbestos-containing material which exceed 160 square feet, 260 linear feet or 35 cubic feet. Harm to public health exists if these activities are completed without taking the precautions required under work practices and associated air monitoring specified in rule parts 4620.3560 to 4620.3598.

The subdivision of jobs is prohibited to ensure that projects will not be broken into small projects allowing the contractor to escape regulation and thereby compromise public health. In comparison with item B, a calendar year is not specified for a project because a project is an entity in and of itself. Some projects extend beyond one calendar year. It would be misleading to break the project up into smaller increments. It is also necessary to incorporate the exempt asbestos-containing materials into this definition. The exemptions are consistent with Minnesota Statutes, section 326.71, subdivision 4, resolving a questionable provision of the statute.

Item B is reasonable because smaller jobs could collectively include work where large quantities of asbestos-containing material are removed, encapsulated or enclosed. Potential harm to public health exists if these activities are completed without any regulation and adherence to the work practices specified in rule parts 4620.3560 to 4620.3598. A calendar year is the time specified for accumulation of asbestos-related work. That is the time period in existing rule part 4620.3100, subpart 8, and has worked well. Additionally, the National Emission Standards for Hazardous Air Pollutants (NESHAP) uses the calendar year for accumulation of asbestos-related work. Most businesses take care of their accounting for one year at a time and this would simplify the accounting for asbestos-related work completed under this type of permit. Under the definition of "project," small jobs under 160 square feet or 260 linear feet would accumulate separately from large projects which meet or exceed 160 square feet or 260 linear feet.

Item C is necessary to allow for maintenance activity to be permitted independently of other types of projects which are distinct entities in and of themselves. A facility must predict the additive quantity of maintenance to be completed in the calendar year. This is already required in Code of Federal Regulations, title 40, chapter I, subchapter R, part 61, subpart M, section 61.141 of the National Emission Standard for Asbestos. It is reasonable to have maintenance activity accumulate independently of other projects because the maintenance is usually smaller quantities which need to be dealt with quickly to sustain the operating condition of the mechanical system or machinery. Maintenance work should not be dependent on other projects which have taken place in the facility within the calendar year.

Item D is necessary because each small residential abatement is considered an asbestos-related work project, but was not included in items A through C. This type of project applies to asbestos-containing materials in quantities greater than six square feet but less than 160 square feet or quantities greater than ten linear feet but less than 260 linear feet.

Subp. 28. **Renovation.** This subpart has been revised to add hyphenation to the term "asbestos-related" and "asbestos-containing".

Subp. 29. **Responsible individual.** The existing rule definition is proposed for amendment to clarify that the individual must be an asbestos site supervisor to act as the responsible individual for a contractor. This is a reasonable requirement because it is necessary that important safety decisions be made by a trained individual. The asbestos site supervisor would have the knowledge, skill, and previous experience to perform the duty of "responsible individual".

Subp. 30. [See repealer]

Subp. 31. **Small residential abatement.** The definition of "small residential abatement" is necessary to implement the changes in Minnesota Statutes, section 326.71, subdivision 4, and the definition of "asbestos-related work," which now includes asbestos abatement projects in residences where asbestos in amounts of more than ten linear feet but less than 260 linear feet and more than six but less than 160 square feet are involved. The definition of "small residential abatement" incorporates language of amendments to Minnesota Statutes, section 326.71, subdivision 4, the definition of "asbestos-related work". The definition of "small residential abatement" provides consistency between Minnesota rule and statute.

Item A is necessary to prevent regulated projects from being divided into small, unregulated increments. Division of projects into smaller increments does not reduce the potential harm of removal, encapsulation or enclosure of that asbestos-containing material.

Item B is necessary to reflect 1994 changes to Minnesota Statutes, section 326.71, subdivision 4, the definition of "asbestos-related work" and its exemptions.

Subp. 32. **Training course.** The definition of "training course" is necessary to reflect changes to Minnesota Statutes, section 326.73, subdivisions 2 to 4, that require training for certification of asbestos inspector, asbestos management planner and asbestos project designer. Training requirements are found in parts 4620.3702 to 4620.3722 of the proposed rule. For clarification, the proposed definition addresses the amendment to Minnesota Statutes, section 326.71, subdivision 4 that changed the definition of "asbestos-related work" to include air monitoring and the subsequent requirement for air monitors to successfully complete an air monitoring training course.

Subp. 33. **Tunnel.** The term "tunnel" is used in rule part 4620.3567, subpart 6. The definition of "tunnel" is necessary to clarify the term used in Minnesota Statutes, section 326.785 and in the proposed rule. The term "tunnel" was commonly used when the department granted variances for asbestos-related work in four foot square utility tunnels located under school buildings throughout the state. The variance documents exempted asbestos related work in tunnels from the requirement of one layer of four-mil polyethylene sheeting on the walls of the tunnel and two layers of six-mil polyethylene sheeting on the floor of the tunnel prior to placement of critical barriers. To be defined as a "tunnel," a space must be below grade. This is reasonable because it will be inaccessible and it is therefore appropriate to allow less polyethylene yet maintain safety for getting the project done.

Item A requires that the space defined as a "tunnel" not be used as a human thoroughfare. This is reasonable because if this space is used as a thoroughfare, it is not inaccessible. Asbestos related work must proceed as a regular project and all of the required procedures for asbestos related work must be followed.

Item B requires that the space defined as a "tunnel" not be used for storage. Placement of items in an area which has not been properly abated could easily contaminate the items. Spaces defined as "tunnels" are not meant to be easily accessible and using that space for storage would give reasons for individuals to access the area.

Item C requires that the space defined as a "tunnel" not be used as an air plenum for any facility ventilation system. The agency believes, taking into account the origin of Minnesota Statutes, section 326.785, that it is reasonable to limit the definition so that occupied spaces and air plenums which carry heating and air conditioning air to occupied spaces are subject to the standards required for areas which are or will be occupied. If contamination were to occur in the air plenum, asbestos fibers could be carried throughout the facility.

4620.3200 CONTRACTOR LICENSURE

Part 4620.3200 is proposed for amendment to clarify and consolidate in one subpart existing rule requirements to become a licensed asbestos contractor.

Subpart 1. **License required.** See repealer.

Subp. 2. **Application for license.** Subpart 2 is proposed for amendment to clarify application requirements for an asbestos contractor's license. The proposed rule language specifies to whom the application materials must be submitted and consolidates the requirements for initial and renewal licensure into one subpart. The language has been modified to correct some of the problems the department has had in the past with contractors not following requirements of Minnesota Statutes, section 176.182.

Item A is proposed for amendment to remove the word "properly" which is a term that cannot be enforced without interpretation. Either an application is complete, and therefore properly filled in and the required supporting document supplied, or it is incomplete and can not be approved by the commissioner.

Item B is amended to require a business check, cashier's check or money order to be made out to the Minnesota Department of Health. The department has experienced problems with personal checks bouncing, and therefore is requiring that a business check, cashier's check or money order be used to pay for the contractor's license. The Minnesota Department of Health has been advised by the governor's office to change deposits from the "Treasurer" to the "Minnesota Department of Health".

Item C is proposed for amendment. This item refers to the proposed definition of "responsible individual" in part 4620.3100, subpart 29, instead of referring to the training

required for the responsible individual.

Item D requires that a copy of the responsible individual's current asbestos site supervisor card issued by the department be included in the application. It is reasonable to require a copy of the current asbestos site supervisor certificate to provide ease in processing the application. The easier it is to process the application, the sooner the contractor will obtain his or her license. It is then unnecessary to provide the training records required in existing rule in this item.

Item E is proposed for amendment to include a requirement for the applicant to provide information about contractor licensure in other states. This information is necessary to assist the department in tracking a contractor and to provide historical information about that contractor. This item also reflects the change in the term "asbestos abatement contractor" in existing rule to "asbestos contractor" in proposed rule. This item also has been modified to use the term "asbestos related work" to replace the term "asbestos abatement". The use of the terms "asbestos contractor" and "asbestos related work" allows the department to require licensure information from asbestos contractors performing abatement and from asbestos contractors performing air monitoring.

Item F is required in the proposed rule and is also item F of existing rule part 4620.3200, subpart 2, in existing rule. This item also has been modified to use the term "asbestos related work" to replace the term "asbestos abatement". The use of the terms "asbestos contractor" and "asbestos related work" allows the department to require licensure information from asbestos contractors performing abatement and from asbestos contractors performing air monitoring.

Item G requires that the Internal Revenue Service employer identification number be provided to the commissioner. This will assist the commissioner in identifying contractors with poor compliance records and serious violations. Tracking these businesses will reduce the likelihood of newly-licensed contractors with a history of serious asbestos-related violations to work for long periods of time without oversight by the commissioner for protection of public health. Existing rule part 4620.3200, subpart 2, item I, as required by Minnesota Statutes, section 176.182, subdivision 4, also requires the Minnesota business identification number be submitted to the commissioner on the application for an asbestos contractor license. Item G continues to require information necessary to ensure compliance with Minnesota Statutes, section 176.182.

Item H, of the existing rule, has been struck because it is not the Department of Health's responsibility to ensure that the tax obligations are being met by the applicant, and a self proclamation of tax compliance is not valid. An applicant who is delinquent in tax payment most likely will not admit it in a letter to the commissioner.

Item I, in the existing rule has been struck because the social security number is already required under item C and the business identification number is required in item G of the proposed rule.

Subp. 2a. **Workers' compensation insurance.** Subpart 2a is proposed for amendment to require the applicant for contractor licensure to provide the department with specific information

about the workers' compensation coverage. Evidence if workers' compensation insurance is required under existing rule part 4620.3200, subpart 2, item G. Workers' compensation insurance is also required by Minnesota Statutes, section 176.182.

Item A requires that the applicant provide the name of the insurance company, the policy number, and the dates of insurance coverage. These are standard identification items. The requirement for the contractor to provide the dates of insurance coverage is necessary to ensure that the contractor carries insurance and that the insurance remains in effect while the contractor is licensed as an asbestos contractor.

Item B requires that the Minnesota Department of Health be listed as the certificate holder with a thirty-day notice required to be provided to the department prior to cancellation of the insurance policy. A thirty day notice to the department is reasonable because if a company is going out of business, that company will know ahead of time when the business will cease to do business. Workers' compensation insurance is important for the protection of workers. It is necessary that the department be notified when a business stops workers' compensation coverage but still is operating so the department can notify the Minnesota Department of Labor and Industry and will ensure that MDH is aware of the situation at the time of licensure renewal.

Subp. 2b. **Workers' compensation insurance coverage exemption claims.** Subpart 2b is proposed to delineate the exemption from workers' compensation insurance coverage. Subpart 2b describes the requirements for self-employed individuals. The requirements of this subpart are reasonable because there have been past cases where a contractor claimed that he or she was "self-employed" and therefore did not need workers' compensation insurance coverage. In the past, some contractor's have tried to avoid carrying workers' compensation insurance to avoid the expense. This is unfair to the workers who may not have the ability to obtain insurance on their own. The department has contacted the Minnesota Department of Labor and Industry (DLI) to ensure that the department's proposed language is consistent with workers' compensation insurance requirements administered by DLI.

To provide proof of self-employment, the self insured individual must submit to the commissioner, a letter specifying that the contractor has no employees or no employees required to be covered by the workers' compensation law including spouse, parents, children, or certain farm employees. This is reasonable to ensure that individuals who need not carry workers' compensation insurance under the workers' compensation law are in fact truly exempt from coverage. The department believes that the signed letter will ensure compliance with Minnesota Statutes, section 176.182.

Subpart 3. **Denial of asbestos contractor license application.** Subpart 3 is proposed for amendment to clarify requirements. This subpart has been amended to include reference to the requirements of subpart 2 of this rule part. If all the items are not completed and submitted to the commissioner for licensure, the license will not be granted. This subpart incorporates the changes to Minnesota Statutes, section 144.99, subdivision 8, which address denial or refusal to reissue permits, licenses, registrations, or certificates. This subpart is proposed for amendment by deleting requirements that have either been moved to other items or are no longer necessary.

Item A is proposed for amendment to itemize the responsibility of the Department of Health for notifying the applicant of the reasons an application is being denied.

Item B has also been amended to exempt an applicant from paying a new fee after the asbestos contractor license application has been denied. It is reasonable not to require payment of a second fee provided the applicant resubmits another application within 30 days of the receipt of notice of the denial. Thirty days provides enough time for an applicant to collect any information or requirements for the license application as specified in subpart 2, 2a and 4a.

Subp. 4. **Terms of licensure.** Subpart 4 is proposed for amendment to delete information that no longer needs to be included in this rule part such as items which appear on the front of the license issued to an asbestos contractor. The subpart is also proposed to include additional language to clarify license requirements.

Subpart 4 states that the contractor's license is valid for one year provided the license has not been suspended or revoked by the commissioner. Current practice has been to issue a license for one year. This practice is consistent with Minnesota Statutes, section 326.78, subdivision 2. This subpart also states an asbestos contractor's license cannot be transferred from one contractor to another. The asbestos contractor license is specific to each licensed contractor. Because of the specific information requested in the application process, the license must not be transferable.

Subp. 4a. **Responsible individual.** Subpart 4a is consistent with rule part 4620.3100, subpart 29, the definition of "responsible individual". A "responsible individual" is necessary to ensure that the contractor has a representative trained in asbestos-related work who is familiar with the rules and regulations governing asbestos-related work. The responsible individual must be a person retained by the contractor so that the responsible individual can act as a contact person for the contractor. This requirement is needed to prevent use of individuals who are not associated with the asbestos contractor and know nothing about the contractor's business. In the past, there have been cases where the contractor has placed a responsible individual on the license who does not work for the contractor. This has placed the state in the middle of disputes between individuals. Subpart 4a requires the asbestos contractor to notify the commissioner if the person identified on the license as the responsible individual is no longer serving as the responsible individual. The contractor is the entity that would be aware of who is employed by the contractor, therefore it is the contractor's responsibility to notify the commissioner of a change of the responsible individual.

The contractor must provide a signed statement to the commissioner when the responsible individual has been changed as well as the effective date of change. This is necessary to ensure that the Department of Health maintains current and up-to-date records with the appropriate contact person. It is necessary for the responsible individual to provide a signature so that the responsible individual is aware that he or she is listed as such on the contractor license.

Subp. 5. **Annual license renewal.** Subpart 5 is proposed for amendment. Requirements that have been moved and rewritten in subparts 2 to 4a of this rule part have been deleted from

subpart 5. This subpart is required to ensure that the contractor license renewal is submitted to the commissioner before the expiration date on the current contractor license. This is necessary to prevent the contractor from having an expired license. It takes approximately two weeks for the commissioner to issue a renewal license. To ensure that the license does not expire, the contractor must submit the application for license renewal at least 14 calendar days before the expiration date on the current asbestos license. It is reasonable for the department to require less time for renewal of the contractor's license than for the individual certificates because the individual certificates have pictures on them and require more time for support staff to process.

Subp. 7. **Procedures for obtaining duplicate license.** Subpart 8 is amended to delete unnecessary language. Language has been clarified and allows for the Minnesota Department of Health to recover the cost in issuance of a duplicate asbestos contractor license.

Subp. 8. **Subcontractors.** Subpart 9 requires subcontractors to obtain a contractor's license prior to performing asbestos-related work. This provision is necessary because in the past there have been contractors who subcontracted work out to asbestos abatement crews to circumvent Minnesota law and rules. It also places anyone who wants to perform asbestos-related work on equal ground with respect to requirements.

4620.3250 **USE OF QUALIFIED INDIVIDUALS.** This part is necessary to ensure that the asbestos contractor hires qualified individuals to perform asbestos-related work. The requirements in this part are similar to those existing rule part 4620.3400, subpart 5 of these rules prior to proposed amendment. The requirements have been rewritten for clarification where necessary.

Item A is necessary to ensure that individuals conducting asbestos-related work are certified as either an asbestos worker or an asbestos site supervisor. This is reasonable to ensure that the individuals have had appropriate training so that they will safely conduct asbestos-related work.

Item B is necessary to ensure that certifications of asbestos site supervisors and asbestos workers are available on-site for inspection by the commissioner. This will allow asbestos inspectors to check that individuals are certified and appropriately trained.

Item C is necessary to ensure that a certified asbestos site supervisor is present at the asbestos work site at all times when asbestos-related work is being performed. The certified asbestos site supervisor is the responsible individual who will have knowledge of asbestos-related work, and on-site activity. The requirement that an asbestos contractor must ensure that a site supervisor is present at the work site during all work shifts of the asbestos workers, is found in existing rule part 4620.3400, subpart 5, item B. The language has been changed from "during all work shifts" to "during all times when asbestos-related work is performed." This change clarifies the existing language and is consistent with the commissioner's decision in connection with a contestation of an administrative penalty order (APO), MDH vs. National Surface Cleaning, Inc. (State of MN, 1995- Conclusions of Law and Conclusions of Order, January 11, 1995).

4620.3300 CERTIFICATION OF ASBESTOS WORKER

Several subparts of part 4620.3300 pertaining to the certification of asbestos workers and asbestos site supervisors are proposed for amendment. The rule parts have been rewritten to clarify requirements. Some experience requirements have been changed to address the effect of the 1993 amendment to the definition of "asbestos-related work," in Minnesota Statutes, section 326.71, subdivision 4. The definition of "asbestos-related work" was amended to include air quality monitoring. The consequence of this amendment is that all persons doing air monitoring must be certified in accordance with Minnesota Statutes, section 326.73. Air monitoring companies must be licensed under Minnesota Statutes, section 326.72. Minnesota Statutes, section 326.73 specifies that persons doing asbestos-related work must show evidence of work experience in the general commercial construction trades.

Subpart 1. **Certification of asbestos worker required.** Subpart 1 is proposed for amendment by moving requirements for asbestos site supervisor to part 4620.3310 because requirements for an asbestos worker differ from the requirements for an asbestos site supervisor. References to "workers" are changed to "asbestos worker" for purposes of clarification. References to "employee" are changed to "individual", to reflect changes in Minnesota Statutes, section 326.73, subdivision 1. Specifications as to what the Minnesota Department of Health places on the certificate issued to an asbestos worker is the commissioner's responsibility and need not be specified in rule. The requirement for all asbestos workers to have their certificate on-site is covered in Use of Qualified Individuals, part 4620.3250, items A and B. It is also required under Minnesota Statutes, section 326.73, subdivision 1 and therefore, not necessary in this subpart.

Subp. 2. **Qualifications or experience requirements.** The existing rule subpart is proposed for amendment for clarification and is now divided into three different subparts, namely, experience requirements, training requirements, and application requirements for certification as an asbestos worker.

Item A contains the information similar to requirements in existing rule part 4620.3300, subpart 3, item A. Though the term "general commercial construction trades" is the term used in Minnesota Statutes, section 326.73, subdivision 1, for purposes of classifying previous work experience, the term "general construction" as specified in the Standard Industrial Classification Manual is used to classify "general commercial construction trades". The requirement is proposed to accept two years of full time attendance or the part time equivalent to clarify the requirement in existing rule.

Item B contains the same information in existing rule part 4620.3300, subpart 3, item B. Language has been clarified and the term successful has been deleted because an individual would not complete the program if not successful.

Item C contains the same type of previous work experience as exists in rule part 4620.3300, subpart 3, item C. Instead of requiring 2,000 hours of previous work experience, 1,000 hours is required. The issue of previous work experience was discussed during many work group meetings and there are as many opinions of what to require as there are individuals

who care about this topic. One of the suggestions which was seriously considered by the department involved requiring the applicant to take a worker safety training course in lieu of previous work experience hours. The above option or the option of eliminating all work experience does not comply with Minnesota Statutes, section 326.73, subdivision 1. In response to the work group and comment from interested parties, the hourly requirement of previous work experience has been reduced. As proposed, one-thousand hours of previous experience fulfills requirements of Minnesota Statutes, section 326.73, subdivision 1. Language has been deleted which addresses who may provide verification of the 2,000 hours experience. Verification of previous work experience is still part of the application and is therefore unnecessary in this item.

Subp. 3. **Training requirements for initial certification.** The training requirements in items A and B are found in part 4620.3300, subpart 2 of existing rule. The training requirements have been rearranged and restated for clarity. The substantive requirements have not been changed.

Item A remains necessary to ensure that an individual who applies for initial certification as an asbestos worker has completed an appropriate initial asbestos worker training course. Training courses which meet the standards of the Minnesota Department of Health are acceptable. Minnesota Department of Health standards for training courses are based on criteria set forth by the Environmental Protection Agency. The system of auditing training courses, and acceptance of EPA-approved courses, provided a Minnesota refresher training course is also taken, in existing rule part 4620.3300, subpart 2, item A, subitem (3). This rule part has been rewritten to clarify and update the requirements so requirements are consistent with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, the Asbestos Model Accreditation Plan.

Subitems (1), (2) and (3) have been moved from existing rule part 4620.3300, subpart 2 to proposed rule part 4620.3300, subpart 3, item A.

Item B is necessary to ensure that asbestos workers who have **not** taken their initial training course in Minnesota (item A, subitem 1) will have some knowledge of Minnesota-specific rules. This requirement also ensures that the asbestos worker will have a trainer or knowledgeable individual to use as a reference should Minnesota-specific questions arise. The requirement for asbestos workers to take a one-day Minnesota refresher course has been in rule since 1988. This provision has not caused problems and is accepted by asbestos trainers and asbestos workers throughout the state.

Subp. 3a. **Training diploma expiration; retraining.** Continuing education requirements of this subpart are necessary because the Environmental Protection Agency, in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, Appendix C, section I, paragraph (D) requires an annual refresher course to be taken for an asbestos worker to maintain certification as an asbestos worker.

Item A is necessary to ensure that the most recent refresher course taken must have had a permit issued by the commissioner, as described under 4620.3704, because within the refresher course, topics are often brought up which are specific to requirements of Minnesota statute or rules. Refresher courses which have been issued a permit by the commissioner are capable of

providing answers which are consistent with Minnesota laws and rules. Additionally, the MDH has some control over the quality of the asbestos worker refresher training course provided the course has been issued a permit by the commissioner.

Item B is necessary to allow a 12-month grace period before requiring an applicant to take the initial training course over. This is consistent with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (D). This item is reasonable because the refresher courses are not intended to provide all the training to do asbestos-related work, therefore it is critical for the applicant to maintain initial certification.

Subp. 4. **Application for initial asbestos worker certification.** This subpart has been amended by deleting requirements about denial of certification. Denial of certification has been moved to subpart 6. Subpart 4 includes information which must be submitted to the commissioner before the certification for asbestos worker is issued. Items A, B, and D were part of existing rule subpart 2 and have been moved to this subpart for purposes of clarification and rule organization.

Item A requires that a completed application form be submitted to the commissioner. This is necessary to obtain the required information for processing the applicant's certificate.

Item B requires that a nonrefundable $50 application fee be submitted to the commissioner. This fee amount is established in Minnesota Statutes, section 326.75, subdivision 2 and is unchanged. Item B is amended to require the check for renewal to be made out to the Minnesota Department of Health. The Minnesota Department of Health has been advised by the governor's office to change deposits from the "Treasurer" to the "Minnesota Department of Health". A business check, cashier's check or money order is required because of the large number of personal checks that bounce. Bounced checks require much time and effort be spent by MDH support staff to collect the required fee. MDH has neither the staff nor financial resources to dedicate staff to this task. Some other licensing programs within the department hold the permit or certificate until the check has cleared. This time period would place a burden on the contractor or applicant and would create a much longer waiting period before the applicant is certified.

Item C designates that the experience requirements listed under subpart 2 be met by the applicant. Experience requirements are found in existing rule part 4620.3300, subpart 3, "Additional training or experience requirements". The documents required in subitems (1) to (3) have been required in the application process since 1988 but have not been specified in rule. By placing these items in the rule, the applicant is advised up front of the information he or she needs for the application process. Experience is required as part of Minnesota Statutes, section 326.73, subdivision 1.

Item D requires that the applicant provide proof of the training required according to subpart 3, item A or B. This has been a requirement since 1988 and is necessary to ensure that the applicant has the appropriate training required for certification.

Subp. 5. **Renewal.** Subpart 5 has been rewritten for purposes of clarification and for

consistency with Minnesota Statutes, section 326.78, subdivision 2. This subpart is necessary to inform certified asbestos workers that they may apply for renewal of the asbestos worker certificate prior to the expiration date on the current asbestos worker certificate.

An applicant must complete an application form and submit it to the commissioner. Item A is necessary to obtain the required information for processing the applicant's file. Completion of a new application form is reasonable because changes may have occurred about that individual since the last certification of that individual. The asbestos worker must ensure that the department receives the renewal applications at least 30 days before the expiration date of the current certificate. This is necessary because it takes the support staff at MDH between two and four weeks to process all the materials for certification of individuals. Generally two weeks provides enough time for processing, however, during the spring, when individuals are gearing up for the busiest time of year for asbestos related work, support staff often receive hundreds of applications at one time and it then may take closer to four weeks for processing. Placing the thirty day requirement here is reasonable because it informs individuals of the time period necessary for them to submit their application for recertification, thereby eliminating the possibility that their asbestos certificate will expire so that they can no longer work.

Item B requires that the applicant submit a nonrefundable $50 renewal application fee. This fee is established in Minnesota Statutes, section 326.75, subdivision 2 and is unchanged. This item requires the check for renewal to be made out to the Minnesota Department of Health. The Minnesota Department of Health has been advised by the governor's office to change deposits from the "Treasurer" to the "Minnesota Department of Health". A business check, cashier's check or money order is required because of the large number of personal checks that bounce. Bounced checks require much time and effort be spent by MDH support staff to collect the required fee. MDH has neither the staff nor financial resources to dedicate staff to this task. Some other licensing programs within the department hold the permit or certificate until the check has cleared. This time period would place a burden on the contractor or applicant and would create a much longer waiting period before the applicant is certified.

Item C requires that the applicant submit evidence of completion of an asbestos worker refresher training course. This requirement has not been substantially changed but reflects the reorganization of part 4620.3300.

Subp. 6. **Denial of asbestos worker certification.** Reasons for denial and procedures for denial of a certificate have been placed in one subpart for purposes of clarification. It is necessary to inform the individual of the reasons the individual may be denied an asbestos worker certificate. The commissioner may deny the individual an asbestos worker certificate if any of the requirements for initial or renewal of certification have not been met. Minnesota Statutes, section 144.99, subdivision 8, paragraphs (a) and (b) specify additional grounds for denial or refusal to reissue permits, licenses, registrations, or certificates. Reference to statute is made to clarify all requirements related to denial of certification. The same requirements apply to both initial and renewal asbestos worker certification.

Item A is necessary to inform the individual in a written notice the reasons for the denial of the asbestos worker certification.

Item B is necessary to inform the individual who has been denied certification that the individual has 30 days to correct the deficiencies of the application without repayment of the application fee. It is reasonable to allow 30 days to correct deficiencies in the application. Thirty days allows time for the applicant to obtain information necessary for completion of the application for certification. Fees are required for all subsequent applications.

Subp. 7. **Duration of certificate; transfer.** This subpart specifies the length of time for which a training certificate is valid. The certificate issued by the commissioner is valid for one year from the completion date on the diploma of the most recent training course, as required by Minnesota Statutes, section 326.78, subdivision 2, as amended by Laws of Minnesota, chapter 165, section 14. Certificates are not transferable. This provision is reasonable because of the specific training and experience requirements for obtaining the certificate. Each application needs to be assessed and handled separately and on the individual's own merit.

Subp. 8. **Duplicate certificate.** This subpart is necessary to clarify what a certified asbestos worker needs to do to obtain a duplicate certificate if the original certificate is lost, destroyed, or mutilated. It is reasonable to require the asbestos worker to complete an application for a duplicate certificate and pay for the duplicating cost. Information on the application for the duplicate certificate will be used to track down the files for that individual to verify the training and experience requirements necessary for certification. Due to the time involved for the department to produce another certificate, it is appropriate to assess a charge to recover this lost time and materials. This item requires the check for a duplicate certificate to be made out to the Minnesota Department of Health. The Minnesota Department of Health has been advised by the governor's office to change deposits from the "Treasurer" to the "Minnesota Department of Health". A business check, cashier's check or money order is required because of the large number of personal checks that have bounced in the past. Bounced checks require much time and effort be spent by MDH support staff to collect the required fee. MDH has neither the staff nor financial resources to dedicate staff to this task. Some other licensing programs within the department hold the permit or certificate until the check has cleared. The extended time period for which the individual would have to wait prior to issuance of the certificate would prove burdensome to the individual and would create a much longer waiting period before the applicant is certified.

4620.3310 **CERTIFICATION OF ASBESTOS SITE SUPERVISOR.** Requirements for asbestos site supervisors addressed in this part have been rewritten for clarification. Additional requirements have been added to implement statutory changes resulting from the change in the definition of asbestos-related work (Minnesota Statutes, section 326.71, subdivision 4). Most provisions are in existing rule part 4620.3300.

Subpart 1. **Certification required.** Requirements for asbestos site supervisor are proposed for amendment by moving the requirements from part 4620.3300 to part 4620.3310 because requirements for asbestos worker differ from the requirements for asbestos site supervisor. References to "site supervisors" are changed to "asbestos site supervisor" for purposes of clarification. References to "employee" are changed to "individual", to reflect changes in Minnesota Statutes, section 326.73, subdivision 1. The requirement for the asbestos site

supervisor to have the certificate on site is covered in existing rule part 4620.3400, subpart 7, item B. It is also required under Minnesota Statutes, section 326.73, subdivision 1.

Subp. 2. **Qualifications or experience requirements.** This subpart moves the requirements for asbestos site supervisor in existing rule part 4620.3300 to subpart 2 of part 4620.3310 and divides them into three different subparts, namely, experience requirements, training requirements, and application requirements for certification as an asbestos site supervisor. Similar requirements are in existing rule part 4620.3300. It is imperative to provide numerous options for an individual to qualify for site supervision. It is also important for the applicant to possess the experience or qualifications which make a good asbestos site supervisor.

Item A. This item contains similar information found in existing rule part 4620.3300, subpart 3, item C. Both the proposed and existing rules require 2000 hours of work experience. The proposed rule has been modified to limit the construction experience of an initial asbestos site supervisor to asbestos-related work, safety, industrial hygiene or other hazardous materials control experience. This item is necessary because the department believes that the asbestos site supervisor needs to have experience in asbestos or other hazardous materials control operations to understand how the various asbestos contamination control procedures can change, to respond effectively in the event of fiber releases from the containment and to supervise a project. The agency believes it is reasonable to require specific construction experience for the individual who is in charge of the operation of a project because construction experience provides the individual with knowledge necessary to oversee a project. The issue of previous work experience was discussed during the Asbestos Work Group meeting held on May 11, 1995 and is documented in MDH Minutes, 1995 (MDH Minutes, May 11, 1995). Asbestos contractors and trainers agreed that prior experience in asbestos-related work, safety, industrial hygiene or hazardous materials is appropriate for certification as an asbestos site supervisor.

Item B consists of a combination of education and work experience. It is necessary to have this option for asbestos site supervisor certification because many consultants hire summer help and those individuals who do air monitoring for compliance with the rule need asbestos site supervisor certification to be in compliance with Minnesota Statutes, section 326.71, subdivision 4, which specifies that "air quality monitoring specified in rule to assure that the abatement and adjacent areas are not contaminated with asbestos fibers during the project and after completion" is part of asbestos-related work. A bachelor's degree in architecture, engineering, physical or life science provides an individual with the scientific and technical background to understand the aspects of asbestos-related work involving air monitoring. During discussions with the advisory work group on these proposed rules, many suggestions were made about the requirements needed for air monitors who must now be certified as asbestos workers or asbestos site supervisors. The job duties and expertise of an asbestos air monitor differ from those individuals who usually perform asbestos removal. The combination of education in a scientific field and work experience in construction provide an option for the individual who performs asbestos air monitoring or the individual who wants to be an asbestos site supervisor. The 500-hour work experience requirement fulfills Minnesota Statutes, section 326.73, subdivision 1. Five hundred hours was chosen because it is one quarter of the number of experience hours required under subpart 2, item A, thus the education component serves as nine months experience.

Item C is reasonable because it allows an individual who has completed a master's degree in environmental health, industrial hygiene, or safety to use that experience to meet experience requirements of this part. Master degree programs in the areas listed above generally require laboratory practice and air monitoring through those programs and in related work study. The courses taken in the programs also require knowledge of hazardous materials and public health practice. An understanding of public health practice and the principals of hazardous materials control is necessary for site supervision.

Item D contains information similar to information in existing rule part 4620.3300, subpart 3, item A. Though the term "general commercial construction trades" is the term used in Minnesota Statutes, section 326.73, subdivision 1, for purposes of classifying previous work experience, the term "general construction" as specified in the Standard Industrial Classification Manual is used to classify "general commercial construction trades". The proposed rule language requires the applicant to have completed an apprenticeship training program. This differs from worker applicants who merely need two years attendance in the apprenticeship program. It is reasonable to require more training for an asbestos site supervisor because they are required to have more responsibility at the work site.

Subp. 3. **Training requirements for initial certification.** Training requirements in items A and B are found in existing rule part 4620.3300, subpart 2. The training requirements have been rearranged and restated for clarity. The substantive requirements have not been changed.

Item A is necessary to ensure that an individual who applies for initial certification as an asbestos site supervisor has completed an appropriate initial asbestos site supervisor training course. Training courses which meet the standards of the Minnesota Department of Health are acceptable. Minnesota Department of Health standards for training courses are based on criteria set forth by the Environmental Protection Agency. The system of auditing training courses, and acceptance of EPA-approved courses, provided a Minnesota refresher training course is also taken, in existing rule part 4620.3300, subpart 2, item A, subitem (3). This rule part has been rewritten to clarify and update the requirements so requirements are consistent with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, the Asbestos Model Accreditation Plan.

Subitem (1) is reasonable because courses which have been issued a permit by the commissioner have been audited by the MDH. The department has individuals who are qualified to accurately determine whether the training course is acceptable based on EPA criteria.

Subitem (2) is reasonable because it allows an individual who has completed an EPA-approved initial training course to meet the requirements for asbestos site supervisor certification.

Subitem (3) is reasonable because it allows certification of an individual who has completed a training course approved by a state other than Minnesota, provided that state training program is accredited by the EPA.

Item B is necessary to ensure that asbestos site supervisors who have not taken their

initial training course in Minnesota (item A, subitem 1) will have some knowledge of Minnesota-specific rules. This requirement also ensures that the asbestos site supervisor will have a trainer or knowledgeable individual to use as a reference should Minnesota-specific questions arise. The requirement for asbestos site supervisors to take a one-day Minnesota refresher course has been in rule since 1988. This provision has not caused problems and is accepted by asbestos trainers and asbestos site supervisors throughout the state.

Subp. 4. **Training diploma expiration; retraining.** Continuing education requirements of this subpart are necessary because the Environmental Protection Agency, in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (D), requires an annual refresher course to be taken for an asbestos site supervisor to maintain certification as an asbestos site supervisor.

Item A is necessary to ensure that the most recent refresher course taken must be issued a permit by the commissioner because, within the refresher course, topics are often brought up which are specific to requirements of Minnesota statute or rules. Refresher courses which have been issued a permit by the commissioner are capable of providing answers which are consistent with Minnesota laws and rules. Additionally, the MDH has some control over the quality of the asbestos site supervisor refresher training course provided the course has been issued a permit by the commissioner.

Item B is necessary to allow for a 12-month grace period before requiring an applicant to take the initial training course over. This grace period is consistent with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (D). This item is reasonable because the refresher courses are not intended to provide all the training to do asbestos-related work, therefore it is critical for the applicant to maintain initial certification.

Subp. 5. **Initial certification application.** Subpart 5 includes information which must be submitted to the commissioner before the certification for asbestos site supervisor is issued. Items A, B, and D are part of existing rule part 4620.3300, subpart 2. These items are included here for clarification and better rule organization.

Item A requires that a completed application form be submitted to the commissioner. This is necessary to obtain the required information for processing the applicant's file.

Item B requires that a nonrefundable $50 application fee be submitted to the commissioner. This fee amount is established in Minnesota Statutes, section 326.75, subdivision 2 and is unchanged. Item B is amended to require the check for renewal to be made out to the Minnesota Department of Health. The Minnesota Department of Health has been advised by the governor's office to change deposits from the "Treasurer" to the "Minnesota Department of Health". A business check, cashier's check or money order is required because of the large number of personal checks that bounce. Bounced checks require much time and effort be spent by MDH support staff to collect the required fee. MDH has neither the staff nor financial resources to dedicate staff to this task. Some other licensing programs within the department hold the permit or certificate until the check has cleared. This time period would place a burden

on the contractor or applicant and would create a much longer waiting period before the applicant is certified.

Item C designates that the experience requirements listed under subpart 2 be met by the applicant. Similar experience requirements are found in existing rule part 4620.3300, subpart 3, "Additional training or experience requirements". The documents required in subitems (1) to (4) have been required in the application process since 1988 but have not been specified in rule. By placing these items in the rule, the applicant is advised up front of the information he or she needs for the application process. Experience is required as part of Minnesota Statutes, section 326.73, subdivision 1.

Item D requires that the applicant provide proof of the training required according to subpart 3, item A or B. This has been a requirement since 1988 and is necessary to ensure that the applicant has the appropriate training required for certification.

Subp. 6. **Renewal.** Subpart 5 has been rewritten for purposes of clarification and for consistency with Minnesota Statutes, section 326.78, subdivision 2. This subpart is necessary to inform certified asbestos site supervisors what they need for renewal of their asbestos site supervisor certificate.

The applicant must ensure that the department receives the renewal applications at least 30 days before the expiration date of the current certificate. This is necessary because it takes the support staff at MDH between two and four weeks to process all the materials for certification of individuals. Generally two weeks provides enough time for processing, however, during the spring, when individuals are gearing up for the busiest time of year for asbestos related work support staff often receive hundreds of applications at one time and it then may take closer to four weeks for processing. Placing the thirty day requirement here is reasonable because it informs individuals of the time period necessary for them to submit their application for recertification, thereby eliminating the possibility that their asbestos certificate will expire so that they can no longer work.

An applicant must complete an application form and submit it to the commissioner. Item A is necessary to obtain the required information for processing the applicant's file. Completion of a new application form is reasonable because changes may have occurred regarding that individual since the last certification of that individual.

Item B requires that the applicant submit a nonrefundable $50 renewal application fee. This fee is established in Minnesota Statutes, section 326.75, subdivision 2 and is unchanged. This item requires the check for renewal to be made out to the Minnesota Department of Health. The Minnesota Department of Health has been advised by the governor's office to change deposits from the "Treasurer" to the "Minnesota Department of Health". A business check, cashier's check or money order is required because of the large number of personal checks that bounce. Bounced checks require much time and effort be spent by MDH support staff to collect the required fee. MDH has neither the staff nor financial resources to dedicate staff to this task. Some other licensing programs within the department hold the permit or certificate until the check has cleared. This time period would place a burden on the contractor or applicant and

would create a much longer waiting period before the applicant is certified.

Item C requires that the applicant submit evidence of completion of an asbestos site supervisor refresher training course. This requirement has not been changed from existing rule, but reflects the reorganization of part 4620.3300.

Subp. 7. **Denial of certification.** Reasons for denial and procedures for denial of a certificate have been placed in one subpart for purposes of clarification. It is necessary to inform the individual of the reasons the individual may be denied an asbestos site supervisor certificate. The commissioner may deny the individual an asbestos site supervisor certificate if any of the requirements for initial or renewal of certification have not been met. Minnesota Statutes, section 144.99, subdivision 8, paragraphs (a) and (b) specify additional grounds for denial or refusal to reissue permits, licenses, registrations, or certificates. Reference to statute is made to clarify all requirements related to denial of certification. The same requirements apply to both initial and renewal asbestos site supervisor certification.

Item A is necessary to inform the individual in a written notice the reasons for the denial of the asbestos site supervisor certification.

Item B is necessary to inform the individual who has been denied certification that the individual has 30 days to correct the deficiencies of the application without repayment of the application fee. It is reasonable to allow 30 days to correct deficiencies in the application. Thirty days allows time for the applicant to obtain information necessary for completion of the application for certification.

Subp. 8. **Duration of certificate; transfer.** Subpart 8 specifies the length of time for which a training certificate is valid. The certificate issued by the commissioner is valid for one year from the completion date on the diploma of the most recent training course, as required by Minnesota Statutes, section 326.78, subdivision 2, as amended by Laws of Minnesota 1995, chapter 165, section 14. Certificates are not transferable. This provision is reasonable because of the specific training and experience requirements for obtaining the certificate. Each application needs to be assessed and handled separately and on the individual's own merit.

Subp. 9. **Duplicate certificate.** Subpart 10 is necessary to clarify what a certified asbestos site supervisor needs to do to obtain a duplicate certificate if the original certificate is lost, destroyed, or mutilated. It is reasonable to require the asbestos site supervisor to complete an application for a duplicate certificate and pay for the duplicating cost. Information on the application for the duplicate certificate will be used to track down the files for that individual to verify the training and experience requirements necessary for certification. Due to the time involved for the department to produce another certificate, it is appropriate to assess a charge to recover this lost time and materials.

4620.3330 CERTIFICATION OF ASBESTOS INSPECTOR

Part 4620.3330 is necessary to implement the requirement in Minnesota Statutes, section 326.73,

subdivision 2 that directs the commissioner to certify asbestos inspectors who perform inspections of asbestos-containing materials in the State of Minnesota.

Subpart 1. **Certification required.** Subpart 1 is necessary to establish a time for individuals who are interested in performing asbestos inspections to obtain the training required under this rule part. Three months is a reasonable time to allow an interested individual to collect materials needed for certification, complete the training required for an asbestos inspector, and complete the application for certification as an asbestos inspector.

Subp. 2. **Qualifications and experience.** Subpart 2 is proposed to comply with Minnesota Statutes, section 326.73, subdivision 2, requiring the commissioner to specify, by rule, evidence of experience to qualify for asbestos inspector certification. Qualification and experience requirements for asbestos inspector are recommended in the Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (E), subparagraph (1), which states that: "In addition to requiring training and an examination, a State may require candidates for accreditation to meet other qualification and/or experience standards that the State considers appropriate for some or all disciplines." The advisory work group discussed this issue and recommended the qualifications included in this subpart. The qualifications include both work and education to provide a wide range of options to qualify an individual as an asbestos inspector once the required training has been completed. Subpart 2 is required beginning six months after the effective date of this rule. It is necessary to allow for a time period when experience is not required. This time allows the Minnesota Department of Health to process applications and allows currently trained individuals to be "grandfathered in".

Item A allows an individual to become eligible for certification as an asbestos inspector if the individual has work experience of at least 500 hours in the field of building inspection, asbestos-related work, safety, industrial hygiene, or hazardous materials control. An individual who has been working for 500 hours would be eligible for certification under this item. Five-hundred hours allows for summer employees and students to obtain summer work and qualify for asbestos inspector certification. The fields listed all provide experience which is closely related to the job an asbestos inspector performs and provides the individual with skills and knowledge necessary to perform asbestos inspections.

Item B is modeled on the experience requirements in existing rule part 4620.3300 and part 4620.3310, subpart 3, item A. Labor organizations representing construction industry workers often run apprenticeship programs to provide education and work experience needed for skilled jobs. As one option to qualify for certification as an asbestos inspector, the individual must *complete* the apprenticeship program registered with the state of Minnesota, Department of Labor and Industry or with the United States Department of Labor. Both of these agencies accept registrations for apprenticeship programs in construction-related fields.

Item C allows an individual already trained to perform inspections of buildings as a licensed building official to become eligible for Minnesota certification as an asbestos inspector. Item C is reasonable because it is based on knowledge about building structures and materials which the licensed building official possesses.

Item D allows an individual to qualify for certification as an asbestos inspector with a combination of education and work experience. This combination provides an applicant with a broad base of experience for working as an asbestos inspector after completion of the asbestos inspector training course. The forty hour requirement is reasonable because it is specified as on-site asbestos inspection experience and is not an hourly accounting of asbestos-related activity. The forty hour inspection practice is necessary because, although one learns to perform asbestos inspection in the asbestos inspector class, it takes some time to develop inspection skills. Forty hours spent with another certified asbestos inspector signing off on the work provides the skill necessary to ensure that asbestos inspections are done correctly and provides a qualified person from whom the asbestos inspector may seek help. The department believes that forty hours provides consultants with a minimum time for training. The department realizes there may be individuals who need more than forty hours of hands-on experience and the department leaves the discretion to provide additional training up to the contractor or consultant. The forty hour inspection work experience under a certified asbestos inspector is a means to allow individuals into the field of asbestos inspector, yet provides a way to maintain standards, protective of public health.

Item E. The certification or registration as an architect, engineer, industrial hygienist, or safety professional provides an individual with a combination of basic science knowledge and knowledge of basic building structure and function. All of the fields of study listed above require individuals to take courses relating to the structure and function of buildings and air handling systems within those buildings. The certification or registration process ensures competency within that professional field. The agency believes that individuals with any of the certifications or registrations listed have the necessary background to qualify for certification as an asbestos inspector after completion of an asbestos inspector training course.

Subp. 3. **Training requirements for initial certification.** Although training courses for asbestos inspectors are specifically designed for inspection activity, the training system for certification is similar to the training system in place for asbestos workers and asbestos site supervisors.

Item A is necessary to ensure that an individual who applies for initial certification as an asbestos inspector has completed an appropriate initial asbestos inspector training course. Training courses which meet the standards of the Minnesota Department of Health are acceptable. Minnesota Department of Health standards for training courses are based on criteria set forth by the Environmental Protection Agency. The system of auditing training courses, and acceptance of EPA-approved training courses, provided a Minnesota refresher training course is taken, for asbestos workers and asbestos site supervisors is in existing rule part 4620.3300, subpart 2, item A, subitem (3). This rule part has been rewritten to cover asbestos inspectors and to clarify and update the requirements to be consistent with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, the Asbestos Model Accreditation Plan.

Subitem (1) is reasonable because courses issued a permit by the commissioner have been audited by the MDH. The department has course auditors who are qualified to accurately determine whether the training course is acceptable based on EPA criteria.

Subitem (2) is reasonable because it allows an individual who has completed an EPA approved initial training course to meet the requirements for asbestos inspector certification.

Subitem (3) is reasonable because it allows certification of an individual who has completed a training course approved by a state other than Minnesota, provided that state training program is accredited by the EPA.

Item B is necessary to ensure that asbestos inspectors who have **not** taken their initial training course in Minnesota (item A, subitem 1) will have some knowledge of Minnesota-specific rules. This requirement also ensures that the asbestos inspector will have a trainer or knowledgeable individual to use as a reference should Minnesota-specific questions arise. The requirement for asbestos workers and asbestos site supervisors to take a one-day Minnesota refresher course has been in rule since 1988. This provision has not caused problems and is accepted by asbestos trainers, asbestos workers and asbestos site supervisors throughout the state.

Subp. 4. **Training diploma expiration; retraining.** Continuing education requirements of this subpart are necessary because the Environmental Protection Agency, in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (D), requires an annual refresher course to be taken for an asbestos inspector to maintain certification as an asbestos inspector.

Item A is necessary to ensure that the most recent refresher course taken must have been issued a permit by the commissioner because within the refresher course, topics are often brought up which are specific to requirements of Minnesota statute or rules. Refresher courses which have been issued a permit by the commissioner are capable of providing answers which are consistent with Minnesota laws and rules. Additionally, the MDH will have some control over the quality of the asbestos inspector refresher training course provided the course has been issued a permit by the commissioner.

Item B is necessary to be consistent with Minnesota Statutes, section 326.78, subdivision 2. Allowance of a 12-month grace period before requiring an applicant to take the initial training course over is also consistent with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (D). This item is reasonable because the refresher courses are not intended to provide all the training to do asbestos-related work, therefore it is critical for the applicant to maintain initial certification.

Subp. 5. **Application for initial certification.** Subpart 5 includes information which must be submitted to the commissioner before the certification for asbestos inspector is issued. An application form, a fee and proof of training are all required for the certification of asbestos workers and asbestos site supervisors under existing rule part 4620.3300, subpart 2.

Item A requires that a completed application form be submitted to the commissioner. This is necessary to obtain the required information for processing the applicant's file.

Item B requires a $100 annual fee for certification as an asbestos inspector. The

proposed fee is necessary to allow the commissioner to collect a fee to support the staff resources necessary for certifying asbestos inspectors. The commissioner's authority for collecting a certification fee for asbestos inspectors is under Minnesota Statutes, section 326.73, subdivision 2. (See appendix B for analysis of projected program costs and revenues).
Item B requires that the check for renewal to be made out to the Minnesota Department of Health. The Minnesota Department of Health has been advised by the governor's office to change deposits from the "Treasurer" to the "Minnesota Department of Health". A business check, cashier's check or money order is required because of the large number of personal checks that bounce. Bounced checks require much time and effort be spent by MDH support staff to collect the required fee. MDH has neither the staff nor financial resources to dedicate staff to this task. Some other licensing programs within the department hold the permit or certificate until the check has cleared. This time period would place a burden on the contractor or applicant and would create a much longer waiting period before the applicant is certified.

Item C is necessary because it requires proof that the applicant is qualified to be certified as an asbestos inspector. The documents required in subitems (1) to (5) have been required in the application process of asbestos workers and asbestos site supervisors since 1988 but were not specified in rule until now. By placing these items in the rule, the applicant is advised up front of the information he or she needs for the application process.The experience is required as part of Minnesota Statutes, section 326.73, subdivision 2.

Subitem (1) requires an affidavit be submitted to the commissioner so that the commissioner may ascertain the actual number of hours of employment. This documentation is necessary as a part of the requirements in subpart 2, item A.

Subitem (2) requires certified copies of the document issued upon completion of any of the apprenticeship training program described in subpart 2, item B. This is necessary to provide the commissioner with proof that the individual successfully completed the apprenticeship training.

Subitem (3) requires that the applicant provide the commissioner with a certified copy of the current building official license as an option under subpart 2, item C.

Subitem (4) is necessary to ensure that the individual has completed the course work and work experience which is described in subpart 2, item D, and is allowed for meeting the requirements for certification as an asbestos inspector.

Subitem (5) requires the applicant to submit to the commissioner a copy of the applicant's current professional registration or certification as described in subpart 2, item E, for meeting the requirements for certification as an asbestos inspector.

Item D requires that the applicant provide proof of the training required according to subpart 3, item A or B. This has been a requirement for asbestos workers and asbestos site supervisors since 1988 and is necessary to ensure that the applicant has the appropriate training required for certification.

Subp. 6. **Renewal.** Subpart 6 is modeled after annual renewal procedures required for asbestos workers and asbestos site supervisors and is consistent with Minnesota Statutes, section 326.78, subdivision 2. This subpart is necessary to inform certified asbestos inspectors that they may apply for renewal of the asbestos inspector certificate before to the expiration date on the current asbestos inspector certificate.

The asbestos inspector must ensure that the department receives the renewal applications at least 30 days before the expiration date of the current certificate. This is necessary because it takes the support staff at MDH between two and four weeks to process all the materials for certification of individuals. Generally two weeks provides enough time for processing, however, during the spring, when individuals are gearing up for the busiest time of year for asbestos related work, support staff often receive hundreds of applications at one time and it then may take closer to four weeks for processing. Placing the thirty day requirement here is reasonable because it informs individuals of the time period necessary for them to submit their application for recertification, thereby eliminating the possibility that their asbestos certificate will expire so that they can no longer work.

An applicant must complete an application form and submit it to the commissioner. Item A is necessary to obtain the required information for processing the applicant's file. Completion of a new application form is reasonable because changes may have occurred regarding that individual since the last certification of that individual.

Item B requires that the applicant submit a nonrefundable $100 renewal application fee. The proposed fee is necessary to pay for the staff resources necessary for certifying asbestos inspectors. The commissioner's authority for collecting a certification fee for asbestos inspectors is under Minnesota Statutes, section 326.75, subdivision 2. (See appendix B for analysis of projected program costs and revenues). This item also requires the check for renewal to be made out to the Minnesota Department of Health. The Minnesota Department of Health has been advised by the governor's office to change deposits from the "Treasurer" to the "Minnesota Department of Health". A business check, cashiers check or money order is required because of the large number of personal checks that bounce. Bounced checks require much time and effort be spent by MDH support staff to collect the required fee. MDH has neither the staff nor financial resources to dedicate staff to this task. Some other licensing programs within the department hold the permit or certificate until the check has cleared. This time period would place a burden on the contractor or applicant and would create a much longer waiting period before the applicant is certified.

Item C requires that the applicant submit evidence of completion of an asbestos inspector refresher training course.

Subp. 7. **Denial of certification.** Reasons for denial and procedures for denial of a certificate have been placed in one subpart for purposes of clarification. It is necessary to inform the individual of the reasons the individual may be denied an asbestos inspector certificate. The commissioner may deny the individual an asbestos inspector certificate if any of the requirements for initial or renewal of certification have not been met. Minnesota Statutes, section 144.99, subdivision 8, paragraphs (a) and (b) specify additional grounds for denial or refusal to reissue

permits, licenses, registrations, or certificates. Reference to statute is made to clarify all requirements related to denial of certification. The same requirements apply to both initial and renewal asbestos inspector certification.

Item A is necessary to inform the individual in a written notice the reasons for the denial of the asbestos inspector certification.

Item B is necessary to inform the individual who has been denied certification that the individual has 30 days to correct the deficiencies of the application without repayment of the application fee. It is reasonable to allow 30 days to correct deficiencies in the application. Thirty days allows time for the applicant to obtain information necessary for completion of the application for certification. A fee will be charged for all subsequent applications.

Subp. 8. **Duration of certificate; transfer.** This subpart specifies the length of time for which a training certificate is valid. The certificate issued by the commissioner is valid for one year from the completion date on the diploma for the most recent training course, as required by Minnesota Statutes, section 326.78, subdivision 2, as amended by Laws of Minnesota 1995, chapter 165, section 14. Certificates are not transferable. This provision is reasonable because of the specific training and experience requirements for obtaining the certificate. Each application needs to be assessed and handled separately and on the individual's own merit.

Subp. 9. **Duplicate certificate.** This subpart is necessary to clarify what a certified asbestos inspector needs to do to obtain a duplicate certificate if the original certificate is lost, destroyed, or mutilated. It is reasonable to require the asbestos inspector to complete an application for a duplicate certificate and pay for the duplicating cost. Information on the application for the duplicate certificate will be used to track down the files for that individual to verify the training and experience requirements necessary for certification. Due to the time involved for the department to produce another certificate, it is appropriate to assess a charge to recover this lost time and materials.

4620.3340 ASBESTOS MANAGEMENT PLANNER CERTIFICATION

This part is necessary to implement the requirement in Minnesota Statutes, section 326.73, subdivision 3 that directs the commissioner to certify asbestos management planners who draft management plans for asbestos-containing materials in the State of Minnesota.

Subpart 1. **Certification required.** Subpart 1 is necessary to establish a time for individuals who are interested in performing asbestos management planning to obtain the training required under this rule part. Three months is a reasonable time to allow an interested individual to collect materials needed for certification, complete the training required for an asbestos management planner, and complete the application for certification as an asbestos management planner.

Subp. 2. **Qualifications and experience.** This subpart is proposed to comply with Minnesota Statutes, section 326.73, subdivision 3, requiring the commissioner to specify in rule, evidence

of experience to qualify for asbestos management planner certification. Qualification and experience requirements for asbestos management planner are recommended in the Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, which states that, "In addition to requiring training and an examination, a State may require candidates for accreditation to meet other qualification and/or experience standards that the State considers appropriate for some or all disciplines." The advisory work group discussed this issue and recommended the qualifications included in this subpart. Qualifications and experience required for asbestos management planners is narrower than those qualifications and experience requirements for asbestos inspectors. This is necessary because of the greater responsibility placed on asbestos management planners and the general belief of the department and of other state asbestos programs that both asbestos worker and asbestos inspector disciplines are entry disciplines into the fields performing asbestos-related work. The qualifications include both work and education to provide options to qualify an individual as an asbestos management planner once the required training has been completed. Subpart 2 is required beginning six months after the effective date of this rule. It is necessary to allow for a time period when experience is not required. This time allows the Minnesota Department of Health to more process applications and allows currently trained individuals to be "grandfathered in".

Item A allows an individual to become eligible for certification as an asbestos management planner if the individual has work experience of at least 1,000 hours in the field of building inspection, asbestos-related work, safety, industrial hygiene, or hazardous materials control. An individual who has been working full time for six months would be eligible for certification under this item. This is reasonable because it allows individuals who have been performing asbestos inspections and other asbestos-related work to qualify for asbestos management planner certification. The fields listed all provide experience which is closely related to the job an asbestos management planner performs and provides the individual with the skills and knowledge necessary to perform asbestos management planning.

Item B allows an individual already trained to perform inspections of buildings as a licensed building official to become eligible for Minnesota certification as an asbestos inspector. Item B is reasonable because it is based on knowledge about building structures and materials which the licensed building official possesses.

Item C allows an individual to qualify for certification as an asbestos management planner with a combination of education and work experience. This combination provides an applicant with a broad base of experience for working as an asbestos management planner after completion of the asbestos management planner training course. The 500 hour requirement is reasonable because it specifies experience if fields pertinent to performing asbestos management planning.

Item D, the certification or registration as an architect, engineer, industrial hygienist, or industrial safety professional provides an individual with a combination of basic science knowledge and knowledge of basic building structure and function to perform the job of asbestos management planning. All of the fields of study listed require individuals to take courses relating to the structure and function of buildings and air handling systems within those buildings. The certification or registration process ensures competency within that professional field. The agency believes that individuals with any of the certifications or registrations listed

have the necessary background to qualify for certification as an asbestos management planner after completion of an asbestos management planner training course.

Item E is necessary to provide another option for an individual to qualify for certification as an asbestos management planner with a combination of education and work experience. The applicable master's degree counts for one-half of the hourly experience required under item C. Each degree listed provides applicable skills and knowledge for performing asbestos management planning. The experience requirement has been reduced to 250 hours to correspond with increased educational experience of this item.

Subp. 3. **Training requirements for initial certification.** Although training courses for asbestos management planners are specifically designed for management planning activity, the training system for certification is similar to the training system in place for asbestos workers and asbestos site supervisors.

Item A is necessary to ensure that an individual who applies for initial certification as an asbestos management planner has completed an appropriate initial asbestos management planner training course. Training courses which meet the standards of the Minnesota Department of Health are acceptable. Minnesota Department of Health standards for asbestos-related training courses are based on criteria set forth by the Environmental Protection Agency. The system of auditing asbestos-related training courses, and acceptance of EPA-approved training courses, provided a Minnesota refresher training course is taken, for asbestos workers and asbestos site supervisors, is in existing rule part 4620.3300, subpart 2, item A, subitem (3). This rule part has been rewritten to cover asbestos management planners and to clarify and update the requirements to be consistent with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, the Asbestos Model Accreditation Plan.

Subitem (1) is reasonable because courses issued a permit by the commissioner have been audited by the MDH. The department has course auditors who are qualified to accurately determine whether the training course is acceptable based on EPA criteria.

Subitem (2) is reasonable because it allows an individual who has completed an EPA-approved initial training course to meet the requirements for asbestos management planner certification. In addition to the initial training, the individual would be required to complete a Minnesota-approved management planner refresher course to provide the individual with Minnesota-specific law and rules.

Subitem (3) The requirement for asbestos management planners to complete a Minnesota refresher course is reasonable because it allows certification of an individual who has completed a training course approved by a state other than Minnesota, provided that state training program is accredited by the EPA.

Item B is necessary to ensure that asbestos management planners who have **not** taken their initial training course in Minnesota (item A, subitem 1) will have some knowledge of Minnesota-specific rules. This requirement also ensures that the asbestos management planner

will have a trainer or knowledgeable individual to use as a reference should Minnesota-specific questions arise. The requirement for asbestos workers and asbestos site supervisors to take a one-day Minnesota refresher course has been in rule since 1988. This provision has not caused problems and is accepted by asbestos trainers, asbestos workers and asbestos site supervisors throughout the state.

Subp. 4. **Training diploma expiration; retraining.** Continuing education requirements of this subpart are necessary because the Environmental Protection Agency, in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (D), requires an annual refresher course to be taken for an asbestos management planner to maintain certification as an asbestos management planner.

Item A is necessary to ensure that the most recent refresher course taken must have been issued a permit by the commissioner because within the refresher course, topics are often brought up which are specific to requirements of Minnesota statute or rules. Refresher courses which have been issued a permit by the commissioner are capable of providing answers which are consistent with Minnesota laws and rules. Additionally, the MDH will have some control over the quality of the asbestos management planner refresher training course provided the course has been issued a permit by the commissioner.

Item B is necessary to be consistent with Minnesota statutes, section 326.78, subdivision 3. Allowance of a 12-month grace period before requiring an applicant to take the initial training course over is also consistent with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (D). This item is reasonable because the refresher courses are not intended to provide all the training to do asbestos-related work, therefore it is critical for the applicant to maintain initial certification.

Subp. 5. **Application for initial certification.** Subpart 5 includes information which must be submitted to the commissioner before the certification for asbestos management planner is issued. An application form, a fee and proof of training are all required for the certification of asbestos workers and asbestos site supervisors under existing rule part 4620.3300, subpart 2.

Item A requires that a completed application form be submitted to the commissioner. This is necessary to obtain the required information for processing the applicant's file.

Item B requires a $100 annual fee for certification as an asbestos management planner. The proposed fee is necessary to allow the commissioner to collect a fee to support the staff resources necessary for certifying asbestos management planners. The commissioner's authority for collecting a certification fee for asbestos management planners is under Minnesota Statutes, section 326.73, subdivision 3. (See appendix B for analysis of projected program costs and revenues). Item B also requires that the check for renewal to be made out to the Minnesota Department of Health. The Minnesota Department of Health has been advised by the governor's office to change deposits from the "Treasurer" to the "Minnesota Department of Health". A business check, cashier's check or money order is required because of the large number of personal checks that bounce. Bounced checks require much time and effort be spent by MDH support staff to collect the required fee. MDH has neither the staff nor financial resources to

dedicate staff to this task. Some other licensing programs within the department hold the permit or certificate until the check has cleared. This time period would place a burden on the contractor or applicant and would create a much longer waiting period before the applicant is certified.

Item C is necessary because it requires proof that the applicant is qualified to be certified as an asbestos management planner. The documents required in subitems (1) to (5) have been required in the application process of asbestos workers and asbestos site supervisors since 1988 but were not specified in rule until now. By placing these items in the rule, the applicant is advised up front of the information he or she needs for the application process. Experience is required as part of Minnesota Statutes, section 326.73, subdivision 2.

Subitem (1) requires an affidavit be submitted to the commissioner so that the commissioner may ascertain the actual number of hours of employment. This documentation is necessary as a part of the requirements in subpart 2, item A.

Subitem (2) requires a copy of the current license issued to the building inspector, as indicated in subpart 2, item B. This is necessary to provide the commissioner with proof that the individual is licensed as a building inspector.

Subitem (3) requires that the applicant provide the commissioner with certified transcripts of course work completed for the degree, and affidavits to verify the applicant's past work experience, as an option under subpart 2, item C.

Subitem (4) requires the applicant to submit to the commissioner a copy of the applicant's current professional registration or certification as described in subpart 2, item D, for meeting the requirements for certification as an asbestos management planner.

Subitem (5) requires that the applicant provide the commissioner with certified transcripts of course work completed for the master's degree, and affidavits to verify the applicant's past work experience, as an option under subpart 2, item E.

Item D requires that the applicant provide proof of the training required according to subpart 3, item A or B. This has been a requirement for asbestos workers and asbestos site supervisors since 1988 and is necessary to ensure that the applicant has the appropriate training required for certification.

Item E requires that the applicant provide proof of the training required in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (B), subparagraph (4). Current, valid asbestos inspector accreditation is a requirement for asbestos management planners who are allowed to work in schools, and is necessary because a asbestos management planner must have an understanding of how and where the asbestos inspector collected the date that the asbestos management planner will use in development of an asbestos management plan.

Subp. 6. **Renewal.** Subpart 6 is modeled after annual renewal procedures required for asbestos

workers and asbestos site supervisors and is consistent with Minnesota Statutes, section 326.78, subdivision 3. This subpart is necessary to inform certified asbestos management planners that they may apply for renewal of the asbestos management planner certificate before the expiration date on the current asbestos management planner certificate.

The asbestos management planner must ensure that the department receives the renewal applications at least 30 days before the expiration date of the current certificate. This is necessary because it takes the support staff at MDH between two and four weeks to process all the materials for certification of individuals. Generally two weeks provides enough time for processing, however, during the spring, when individuals are gearing up for the busiest time of year for asbestos related work, support staff often receive hundreds of applications at one time and it then may take closer to four weeks for processing. Placing the thirty day requirement here is reasonable because it informs individuals of the time period necessary for them to submit their application for recertification, thereby eliminating the possibility that their asbestos certificate will expire so that they can no longer work.

Item A requires an applicant to complete an application form and submit it to the commissioner. Item A is necessary to obtain the required information for processing the applicant's file. Completion of a new application form is reasonable because changes may have occurred regarding that individual since the last certification of that individual.

Item B requires that the applicant submit a nonrefundable $100 renewal application fee. The proposed fee is necessary pay for the staff resources necessary for certifying asbestos management planners. The commissioner's authority for collecting a certification fee for asbestos management planners is under Minnesota Statutes, section 326.75, subdivision 3. (See appendix B for analysis of projected program costs and revenues). This item also requires the check for renewal to be made out to the Minnesota Department of Health. The Minnesota Department of Health has been advised by the governor's office to change deposits from the "Treasurer" to the "Minnesota Department of Health". A business check, cashier's check or money order is required because of the large number of personal checks that bounce. Bounced checks require much time and effort be spent by MDH support staff to collect the required fee. The department has neither the staff nor financial resources to dedicate staff to this task. Some other licensing programs within the department hold the permit or certificate until the check has cleared. This time period would place a burden on the contractor or applicant and would create a much longer waiting period before the applicant is certified.

Item C requires that the applicant submit evidence of completion of an asbestos management planner refresher training course.

Item D requires that the applicant provide proof of the refresher training course required in Code of Federal Regulations, title 40, chapter I, part 763, subpart E, appendix C, section I, paragraph (B), subparagraph (4). This is an existing requirement for asbestos management planners who are allowed to work in schools, and is necessary because an asbestos management planner must have an understanding of how and where the asbestos inspector collected the date that the asbestos management planner will use in development of an asbestos management plan.

Subp. 7. **Denial of certification.** Reasons for denial and procedures for denial of a certificate have been placed in one subpart for purposes of clarification. It is necessary to inform the individual of the reasons the individual may be denied an asbestos management planner certificate. The commissioner may deny the individual an asbestos management planner certificate if any of the requirements for initial or renewal of certification have not been met. Minnesota Statutes, section 144.99, subdivision 8, paragraphs (a) and (b) specify additional grounds for denial or refusal to reissue permits, licenses, registrations, or certificates. Reference to statute is made to clarify all requirements related to denial of certification. The same requirements apply to both initial and renewal asbestos management planner certification.

Item A is necessary to inform the individual in a written notice the reasons for the denial of the asbestos management planner certification.

Item B is necessary to inform the individual who has been denied certification that the individual has 30 days to correct the deficiencies of the application without repayment of the application fee. It is reasonable to allow 30 days to correct deficiencies in the application. Thirty days allows time for the applicant to obtain information necessary for completion of the application for certification. A fee will be charged for all subsequent applications. A fee will be charged for all subsequent applications.

Subp. 8. **Duration of certificate; transfer.** This subpart specifies the length of time for which a training certificate is valid. The certificate issued by the commissioner is valid for one year from the completion date on the diploma of the most recent training course, as required by Minnesota Statutes, section 326.78, subdivision 2, as amended by Laws of Minnesota 1995, chapter 165, section 14. Certificates are not transferable. This provision is reasonable because of the specific training and experience requirements for obtaining the certificate. Each application needs to be assessed and handled separately and on the individual's own merit.

4620.3350 ASBESTOS PROJECT DESIGNER CERTIFICATION

This part is necessary to implement the requirements in Minnesota Statutes, section 326.73, subdivision 4 that directs the commissioner to certify individuals who design projects in the State of Minnesota.

Subpart 1. **Certification required.** Subpart 1 is necessary to establish a time for individuals who are interested in performing asbestos project design to obtain the training required under this rule part. Three months is a reasonable time to allow an interested individual to collect materials needed for certification, complete the training required for an asbestos project designer, and complete the application for certification as an asbestos project designer.

Subp. 2. **Qualifications and experience.** This subpart is proposed to comply with Minnesota Statutes, section 326.73, subdivision 4, requiring the commissioner to specify in rule, evidence of experience to qualify for asbestos project designer certification. Qualification and experience requirements for asbestos project designer are recommended in the Code of Federal Regulations, title 40, part 763, subpart E, appendix C, section I, paragraph (E), subparagraph (1), which

states that, "In addition to requiring training and an examination, a State may require candidates for accreditation to meet other qualification and/or experience standards that the State considers appropriate for some or all disciplines." The advisory work group discussed this issue and recommended the qualifications included in this subpart. Qualifications and experience required for asbestos project designers is narrower than those qualifications and experience requirements for asbestos inspectors and asbestos management planners. The qualifications include both work and education to provide options to qualify an individual as an asbestos management planner once the required training has been completed. Subpart 2 is required beginning six months after the effective date of this rule. It is necessary to allow for a time period when experience is not required. This time allows the Minnesota Department of Health to process applications and allows currently trained individuals to be "grandfathered in".

Item A allows an individual to become eligible for certification as an asbestos project designer if the individual has work experience of at least 4,000 hours in the field of asbestos-related work, asbestos project design, or asbestos site supervision. An individual who has performed the work in item A for two years would be eligible for certification. This is reasonable because it allows individuals who have been performing related asbestos work to qualify for asbestos project designer certification. The fields listed all provide experience is closely related to the job an asbestos project designer performs and provides the individual with skills and knowledge necessary to perform the tasks of an asbestos project designer.

Item B, the certification or registration as an architect, engineer, industrial hygienist, or safety professional provides an individual with a combination of basic science knowledge and knowledge of basic building structure and function to perform the job of asbestos project design. All of the fields of study listed above require individuals to take courses relating to the structure and function of buildings and air handling systems within those buildings. The certification or registration process ensures competency within that professional field. The agency believes that individuals with any of the certifications or registrations listed have the necessary background to qualify for certification as an asbestos project designer after completion of an asbestos project designer training course.

Subp. 3. **Training requirements for initial certification.** Although training courses for asbestos project designers are specifically designed for asbestos project design activity, the training system for certification is similar to the training system in place for asbestos workers and asbestos site supervisors.

Item A is necessary to ensure that an individual who applies for initial certification as an asbestos project designer has completed an appropriate initial asbestos project designer training course. Training courses which meet the standards of the Minnesota Department of Health are acceptable. Minnesota Department of Health standards for asbestos-related training courses are based on criteria set forth by the Environmental Protection Agency. The system of auditing asbestos-related training courses, and acceptance of EPA-approved training courses, provided a Minnesota refresher training course is taken, for asbestos workers and asbestos site supervisors is in existing rule part 4620.3300, subpart 2, item A, subitem (3). This rule part has been rewritten to cover asbestos project designers and to clarify and update the requirements to be consistent with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, the

Asbestos Model Accreditation Plan.

Subitem (1) is reasonable because courses issued a permit by the commissioner have been audited by the MDH. The department has course auditors who are qualified to accurately determine whether the training course is acceptable based on EPA criteria.

Subitem (2) is reasonable because it allows an individual who has completed an EPA-approved initial training course to meet the requirements for asbestos project designer certification.

Subitem (3) is reasonable because it allows certification of an individual who has completed a training course approved by a state other than Minnesota, provided that state training program is accredited by the EPA.

Item B is necessary to ensure that asbestos project designers who have **not** taken their initial training course in Minnesota (item A, subitem 1) will have some knowledge of Minnesota-specific rules. This requirement also ensures that the asbestos project designers will have a trainer or knowledgeable individual to use as a reference should Minnesota-specific questions arise. The requirement for asbestos workers and asbestos site supervisors to take a one-day Minnesota refresher course has been in rule since 1988. This provision has not caused problems and is accepted by asbestos trainers, asbestos workers and asbestos site supervisors throughout the state.

Subp. 4. **Training diploma expiration; retraining.** Continuing education requirements of this subpart are necessary because the Environmental Protection Agency, in Code of Federal Regulations, title 40, part 763, subpart E, appendix C, section I, paragraph (D), requires an annual refresher course to be taken for an asbestos project designer to maintain certification as an asbestos project designer.

Item A is necessary to ensure that the most recent refresher course taken must have been issued a permit by the commissioner because within the refresher course, topics are often brought up which are specific to requirements of Minnesota statute or rules. Refresher courses which have been issued a permit by the commissioner are capable of providing answers which are consistent with Minnesota laws and rules. Additionally, the department will have some control over the quality of the asbestos project designer refresher training course provided the course has been issued a permit by the commissioner.

Item B is necessary to be consistent with Minnesota Statutes, section 326.78, subdivision 2. Allowance of a 12-month grace period before requiring an applicant to take the initial training course over is also consistent with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C. This item is reasonable because the refresher courses are not intended to provide all the training to do asbestos-related work, therefore it is critical for the applicant to maintain initial certification.

Subp. 5. **Application for initial certification.** Subpart 5 includes information which must be submitted to the commissioner before the certification for asbestos project designer is issued.

An application form, a fee and proof of training are all required for the certification of asbestos workers and asbestos site supervisors under existing rule part 4620.3300, subpart 2.

Item A requires that a completed application form be submitted to the commissioner. This is necessary to obtain the required information for processing the applicant's file.

Item B requires a $100 annual fee for certification as an asbestos project designer. The proposed fee is necessary to allow the commissioner to collect a fee to support the staff resources necessary for certifying asbestos project designers. The commissioner's authority for collecting a certification fee for asbestos project designers is under Minnesota Statutes, section 326.73, subdivision 4. (See appendix B for analysis of projected program costs and revenues). Item B also requires that the check for renewal to be made out to the Minnesota Department of Health. The Minnesota Department of Health has been advised by the governor's office to change deposits from the "Treasurer" to the "Minnesota Department of Health". A business check, cashier's check or money order is required because of the large number of personal checks that bounce. Bounced checks require much time and effort be spent by MDH support staff to collect the required fee. MDH has neither the staff nor financial resources to dedicate staff to this task. Some other licensing programs within the department hold the permit or certificate until the check has cleared. This time period would place a burden on the contractor or applicant and would create a much longer waiting period before the applicant is certified.

Item C requires that the applicant provide proof of the training required according to subpart 3, item A or B. This has been a requirement for asbestos workers and asbestos site supervisors since 1988 and is necessary to ensure that the applicant has the appropriate training required for certification.

Item D is necessary because it requires proof that the applicant is qualified to be certified as an asbestos project designer. The documents required in subitems (1) to (5) have been required in the application process of asbestos workers and asbestos site supervisors since 1988 but were not specified in rule until now. By placing these items in the rule, the applicant is advised up front of the information he or she needs for the application process. Experience is required as part of Minnesota Statutes, section 326.73, subdivision 2.

Subitem (1) requires an affidavit be submitted to the commissioner so that the commissioner may ascertain the actual number of hours of employment. This documentation is necessary as a part of the requirements in subpart 2, item A.

Subitem (2) requires the applicant to submit to the commissioner a copy of the applicant's current professional registration or certification as described in subpart 2, item B, for meeting the requirements for certification as an asbestos project designer.

Subp. 6. **Renewal.** Subpart 6 is modeled after annual renewal procedures required for asbestos workers and asbestos site supervisors and is consistent with Minnesota Statutes, section 326.78, subdivision 4. This subpart is necessary to inform certified asbestos project designers that they may apply for renewal of the asbestos project designer certificate prior to the expiration date on the current asbestos project designer certificate.

The asbestos project designer must ensure that the department receives the renewal applications at least 30 days before the expiration date of the current certificate. This is necessary because it takes the support staff at MDH between two and four weeks to process all the materials for certification of individuals. Generally two weeks provides enough time for processing, however, during the spring, when individuals are gearing up for the busiest time of year for asbestos related work, support staff often receive hundreds of applications at one time and it then may take closer to four weeks for processing. Placing the thirty day requirement here is reasonable because it informs individuals of the time period necessary for them to submit their application for recertification, thereby eliminating the possibility that their asbestos certificate will expire so that they can no longer work.

An applicant must complete an application form and submit it to the commissioner. Item A is necessary to obtain the required information for processing the applicant's file. Completion of a new application form is reasonable because changes may have occurred regarding that individual since the last certification of that individual.

Item B requires that the applicant submit a nonrefundable $100 renewal application fee. The proposed fee is necessary to pay for the staff resources necessary for certifying asbestos project designers. The commissioner's authority for collecting a certification fee for asbestos project designers is under Minnesota Statutes, section 326.75, subdivision 3. (See appendix B for analysis of projected program costs and revenues). This item also requires the check for renewal to be made out to the Minnesota Department of Health. The Minnesota Department of Health has been advised by the governor's office to change deposits from the "Treasurer" to the "Minnesota Department of Health". A business check, cashier's check or money order is required because of the large number of personal checks that bounce. Bounced checks require much time and effort be spent by MDH support staff to collect the required fee. The department has neither the staff nor financial resources to dedicate staff to this task. Some other licensing programs within the department hold the permit or certificate until the check has cleared. This time period would place a burden on the contractor or applicant and would create a much longer waiting period before the applicant is certified.

Item C requires that the applicant submit evidence of completion of an asbestos project designer refresher training course.

Subp. 7. **Denial of certification.** Reasons for denial and procedures for denial of a certificate have been placed in one subpart for purposes of clarification. It is necessary to inform the individual of the reasons the individual may be denied an asbestos project designer certificate. The commissioner may deny the individual an asbestos project designer certificate if any of the requirements for initial or renewal of certification have not been met. Minnesota Statutes, section 144.99, subdivision 8, paragraphs (a) and (b) specify additional grounds for denial or refusal to reissue permits, licenses, registrations, or certificates. Reference to statute is made to clarify all requirements related to denial of certification.

Item A is necessary to inform the individual in a written notice the reasons for the denial of the asbestos project designer certification.

Item B is necessary to inform the individual who has been denied certification that the individual has 30 days to correct the deficiencies of the application without repayment of the application fee. It is reasonable to allow 30 days to correct deficiencies in the application. Thirty days allows time for the applicant to obtain information necessary for completion of the application for certification. A fee will be charged for all subsequent applications.

Subp. 8. **Duration of certificate; transfer.** This subpart specifies the length of time for which a training certificate is valid. The certificate issued by the commissioner is valid for one year from the completion date on the diploma of the most recent training course, as required by Minnesota Statutes, section 326.78, subdivision 2, as amended by Laws of Minnesota 1995, chapter 165, section 14. Certificates are not transferable. This provision is reasonable because of the specific training and experience requirements for obtaining the certificate. Each application needs to be assessed and handled separately and on the individual's own merit.

Subp. 9. **Duplicate certificate.** This subpart is necessary to clarify what a certified asbestos project designer needs to do to obtain a duplicate certificate if the original certificate is lost, destroyed, or mutilated. It is reasonable to require the asbestos project designer to complete an application for a duplicate certificate and pay for the duplicating cost. Information on the application for the duplicate certificate will be used to track down the files for that individual to verify the training and experience requirements necessary for certification. Due to the time involved for the department to produce another certificate, it is appropriate to assess a charge to recover this lost time and materials.

4620.3410 ASBESTOS-RELATED WORK PROJECT NOTICE

Contractor responsibilities are specified in this part. The requirements in this part are in existing rule part 4620.3400 which is proposed for repeal. New requirements have been added to the proposed rule as a result of amendments to Minnesota Statutes, sections 326.71 to 326.81 made in 1993, 1994, and 1995.

Subpart 1. **General.** It is necessary to require contractors to notify the commissioner of each project to be performed so the commissioner has the opportunity to inspect the project to ensure public safety. Minnesota Statutes, section 326.74 requires the licensed asbestos contractor to provide the commissioner with a written notice of any project.

Subp. 2. **Requirements for notice.** Subpart 2 reorganizes and clarifies notice to the commissioner for performance of asbestos-related work. This subpart requires that the commissioner must receive written notification from the licensed asbestos contractor performing asbestos related work at least five calendar days before to the start of asbestos-related work as required by Minnesota Statutes, section 326.74.

Items A to C are necessary so that notices can be processed. The provisions of this subpart are also found in existing rule part 4620.3400, subpart 1, item A, subitems (1) to (3). The provisions have been reorganized and rewritten for clarification.

Item A is necessary to provide the commissioner with data about the asbestos-related work to be done. The department frequently handles calls from the general public about on-going projects and the notice is helpful in answering questions. The notice also assists MDH inspectors in determining which projects to inspect. The notice must be completed on a form provided by the commissioner to assist support staff in entering project data on to the data base.

Item B is necessary for collection of the fee required in Minnesota Statutes, section 326.75, subdivision 3.

Item C is necessary to ensure that item B is being complied with. Small residential abatement projects are exempt from documenting the cost of a project because Minnesota Statutes, section 326.75, subdivision 3 requires that a flat fee be paid to the commissioner for each small residential abatement project noticed to the commissioner. The flat fee system does not need documentation as to the cost of the project. The work group raised concern over the one-percent fee required in Minnesota Statutes, section 326.75, subdivision 3. Because the changes necessary for restructuring asbestos-related fees would also require a change in statute, item C and the requirement for contractors to submit project cost is still necessary and reasonable for inclusion in this subpart.

Subp. 3. **Project activity notice.** Subpart 3 is necessary to ensure that the commissioner is notified of the schedule for projects and portions of projects as defined under part 4620.3100, subpart 27b. During the work group meeting on April 6, 1995 the Minnesota Asbestos Abatement Contractors Association suggested changing the proposed language from "work shift times" to "*anticipated* work shift times". During 1994, Minnesota Department of Health inspectors experienced no one on site at the time of an inspection approximately one-third of the time. This is an extreme waste of the MDH inspector's time and state funds. MDH inspectors plan their day using the information found on the asbestos notices submitted to the commissioner for obtaining a permit. Initial 1994 draft rule language was written to make the asbestos contractor responsible for ensuring that personnel be at the project site on the days and during the time periods indicated on the notification. We have changed the 1995 draft rule language to read "work shift times during which there will be project activity". Work shift times are more flexible than specifying exact times when project activity will be occurring. Currently some contractors consistently notify the Minnesota Department of Health of changes in work times. To address the concerns of the Contractor's Association, the department has added language to address the means by which the department must be notified of changes to work shift times.

Item A is necessary to inform the commissioner when a project will be completed in phases. By allowing an project to be notified in phases, the commissioner is providing the asbestos contractors with the flexibility to complete their work in an efficient manner. This also prevents the contractor from having to wait another five days prior to beginning asbestos-related work. This provision is new and intended to simplify project notification for contractors. It is expected that time, effort and money will be saved by simplifying the notification process.

Item B is necessary to implement notice requirements for asbestos-containing material to be enclosed, removed, or encapsulated for a project that is a series of abatements when a contractor cannot reasonably determine a work schedule ahead of time. Notice of all asbestos-related work is required by Minnesota Statutes, section 326.74. By requiring the information be sent to the commissioner on a form provided by the commissioner, it is certain that the appropriate project information is obtained and the information can then be easily transferred to the data base.

Historically, the department has issued a permit for a series of abatements under "blanket" or "annual" permits. This permit system caused difficulties because the amount of asbestos-containing material abated was cumulative over the calendar year. Under the blanket permit system, if a company had a large project completed in the beginning of the calendar year, every additional foot of asbestos-containing material (ACM) abated in that facility needed to be notified to the department and all of the department rules had to be complied with for any additional amount. In response to comment by members of the work group and to individuals who attended work group meetings, the department has restructured the permit system. Commercial projects which exceed 160 square feet, 260 linear feet or 35 cubic feet will be issued a permit under subpart 3 items A or B. Small projects will cumulate on a separate scale from the large projects and will be issued a permit under subpart 3 item C. In addition to the separate accumulation of ACM, amounts of ACM abated will only need to be notified to the commissioner if the amount exceeds three square or three linear feet. This allows contractors to make small repairs without the additional responsibility of notifying the commissioner. The building owner must still keep track of the amount of asbestos-related work performed in the facility but the new system greatly reduces the amount of paperwork required to perform asbestos-related work, thus saving the building owner and contractor time and money.

Subp. 4. **Dates and times of asbestos-related work.** Subpart 4 is necessary for inspections. The commissioner needs to know when the asbestos workers and asbestos site supervisors will be on-site. As stated above, this has been a problem in the past causing nearly one-third of all on-site inspections to result in the department being unable to perform an inspection due to inaccurate notification. Some contractors are already notifying the commissioner of their work shift times and regularly amend the work times. This has not been problematic for those contractors. This provision would save the department both time and money and is therefore reasonable.

Items A and B are necessary to ensure that the commissioner has accurate information about the work shift times when asbestos workers and asbestos site supervisors are on site. This is reasonable because it allows for inspections of asbestos-related work. By knowing when the asbestos-related work is being performed, MDH inspectors are able to plan and execute their inspections. The department originally had suggested that "times" be used instead of "work shift times". In response to the Minnesota Asbestos Abatement Contractor's Association (MAACA, 1995), the department has replaced "times" with "work shift times". The use of the term "work shift times" allows asbestos workers and asbestos site supervisors to not be on site every minute

that is noted on the notification, however, if the contractor decides not to have asbestos workers on site during one or more work shifts, they must notify the commissioner. The notification will prevent many of the unsuccessful inspection attempts by MDH inspectors which now occur approximately one-third of the time. This will be particularly time saving for those sites outside the Twin Cities metropolitan area.

Item C is necessary to indicate the methods by which contractors must inform the commissioner of changes in work shift dates and times. It is reasonable to allow the use of fax and voice mail for changes on the notice to ensure the contractor will not experience problems notifying the commissioner of changes. Multiple methods of notification allow for flexibility and simplify the notification process for the asbestos contractor. Written notification is expected for changes on the project start and end dates. This exception is reasonable because of the extensive preparation and activity found in both the set up and tear down of a project. The start and end dates are not subject to spontaneity as are the work shift times for projects.

Subp. 5. **Licensed asbestos contractor performing air quality monitoring.** Subpart 5 is necessary to ensure that the licensed contractors performing air quality monitoring submit the one-percent fee required in Minnesota Statutes, section 326.75, subdivision 3. The one-percent fee is required to be paid to the department for "asbestos-related work," which, as defined in Minnesota Statutes, section 326.71, subdivision 4, includes "an air quality monitoring specified in rule to assure that the abatement and adjacent areas are not contaminated with asbestos fibers during the project and after completion." The items in this subpart are required under law. The asbestos contractors have been notifying the department and paying the one-percent fee, however, the air monitoring contractors are not regularly paying the one-percent fee required by law. The notification to the commissioner, as required by Minnesota Statutes, section 326.74, will help ensure that the air quality monitoring fees are paid.

4620.3415 **AMENDMENT OF NOTICE.**

Part 4620.3415 is proposed to specify when notices can be changed and expands the methods by which a notice can be changed. It is reasonable because it provides the asbestos contractor with flexibility for the notification process. Requirements in this part are contained in existing rule part 4620.3400, subpart 1, item B, which is proposed for repeal. This part specifies that the commissioner must be notified of any changes to the notification as specified in part 4620.3410, subp. 2, item A.

By allowing notification of changes in work shift times to take place by fax or voice mail, the messages may cross and there still may be unsuccessful inspections attempts by MDH inspectors, but it is expected that the number of these unsuccessful inspections will decrease.

Item A is necessary to inform the commissioner of changes made to the information provided to the commissioner under part 4620.3410, subp. 2, item A. Requirements in this part

are contained in existing rule part 4620.3400, subpart 1, item B. Work shift times are addressed in proposed rule part 4620.3410, subpart 4.

Item B is necessary to ensure that there is a five day waiting period in place. This is consistent with requirements of Minnesota Statutes, section 326.74.

Item C is necessary to prevent contractors from changing work practices, dates, and work shift times without prior notification to the commissioner. The commissioner must be informed of changes made before the changes are implemented.

4620.3420 EMERGENCY PROJECT NOTICE.

Part 4620.3420 is necessary to address the situation where asbestos poses a threat to public health. In this case an asbestos contractor performing abatement needs to act quickly to protect the public. It would not be prudent to require a waiting period, therefore different emergency notice procedures must be followed. Many clean up projects would fall under the category of an emergency. Some repair jobs would also need to be considered under the emergency notification process. The requirements in this part are contained in existing rule part 4620.3400, subpart 1, item E, which is proposed for repeal.

Subpart 1. **Emergency project begun during work hours.** In subpart 1, the work hours for the Minnesota Department of Health are listed to specify whether item A or item B of this subpart is to be followed.

Item A is necessary so that the commissioner is informed of emergency asbestos-related work. It is reasonable to require that the asbestos contractor performing abatement notify the commissioner of the emergency project before the project begins because during the times listed above, the Minnesota Department of Health has staff available to assist with the notification process.

Item B requires the permit fee and related cost verification for the project be submitted to the commissioner within five days of the project start date. Permit fees and cost verifications are ordinarily due at the time of submittal of the notification to the commissioner, prior to issuance of a permit. In an emergency, the most important goal is to clean up the mess and protect human health. Five days is a reasonable amount of time to collect information needed for the cost verification and to get the permit fee together.

Subp. 2. **Emergency project begun after work hours.** In subpart 2, the work hours for the Minnesota Department of Health are referenced to indicate when the contractor may follow the items of this subpart.

Item A is necessary to inform the commissioner of emergency asbestos-related work.

It is reasonable to require that the asbestos contractor performing abatement notify the commissioner of the emergency project as soon as the department is open once again for business.

Item B requires the permit fee and related cost verification for the project be submitted to the commissioner within five days. Permit fees and cost verifications are ordinarily due at the time of submittal of the notification to the commissioner. In an emergency, the most important goal is to clean up the mess and protect human health. Five days is a reasonable amount of time to collect information needed for the cost verification and to pay the permit fee.

Subp. 3. **Amendments to emergency project notice.** Subpart 3 requires that amendments to emergency project notice occur in the same manner as a non-emergency project notice. Additional asbestos-containing material may not be abated under the emergency permit unless that material was a part of the emergency situation. It is reasonable to require that the contractor wait five days for additional asbestos abatement to be consistent with non-emergency situations and to allow time for the commissioner to plan inspections and to issue a permit.

4620.3425 **PERMIT ISSUANCE.**

Part 4620.3425 states that the commissioner will issue a permit to the licensed contractor provided the notification is complete and submitted with the fee and, if necessary, the cost verification. The permit is valid only for the dates listed on the notification or subsequent amendments to the current notification.

4620.3430 **PERMIT FEES.**

Part 4620.3430 clarifies project permit fee requirements. It provides procedures for payment of project permit fees established in Minnesota Statutes, section 326.75, subdivision 3. Some of the requirements are in existing rule part 4620.3400, subpart 1, items C and D, which are proposed for repeal, and thus have been moved for rule reorganization purposes.

Subpart 1. **General.** Subpart 1 is necessary because it states that a permit fee is required for every project. Subpart 1 is reasonable because it is required in Minnesota Statutes, part 326.75, subdivision 3.

Subp. 2. **Permit fees other than small residential.** Subpart 2 requires that a one percent fee be paid to the commissioner for non-residential projects. This subpart is reasonable because it is required in Minnesota Statutes, part 326.75, subdivision 3 and it is the same requirement as found in existing rule, part 4620.3400, subpart 1.

Item A specifies the requirement in existing rule part 4620.3400, subpart 1, item C is

proposed for repeal.

Item B requires the contractor to pay one percent on the difference of the amount listed on the original invoice and the final project cost. This one percent fee on the difference must be submitted to the commissioner within thirty days of submittal of the invoice to the contracting entity. This is consistent with requirements of Minnesota Statutes, section 326.75, subdivision 3.

Item C is necessary to inform the contractor that the commissioner must refund excess fee payments back to the contractor.

Subp. 3. **Small residential abatement permit fee.** Subpart 3 is necessary to specify the small residential abatement fee required under Minnesota Statutes, section 326.75, subdivision 3. The project fee for small residential abatement is a flat fee, unlike the percentage fee assessed for large non-residential projects.

4620.3435 **POSTING THE WORK SITE.**

Part 4620.3435 includes requirements in existing rule part 4620.3400, subpart 2, which is to be repealed. The contractor would now post the project permit and amended permits in a conspicuous place outside the asbestos work area rather than posting a sign designating "Asbestos-related work" was being performed. Posting of the notification and subsequent amendments provides the general public with more information than posting only a sign. The information on the notice is valuable to the public when members of the general public make inquiries to the commissioner about performance of asbestos related work. It is the only method by which a member of the general public or another worker in the building or facility in which the abatement is performed could be informed about the work taking place.

Item A is necessary to require the project permit to be posted because this demonstrates that the commissioner has been notified of the project and that the project fee has been paid. A copy of the project permit is required to be posted in existing rule part 4620.3400, subpart 2, which is proposed for repeal.

Item B is necessary to provide project information to the general public and to anyone interested in obtaining information about the project. A copy of the project permit is required to be posted in existing rule part 4620.3400, subpart 2, which is proposed for repeal. The permit does not provide the amount and same type of information provided on the notice submitted to the commissioner, therefore, the department is also requiring the notice to be posted. Additionally, amended notices currently serve as the new and updated permit to perform the work specified on the notice. It is therefore reasonable to require the asbestos contractor to post both the notice and all subsequent written amendments to that notice.

Item C is necessary to include posting of notifications for permits for projects performed as a series of projects and for projects performed in stages.

4620.3440 **RECORDS.**

Part 4620.3440 includes requirements already in existing rule part 4620.3400, subpart 3, which is proposed for repeal. Existing rule requirements have been clarified in this part. It is necessary for these records to be available for review by the commissioner at the work site during the project to enable MDH inspectors to adequately review the project upon inspection.

Subpart 1. **On-site records.** Subpart 1 is necessary to address records which are required to be maintained on site during the project. Daily sign-in and sign-out logs are important records to verify who the asbestos workers are and the time spent performing asbestos-related work inside the containment, mini-containment or working with glove bags.

Item A is necessary to include glove bag procedures and mini-containments. The log is currently required for asbestos workers inside the containment, however, it is also necessary to collect data from individuals inside mini-containments and individuals working with glove bags as exposure to asbestos may occur from these jobs as well. Without data identifying the individuals who performed the glove bag procedure or abatement within the mini-containment, it would be impossible to investigate problems which may occur.

Item B is contained in existing rule part 4620.3400, subpart 3, item B, which is proposed for repeal. The project plan has been updated and simplified in part 4620.3560.

Item C requires that all air monitoring results be maintained as records. This is reasonable because it is required in existing rule part 4620.3400, subpart 3, item C, which is proposed for repeal. Episodes of fiber count excursions are also required to be documented and maintained as records. This is reasonable because it is these excursions which may pose a hazard to public health. There are protocols which must be followed in response to fiber count excursions. Under existing rule, the contractor may assume that the excursion is not asbestos. The department believes that documentation will ensure that repeated excursions are appropriately responded to.

Item D requires that records of the levels of negative pressure inside of a containment be kept. This is necessary because maintaining negative air pressure within the containment is one of the primary engineering controls to prevent fiber release into areas adjacent to the containment. Excursions in negative air pressure from established requirements may pose a hazard to public health.

Subp. 2. **Record retention.** Subpart 2 is necessary to provide information about possible fiber release and contamination to areas outside the asbestos work area. The data must be maintained

for 30 years because two of the diseases caused by exposure to asbestos fibers, namely lung cancer and mesothelioma, have a latency period of between 20 and 30 years. In other words, it takes 20 to 30 years between the time of exposure to the carcinogen and the onset of disease to occur. Without the maintenance of appropriate records, there would be no way to go back and review the project in relationship to health effects. This subpart also has provisions necessary to ensure that when an asbestos contractor ceases to do business, the records required under this part are not lost and remain available to the commissioner for inspection.

4620.3450 DUTIES OF THE CONTRACTING ENTITY.

Part 4620.3450 is necessary to clarify that the contracting entity has certain responsibilities related to asbestos-related work.

Item A is necessary to ensure that the contracting entity is responsible for maintaining records regarding all asbestos-related work performed in the facility during the calendar year. The requirement in item A is reasonable because the contracting entity is the only party that will have ongoing knowledge about asbestos-related work performed in the facility. The notice of asbestos-related work to the commissioner under part 4620.3400 is the responsibility of the asbestos contractor performing abatement. However, the asbestos contractor must rely on the contracting entity for information about how much asbestos-related work has been performed within the calendar year.

Item B is necessary to ensure that the contracting entity is responsible for notifying the asbestos contractor of the amount of asbestos-related work which has been completed within the facility during the calendar year. In response to the Minnesota Asbestos Abatement Associations' concerns, written notification must be provided to the asbestos contractor. The asbestos contractor needs to know the amount of asbestos-related work completed in the facility to decide whether or not the project must be notified to the commissioner and to decide whether or not all other parts of this rule apply.

4620.3460 INSPECTION AND ASSESSMENT OF ASBESTOS-CONTAINING MATERIALS

Part 4620.3460 implements provisions in Minnesota Statutes section 326.78, subdivision 6, which mandate the Commissioner of Health to establish work practices for asbestos management activity as defined in Minnesota Statutes, section 326.71, subdivision 4b. Requirements in this part reflect the requirements established in the Code of Federal Regulations promulgated under United States Code, title 15, sections 200 to 215 as amended through 1995.

On October 30, 1987, the United States Environmental Protection Agency (EPA) promulgated Title 40 Code of Federal Regulations chapter I, subchapter R, part 763, subpart E, titled

"Asbestos-Containing Material in Schools." Although the Congressional Act was not specifically limited to schools, the EPA chose to regulate asbestos-containing materials in schools as the first step toward implementation of the federal statute. As part of Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.85 standard operating procedures for the performance of asbestos inspections and reinspections and the reporting of the results of the inspection and reinspections were established. Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.86 established suspected asbestos-containing material bulk sampling procedures; Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.87 established analysis procedures for suspected asbestos-containing material bulk samples; Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.88 established procedures for assessment of the condition and hazard presented by asbestos-containing material in a building; and Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.93 established standardized contents of the asbestos management plan which directs an asbestos management program.

On February 3, 1994, the Environmental Protection Agency promulgated Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, the "Asbestos Model Accreditation Plan". In this document the EPA defines an "asbestos inspection." The agency has chosen to use the federal definition of asbestos inspection in Minnesota Rules, part 4620.3100, subpart 7a. This definition defines the scope of Minnesota Rules, part 4620.3460, "Inspection and Assessment of Asbestos-containing Material."

The agency has chosen Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, sections 763.85 to 763.88, as a reasonable model of asbestos inspection standard operating procedures for Minnesota Rules part 4620.3460 because the above federal rules have been applied mandatorily, in accordance with federal law, to all schools nationwide since October 30, 1987 and also have become the established standard for asbestos inspections, reinspections and asbestos management programs in nonschool settings. The establishment of a reasonable minimum standard for the performance of asbestos inspections is needed to ensure that: (1) asbestos inspections are conducted in an effective and standardized manner; and (2) the results of the asbestos inspections are defined and reproducible.

The agency has chosen to use the federal definition of "asbestos inspection and reinspection."

In general, an asbestos inspection consists of division of the building into homogeneous areas and establishing whether or not those areas aré asbestos-containing material. Asbestos content of a homogeneous area is determined through collection of samples of the material and analysis of those samples by polarized light microscopy.

Subpart 1. **Applicability.** Subpart 1 is necessary because it establishes that when asbestos inspections are conducted the provisions of part 4620.3460 apply. It is reasonable to inform individuals up front of who is affected by the rule part and address the situations to which the

rule part applies. The applicability of part 4620.3460 is consistent with applicability of asbestos inspectors and exemptions provided in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.86, appendix C, the Asbestos Model Accreditation Plan, and the definition of asbestos inspection defined in part 4620.3100, subpart 7a.

Subp. 2. **Asbestos sampling.** Subpart 2 is necessary to direct individuals when they must collect samples for asbestos inspections and how to perform this sampling. It is reasonable to refer to Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.86 and appendix C, section I, paragraph (B), subparagraph (3) because the sampling methods and designations within part 763.86 were originally promulgated in 1987 and have not been subject to frequent change. Individuals within asbestos-related fields are familiar with these standards. The ability to collect bulk samples of asbestos-containing materials in areas where an individual with reasonable diligence cannot reach the material was an issue of concern raised by the advisory work group. The department agrees that permanent destruction of walls, ceilings, floors, roof or foundation of the building to access suspected asbestos-containing material for the purpose of collection of a bulk sample of the material is unreasonable. The department also believes that since the suspect material cannot be proven to be nonasbestos-containing material it presents an asbestos exposure hazard when it is disturbed and therefore it must be classified as building material assumed to be asbestos-containing material. Building materials assumed to be asbestos-containing material must be treated as if the material is asbestos-containing material unless bulk sampling of the material proves otherwise.

The department has chosen to cite Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.86 for when to sample and for procedures to be followed when samples are to be taken for compliance with this rule. These rules have been in effect for more than five years and individuals currently dealing with asbestos are familiar with these sampling protocols. During the February 1995 work group meeting, it was suggested that the department allow for single samples to be taken, instead of the multiple samples required to be taken by Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.86. Single samples are not sufficient for the determination of asbestos containing materials unless those samples are analyzed to be positive.

Subp. 3. **Asbestos analysis.** After discussion with the work group, it was decided that analysis must be performed by persons or laboratories with proficiency demonstrated by current successful participation in a nationally recognized testing program such as the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute for Standards and Technology (NIST) or the Round Robin for bulk samples administered by the American Industrial Hygiene Association (AIHA). This is consistent with the Code of Federal Regulations, title 29, chapter XVII, parts 1910, 1915, and 1926, Occupational Exposure to Asbestos; Final rule, published in the Federal Register on Wednesday August 10, 1994. The agency had originally only considered allowing NVLAP accreditation, however, within the past few years, the American Industrial Hygiene Association (AIHA) has upgraded their Round

Robin/bulk sampling program. The AIHA now requires that laboratories submit laboratory quality control information and other information necessary to ensure that the laboratory is adhering to standard protocols, checks and balances.

Subpart 3 reflects requirements contained in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.87. This subpart is needed because it establishes who is qualified to perform bulk sample analysis, what analytic protocol must be used and the criteria for classifying a material as asbestos-containing material. This subpart is reasonable because it reflects established analysis protocols and building material classification criteria. This subpart reflects requirements contained in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.87, paragraph (a). The NVLAP accreditation program is the National Institute of Science and Technology polarized light microscopy (PLM) laboratory accreditation program. This standard is needed because it establishes the quality control program necessary for persons who analyze bulk samples. This provision is reasonable because it specifies the established national accreditation program for polarized light microscopy (PLM).

Item A is necessary because it establishes what programs are acceptable to ensure that laboratories performing bulk analysis of samples for asbestos inspectors have some type of accreditation and quality control. Without credentials, it is more likely that a laboratory would not perform an adequate analysis of the bulk samples and human exposures to asbestos-containing material would occur.

Subitem (1) allows for a laboratory accredited by the National Institute of Science and Technology through the National Voluntary Laboratory Accreditation Program to perform bulk analysis for asbestos samples to be analyzed. This is reasonable because it is consistent with the requirements in Code of Federal Regulations, title 29, chapter XVII, part 1910, subpart Z, section 1910.1001, paragraph (j) subparagraph (8)(ii)(B), Occupational Safety and Health Standards.

Subitem (2) allows for a laboratory accredited by the American Industrial Hygiene Association (AIHA) bulk analysis program to perform bulk analysis for compliance with Code of Federal Regulations, title 29, chapter XVII, part 1910, subpart Z, section 1910.1001, paragraph (j), subparagraph (8)(ii)(B), Occupational Safety and Health Standards. This is necessary because the AIHA bulk analysis program provides quality controls to ensure proper analysis of the bulk samples.

Item B reflects requirements contained in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.87, paragraph (b). This item is reasonable and needed because combining bulk samples would not give accurate results and would not allow for the use of classification criteria to produce an inspection report. The EPA Method For the Determination of Asbestos In Bulk Building Materials (USEPA, 1993) is the current standard

method of analyzing bulk samples for asbestos. This is the document which is used by accredited laboratories.

Item C reflects requirements contained in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.87, paragraph (c), subparagraph (1). This item is reasonable because it uses the national standardized criteria for bulk sampling to classify homogeneous areas of building material non-asbestos-containing material.

Item D reflects requirements contained in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.87, paragraph (c), subparagraph (2). This item is reasonable because it uses the national standard criteria for bulk sampling analysis to classify homogeneous areas of building material and it minimizes costs of analysis by allowing classification as asbestos-containing material after the first bulk sample of the group is found to contain asbestos.

Item E reflects requirements contained in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.87, paragraph (d). The information required is necessary to ensure that the laboratory report will contain enough information to provide accurate identification of the bulk sample analysis. By requiring the written report to provide the name and address of each laboratory performing the laboratory analysis, the date of analysis and the name and signature of the person performing the analysis, one would be able to track the analysis of a sample.

Subp. 4. **Assessment.** This subpart is necessary to ensure that the asbestos inspector who performs an assessment will provide the building owner with written documentation of the assessment of all friable assumed asbestos-containing material (ACM) and known ACM. It is the friable ACM which poses the greatest threat to public health, and therefore it is these materials for which a written assessment is required.

Subpart 4 is needed because it requires that building materials that are known or assumed to be asbestos-containing material have their condition examined and classified. This subpart reflects requirements contained in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.88. Assessment of the condition of building materials that are known or assumed to be asbestos-containing material is critical to the establishment of whether the material is or will release asbestos fibers into the air.

Extensive discussions of asbestos inspections took place during several work group meetings. Some building owners contract with asbestos inspectors to perform only sampling. In response to the comment of the work group and other individuals who were present at the work group meetings, the department has proposed language in subpart 4 to reflect the possibility of a building owner contracting with an asbestos inspector for sampling without an assessment of the materials which were sampled. The language now reads, "If an assessment is completed as part of an inspection or reinspection...".

Subp. 5. **Inspector duties.** This subpart is necessary to establish asbestos inspector responsibility for the information in the inspection report. This subpart is reasonable because the asbestos inspector has the training needed to relay accurate information to the facility owner and thus, should be responsible for transmitting the information obtained from the inspection to the facility owner.

In response to comment by the asbestos work group and members of the general public attending the work group meetings, the department is proposing language only requiring a "report". This allows a facility owner to hire an asbestos inspector to obtain samples without submitting an assessment of each sample material analyzed. The assessment could be performed by another asbestos inspector.

Item A is necessary so that the signature is visible on the inspection report. A signature on the report implies that the individual who performed the inspection did indeed do the work therein.

Item B is necessary to ensure that if items were added after the asbestos inspector has signed off on the report that those items would not be associated with the initial inspection report.

Item C is necessary to allow for ease of checking the asbestos inspector's credentials and asbestos inspector certification information.

Item D is necessary to be in compliance with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section II, paragraph (C), subparagraph (1), the Asbestos Model Accreditation Plan.

Item E is necessary so that anyone reviewing the asbestos inspection report will be able to easily identify the certified individual who is responsible for that report.

Item F is necessary to ensure the facility owner is given a report that informs the facility owner where each homogenous area of asbestos-containing material is located, and the condition of each of those areas. This is reasonable because it provides information to the facility owner in a basic report to enable the facility owner to inform workers and manage the asbestos-containing material in a non-hazardous way.

4620.3470 ASBESTOS MANAGEMENT PLAN

Part 4620.3470 provides means to implement provisions contained in Minnesota Statutes, section 326.78, subdivision 1 that mandate the Commissioner of Health to establish work practices for asbestos management activity as defined in Minnesota Statutes, section 326.71, subdivision 4b.

Requirements in this part reflect the requirements established in the federal regulations promulgated in response to United States Code, title 15, section 2641, known as the Asbestos Hazard Emergency Response Act (AHERA)

These regulations, Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.93, are a reasonable model of asbestos management plan content for Minnesota Rules part 4620.3470 because Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.93 were originally promulgated and have been applied to all schools nationwide since October 30, 1987. These regulations have not been subject to frequent change and have become the established standard for asbestos management plans in nonschool settings. The agency has attempted to be as consistent with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.93, appendix C as allowed by Minnesota Statutes. Much of Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.93 was written with school specific references. The applicability of this part to other public and commercial facilities is also warranted when those facilities opt to develop an asbestos management plan. The agency has chosen Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.93, paragraph (b) as a model for what is necessary for periodic surveillance of known or assumed asbestos-containing material. The agency has chosen Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.94 as a model for record keeping required as part of the asbestos management plan. All of the above cited federal rules have direct applicability to the effective development and administration of an asbestos management plan.

Subpart 1. **Applicability.** Subpart 1 is necessary because it established that when an asbestos management planner develops an asbestos management plan, the provisions of 4620.3470 apply. The applicability of part 4620.3470 is consistent with the applicability of Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.94

Subp. 2. **General**. Subpart 2 defines the general requirements of an asbestos management plan.

Item A is needed because it establishes that the asbestos management plan must be developed by a certified asbestos management planner which means that the individual has had extensive training and meets the requirements for certification as an asbestos management planner. Item A is also needed to implement requirements contained in Minnesota Statutes, section 326.73, subdivision 3 and reflects requirements contained in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.93, paragraph (e). The certification of an asbestos management planner by the commissioner guarantees that the individual's training will be in compliance with federal asbestos management planner requirements.

Item B is necessary to comply with Code of Federal Regulations, title 40, chapter I,

subchapter R, part 763, subpart E, appendix C, section I, paragraph (C), subparagraph (1), the model accreditation plan. This model accreditation plan specifies that the certified asbestos management planner must carry his or her certifications with them at all times during the development of an asbestos management plan.

Item C requires that an asbestos management planner is used to change or amend the asbestos management plan because the amendment is considered an initial management plan for the newly identified material. In addition, the training and experience of the asbestos management planner will assure that amendments to the asbestos management plan are correct and applicable.

Item D is necessary to ensure that the asbestos management plans are available for review to determine compliance with this part.

Item E is necessary because the department believes it must be clearly stated that bulk sample collection and analysis of building materials assumed to be asbestos-containing material is necessary to change the status of assumed material to material that is not asbestos-containing material. Bulk sampling and analysis of building materials assumed to be asbestos-containing material must be completed to ensure that actual asbestos-containing material is not going to be disturbed thereby creating a public health hazard.

Subp. 3. **Asbestos management plan contents.** The asbestos management plan is the core document through which an asbestos management program is defined and administered. The department has chosen to adhere closely to the requirements for an asbestos management plan as defined in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.93. It is necessary to establish the minimum content of an asbestos management plan to ensure that the asbestos management program addresses all components necessary to effectively manage known or assumed asbestos-containing material to minimize asbestos fiber release into the air. Management plans must be specific for that facility because the distribution of asbestos-containing building material differs for each facility and failure to reflect those differences in the management plan could pose a threat to public health.

The requirements necessary for certification ensure that quality management plans are produced.

Item A is necessary to ensure that an asbestos management plan does not get mixed up with an asbestos management plan produced for another facility. Asbestos management plans need to be specific to the facility and areas within the facility that have been inspected.

Item B is necessary to ensure that copies of important documents such as inspection reports, photographs, diagrams, and other information serving as reference material in an asbestos inspection report is included in the management plan. These are the core documents used in development of an asbestos management plan.

Item C is necessary to ensure that asbestos-containing materials which have been identified during an asbestos inspection are able to be easily located and to ensure that all assumptions made are considered in the asbestos management plan. It is reasonable to require the asbestos management plan to contain blueprints, legible diagrams, or written descriptions because these items assist in locating the known or assumed asbestos-containing material.

Item D is necessary because the name, address, and telephone number of the individual designated by the facility owner to implement the asbestos management plan will assist the commissioner in locating the management plan and employees who are involved in implementation of the management plan. Item E also ensures that an individual is assigned to implement and administer the asbestos management plan. A management plan placed in a drawer and not used or implemented is worthless.

Item E is reasonable because the name, address, and Minnesota asbestos management planner certification number of the individual who signed the plan is necessary to assist in locating the plan and to provide a record of the individual who put together the asbestos management plan. It is important to know who to contact if questions arise about that asbestos management plan. Item F also requires the asbestos management planner to provide a signature. It is reasonable to provide a signature on the asbestos management plan so a professional takes responsibility for the document.

Item F is necessary ensure that response actions and other methods to prevent fiber release have been considered. This will allow prompt action if an accident should occur.

Item G is necessary because if there is no plan to inform maintenance personnel and outside contractors of the location of known or assumed asbestos-containing material, there is a risk that asbestos will be unknowingly disturbed, thereby creating a public health hazard.

4620.3480 ASBESTOS PROJECT DESIGN

Subpart 1. Applicability. Subpart 1 is necessary because it established that when an asbestos project designer develops an asbestos project design, the provisions of 4620.3480 apply. The applicability of part 4620.3480 is consistent with the applicability of Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.94

Subp. 2. Use of an asbestos project designer. Subpart 2 establishes that the technical specifications for asbestos-related work must be designed and developed by an asbestos project designer certified by the commissioner in accordance with part 4620.3350. This subpart is necessary because it reflects requirements contained in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.90, paragraph (g). Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (C), subparagraph (1) requires that accredited persons have their initial and current

accreditation certificates at the location where they are conducting work. The agency has chosen to require a photocopy of the asbestos inspector certificate required under part 4620.3330, subpart 1 instead of the training certificates required by Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (C), subparagraph (1). Requiring the certification as an asbestos project designer will ensure that requirements in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (B), subparagraph (5) have been satisfied.

Subp. 3. Technical specification content requirements. Subpart 3 is necessary to establish the topics that must be addressed in the technical specifications for a project. These topic areas are part of technical specifications typically written as asbestos project designs for projects. If one or more of these items is not applicable to a given project, the rule can be satisfied by a brief explanation of why the item is not applicable to the project. The agency believes it is reasonable to require the topic areas in this subpart to be addressed because each topic area directly relates to whether the asbestos-related work is to be performed safely without contaminating surrounding areas.

Item A is necessary because it requires that the technical specifications address how the asbestos work area will be prepared for safe abatement to occur.

Item B is necessary because it requires that the technical specifications address how the containment must be constructed for safe abatement to occur.

Item C is necessary because it requires that the technical specifications address how the decontamination unit must be constructed and used to prevent migration of asbestos fibers into the area surrounding the containment.

Item D is necessary because it requires that the technical specification address how asbestos fiber release into the air will be controlled during the abatement.

Item E is necessary because it requires that the technical specifications address how the ventilation system within the containment will create and maintain a negative pressure within the containment to prevent asbestos fibers from leaking into the area surrounding the containment. This item also requires that the technical specification address how the negative pressure will be monitored to ensure that the negative pressure within the containment is maintained.

Item F is necessary because it requires that the technical specifications address what work practices will be used allowing the safe enclosure, removal, encapsulation or repair of asbestos-containing material within the containment.

Item G is necessary because it requires that the technical specifications must address the procedures to be used to visually inspect the asbestos work area once abatement is complete to

determine if all asbestos-containing material has been removed and whether the interior of the containment is contaminated prior to removal of the containment's protective barriers.

Item H is necessary because it requires that the technical specifications address what air monitoring will be done during the project and procedures to be followed to perform air monitoring. Air monitoring during a project is critical to ensure that asbestos fibers have not escaped from the containment and that the asbestos work area is clean and able to be reoccupied after abatement is complete.

Item I is necessary because it requires that the technical specifications address what protective equipment must be used by the asbestos abatement contractor and other workers in the asbestos work area during the asbestos abatement.

Item J is necessary because it requires that the technical specifications address how the asbestos contaminated waste will be disposed of without endangering the public health.

4620.3559 WORK PRACTICES FOR ABATEMENT

Part 4620.3559 is necessary to provide time for asbestos abatement contractors to modify their work practices for projects. The issue of a lead-in time was discussed with work group members who agreed that rule changes would not require planning of more than sixty days in advance of beginning asbestos-related work. Items A and B provide exemptions to following proposed rule parts 4620.3560 to 4620.3598. Note that a containment area means the area where a containment will be constructed or where a containment was constructed prior to being dismantled.

Item A is necessary to ease the regulations for projects which occur outdoors. Frequently outdoor projects involve removal of asbestos from pipes located outside of a facility on privately-owned land. A similar exemption is in existing rule part 4620.3500, subpart 1, item B. Rule parts which are required for completion of asbestos abatement outdoors include completion of an asbestos abatement project plan (4620.3560); posting the area (4620.3568, subpart 5); removal, encapsulation or enclosure procedures (4620.3571, 4620.3572, 4620.3573); on-site handling of the asbestos abated (4620.3575, subpart 9); and asbestos abatement for demolition (4620.3585). Rule parts which have not been exempted address issues of asbestos abatement which may have an impact on public health during an abatement outdoors. Each rule part which is not exempted from outdoor abatement is further justified under the respective part within this Statement of Need and Reasonableness.

For asbestos abatement outdoors, exemptions include: no containments or critical barriers are required (4620.3566 to 4620.3568-[subparts 1 to 4]); no negative air is required (4620.3570), no air monitoring is required (4620.3592, 4620.3594, 4620.3596, 4620.3597, 4620.3598); and specific work practices such as glove bags, mini-containments, and wrap and cut methods which

provide options to construction of containments and critical barriers are not required (4620.3580, 4620.3581, 4620.3582). Building a containment in an outdoor area where dilution will take place, and where the contractor would risk maintaining the integrity of that containment from natural forces such as wind, rain, and snow, may provide more risk to the asbestos contractor and asbestos workers than not having a containment in this situation. In an outdoor setting one can expect that dilution will occur and it is questionable whether the time, money, and effort spent building the containment will confer additional safety to public health.

For outdoor abatement, worker safety is governed by Occupational Safety and Health Standards (Code of Federal Regulations, title 29, chapter XVII, part 1910, subpart Z, section 1910.1001 and part 1926, section 1926.58) and visible emissions are governed by National Emission Standards for asbestos (Code of Federal Regulations, title 40, chapter I, subchapter R, part 61, subpart M, sections 61.140 to 61.160). It is necessary to cite the laws which still apply to outdoor abatement of asbestos to ensure that individuals are not misled into thinking all asbestos abatement performed outdoors is exempt from regulation.

Item B is necessary to ensure that individuals performing asbestos abatement in tunnels, as defined in proposed rule part 4620.3100, subpart 33, are aware of the requirements of Minnesota Statutes, part 326.785, which states: "containment barriers, in the case of tunnel abatement enclosures, are limited to double critical barriers." An enclosure has the same definition as a containment. This item is reasonable because it is required by statute. These same work practices, relative to tunnel abatement, have been department policy since adoption of the rule in 1988, and have not been problematic.

4620.3560 ASBESTOS ABATEMENT PROJECT PLAN.

Subpart 1. **Applicability.** An asbestos abatement project plan is necessary so individuals not involved in the project have access to basic information about the project. These individuals may be directly affected if a project is performed without the controls necessary to protect human health. The asbestos contractor performing abatement is responsible for providing information in subpart 3, items A to I, because the contractor will have the specific information concerning the abatement portion of the project. In a single family residence, where the project is performed by the owner of the residence, the owner is exempt from providing an asbestos project plan because the family is expected to be informed by the member of that family performing the asbestos abatement.

Subp. 2. **Plan availability.** Subpart 2 is necessary to clarify that the asbestos contractor performing abatement must have the complete and up-to-date project plan available for inspection during the project. The availability of the asbestos project plan is to inform individuals not directly involved in the asbestos-related work about the project.

Subp. 3. **Project plan content.** Items which must be included in the project plan are listed in

this subpart. A twelve point asbestos abatement plan is required under existing rule part 4620.3500, subpart 4, item A, subitems 1 to 12, which is proposed for repeal. This requirement has not been problematic to contractors, yet provides important, basic information about a project. For simplification, the twelve point plan is proposed for reduction to nine points.

Item A is required to identify the site where the project is taking place.

Item B is required to specify the area of the facility in which the asbestos-related work is being done.

Item C is required to provide information on the amount and type of material to be removed, encapsulated or enclosed. Some types of asbestos containing materials pose a greater hazard to human health than others due to the matrix used during the manufacture of the material. The matrix may not be efficient in holding the asbestos fibers. It is essential that the type of material and the area in which that asbestos containing material is found, be listed in the asbestos project plan, so that it is clear what type of asbestos-related work is being performed and what types of hazards may be encountered. It is necessary to know the amount of asbestos-containing material to be abated because the amount determines whether or not the asbestos work is regulated.

Item D is required to inform the person looking at the plan when the heating, ventilating, and air conditioning (HVAC) system will be turned off in the facility. By disconnecting or shutting down the HVAC system, airborne asbestos fibers will not be carried through the HVAC system, thereby contaminating those parts of the facility served by that system, if there is a fiber release episode.

Item E is required to track the individual responsible for shutting down the HVAC system.

Item F is required to enable the department, during an inspection, to ascertain whether the type and size of negative air machines are sufficient to establish and maintain the required negative pressure in the containment with respect to air pressure outside the containment. The creation of negative air pressure inside of a containment is one of the primary defenses against asbestos fiber release from projects. It is essential that this information be provided and readily available. To calculate the maximum operating capacity, good engineering practice requires that an individual multiply the rated capacity of the negative air machine by 0.75 to obtain the maximum operating capacity. This is reasonable because good engineering practice dictates that machines do not actually run at 100% of their rated operating capacity.

Item G is necessary to ensure that the asbestos abatement contractor is using good engineering practice when calculating the negative air flow necessary to achieve at least a negative pressure of 0.02 inches of water with respect to the air pressure outside the containment, as required by part 4620.3570, subpart 4. The number of negative air machines,

as well as the air flow produced by each of these machines, is essential for calculating the negative air flow generated inside of the containment.

Item H requires the asbestos contractor, who designs a project where the air from the negative air machines is vented inside, to provide justification for venting inside. The department believes that it is better to vent the air outside when possible. By venting negative air machines outside, if there were a fiber release due to the negative air machine filter alignment or other circumstances involving the failure of negative air machines, the fiber release would occur outside the facility where dilution of asbestos fibers might take place. This should lessen the probability of human exposure to the asbestos fibers.

Item I requires that a sketch or floor plan of the project be written for the asbestos project plan. Items crucial in determining whether the project has been designed in a manner protective of human health include the four subitems listed below.

Subitem (1) is required to determine the volume of each containment. The volume of the containment is essential in calculating how much negative air one will need to achieve at least a negative pressure of 0.02 inches of water with respect to the air outside the containment, as required by part 4620.3570, subpart 4.

Subitem (2) is required because the location of the negative air machines within the containment, along with the configuration of that containment, affect the negative pressure within that containment. If the negative air machines are placed next to the manometers, the manometers may read that there is a higher negative air pressure within the containment than is actually the case. If the negative air machines are improperly placed, areas of the containment may have pockets of air which are not being sufficiently mixed with the air movement caused by the machines. If the air is not being sufficiently mixed, it is probable that while the asbestos workers are performing asbestos removal, fiber levels will exceed allowable levels for the type of respiratory protection being used by these asbestos workers inside that containment.

Subitem (3) is necessary to determine the air flow within the containment. The worker decontamination units often provide make-up air to the containment. If there is any type of problem with the negative air system for the containment or with fiber levels outside the containment, it is important to know where the decontamination unit is located. The worker decontamination unit could also be a source of contamination if workers do not properly use the decontamination system.

Subitem (4) is necessary to help determine the air flow within the containment. The comments provided in Subitem (3) also apply to any containment attachments through which asbestos waste containers are removed from the containment.

Subp. 4. **Project plan changes.** Subpart 4 is necessary to allow for initial estimation of information in the project plan and for amendments to the project plan as necessary to ensure

that the most recent changes have been reflected within that project plan. To be of value, the project plan must be current and maintained with up-to-date information.

4620.3566 **CLEANING CONTAINMENT AREA BEFORE ABATEMENT.**

Rule part 4620.3566 is necessary to ensure that surfaces in the containment area are cleaned and all moveable objects are removed from the containment area prior to abatement. Similar requirements are included under existing rule part 4620.3500, subpart 4, item B, subitems (3) and (4), which are proposed for repeal. If asbestos fibers were accidentally released during the abatement, the asbestos contractor responsible for the final visual inspection would likely see the remaining material and or asbestos containing dust on a previously cleaned surface and would be able to perform a thorough cleanup.

Item A is necessary to ensure that uncontaminated objects in the containment area are removed because they are in danger of being contaminated if the seal of the polyethylene sheeting, in which they would have to be wrapped, is not maintained. Objects within the containment also pose a trip and fall hazard to asbestos workers which is remedied if those objects are moved out of the containment.

Item B is necessary to ensure that contaminated objects are decontaminated before being moved or covered with polyethylene sheeting prior to abatement. The only safe method of cleaning objects contaminated with asbestos is to wet wipe the surfaces or vacuum surfaces with a vacuum which has a special filter to capture asbestos fibers. This type of vacuum is commonly called a "HEPA vac". Contaminated objects which are unable to be cleaned using wet wipe or HEPA vac techniques must be disposed of as asbestos waste to prevent contamination of the surrounding area or other parts of the facility.

Item C is necessary to ensure that decontaminated objects in the containment are removed because they are in danger of being contaminated again if the seal of the polyethylene sheeting, in which they would have to be wrapped, is not maintained. Objects within the containment area also pose a trip and fall hazard which is remedied if those objects are able to be moved out of the containment area.

Item D is necessary to ensure that asbestos fiber contamination due to abatement will be detectable on objects which cannot be moved. This will allow for appropriate clean up using HEPA-vacs and wet wiping methods after abatement.

Item E is necessary to ensure that asbestos fiber contamination due to the asbestos abatement process will be detectable to allow for appropriate clean up using HEPA-vacs and wet wiping methods after abatement.

Item F is necessary to ensure that movable objects are removed from the containment area prior to abatement. Construction of a wall or of a freestanding containment is not a

sufficient reason to allow movable objects to remain in the containment area.

4620.3567 INSTALLATION OF CRITICAL BARRIERS

This part is necessary to ensure that openings between the containment area and uncontaminated areas are sealed to prevent asbestos fibers from moving into uncontaminated areas. Items A to F are necessary to ensure that the asbestos work area is isolated from the rest of the facility and the outside. When porous surfaces are not covered with barrier material, microscopic asbestos fibers may cling to those surfaces and be released later when someone or something unknowingly disturbs the contaminated object or surface.

Item A is necessary to ensure that contamination will not occur to objects or structures which can not be removed from the containment area prior to abatement.

Item B is necessary to ensure that all heating, ventilating, and air conditioning intake and exhaust openings are sealed with polyethylene to prevent contamination of the HVAC system. If the HVAC system becomes contaminated with asbestos fibers, the air flow through the HVAC system can potentially contaminate all other areas of the facility supplied with air from that HVAC system.

Item C is necessary to ensure that other facility system components which can not be removed from the containment area are sealed to prevent contamination of the system components.

Item D is necessary to ensure that porous surfaces within the containment area are sealed in polyethylene to prevent contamination of those surfaces. Ceilings are exempted from this requirement because of the difficulty in placement of polyethylene sheeting on the ceiling and the practice of using spray lockdown after abatement to secure any fibers which may remain in the containment area. Lockdown is not a solution for fibers remaining on the walls or floors because further friction on those areas may re-release the fibers which have been temporarily glued in place with lockdown.

Item E is necessary to ensure that doorways, windows and other openings are sealed in polyethylene to prevent contamination of non-asbestos work areas outside of the containment.

Item F is necessary to ensure that the porous surfaces of free standing frames, often made of wood, will not contaminate an uncontaminated area when an asbestos abatement contractor moves these framing materials from site to site. If the framing materials cannot be completely cleaned and decontaminated, they must then be covered with six-mil polyethylene sheeting to prevent the spread of asbestos contamination.

4620.3568 CONTAINMENT

This part is necessary to ensure that abatement is performed in an airtight area to protect the rest of the facility and the outdoors from contamination with asbestos fibers. When asbestos-containing material is disturbed, airborne asbestos fibers will contaminate that work area. To protect the remainder of the facility and the outdoors from this contamination, all points of entrance to the work area must be sealed and the work area must be maintained at an air pressure lower than that of the surrounding areas. It is particularly important to have an air-tight containment. If the negative air machines fail, the containment must be air tight to prevent fiber release from the asbestos work area to surrounding areas. Requirements for containments are included in existing rule part 4620.3500, subpart 4, item B, subitem 5, which is proposed for repeal.

Subpart 1. **General.** This subpart is necessary to require the construction of a containment. The function of the containment is to provide an area where asbestos-containing material can be safely removed, encapsulated or enclosed without contaminating non-asbestos work areas or areas adjacent to the asbestos work area. It is important to safeguard the areas adjacent to the containment. These areas are where non-abatement personnel may come in contact with asbestos containing materials or airborne asbestos fibers. Containments and associated issues were discussed at work group meetings held on September 8, 1993, and July 21, 1995 (MDH Minutes, Asbestos Work Group Meetings, September 8, 1993, and July 21, 1995). The department concentrates on maintaining an airtight, leak proof containment to prevent asbestos fiber migration out of the containment area. Instead of specifying the exact footage of polyethylene sheeting which must be overlapped, as is done in existing rule 4620.3500, subpart 4, item B, subitem 5, the terms "airtight" and "leak proof" have been used. This provides the asbestos contractor with the flexibility, yet maintains the focus of construction of a leak proof, airtight containment.

Subp. 2. **Floor sheeting.** This subpart is necessary to specify how the polyethylene flooring must be placed within the containment. Polyethylene flooring is an important part of the containment. It must be sturdy enough to withstand objects being dropped on it, ladders being set up on it, machines or equipment being set up on it and people walking on it. Six-mil polyethylene sheeting will withstand more wear and tear than the four-mil polyethylene required for the walls. This requirement does not significantly differ from the requirements in existing rule part 4620.3500, subpart 4, item B, subitem (5), which is proposed for repeal. Item B of the proposed rule states that "the floors must provide enough area for overlap with the wall sheeting." This is less stringent than requirements of existing rule part 4620.3500, subpart 4, item B, subitem (5), which requires a twelve inch overlap for both layers of floor polyethylene. The department believes that maintaining an air-tight containment is critical and that asbestos contractors can use their best judgement in deciding how to attach the walls of the containment to the floor.

Item A is in existing rule part 4620.3500, subpart 4, item B, subitem (5), which is proposed for repeal. It has been itemized here for clarification.

Items B and C replace existing rule part 4620.3500, subpart 4, item B subitem (5), which requires both layers of polyethylene floor sheeting to extend up the sidewalls of the containment at least 12 inches. Item B requires an unspecified overlap to provide an airtight, leak proof containment. The airtight, leak proof containment is essential to prevent fiber release from the containment.

Item C requires that the second layer of polyethylene sheeting extend up the wall at least twelve inches. This is necessary to ensure that at least one layer of polyethylene sheeting will extend enough beyond the floor and wall joint to ensure that water used inside the containment for removal of asbestos, will not leak out of the containment.

Item D is in existing rule part 4620.3500, subpart 4, item B, subitem (5). It has been itemized for clarification.

Item E is in existing rule part 4620.3500, subpart 4, item B, subitem (5). It has been itemized for clarification.

Subp. 3. **Wall sheeting.** This subpart is necessary to specify how the polyethylene wall sheeting must be placed for the asbestos abatement containment. Items A, B, C, and E are identical to requirements in existing rule part 4620.3500, subpart 4, item B, subitem (5), which is proposed for repeal.

Item D in this subpart differs from an existing rule requirement in part 4620.3500, subpart 4, item B, subitem (5). It is, however, similar to that rule part. The use of polyethylene wall sheeting is now clarified to require it to extend to the ceiling deck or floor joists in the containment. Past incidents have occurred where asbestos contractors constructed walls which were not entirely covered with polyethylene sheeting when abatement was being performed on or near the ceiling. This is hazardous. It would allow for fiber release during abatement and often leaves porous materials exposed to become contaminated with asbestos fibers.

Item F is necessary because a 12-inch by 12-inch clear viewing window takes only a few minutes for asbestos workers to construct and provides the asbestos site supervisor and department and other regulatory inspectors with an easy way to view activity within the containment.

Subp. 4. **Freestanding containment walls and freestanding containments.** Subpart 4 is necessary to direct construction of a freestanding wall or an entire freestanding containment. A freestanding wall is sometimes used to isolate and separate one part of a room from the rest of that room. For example, in a room with an asbestos-containing building component located in the north east corner of the room, an asbestos abatement contractor may choose to construct freestanding containment walls to isolate the work area in this corner from the remainder of the

room. These requirements also apply to all freestanding containments, including what is referred to as a "mini-containment".

Items A to D are necessary to specify construction of containment walls and freestanding containments. Items A, B and D require that the freestanding containment be constructed so that it will be as secure as the containment described in subparts 2, 3 and 4.

Item C is necessary to address additional protective measures required if porous materials are used. These are necessary to prevent cross contamination from project to project. The wood or other materials used to construct free standing walls may be porous. Once these materials have been contaminated, and if the asbestos abatement contractor chooses to use the it again, it could provide a source of asbestos fiber release when carried to other projects. Painting surfaces of the framing material or using non-porous framing materials, such as plastic, would allow for cleaning the frame and preventing cross contamination.

Subp. 5. **Posting asbestos work area.** Subpart 5 is necessary to provide warning of potential exposure to asbestos. It is required that all approaches to any location where airborne fiber levels can be expected to exceed the indoor air standard or the alternative indoor air standard be posted. These are the areas where exposure to non-abatement personnel may occur. This provides the general public with a warning so that they are aware of the potential hazard and do not enter.

4620.3569 DECONTAMINATION UNITS

This part is necessary to prevent asbestos workers from leaving the work area and contaminating areas outside of the containment. An increased incidence of mesothelioma and lung cancer has been found in spouses of asbestos workers. This increase is noted in a chapter written as part of Occupational Respiratory Diseases (Lilis, Ruth). Additionally, lung disease is recorded as the third most common cause of death in the United States and asbestos is one of the carcinogens where occupational exposures contribute to the increase in lung disease (ALA, 1995).

Subpart 1. **General.** Worker decontamination units consist of a dirty room or equipment room, a shower room, and a clean room. A dirty room is an area where asbestos workers leave objects which have been contaminated by the abatement process. Workers take off protective clothing in this room before entering into the shower and finally, the clean room. Respirators remain on workers until after the worker washes off in the shower. The clean room is an area where the worker's street clothes are stored so that the worker can dress in privacy after showering. Although gross removal of asbestos from clothing can take place in the containment, smaller asbestos fibers may remain until washed off in the shower, even though a hood and other disposable garments were worn while inside the containment. Hoods and other protective garments are not air tight and may allow microscopic fibers to accumulate in the worker's hair and on the worker's skin.

Item A is needed because the decontamination unit must be attached to the containment to prevent release of asbestos fibers carried on the workers' clothing or tools.

Item B is a clarification of the configuration of the worker decontamination unit required under existing rule part 4620.3500, subpart 4, item B, subitem (6).

Item C is necessary because two overlapping sheets of polyethylene between the chambers prevent the movement of asbestos fibers out of the decontamination unit.

Item D is necessary because showering is an integral part of the decontamination process. Requirements have been added to those in existing rule part 4620.3500, subpart 4, item B because of flooring and other types of surfaces which are often present at a work site, yet may not be easily cleaned. Cement floors, which are often found in commercial or industrial facilities, are more easily cleaned and decontaminated some other types of surfaces, such as carpeting. The department has noted showers leaking while performing routine inspections. This asbestos contaminated water has the potential to contaminate adjacent areas. While the floor is wet, the asbestos can be tracked into other areas causing a larger area of contamination. Once the water has evaporated, microscopic asbestos fibers are left behind. These fibers may be re-entrained into the air at some future date producing a respiratory hazard. If the shower is leak proof, the asbestos-containing waste water can be filtered and safely disposed of, preventing this potential hazard. Hot and cold water, which are adjustable at the tap, are important to ensure that workers will shower. If it is uncomfortable to take a shower, workers may not thoroughly shower or may not shower at all. Soap is necessary to wash in a manner which will release all fibers from the skin. Soap assists the workers in cleansing themselves. Disposable towels are necessary because if towels were brought from home and accidentally became contaminated, the worker would contaminate his or her home by bringing the towel home and washing it with the family clothes. Illinois rules and regulations in title 77, chapter I, subchapter p, part 855 (State of Illinois, 1990) and the New York Department of Environmental Protection rules and regulations in section 8212, item (h), (State of New York, 1994) require that waste water be filtered through a system of "several" filters with at least 5.0 micron particle size collection capability. A system containing a series of several filters with progressively smaller pore sizes will be used to avoid rapid clogging of the filtration system by large particles.

Subp. 2. **Location.** In response to comment from the asbestos work group during the meeting held July 21, 1995, (MDH Minutes, 1995), subpart 2 is proposed to allow an exemption for having a decontamination unit attached to the containment in certain facilities. The department is allowing this exemption in very large industrial settings where abatement often takes place high in the air while asbestos workers are working on scaffolding. Those types of facilities which fall under the Standard Industrial Classification codes (OMB, 1987) listed in subpart 2 must only have a decontamination unit attached to the containment when feasible to do so. Asbestos abatement in process areas often requires asbestos workers to be working from scaffolding which may make it necessary to have a remote decontamination unit. Most office

areas would require a decontamination unit to be attached to the containment. The exemption in this subpart applies to mining operations (Division B); manufacturing of paper and allied products (Division D- Major group 26); and transportation, communications, electric, gas, and sanitary services (Division E- Major group 49). The department believes it reasonable to exempt these types of facilities from having a contiguous decontamination unit when not feasible because these facilities have much greater hazards to human health than asbestos in many facility areas and these areas typically have many situations each year where it would prove more hazardous to build a decontamination unit contiguous to the containment. In rare situations where it is not feasible to have an attached worker decontamination system in a facility not listed under the Standard Industrial Classification codes of this subpart, the facility may apply for a variance.

Subp. 3. **Waste.** Subpart 2 is necessary to ensure the water contaminated with asbestos fibers is disposed of in a safe manner. Asbestos rules for the state of New York, title 77, chapter I, subchapter p, part 855 also requires that filtered waste water be discharged to a sewer or be drummed and then properly disposed (State of New York, 1994).

Subp. 4. **Small residential decontamination unit.** A three room decontamination unit is required for small residential abatement projects and subpart 4 is necessary to clarify how many rooms the decontamination unit must contain. It is important to have separate rooms for a dirty room, a shower and a clean room because the appropriate steps in decontamination prevent asbestos fibers from being tracked out of the asbestos work area. The area to be abated for small residential abatement projects is generally much smaller than for non-residential projects. Due to the size limitations for small residential abatement projects, the five stage decontamination unit complete with air locks has been reduced to a three-stage decontamination unit. The major components of a decontamination system, the dirty room, shower and clean rooms have been left in place to preserve the decontamination process.

Subp. 5. **Decontamination units other than small residential.** The requirements of subpart 5 are requirements of existing rule part 4620.3500, subpart 4, item B, subitem 6. This has been in place since 1988 and it has not been problematic for contractors to comply with.

4620.3570 HEPA-FILTERED NEGATIVE PRESSURE

Subpart 1. **General.** Subpart 1 is necessary to prevent asbestos fibers from contaminating the air outside the containment if the polyethylene seal is broken or the polyethylene has a leak. The use of high efficiency particulate air (HEPA) filtered negative air machines is standard practice for asbestos abatement. Existing rule part 4620.3500, subpart 4, item B, subitem (7) requires negative pressure to be used for projects. When asbestos-containing material is disturbed, airborne asbestos fibers will contaminate the work area. To protect the remainder of the facility and areas adjacent to the asbestos work area from this contamination, all points of entrance to the work area must be sealed off and the work area must be maintained at an air pressure lower than that of the surrounding area.

Subp. 2. **HEPA-filter equipped negative air requirements.** Items A to D of subpart 2 are similar to requirements in existing rule part 4620.3500, subpart 4, item B, subitem (7)(b)(i-iv). The language has been modified for clarity. HEPA filters are required to be placed on the negative air machines because other filters are not capable of capturing the small, microscopic asbestos fibers.

Item A is necessary to ensure that an asbestos worker or asbestos site supervisor can quickly check whether or not the HEPA-filter equipped negative air machine is operating. The pressure gauge also assists in the calibration of the HEPA-filter equipped negative air machine.

Item B is necessary to provide warning when there is little or no pressure across the HEPA filter. Contamination to the inside of a facility can be prevented if the negative air machine is able to sense and provide a warning if there is a lack of pressure across the filter, if the filter is breached, or if, in the process of changing a HEPA filter, someone forgets to replace the HEPA filter or improperly places the filter. This warning also prevents someone from disturbing the filter when the machine is operating.

Item C provides a warning when a HEPA filter is too full to allow for efficient filtration and would prevent the pressure from becoming too great so that the filter fails.

Item D is necessary because without the filter in place, the HEPA-filtered negative air machine would disseminate asbestos fibers into the air instead of filtering the asbestos fibers out of the air. In response to the asbestos rule work group, the department dropped the term "interlock system" and replaced it with "automatic electric power cutoff switch" which is similar to language in existing rule part 4620.3500, subpart 4, item B, subitem (7)(b)(ii) which requires a "built-in mechanism for automatic unit shut-down."

Subp. 3. **Continuous operation of the HEPA-filter equipped ventilation system.** Subpart 3 is necessary to ensure that the HEPA-filtered system runs continuously from the time asbestos is first disturbed until clearance air sampling indicates the air inside the containment is below the asbestos abatement air clearance standard of 0.01 fibers per cubic centimeter. The HEPA-filtered system, if in good working condition, provides protection to the public by filtering asbestos fibers out of the air. A comparable requirement applies to projects under existing rule part 4620.3500, subpart 4, item B, subitem (7)(c).

Subp. 4. **HEPA-filter equipped system criteria.** This subpart establishes criteria for the operation of the HEPA-filtered ventilation system. These criteria are necessary to ensure that the system is operated efficiently. Similar criteria are included under existing rule part 4620.3500, subpart 4, item B, subitem (7)(c)(i). Some of criteria have been modified for clarity.

Item A requires that the amount of air exhausted from the containment provide for at least four air changes per hour within the containment. A minimum ventilation requirement of the National Institute of Building Sciences Asbestos Abatement & Management in Buildings- Model Guide Specifications (NIBS, 1992) recommends that, for safe work practices, the operational negative pressure systems must supply a minimum of one air change every 15 minutes, or four

air changes per hour. The four air changes per hour cause the asbestos laden air within the containment to be cycled through the HEPA-filtered exhaust system. Asbestos-free air enters the containment to replace that air which has been filtered. The Model Guide Specifications also set criteria to ensure that the containment remains under negative air pressure, drawing asbestos fiber laden air through the HEPA filter and preventing release of asbestos fibers outside the containment.

Item B requires a negative pressure of at least 0.02 inches of water within the containment with respect to the air pressure outside the containment. A negative pressure of 0.02 inches of water is specified as an optimum pressure under Code of Federal Regulations, title 29, chapter XVII, part 1926, subpart Z, section 1926.58, appendix F (Federal Register, Wednesday, August 10, 1994). This pressure is also required in existing rule part 4620.3500 and has not been problematic for asbestos abatement contractors to achieve and maintain. The negative pressure of at least 0.02 inches of water assists in ensuring that the HEPA-filtered negative air ventilation system is functioning appropriately.

Item C contains the criteria for the manometer which is required under this subpart. The manometer serves as a gauge to measure the air pressure within the containment. This is the primary means by which one can measure the effectiveness of the negative air machines. The manometer also provides a means to detect problems with the continuity of the containment. The existing rule does not require the manometer to be of the recording type and does allow for manual recording on an hourly basis (see existing rule part 4620.3500, subpart 4, item B (7)(c)(i)). The Minnesota Asbestos Abatement Association's comments to the department about the draft request that "The MDH should allow the use of non-recording manometers as long as hourly pressure readings are taken" (MAACA, 1995), Minnesota Asbestos Abatement Contractors Association, submitted October 5, 1995). The department disagrees with this because of past problems the department has had with individuals not taking the hourly recordings as required in existing rule part 4620.3500, subpart 4, item 7, subitem (c)(i). The maintenance of a negative pressure of at least 0.02 inches of water within the containment with respect to the air outside the containment is one of the primary methods of controlling against asbestos fiber release. It is reasonable to require contractors to have a recording manometer on site because most contractors already have recording manometers. Inspectors for the department have witnessed asbestos site supervisors scurrying to quickly write down multiple manometer readings once the MDH inspector arrives on site. Requiring recording manometers would make it more difficult to falsify important information on the integrity of the negative air system.

Subitem (1) requires that the recording manometer be placed as far from the intake of the HEPA-filtered ventilation system as possible. Negative pressure increases as one approaches the intake area of the negative pressure machine. A false reading may be obtained from placement of the manometer close to the HEPA-filtered ventilation system. The negative pressure of 0.02 is a minimum standard and needs to be obtained throughout the containment, not simply in the area of the negative air machine.

Subitem (2) requires the placement of the recording manometer to be such that the placement ensures a correct reading of the pressure within the containment. Each containment

will differ. The positioning of the manometer has been left to the discretion of the contractor. Examples of placement of the manometer which would not provide an accurate reading of the pressure within the containment include placement of the manometer next to the negative air machine or in any of the rooms of the worker decontamination unit.

Subitem (3) requires that the recording manometer be monitored every two hours throughout all work shifts. It is during the work shifts of the asbestos workers that asbestos fibers have the greatest potential of being released into the air. This requirement is necessary because the manometer may break down or the air pressure within the containment may not be maintained at a negative pressure of at least 0.02 inches of water. The only way in which an asbestos worker or asbestos site supervisor would know whether the appropriate negative air was being maintained within the containment is to check the manometer periodically. This is needed to protect human health.

Subitem (4) is necessary to ensure that the manometer reading is correct.

Subitem (5) requires annual calibration of the recording manometer. Calibration of equipment is essential in ensuring that the equipment is functioning accurately. Because manometers often need to be sent to the manufacturer for calibration, it is only required once a year.

Subp. 5. **Inability to establish or maintain a negative pressure of at least 0.02 inches of water.** It is sometimes not possible to establish or maintain a negative pressure of at least 0.02 inches of water inside of a containment. The required negative pressure may not be able to be established due to the configuration of the containment or by a constant or periodic positive pressure within a facility caused by mechanical components or the HVAC system. In response to the Minnesota Asbestos Abatement Contractor's Association, the items to be followed under this subpart need only be followed if negative air pressure of at least 0.02 is not maintained or achieved for a period of fifteen minutes. This allows for a temporary loss of negative pressure and would provide a separation of a temporary loss of negative pressure from a serious loss of containment pressure.

Item A is necessary because even some negative air pressure is more protective than a positive pressurized containment.

Item B is necessary to ensure that air exchanges are compensating for the inadequate negative pressure within the containment.

Item C is necessary to ensure that each loss of negative pressure is documented. This helps track the problem and will provide records if there is a release of asbestos fibers outside the containment.

Item D is necessary to ensure that the asbestos site supervisor can quickly respond to the lack of negative pressure in the containment.

Subp. 6. **HEPA-filtered ventilation system exhaust.** The HEPA-filtered system, if in good working condition, provides protection to the public by filtering asbestos fibers out of the air. If this filtering system fails, however, asbestos fibers would be continuously transported from inside the containment to uncontaminated areas of the facility. To protect the public, it is necessary to require that the system is exhausted outside of the facility. If this is not possible, then the exhaust must be monitored for its fiber content to make sure the system has not failed.

4620.3571 REMOVAL OF ASBESTOS-CONTAINING MATERIAL

Subpart 1. **General.** Subpart 1 is necessary to ensure that asbestos-containing material is wet and remains wet at all times during removal. This is a basic requirement for asbestos removal because when the asbestos containing material is wet, fibers cannot be readily released to the air.

Items A through D of this subpart are necessary to ensure that the asbestos containing material is wet from the time prior to removal to the time of removal from the site for disposal. This helps prevent fiber release at all times. Similar requirements apply to this type of removal under existing rule part 4620.3500, subpart 4, item C, subitem (1)(b).

Subp. 2. **Removal of structures and objects covered with asbestos-containing material.** Subpart 2 is necessary to ensure that objects covered with asbestos-containing material are removed intact to minimize asbestos fiber release. From the time prior to removal until disposal, large structures and objects covered with asbestos-containing material must be properly handled to prevent release of asbestos fibers into the air. Similar requirements apply to this type of removal under existing rule part 4620.3500, subpart 4, item C, subitem (1)(a).

Subp. 3. **Waste.** Subpart 3 is necessary to prevent asbestos fiber release from waste containers of asbestos-containing material.

4620.3572 ENCAPSULATION OF ASBESTOS-CONTAINING MATERIAL

Part 4620.3572 is necessary to ensure that proper techniques are used to prevent fiber release of asbestos when asbestos-containing material is encapsulated rather than removed. The use of proper encapsulation techniques prevents future asbestos hazards caused by improperly encapsulated materials. Similar requirements apply to encapsulation projects under existing rule part 4620.3500, subpart 4, item C, subitem (1)(c) and (d), and subitem (2).

Item A is necessary to ensure that the encapsulation protects human health. This item is in existing rule part 4620.3500, subpart 4, item C, subitem (2)a.

Item B is necessary to ensure that the encapsulation protects human health. This item is in existing rule part 4620.3500, subpart 4, item C, subitem (2)b.

Item C is necessary to ensure that the encapsulation protects human health. This item is in existing rule part 4620.3500, subpart 4, item C, subitem (2)c. The proposed rule specifies

"spray" encapsulant because this is the only type of encapsulant which would need to be applied using an airless sprayer.

Item D is necessary to ensure that the encapsulation protects human health. This item is in existing rule part 4620.3500, subpart 4, item C, subitem (2)d. Encapsulants which do are not solvent based and do not contain hydrocarbons are water-based solvents.

Item E is necessary to ensure that warning is given to individuals who may disturb the encapsulated material. This item is based upon existing rule part 4620.3500, subpart 4, item C, subitem (2)e. Item E has been changed to require a label consistent with the existing rule but a label which does not incorporate another rule or cite to a rule which MDH does not have the authority to enforce.

4620.3573 PERMANENT ENCLOSURE OF ASBESTOS-CONTAINING MATERIAL

Part 4620.3573 is necessary to prevent asbestos fiber release when asbestos-containing material is enclosed rather than removed or encapsulated. These requirements are similar to those that apply in existing rule part 4620.3500, subpart 4, item C, subitem (3). The requirements have been reorganized for clarification. Additionally, the language concerning the design of the permanent enclosure has been changed from "designed to minimize air movement" under the existing rule to "designed to prevent air movement" in the proposed language. This change is reasonable because the intent of this language is to prevent air movement across the enclosed asbestos-containing material.

Item A is necessary to provide standards for each permanent enclosure.

Subitem (1) is necessary to ensure that the enclosed asbestos-containing material will not be disturbed. Existing rule requires a "permanent barrier" be constructed whereas the proposed rule requires the barrier to be "rigid". The department believes that this clarifies the existing rule language in existing rule part 4620.3500, subpart 4, item C, subitem (3)c.

Subitem (2) is necessary to ensure that the enclosed asbestos-containing material is not open to air currents which may carry asbestos fibers throughout an area. This is an outcome based criteria to protect public health.

Subitem (3) is necessary to ensure that the enclosed asbestos-containing material is not disturbed and is rendered inaccessible. This subitem is also outcome based and will protect public health. "Inaccessibility" of asbestos-containing material is also addressed in existing rule part 4620.3500, subpart 4, item C, subitem (3)c.

Item B is necessary to ensure that asbestos-containing materials which are disturbed during the process of permanently enclosing asbestos-containing material (ACM) is wetted during the enclosure process. The wetting of the ACM is one of the primary controls against fiber release. This requirement is found in existing rule part 4620.3500, subpart 4, item C, subitem (3)a.

Item C is necessary to ensure that loose ACM is removed prior to permanent enclosure of the ACM. This requirement is found in existing rule part 4620.3500, subpart 4, item C, subitem (3)b.

Item D is necessary to ensure that ACM is appropriately labeled. This requirement is found in existing rule part 4620.3500, subpart 4, item C, subitem (3)c.

4620.3575 COMPLETION OF ASBESTOS ABATEMENT

Part 4620.3575 is necessary to ensure that after asbestos abatement has been completed the area is free of asbestos debris. Similar requirements apply in existing rule part 4620.3500, subpart 4, items D and E.

Subpart 1. **Post asbestos abatement cleaning.** Subpart 1 is necessary to ensure that the containment area is cleaned to prevent asbestos fiber release upon tear down of the containment after abatement has been completed.

Item A requires that either wet wiping or HEPA-filtered vacuuming can be used for cleaning. These methods are both adequate for final removal of any remaining fibers.

Item B requires the removal of all visible debris. This provides a first level of cleaning of possible remaining fibers.

Item C specifies proper disposal of liquid waste.

Item D is necessary to specify that everything except the HEPA-filtered negative air machine must be removed from the containment. The negative air machine must be left in case fibers remain after the post asbestos visual inspection required under subpart 2.

Item E is necessary to specify a method of dealing with equipment that cannot be cleaned.

Item F is necessary to prevent the recontamination of the containment area by broken or leaking waste bags containing asbestos materials.

Subp. 2. **Visual inspection of containment after post abatement cleaning.** Subpart 2 is necessary so that a check will be made for any observable asbestos-containing debris. Similar requirements in existing rule part 4620.3500, subpart 4, item E. They have been modified in this part for clarity.

Item A is necessary because residue within the containment will likely contain asbestos fibers as a result of the asbestos abatement procedures. Since asbestos fibers are microscopic, this residue must be assumed to contain asbestos.

Item B is necessary to ensure that the cleaning and inspection process is repeated until the

containment is free of dust, debris and residue.

Item C is necessary to ensure that the abatement has been completed in a manner which leaves the area free of asbestos containing material. All dust, debris and residue must be removed after the abatement. If not cleaned, this dust, debris and residue can be reentrained into the air causing a respiratory hazard. The use of a dark cloth is an easy and inexpensive method to test the containment for dust, debris and residue.

Subitem (1) is necessary and is in existing rule part 4620.3500, subpart 4, item E, subitem (2)(a).

Subitem (2) is necessary and is in existing rule part 4620.3500, subpart 4, item E, subitem (2)(a).

Subitem (3) is necessary and takes the place of existing rule part 4620.3500, subpart 4, item E, subitem (2)(b). Instead of a test requiring that the lighting be reduced and areas wiped, the visual inspection must be made to ensure that no dust or debris is left on areas which are part of the asbestos abatement work area. An outcome replaces a specific test which was performed to ensure the same outcome as specified in the proposed rule.

Subp. 3. **Removal of containment walls and floors.** Subpart 3 is necessary to prevent the release of asbestos fibers during the disassembly of the containment after abatement is complete.

Item A is necessary to ensure that porous surfaces will be permanently encapsulated to prevent fiber release. Final clearance air sampling may only be done after the surfaces have been encapsulated. This precaution is necessary to prevent future fiber release.

Subitem (1) is necessary to ensure that visual inspection and subsequent clean-up is completed before encapsulation to prevent large pieces of asbestos debris from being encapsulated or glued to the surfaces of the containment.

Subitem (2) is necessary to prevent asbestos fiber release when asbestos-containing material is enclosed rather than removed. The use of proper encapsulation techniques prevents future asbestos hazards caused by improperly encapsulated materials.

Subitem (3) is necessary to ensure that the air monitoring will be an indication of the completeness of the abatement and adequacy of the encapsulation.

Item B is necessary to ensure that the containment will not be completely dismantled until after the containment has been inspected and encapsulated. This is necessary to prevent fiber release.

Subp. 4. **Visual inspection after removal of containment walls and floors.** Subpart 4 is necessary to ensure that a final inspection is performed to check for the presence of asbestos dust, debris and residue after the containment has been disassembled. If the contractor fails to look

for this type of material and clean up any dust, debris or residue in the area, asbestos fibers will contaminate the facility.

Item A is necessary to ensure that a complete inspection is performed after the containment has been disassembled.

Item B is necessary to ensure that any asbestos fibers remaining on surfaces are wet wiped or HEPA vacuumed to prevent additional contamination.

Subp. 5. **Completion of clearance air sampling.** Subpart 5 is needed to reference air monitoring requirements necessary for projects. Without this subpart, the asbestos contractor may not know where to find requirements specifying air monitoring protocols.

Subp. 6. **Removal of critical barriers.** Subpart 6 is necessary to ensure that the containment and decontamination unit do not contain asbestos fibers which exceed safe levels, prior to removal of critical barriers.

Item A is necessary to ensure that the containment and decon unit have passed visual inspection and to ensure that air clearance monitoring has been completed before the critical barriers are removed. The critical barriers are necessary to ensure that asbestos fibers are not carried throughout the facility. If the critical barriers remain in place, there is some form of containment if there is additional asbestos found or if an air sample comes back positive for asbestos.

Item B is necessary to ensure that the contracting entity is involved in the decision to remove critical barriers. This is reasonable because it is the contracting entity which is responsible for the project.

Item C is necessary to ensure that if additional asbestos containing material is found once the critical barriers are removed, that the workers will have a decontamination unit to clean themselves off in after they have cleaned up the debris.

Item D is reasonable because the outside of the critical barriers have been exposed to asbestos during the removal process. Any fibers which may remain on those critical barriers must be disposed of as ACM.

Subp. 7. **Final visual inspection of asbestos work area.** Subpart 7 is necessary to ensure that the area is inspected after critical barriers have been removed for any remaining asbestos fibers.

Item A is necessary to ensure that the area where the contamination occurred is cleaned. When any contamination is present, there may be other parts of the area also contaminated. Once objects within the area are moved, one can clearly see gross debris and chunks of asbestos-containing material. Hepa vacuuming and wet wiping are the methods which will clean up the fibers remaining on objects and fibers settled on surfaces.

Item B is necessary to ensure that fibers will not be tracked throughout the building is to do a clean up once the contamination is found.

Subp. 8. **Replacement of heating, ventilating and air conditioning system filters.** Subpart 8 is necessary to ensure that the heating, ventilating and air conditioning system has not become contaminated with asbestos fibers during the project. First, duct work must in the asbestos work area must be visually inspected. Next, system filters are replaced when the project is complete. It is important to remove all asbestos fibers from the heating, ventilating and air conditioning system because otherwise they will be recirculated in the air in the facility indefinitely.

Item A is necessary to ensure that disposable heating, ventilating or air conditioning system filters are replaced and that these filters are disposed of as asbestos waste. This item does not apply to small residential abatement projects.

Item B is necessary to ensure that the contractor performing small residential abatement advises the owner of the residence to replace disposable filters once the project has been completed.

Item C is necessary to ensure that all nondisposable filters are decontaminated by the contractor after the project is completed.

Subp. 9. **On-site handling of asbestos-containing waste**. Subpart 9 is necessary to specify that asbestos-containing waste is handled safely on-site.

Item A. This requirement is identical to the requirement that applies to large projects under existing rule part 4620.3500, subpart 4, item C, subitem (1)(e).

Item B is necessary because asbestos waste should be easily identifiable, but sealed in bags strong enough and sealed tight enough to prevent leakage.

Subitem (1) is necessary to ensure that an inspector can view the contents of the bag and assists in determination of whether or not the asbestos containing material was wetted, in accordance with this rule prior to being placed in the bag.

Subitem (2) is necessary to ensure that a strong handle is formed from goosenecking the bag and to ensure that fibers will not be released because the opening of the bag has been doubled over.

Subitem (3) is necessary to ensure that leakage will not occur.

4620.3580 GLOVE BAG PROCEDURES.

Glove bags provide an efficient method of removing asbestos pipe covering in quantities up to approximately four feet in length. These types of removals are often needed for repair of pipes, facility hardware, and equipment, or where asbestos-containing pipe covering has been placed

only on limited areas of the pipe chase. Glove bag removal for asbestos has always been allowed under Minnesota Rules, part 4620.3500, subpart 5, however, under this part procedures governing glove bag use have been specified. Glove bag procedures are prudent considering many studies which demonstrate fiber release resulting from glove bag procedures done carelessly (EPA/NIOSH, 1990), (Froehlich, 1993), (Froehlich & Hollet, 1993). Good work practices regarding removal or repair of asbestos using the glove bag procedures are imperative to prevent fiber release and exposure to asbestos fibers by non-abatement personnel and the public.

Subpart 1. **Application.** Subpart 1 is necessary to limit situations in which the glove bag procedure may be used. Existing rule part 4620.3500, subpart 5 also limits the amount of asbestos-containing material to be removed by glove bag method to ten linear feet or six square feet per room. Subpart 1 is also necessary to indicate other requirements for use of the glove bag method and where those requirements can be found.

Subp. 2. **Placement of remote decontamination unit.** Subpart 2 is required to ensure that asbestos workers have the facilities to properly wash themselves off after performing asbestos-related work with a glove bag. There is no known threshold for safe exposure to asbestos. If fibers have been released during asbestos-related work, it is necessary for asbestos workers to decontaminate themselves by use of a shower. This also provides facilities to clean up if an asbestos fiber release episode occurs.

Item A is necessary to prevent asbestos workers from traveling through and contaminating non-abated areas to reach the remote decontamination unit.

Item B contains alternative procedures for Item A. Again, these procedures are necessary to prevent asbestos workers from contaminating non-abated area with asbestos.

Subitem (1) is necessary to ensure that gross debris is removed from the individuals clothes using a HEPA vacuum and that a clean suit is placed over the contaminated suit to prevent asbestos fibers from being carried to clean areas and thereby contaminating the clean areas.

Subitem (2) provides an option to subitem (1) above in that two protective layers of clothing are worn from the beginning. The worker will remove the outer contaminated layer of clothing prior to leaving the containment. The second suit remains on with little contamination and the worker can proceed to a remote decontamination unit.

Item C is necessary to prevent asbestos workers from leaving the glove bag operation area or the work site without first having decontaminated themselves.

Subp. 3. **Remote decontamination unit.** Subpart 3 is needed to reference decontamination unit requirements necessary for projects. Without this subpart, the asbestos abatement contractor may not know where to find these requirements.

Subp. 4. **Glove bag set-up procedure.** Subpart 4 is necessary to provide a safe procedural

method of setting an area up in order to perform removal of asbestos by use of a glove bag.

Item A is necessary to ensure that asbestos-containing dust and debris is cleaned up prior to the glove bag procedure. This cleaning must be done in the appropriate manner to prevent further asbestos fiber contamination of areas not yet contaminated by asbestos fibers.

Item B is necessary to ensure that if any contaminated items are dropped to the floor or pieces of asbestos-containing material fall from the preparation area, they land on the polyethylene thereby preventing further contamination of the area below the asbestos containing material to be glove bagged.

Item C is necessary to ensure, through the use of a transparent glove bag, that the person performing the glove bag activity is able to see the work which they are performing and is able to perform this work properly.

Item D is necessary to prevent asbestos fiber release from areas of pipe lagging not being removed but which would be disturbed by the glove bag activity. Glove bag activity often entails cutting and sawing the asbestos containing material and this activity can disturb other asbestos containing materials on the same pipe, adjacent to the area being glove bagged. It is especially important to provide safeguards to areas which are damaged or significantly damaged to prevent these areas from releasing asbestos fibers into the air during glove bag activities.

Item E is necessary to ensure that asbestos fibers are not released from areas adjacent to the pipe area being glove bagged.

Item F is necessary to ensure that the fibers released during the glove bag operation will be contained within the glove bag.

Item G is necessary to prevent fiber release from the glove bag.

Item H is necessary to ensure that the glove bag is completely sealed so fibers are not released during the glove bag procedure. Because high fiber counts have been generated from glove bag operations, it is necessary to have this testing procedure part of the glove bag operation.

Subitem (1) is necessary to ensure that smoke is generated inside the glove bag to test the seal of the glove bag.

Subitem (2) is necessary to test the seal of the glove bag. Some pressure will be generated from the glove bag operation. Hand pressure is intended to simulate the pressure generated from working in the glove bag.

Subitem (3) is necessary to ensure that the asbestos worker inspects the glove bag for signs of smoke escaping from the glove bag which indicates a poor seal of the glove bag.

Subitem (4) is necessary to ensure that all detectable leaks are repaired prior to the removal or repair operations in the glove bag, thereby preventing release of asbestos fibers.

Subp. 5. **Asbestos removal or encapsulation.** Subpart 5 is necessary to guide the asbestos worker in steps to be followed during the removal or encapsulation of asbestos-containing material by use of glove bag.

Item A is necessary to prevent fiber release and ensure that the seal remains intact. This is also a requirement of existing rule part 4620.3500, subpart 5, item A, subitem (1).

Item B is necessary to ensure that the glove bag contents remain sealed within the bag. This is also a requirement of existing rule part 4620.3500, subpart 5, item A, subitem (1).

Item C is necessary to ensure that one of the primary engineering controls, use of water, is used for the removal of asbestos-containing material.

Item D is required to prevent excess pressure from building up inside the glove bag and eventually bursting the bag or destroying the seal of the bag.

Item E is necessary to prevent fiber release from the surface where the asbestos-containing material has been removed after the glove bag is removed. This is similar to requirements of existing rule part 4620.3500, subpart 5, item A, subitem (7). The proposed language requires that a brush be used to ensure areas are free of asbestos. It is common practice to use a wire brush to remove asbestos from areas which are not flat surfaces and are difficult to scrape such as pipes.

Item F is necessary to prevent fiber release from the surfaces adjacent to where the asbestos-containing material has been removed after the glove bag is removed. This is similar to a requirement of existing rule part 4620.3500, subpart 5, item A, subitem (8).

Item G is necessary to ensure that fiber release will not occur once the glove bag is removed.

Subp. 6. **Completion of glove bag operation.** Subpart 6 necessary to ensure that steps are followed in a specific order to prevent fiber release from contaminated tools and other equipment used during the glove bag procedure.

Item A is necessary to rinse the sides of the glove bag. This will move asbestos containing particulate to the bottom of the glove bag so this asbestos-containing material is not released at the time the glove bag is removed from the pipe chase.

Item B is necessary to prevent contamination of clean areas by removal of contaminated tools from the glove bag.

Subitem (1) is necessary to ensure that asbestos-containing material will not be

released from either the tool pouch or from the glove bag containing the asbestos-containing waste.

Subitem (2) is necessary to prevent accidental fiber release from the tools and the tool pouch prior to decontamination.

Subitem (3) is necessary to prevent contamination of clean areas by the tools which have been contaminated with asbestos.

Subitem (4) is necessary to prevent accidental fiber release from the tools and the tool pouch prior to decontamination.

Subitem (5) is necessary to prevent contamination of clean areas by the tools prior to the decontamination of the tools or to their reuse in a glove bag operation.

Subitem (6) is necessary to prevent accidental fiber release from the tools and the tool pouch prior to decontamination.

Subitem (7) is necessary to allow for removal of the sprayer wand from the glove bag without contaminating clean, uncontaminated areas.

Item C is necessary to prevent fiber release from the air escaping from the glove bag. The HEPA-filtered vacuum will pull air from the glove bag but the HEPA-filters will capture the asbestos fibers.

Item D is necessary to prevent more air from reoccupying the evacuated glove bag and sealed off so that the asbestos-containing debris is contained.

Item E is necessary to ensure labeling and proper disposal of the asbestos-containing debris.

Item F is necessary to ensure that debris has not been released from the glove bag or activities related to the glove bag procedure.

Item G is necessary to ensure that proper cleaning methods are used for suspect asbestos-containing material. There is no time to have a sample analyzed to see if the material contains asbestos. Since the appropriate cleaning equipment is on site, dust and debris must be assumed to contain asbestos and the area must be cleaned using equipment appropriate to clean up asbestos-containing debris.

Item H is necessary to ensure that any asbestos fibers released and settled on the polyethylene drop-cloth be disposed of as asbestos-containing waste. Microscopic asbestos fibers may remain on the polyethylene drop-cloth and could contaminate uncontaminated areas if this drop-cloth is not disposed of as asbestos containing waste.

Subp. 7. **On-site handling of asbestos-containing waste.** Subpart 7 is needed to reference waste handling requirements necessary for projects. Without this subpart, the asbestos abatement contractor may not know where to find these requirements.

4620.3581 MINI-CONTAINMENT PROCEDURES.

Subpart 1. **Mini-containment.** Subpart 1 is necessary to set parameters under which the mini-containment alternative may be used during projects. The requirements set forth in subpart 1 reflect requirements found in existing rule part 4620.3500, subpart 5, which is proposed for repeal. This subpart also specifies where the applicable air monitoring requirements for this alternative procedure may be found. Good work practices regarding removal or repair of asbestos using mini-containment procedures are imperative to prevent fiber release and exposure to asbestos fibers by non-abatement personnel and the public.

Subp. 2. **Remote decontamination.** Subpart 2 is necessary to prevent asbestos workers from traveling through and contaminating non-abated areas to reach the remote decontamination unit. There is no known threshold for safe exposure to asbestos. If fibers have been released during asbestos-related work, it is necessary for asbestos workers to decontaminate themselves as well as possible before proceeding from the mini-containment to the remote decontamination unit.

Item A is necessary to ensure that contaminated clothing, which could potentially expose non-abatement personnel and the public to asbestos fibers, is not worn while asbestos workers proceed to the remote decontamination unit.

Item B is necessary to remove asbestos contamination from those body parts which were exposed during asbestos-related work to prevent contamination of uncontaminated areas.

Item C is needed to prevent the release of any asbestos fibers which remain after the steps in Items A and B have been performed.

Subp. 3. **Remote decontamination unit.** Subpart 3 is needed to ensure that asbestos workers are provided with the equipment appropriate for cleaning and decontamination to prevent them from contaminating uncontaminated areas of the facility and their homes with asbestos fibers.

Item A is necessary so that there will be facilities for cleaning the area if there is a fiber release or accident during the mini-containment procedure or if asbestos workers need to leave the mini-containment before completing asbestos-related work inside that mini-containment.

Item B will prevent contamination to areas where no abatement has occurred. This is also a requirement of existing rule part 4620.3500, subpart 5, item A, subitem 5.

Item C will also prevent contamination to areas where no abatement has occurred. This is also a requirement of existing rule part 4620.3500, subpart 5, item A, subitem 5.

Subp. 4. **Mini-containment set-up procedure.** Subpart 4 is necessary to ensure that preparatory steps are followed prior to the actual asbestos-related work inside the mini-containment. These steps are important in ensuring that the mini-containment procedure will be protective of public health and will not cause contamination to areas outside of the mini-containment area.

Item A is necessary to ensure that the work area is clean. This will enable the asbestos worker to assess the work which has been completed within the mini-containment. It also ensures that the appropriate equipment is used for the clean-up of debris which may contain asbestos fibers.

Item B is necessary to ensure that the mini-containment is constructed to contain the asbestos during the abatement procedure, thereby preventing asbestos fiber release and subsequent contamination of areas adjacent to the mini-containment.

Subitem (1) is necessary to ensure a certain strength of polyethylene which is used to build the mini-containment. Six-mil polyethylene is also required under existing rule part 4620.3500, subpart 5, item A, subitem (3).

Subitem (2) is necessary to ensure that asbestos fibers released from asbestos abatement activities within the mini-containment are pulled out of the air and captured by the HEPA filter. This is also a requirement under existing rule part 4620.3500, subpart 5, item A, subitem (3).

Subitem (3) is necessary to ensure that the mini-containment is air tight.

Subp. 5. **Asbestos removal or enclosure.** This subpart is necessary to guide the asbestos worker in steps to be followed during the removal, enclosure, or encapsulation of asbestos-containing material inside of a mini-containment.

Item A is necessary to prevent release of asbestos fibers outside of the mini-containment.

Item B is necessary to prevent fiber release from surfaces which have been abated. This is important once the polyethylene mini-containment is torn down and the negative air machine use is discontinued.

Item C is necessary to ensure that asbestos is not left in place which may pose a threat to public health. Frayed edges of asbestos-containing material must be encapsulated to prevent fiber release.

Subp. 6. **Completion of mini-containment operation.** Subpart 6 is necessary to ensure that steps are followed in a specific order to prevent fiber release from contaminated tools and other equipment used during the mini containment operation.

Item A is necessary to prevent contamination of clean areas by removal of contaminated tools from the mini-containment.

Item B is necessary to ensure that asbestos fibers will not be released once the tools are removed from the mini-containment.

Item C is necessary to ensure that asbestos fibers will not be released once the tools are outside of the mini-containment.

Item D is necessary to ensure that asbestos fibers will not be accidently released once the tools are in the leak proof container and transported away from the work site.

Item E is necessary to ensure that asbestos fibers within the mini-containment are either cleaned up using appropriate cleaning techniques or by encapsulating the fibers which is like gluing the fibers down to the polyethylene of the mini-containment which will later be disposed of as asbestos waste.

Subitem (1) provides the asbestos worker with the option of cleaning the mini-containment using a HEPA-filtered vacuum and wet wiping techniques.

Subitem (2) provides the asbestos worker with the option of securing fibers by application of an encapsulant inside the mini-containment.

Item F is necessary to ensure that exposed asbestos in areas adjacent to the area where asbestos removal, encapsulation or enclosure occurred are not left once the mini-containment is taken down. The final visual will also ensure that debris does not remain in the mini-containment.

Item G is necessary to ensure that the mini-containment safely collapses or to ensure that fiber levels are cleared and surface areas cleaned to a "clearance level" before the mini-containment is disassembled. Under this item, asbestos workers are provided two options for removal of the mini-containment.

Subitem (1) allows the asbestos worker the option of collapsing the mini-containment using a HEPA-filtered vacuum to capture any asbestos fibers in the air to prevent release from collapse of the mini-containment. The mini-containment must be constructed to allow for this type of mini-containment removal.

Subitem (2) allows the asbestos worker the option of clearing the mini-containment and ensuring that fiber levels are below the clearance standard prior to tearing down of the mini-containment. Once the air samples have been collected, analyzed, and are fiber levels are shown to be below 0.01 fibers per cubic centimeters, removal of the mini-containment may proceed by whatever method the asbestos worker chooses to use.

4620.3582 REMOVAL OF ENTIRE FACILITY COMPONENTS WITH INTACT ASBESTOS-CONTAINING MATERIAL

Subpart 1. **Applicability.** Subpart 1 is necessary to provide rules for removal of entire facility components which still have asbestos-containing material on them. Lengths of pipe and smaller facility components are examples of items which the contractor may wish to remove from the facility without first removing the asbestos containing material. For purposes of regulation, the asbestos-containing material removed from the facility is regulated and is part of the project according to part 4620.3100, subpart 27b. This includes any asbestos-containing material removed using methods in this part. The Minnesota Department of Health believes that when facility components have intact asbestos-containing material on them and the entire component will be replaced, a safe method of removal is to wrap the entire component in polyethylene and carry out the entire component, asbestos and all, without first removing the asbestos-containing material.

Subp. 2. **Conditions for removal of entire facility components.** This subpart is necessary to provide information about other parts of the rule which also apply to this part.

Item A is necessary to protect public health by limiting the amount of asbestos-containing material which can be glove bagged. A limitation of glove bagging to 10 linear feet or six square feet of asbestos-containing material per room is in existing rule part 4620.3500, subpart 5.

Item B is necessary because if the asbestos-containing material is damaged, moving that material and the preparation to move that material such as wrapping the asbestos-containing material in polyethylene can cause fiber release.

Item C is necessary because glove bag procedures carried out in an unsafe manner can contaminate areas adjacent to where these procedures take place.

Subp. 3. **Procedures.** Subpart 3 is necessary to prevent fiber release and contamination to areas adjacent to the asbestos work area.

Item A is necessary to ensure that after the asbestos abatement procedure is complete, asbestos workers will be able to identify debris from the abatement from debris which may have been in the work area before the abatement. Ten feet is reasonable because that would allow the asbestos workers to set up all their equipment needed for the asbestos-related work including ladders.

Item B is necessary to ensure that the outer wrap on the asbestos containing material is left intact while the outer covering is wet. Amended water is one of the major fiber controls used during asbestos-related work. Many of the protective wraps covering asbestos-containing material, including pipe wrap are waterproof. Requiring asbestos workers to wet the material is intended to provide safe procedures for those materials which will absorb water and will also safeguard against very small cracks or breaks in the material which it covers.

Subitem (1) is necessary to ensure that the outer covering of the asbestos remains in tact as much as possible. The method of wrap and cut can be a safe method for removal of asbestos-containing material and the department does not want individuals to get the wrong idea about wetting the material.

Subitem (2) is necessary to ensure that the exposed asbestos is wrapped and sealed to prevent fiber release while the pipe or facility component is being removed from the facility.

Item C is necessary to ensure asbestos fibers are contained inside the polyethylene wrap and prevents fiber release to the air.

Item D is necessary to ensure asbestos fibers remain contained inside the polyethylene wrap and prevents fiber release to the air.

Item E is necessary to ensure that methods to remove the facility component are performed in a safe manner with the asbestos containing material removed in a manner which will control asbestos fiber release.

Subitem (1) is necessary to ensure that the glovebag is attached to the polyethylene sheeting when a glovebag is used to provide an asbestos free area. This item also ensures that the pipe will be wrapped prior to performing the glovebag procedure.

Subitem (2) is necessary to ensure that ends exposed to the open air are wrapped and sealed after using the glove bag to provide an asbestos free area to cut the component free.

Item F is necessary to prevent fiber release from disturbance when the facility component is removed.

Subitem (1) is necessary to ensure that the facility component will not fall to the ground.

Subitem (2) is necessary to ensure that the facility component will not be dropped or thrown to the ground and prevents release of asbestos fibers and breaking the seal around the wrapped component.

Item G is necessary to prevent the accidental release of asbestos fibers by persons unaware of the contents within the polyethylene sheeting.

Item H is necessary to ensure that once the facility component is removed from the facility the asbestos-containing material is not stripped off the component without taking the appropriate precautions to control fiber release and prevent exposure to public health. Components are often stripped of the asbestos when the asbestos covered pipe is made of copper. The Minnesota Pollution Control Agency has jurisdiction over waste disposal issues, however, the stripping of asbestos-containing material from pipes which have been removed from a facility often occurs inside another building which is used for temporary storage. The Minnesota Department of Health wants to ensure safe removal of asbestos-containing material for the situation described above.

4620.3585 ASBESTOS ABATEMENT FOR DEMOLITION BY DESTRUCTION TO THE GROUND

This part is necessary to ensure that when asbestos abatement is performed before demolition, asbestos fiber release is prevented.

Subpart 1. **Applicability.** This subpart is necessary for specifying to which projects this part applies. No personnel other than asbestos abatement personnel must enter the facility after asbestos abatement. This means that less stringent practices may be followed because no personnel will be in the facility without protective equipment after asbestos abatement has occurred.

Item A is necessary to limit the time frame in which the facility might be accidently or intentionally be entered by those other than abatement personnel.

Item B is necessary to deny access to the facility after asbestos related work has been performed.

Subp. 2. **Exceptions.** This subpart is necessary to cross reference the air monitoring requirements and work practices that must be performed for projects prior to demolition. Even if a facility is to be demolished after asbestos related work has been performed, it is critical that asbestos fibers not be released to the air under any circumstances.

Subp. 3. **Securing facility following asbestos-related work.** This subpart is necessary to ensure that only asbestos abatement personnel are able to gain access to the facility after asbestos related work has been completed.

Subp. 4. **Demolition prior to asbestos-related work.** This subpart is necessary to specify which types of projects when structures containing asbestos have to be demolished before asbestos can be removed because the structure is unsafe.

Item A is necessary to specify that subpart 5 is applicable to only those projects where the facility will be demolished to the ground.

Item B is necessary to specify that subpart 5 is applicable to only friable asbestos materials in the quantities provided.

Subp. 5. **Abatement following facility demolition.** This subpart is necessary to specify requirements that ensure safe removal of asbestos-containing material when structures containing asbestos have to be demolished before asbestos can be removed because the structure is unsafe.

Item A is necessary so no one, except asbestos abatement personnel, enter the area.

Item B is necessary to ensure the commissioner receives notification for this type of asbestos-related work.

Item C is necessary to make sure that properly trained persons are used to search for and remove asbestos-containing material.

Item D is necessary for the same reason as in item C.

4620.3592 INDOOR AIR MONITORING

Air monitoring requirements are necessary to ensure that if there is a fiber release episode outside of the containment, air samples detect that fiber release and appropriate decontamination methods are employed. Air monitoring provides valuable information about fiber release which may have occurred and can explain whether techniques used for prevention of fiber release are working. Because asbestos fibers not visible to the unaided human eye may cause fatal disease, it is necessary to monitor fiber levels in the air. Fibers are primarily a respiratory hazard and therefore the air is what is sampled to find asbestos fibers. If a fiber release episode has occurred, it is important to do a thorough clean up of the contaminated area to prevent reentrainment of the asbestos fibers into the air thereby posing risk of inhalation by an individual without respiratory protection.

Subpart 1. **Applicability.** Subpart 1 is necessary for specifying to which projects this part will apply.

Item A is necessary to ensure that the asbestos abatement contractor monitor the air during projects where the facility is occupied or entered by non-abatement personnel during asbestos abatement or reoccupied by non-abatement personnel after asbestos abatement. This is necessary to ensure that appropriate clean up and decontamination of the areas adjacent to the containment area occur if fiber levels exceed the indoor air standard or alternative indoor air standard.

Item B is reasonable because performing air monitoring when the individual is not qualified to do so, can be extremely dangerous. By conducting air monitoring in an incorrect manner, the person may be led to believe that the area is safe and no fibers exist when in fact there may be asbestos contamination of the area.

Subp. 2 **General.** Subpart 2 is necessary to provide a window of time in which air monitoring is required to be performed. By placing the beginning of air monitoring at "the time of disturbance of the asbestos-containing material, the air monitoring may be required during preparation of the containment if the asbestos-containing material is in poor condition or if the contractor must disturb asbestos-containing material to construct the containment. Otherwise, the air monitoring may begin once removal, encapsulation, or enclosure of the asbestos-containing material is commencing. Air sampling must continue until the time that the indoor air standard has been met.

Item A is necessary to inform the asbestos abatement contractor of the number of samples which must be collected during asbestos-related work. It is necessary to collect two samples to ensure that at least one sample can be used even if one of the samples taken was defective. Additional samples ensure that sample collection is not being interfered with due to incorrect placement of the sampling train. The sampling train is the entire combination of equipment necessary for pulling air samples including the pump, the cassette loaded with the appropriate

filter, any stand or equipment used to hold the various parts of the sampling apparatus and all connections for the pump, cassette and other equipment.

Item B is necessary to ensure that the area at the entrance to the decontamination unit is being monitored. The entrance is an opening between the containment and the decontamination unit, it is possible that fiber release may occur in this area. Placement of the other sampling train is left up to professional judgement of the air sampler and will vary from containment to containment.

Item C is necessary to ensure that the air sampler does not place the sampling train so far away from the containment that the air sampler will find no fibers even though fiber release may be occurring from the containment.

Item D is necessary to ensure that a limit is placed on the amount of air to be sampled. Sample collection is very important because if too little air is collected, the chance of finding asbestos fibers are often poor, and if too much air is collected, the analysis may be impossible to perform because of overloaded filters. The use of "work shifts" for a period sample collection was discussed in the work group. The problem with the use of "work shift" is that shifts may overlap. It also becomes confusing when many work shifts may be occurring in the area at one time. For example, should sampling be performed during the asbestos workers work shift, the work shift of the air monitor, or the work shift of non-abatement personnel? Minimum volumes to be collected and other sample collection requirements are specified in part 4620.3597, subparts 2 to 4.

Subp. 3. **Evacuation and corrective measures.** This subpart is necessary because if areas adjacent to the containment have been contaminated, it is important to evacuate nearby unprotected individuals and implement corrective measures to limit the exposure to other individuals and prevent further exposure to the public. When sample cassettes are too heavily loaded to allow for fiber analysis, samples must be assumed to be asbestos until proven otherwise. Resampling must be done and with the knowledge that previous cassettes from previous air sampling were overloaded, the air sampler can adjust the quantity of air sampled for the next round of sampling. If the overloaded cassettes are overloaded from an excess of asbestos fibers in the air, some high exposure levels may occur and thus the need to assume that the overloading is due to asbestos fibers until proven otherwise.

Item A is necessary because often on a site undergoing renovation other dust may be interfering with the sampling for asbestos. If there is reason to believe the excess fibers detected under the microscope are not in fact asbestos, the abatement contractor is given an option of proving that non-asbestos dust or other fibers are causing the high fiber counts.

Item B is necessary because if there is no reason to believe that non-asbestos dust is interfering with the air sampling, the high fiber counts could be due to elevated levels of asbestos fibers in the air. Asbestos is a known carcinogen, no safe exposure level is known, thus a hazardous situation exists and evacuation must occur. It is necessary to ensure that a paper trail is created to demonstrate what corrective measures have been taken and documentation shows that

the area is safe for reentry of non-abatement personnel.

Subitem (1) is necessary because if there is a breech in the containment, the holes or separations in the barrier could allow for asbestos fibers to escape from the containment. Checking for holes or separations in the barrier is one of the first problems to look for and those holes or breeches can be patched to prevent or reduce further fiber release.

Subitem (2) is necessary to check that the negative pressure is being maintained. The negative pressure is one of the primary engineering controls to prevent fiber release outside of the containment.

Subitem (3) is necessary because if fiber release has occurred and areas outside of the containment are contaminated with asbestos fibers, the contaminated areas need to be cleaned up using appropriate methods. Not cleaning the contamination or using inappropriate cleaning techniques will allow for reentrainment of asbestos fibers into the air and may make the contamination worse than it already is.

Subitem (4) is necessary to ensure that enough samples are collected to provide some statistically significant result and that the appropriate sample collection methods are followed. The samples are collected to ensure that the problem has been corrected through actions taken in subitem (1), and therefore, subsequent air sampling is performed in the area which did not pass the initial air sampling and analysis.

Subitem (5) is necessary to ensure that results of air sampling and analysis meet the Minnesota indoor air standards set for asbestos fiber levels in the air.

Subp. 4. **Suspected non-asbestos dust.** Subpart 4 is necessary to deal with situations where there is a great deal of non-asbestos containing construction dust in the areas which are being sampled in accordance with this part. In many cases, asbestos abatement is performed in areas where general construction is also being performed. Consequently, the areas may contain large amounts of non-asbestos containing dust. The requirements of this subpart are similar to those in existing rule part 4620.3500, subpart 2, items B and C.

Item A is necessary because if non-asbestos abatement personnel remain in areas adjacent to asbestos abatement, then it is imperative to know whether or not the excessive fibers in the air are indeed asbestos or are non-asbestos containing fibers. The only way to absolutely determine asbestos containing from non-asbestos containing fibers is to analyze the samples using transmission electron microscopy.

Item B is necessary because if analysis by transmission electron microscopy shows that fibers are asbestos containing, the area must be evacuated and clean up must occur to prevent further exposure to asbestos fibers by non-abatement personnel and the public.

Subp. 5. **Indoor air monitoring during glove bag or mini-containment procedures.** This subpart is necessary to ensure air monitoring of glove bag and mini-containment procedures,

which differ from traditional asbestos abatement methods.

Item A is necessary because for both a glove bag or mini-containment procedure there is only one layer of polyethylene separating the asbestos-containing material from the non-asbestos work area of the room. There are no clearance samples required so to ensure that fiber release is not occurring, it is important to take two samples per room. Additionally, if one of the samplers should fail or there is a problem with one sample, the second sample can be counted so that there is some air sampling data regarding that project.

Item B is necessary so that the air samplers are taking samples of the air in the vicinity of the asbestos-related work.

Item C is necessary to limit the amount of air drawn through the air sampler. See same discussion in this document, part 4620.3592, subpart 1, item E.

Item D is necessary because with a glove bag or mini-containment, there is only one polyethylene barrier versus the two layers required during more traditional asbestos abatement. If fiber release has occurred as a result of the asbestos-related work performed, the area must be cleaned using appropriate wet methods and HEPA vacuuming to prevent exposure to individuals who will be reoccupying the area.

Item E is necessary to ensure that air samples are able to be analyzed to determine whether or not fiber release has occurred during the asbestos related work. If analysis results show that fiber release has occurred, the area must be cleaned using appropriate methods to prevent exposure to non-abatement personnel.

Subitem (1) is necessary to ensure that the area is being cleaned to enable the air monitor to take a sample which will be able to be analyzed.

Subitem (2) is necessary to ensure retesting of the asbestos work area after cleaning has been performed.

Subitem (3) is necessary to ensure that recleaning and resampling are repeated until the area tests clean.

4620.3594 CLEARANCE AIR MONITORING

This part is necessary to specify air monitoring required at the end of a project to ensure that abatement and clean-up after asbestos abatement has been done in a manner which will not pose a threat to public health.

Subpart 1. **General.** This subpart is necessary to inform the contractor that there is a clearance air standard or the alternative clearance standard which must be met at the end of an project.

Item A is necessary to ensure that the air tests are "clean" prior to reoccupying of the asbestos work area.

Subitem (1) requires that five clearance air monitoring samples are taken and analyzed with each showing fiber levels remaining in the air to be less than 0.01 fibers per cubic centimeter following projects which exceed 160 square feet, 260 linear feet, or 35 cubic feet. This subitem also requires that five clearance air monitoring samples are taken and analyzed with each showing fiber levels remaining in the air to be less than an alternative indoor air standard, established according to part 4620.3594, subpart 2, following all projects which exceed 6 square feet or 10 linear feet. Clearance air sampling is an important tool to determine whether or not the asbestos has been contained and cleaned up so exposure to the fibers does not occur when the area is reoccupied.

Subitem (2) requires that three clearance air monitoring samples are taken and analyzed with each showing fiber levels remaining in the air to be less than 0.01 fibers per cubic centimeter following projects which exceed 6 square feet or 10 linear feet. For air sampling, the more samples that one takes, the closer one will come to detecting the true fiber counts within the air. Projects which exceed 160 square feet, 260 linear feet, or 35 cubic feet require five samples to be taken for clearance of the containment. For small residential abatements, the number of clearance air samples required has been reduced to three because of the size of the abatement project and the additional requirements of subpart 2, item D, which help ensure equal mixing of the air within the containment. Three samples are adequate to cover an area where the asbestos abated was greater than 6 square feet or 10 linear feet yet is below 160 square feet or 260 linear feet.

Item B requires that each sample is required to pass the indoor air standard or alternative indoor air standard. It is not a mean or average of the samples. By use of a mean, the ability to count the asbestos fibers may be obstructed by the detection limit and therefore should not be dismissed as "zero" and averaged in. If after analysis, one of the samples exceeds the clearance standard, additional testing must be completed.

Subp. 2. **Clearance air monitoring procedures.** The sequence of events after the asbestos containing material has been removed is essential for preventing cross contamination of equipment and areas outside of the containment. Subpart 2 is necessary to emphasize the importance of following the sequence of events required by these rules.

Item A is necessary to maintain one of the primary engineering controls, the negative air, until clearance samples have been taken, analyzed, and have shown that fiber levels within the containment are below the clearance air standard. This is to protect public health.

Item B is necessary to ensure that if asbestos workers need to reenter the containment to repair critical barriers or the negative air pressure system before the results from final air samples are known, these asbestos workers will be able to decontaminate themselves upon exiting the containment. If the final air samples are greater than the indoor air standard or the alternative indoor air standard or are overloaded, asbestos workers must reclean the inside of the

containment. These asbestos workers must be able to decontaminate themselves upon exiting the containment.

Item C is necessary to maintain one of the primary engineering controls, the negative air, until clearance samples have been taken, analyzed, and have shown that fiber levels within the containment are below the clearance air standard. This is to protect public health. Item C is also necessary to ensure even mixing of air within the containment so results are indicative of the fiber levels within the air inside the containment.

Item D is necessary to ensure that the air samples will actually be measuring what they are designed to measure. It would do no good to place the samplers in a corner so as not to detect fibers which may be present in the containment.

Item E is necessary so that the sampling will detect asbestos contamination within the containment and not from another project. By using contaminated air sampling equipment, the air sampler may obtain false positive results.

Item F is necessary to assure that there is equal mixing of the air inside the containment, samples collected will reflect an accurate accounting of the fiber levels within the containment air.

Subitem (1) is necessary to ensure that fibers loosely attached to areas which have not been cleaned are reentrained in the air just as they might be from air currents in the room or when surfaces are disturbed during daily inhabitance.

Subitem (2) is necessary to ensure that air is continually moved within the containment just as occupants of the area may cause movement of the air within the room.

Subitem (3) is necessary to prevent a fire or electric shock hazard within the containment.

Item G is necessary to prevent asbestos contamination from one project to another and also from the containment area to areas outside the containment area.

4620.3596 GENERAL REQUIREMENTS FOR AIR MONITORING SAMPLE COLLECTION.

Air monitoring is an essential part of asbestos-related work in both small residential abatements and large projects. The requirements of this part are written to ensure that air monitoring is performed correctly and that the results are reported in a timely fashion to verify that the asbestos abatement was done in a safe manner, protective of public health.

Item A is necessary to ensure that air sampling technicians have the required training. Since the definition of "asbestos related work" in Minnesota Statutes, section 326.71, subdivision

4, was amended to include air quality monitoring, it is reasonable to implement additional air sampling training requirements to those requirements in existing rule part 4620.3500, subpart 3. The proposed requirements for training those who perform air sampling was discussed at length with the advisory work group who agreed that additional requirements were necessary. A two-day training course for asbestos air sampling is necessary to ensure that those individuals whose are responsible for performing air monitoring during asbestos-related work have had the appropriate training to perform this sampling. In addition to the two day air sampling course, those persons who perform asbestos air sampling also must take either the asbestos worker or asbestos site supervisor course for compliance with Minnesota Statutes, section 326.73, subdivision 1, as amended through Laws of Minnesota 1993, chapter 303, section 11. Neither of these courses contain the detailed instruction needed to perform air sampling.

Subitem (1) is necessary to provide air sampling technicians with the knowledge needed to set up the air sampling equipment and perform air monitoring in accordance with Minnesota law and rules. The existing rule, part 4620.3500, subp. 3, item A requires that, "Air sampling must be conducted under the direction or control of a certified industrial hygienist or an individual who has successfully completed the National Institute for Occupational Safety and Health (NIOSH), course number 582, entitled Sampling and Identification of Airborne Asbestos, or another suitable course as determined by the commissioner". There are many NIOSH 582 courses and NIOSH 582-equivalent courses which provide individuals with knowledge for analysis of samples. Some of these courses teach air monitors about the correct placement of the air sampling equipment while others don't. Additionally, Minnesota specific law and rules are not covered in the NIOSH 582 courses. Since the adoption of the initial asbestos abatement rules, "a suitable course as determined by the commissioner" has come to mean a "State of Minnesota Asbestos Air Sampling Course". This course is currently offered in Minnesota by four different training course providers and instructs individuals on the placement of air monitors, tasks related to performing sample collection, and knowledge of Minnesota law and rules regarding air monitoring in Minnesota. To ensure that individuals who will be performing air monitoring in Minnesota are knowledgeable about techniques of sample collection and are familiar with Minnesota law and rules, it is necessary to require that these individuals have completed the State of Minnesota Air Sampling Course or another course which provides the same type of air monitoring instruction.

Subitem (2) is necessary to allow other qualified individuals to perform air monitoring. Certified Industrial Hygienists have the training, have been tested on that knowledge, and by certification are held to a level of professional liability. The industrial hygienist will have training and prior experience in placement of air sampling equipment and will have a knowledge of laws and rules governing sample collection for asbestos-related work in the State of Minnesota.

Item B is necessary because the asbestos abatement contractor is not allowed to tear down the containment and remove critical barriers until the air samples indicate that fiber levels are below the indoor air standard or the alternative indoor air standard. To enable the asbestos abatement contractor to tear down the containment in a timely manner, this item is necessary.

Item C is necessary to ensure that analysis results are available prior to disassembly of the containment. Fiber levels at or below the indoor air standard or the alternative indoor air standard indicate that the project has been completed in a manner protective of public health.

4620.3597 PHASE CONTRAST MICROSCOPY

Subpart 1. **Phase contrast microscopy air sample analysis.** This subpart is necessary to ensure that analysis will proceed in accordance with National Institute Of Safety and Health Method 7400 (NIOSH, 1994). This is a standardized method and is a requirement for analysis of samples under existing Minnesota Rules, part 4620.3500, subpart 3, item B, subitem (3). The address of the State Law Library has been changed to the Minnesota Judicial Center, 25 Constitution Avenue, Saint Paul, Minnesota 55155, its new address.

Subp. 2. **Procedures for establishing an alternative indoor air standard.** This subpart is necessary to ensure that use of an alternative indoor air standard during projects will not be misused.

Item A is necessary to ensure that the alternative indoor air standard is set prior to the beginning of abatement. This will ensure that the fibers are not coming directly from the asbestos abatement activities therefore having a low probability of being asbestos containing fibers.

Item B is necessary to ensure that the alternative indoor air standard is measuring asbestos fibers just as done in other parts of this rule. With the alternative indoor air standard, there is no set fiber limit and therefore the statistical significance of using results from five separate air samples is important in determining the alternative indoor air standard. Five samples are necessary to establish a small residential abatement alternative indoor air standard and is reasonable because this method is not required and is an alternative to the standard small residential abatement indoor air standard.

Item C is necessary to ensure that the method to arrive at the alternative indoor air standard is calculated in the correct manner. This also clarifies why it is necessary to collect five separate samples to establish an alternative indoor air standard.

Item D is necessary to ensure that the air monitor is collecting samples representative of the fiber release from the containment. It should prevent an air sampler from placing air sampling trains in areas which fail to measure fibers released from the containment.

Item E is necessary to clarify that the alternative indoor air standard is not transferable from one project to another. The alternative indoor air standard is calculated from site specific data and if there is a different containment different fiber levels outside of the containment could result. For each containment or area of a project, five background air samples need to be taken and a new alternative indoor air standard established.

Subp. 3. **Air monitoring sample collection and analysis.** This subpart is necessary to ensure that analysis by phase contrast microscopy is performed in accordance with the standards set forth in this subpart.

Item A is necessary to ensure that a detection limit of at least 0.01 fibers per cubic centimeter of air is achieved and that enough air is sampled to make an accurate determination down to the detection limit of 0.01 fibers per cubic centimeter. A minimum air volume of 2,000 liters, is necessary to ensure reasonable reproducibility or precision of analytical results in environments where asbestos air concentrations are presumed to measure 0.01 fibers per cubic centimeter or less. The reproducibility of fiber counts is related to the number of fibers counted, and improves as the number of fibers counted increases. When the sample cassette is analyzed according to the NIOSH 7400 method, the analyst will count about 40 fibers in 100 microscope fields (NIOSH, 1994). This corresponds to a theoretical precision of about 16 percent of the concentration.

During the work group meetings, the indoor air standard of 0.01 fibers per cubic centimeter was discussed (MDH- Minutes from January 6, 1994). The departments final decision is based on an Administrative Penalty Order and the recommendations of the Administrative Law Judge and final decision of the Commissioner regarding that case (State of Minnesota, 1995, Conclusions of Law and Conclusions of Order, February 17, 1995). During the hearing, the 0.01 fibers per cubic centimeter was questioned. The limit of 0.01 fibers per cubic centimeter stands as it exists in current rule and the department will educate air monitors about the standard and how to interpret air analysis results for compliance with the indoor air standard. Since the APO, the department believes that the matter of 0.01 fibers per cubic centimeter has been clarified and that adding an extra zero at the end (i.e. 0.010) would only add further confusion to this issue.

Item B is necessary because reproducibility rapidly declines when fewer fibers are counted. Therefore, a minimum air volume of 2,000 liters is a practical limit to control the precision of results to be used for compliance purposes.

Item C is necessary to ensure that a consistent alternative exists to counting fibers when collecting less than 2,000 liters of air. For small, short duration projects or projects where high background fiber levels, asbestos or non-asbestos fibers or dust may interfere with the ability to sample 2,000 liters of air. For these special cases, the alternative needs to exist with parameters set forth in subitems (1) to (5).

Subitem (1) is necessary to inform the sample analyst that more than 100 fields need to be counted if less than 2,000 liters of air have been sampled.

Subitem (2) is the directions necessary to determine the proportion of fields to be counted to the amount of air sampled. This will determine the number of fields which need to be counted, since 100 fields no longer are appropriate for less than 2,000 liters of air sampled.

Subitem (3) is necessary to obtain areas of the filter which may not have been used if at least 2,000 liters of air had been sampled.

Subitem (4) is necessary to inform the analyst when counting of fibers must stop.

Subitem (5) is necessary to calculate the number of fibers per fields counted. This is the important ratio, not simply the number of fibers found as that will differ with the total number of fields counted.

Subp. 4. **Air monitoring sample analysis.** This subpart is necessary to ensure that laboratories which analyze air monitoring samples are qualified to do so and there is no conflict of interest between the party taking the samples and the party analyzing the sample.

Item A is necessary to allow for all laboratories who currently do not have American Industrial Hygiene Association (AIHA) accreditation to become accredited. According to AIHA, this accreditation process can take anywhere from twelve to eighteen months, on the average. AIHA accreditation ensures that the laboratory has a quality control program in place and ensures laboratory visits to ensure the laboratory meets specific standards.

Item B is necessary to ensure that analysts are participating in a quality assurance program and that analysts employed achieve a standard of reliability and proficiency for analyzing asbestos samples under phase contrast microscopy.

4620.3598 TRANSMISSION ELECTRON MICROSCOPY

Transmission electron microscopy is the required method of analysis to meet the alternative clearance standard. There may be other cases, such as to comply with the Asbestos Hazard Emergency Response Action (AHERA) for schools, where transmission electron microscopy is either required or is the analytic method of choice. Methods for analysis by transmission electron microscopy differ from methods for analysis by phase contrast microscopy which necessitates this part.

Subpart 1. **Use of the alternative clearance standard.** This subpart is necessary to inform the project air monitors and analysts when an alternative method is allowed. Transmission electron microscopy is the analytic method required to comply with the alternative clearance standard.

Item A is necessary to ensure that analysis by transmission electron microscopy will be performed in accordance with a standardized method accepted under federal regulations. This method is the same as under existing Minnesota Rules, part 4620.3500, subpart 3, item D.

Item B is necessary to ensure that the amount of air sampled is in accordance with good industrial hygiene practice set forth under item A.

Subp. 2. **Air monitoring sample analysis.** This subpart is necessary to allow some lead time for laboratories who desire to maintain their capability of analyzing samples by Transmission Electron Microscopy (TEM) for compliance with this part to obtain National Voluntary Laboratory Accreditation Program (NVLAP) accreditation. The NVLAP accreditation is largest

accreditation program for TEM analyses and will ensure a level of competence in analysis of asbestos samples taken for compliance with these rules.

4620.3702 to 4620.3724 REQUIREMENTS RELATED TO TRAINING COURSES

The proposed parts are necessary to specify requirements for training course providers. Several requirements existing in rule part 4620.3700, which is proposed for repeal, are proposed as modified new requirements to implement changes resulting from the amendment of Minnesota Statutes, section 326.73 (Laws of Minnesota, 1995, chapter 303, section 11) and section 326.75, subdivision 3a (Laws of Minnesota, 1995, chapter 303, section 11). The commissioner currently approves training courses for asbestos workers and asbestos site supervisors. In addition to asbestos worker and asbestos site supervisor courses, Minnesota will be seeking EPA accreditation to allow the commissioner to approve training courses for asbestos inspectors, asbestos management planners and asbestos project designers. To gain EPA approval, Minnesota must have accreditation requirements at least as stringent as those included in the Asbestos Model Accreditation Plan; Interim Final rule, Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C.

Existing rule part 4620.3700 applies only to the disciplines of asbestos worker and asbestos site supervisor. Minnesota received approval from the EPA to approve training courses for asbestos workers and asbestos site supervisors in 1988.

Proposed parts 4620.3702 through 4620.3724 relate to training courses for accreditation of asbestos worker, asbestos site supervisor, asbestos inspector, asbestos management planner and asbestos project designer meeting the asbestos-related discipline training requirements mandated by both Minnesota law for those disciplines which the department certifies and also federal regulation.

4620.3702 APPLICATION FOR TRAINING COURSE PERMIT

Part 4620.3702 is necessary because it contains application procedures to obtain a permit from the department to provide training courses. Many of the items are currently required in existing rule part 4620.3700, subpart 3. The permit fee required to be paid by training course providers is consistent with statutory language. During the 1995 legislative session Minnesota Statutes, section 326.75, subdivision 3a was amended to read:

> Subd. 3a. [ASBESTOS-RELATED TRAINING COURSE PERMIT FEE.] The commissioner shall establish by rule a permit fee to be paid by a training course provider ~~upon~~ on application for ~~approval or renewal of approval~~ a training course permit or renewal of a permit of each asbestos-related training course required for certification or registration.

Subpart 1. **Applications other than renewal.** It has been policy within the department to require the information in items A to H. By placing the requirements in the rule, those requirements are easily accessible and available to anyone prior to deciding whether or not an individual wants to be issued a permit to provide training courses. It is reasonable to require the training course provider to submit an application to the commissioner at least 60 days before the course is offered to provide the department with adequate time to review all the application materials required to be submitted within this rule.

Item A is necessary to provide a record of application for the training course permit and to provide the information necessary to permit the course and administer that permit.

Item B is required to pay for staff resources necessary to permit the training courses. The authority for the commissioner to charge a training course permit fee is in Minnesota Statutes, section 326.75, subdivision 3a, as amended by Law of Minnesota, 1995, chapter 165, section 13. For analysis of projected costs and revenues related to the training course approval fee, see appendix B. Payment to the commissioner must be in the form of a business check, cashier's check or money order because the department has had many problems in the past with individuals who write the department bad checks.

Items C and D are necessary to comply with part 4620.3718 which ensures that the asbestos training course complies with the content and length of the training course as required by Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, the Model Accreditation Plan (Code of Federal Regulations, title 40, part 763, 1995).

Item E is to ensure compliance with part 4620.3716, subpart 4, items F and G. Without copies of the examination and answer key, the department can not adequately determine whether the training course provider is in compliance with this rule.

Item F is to ensure compliance with part 4620.3716, subpart 3.

Item G is necessary to alert the department of problems which the provider has had in other states or with the Environmental Protection Agency. The information provided to students in the training courses is important. Training can make a difference between the individuals and the public becoming exposed to asbestos fibers. It is reasonable to request violation information to alert the department of the past problems of the training course provider to ensure that these training problems do not occur in Minnesota. Item G is also consistent with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (G) of the Model Accreditation Plan published on February 3, 1994 (Code of Federal Regulations, title 40, part 763, 1995).

Item H is necessary to ensure compliance with proposed part 4620.3702, subpart 2.

Subp. 2. **Renewal.** Subpart 2 is necessary to ensure the training course providers are aware of what is required to renew a training course permit. The training course provider must submit to the commissioner items A to C at least 30 days before the expiration of the current permit.

Thirty days is a reasonable time for the department to process the information submitted as part of the renewal application.

Item A is necessary to provide the commissioner with information about the training course and the permit related to that training course.

Item B requires a fee for renewal of training course permit. This item is necessary to pay for staff resources needed to permit training courses including administration of approvals, providing information and updates to the training course providers and for the department to perform audits of training courses for compliance. The commissioner's authority to charge a renewal fee is under Minnesota Statutes, section 326.75, subdivision 3a, as amended by Laws of Minnesota 1995, chapter 165, section 13. Appendix B provides the analysis of projected program costs and revenues relating to item C.

Item C is necessary to ensure that all changed information is relayed to the department. This is reasonable because the department does not want incorrect information to be taught to individuals who will be performing asbestos-related work.

4620.3704 PERMITTING TRAINING COURSES

Part 4620.3704 is necessary to specify the conditions for issuing a permit to training courses.

Subpart 1. **Applications other than renewal.** Subpart 1 is necessary to inform the training course provider that the provider will be issued a permit by the commissioner to teach the training course. This requirement is included in existing rule part 4620.3700, subpart 5, item A. The term "approved" is replaced with "permitted" to be consistent with Minnesota Statutes, section 326.75, subdivision 3a, as amended by Laws of Minnesota 1995, chapter 165, section 13 (State of MN, Asbestos Abatement Act). To have a training course permitted, the training course provider must comply with 4620.3702, subpart 1 and meet requirements in parts 4620.3708 to 4620.3722.

Subp. 2. **Renewal applications.** Subpart 2 is necessary to ensure that the training course provider applying for renewal of a training course permit knows what must be complied with and procedures to obtain a renewal permit.

Item A is necessary to ensure that the training course provider has submitted the appropriate documentation and fee required for renewal of a training course permit.

Item B is necessary to ensure that the training course provider follows other training course requirements in rule parts 4620.3708 to 4620.3722.

Item C is necessary to ensure that the training course provider offers the training course at least one time every two years in Minnesota. It is reasonable to require the training course provider to offer the training course at least once every two years in Minnesota to ensure that the

training course provider includes updated information on asbestos-related topics. There is no reason to receive a permit for a training course if the training course provider does not provide training courses.

Subp. 3. **Reciprocity with other states.** Subpart 3 is necessary because it allows for reciprocity between Minnesota and those states with asbestos regulatory programs which are equivalent to Minnesota's program or more restrictive. This ensures that the students will have been taught about methods to deal with asbestos which are as protective of public health as those methods being taught in Minnesota.

Subp. 4. **Denial of permit.** It is necessary to ensure that the commissioner have a method to deny a permit when the application does not comply with the rule.

Item A is necessary to inform the applicant of the reasons for which the application is being denied. This is reasonable to ensure that the applicant can correct the deficiencies and reapply without paying a second fee.

Item B is necessary to ensure that an applicant does not have to pay a second fee upon the first denial of an application, provided the applicant resubmits the application within 30 days of the receipt of notice that the training course permit has been denied. It is reasonable to provide the applicant with an opportunity to correct application deficiencies without paying a second fee. Anyone can make a mistake. Thirty days allows time for the applicant to correct the deficiencies.

Subp. 5. **Duration of permit.** It is necessary to inform the training course provider how often the training course provider must renew the permit to provide training courses. The permit is good for one year. The annual renewal of the training course permit is changed from existing rule part 4620.3700, subpart 5, item B, requiring the training course provider to renew the training course approval every two years. Annual renewal of a permit to provide training courses is reasonable because of the frequency in which instructors may change jobs. It is also consistent with the renewal times of asbestos contractors licenses and the various certified asbestos disciplines.

4620.3708 TRAINING COURSE DIPLOMAS

Part 4620.3708 is necessary because the Environmental Protection Agency is very specific in what type of information must be printed on a training diploma received upon completion of an course. Requirements for the diploma issued to students who complete the training course are found in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (C), subparagraph (1) of the Model Accreditation Plan published on February 3, 1994 (Code of Federal Regulations, title 40, part 763, 1994). All other information to be specified on the diploma within the proposed rule, other than the notation regarding a Minnesota permit and the location of the training course, is also required in the Model accreditation plan specified in this part.

It should be noted that the Model Accreditation Plan refers to a certificate being issued to successful participants of a training course. The department has chosen, in an attempt to address on-going confusion, to refer to this document as a diploma, since the department issues a certificate to those persons who are qualified to perform asbestos-related work in the State of Minnesota.

Item A is necessary because it is required in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (C), subparagraph (1) of the Model Accreditation Plan published on February 3, 1994 (Code of Federal Regulations, title 40, part 763, 1994).

Item B is necessary because it provides the department with information about the location of the unique training course taken. Some of our training course providers do not hold each training course in the same facility each time they present the training course. This information is essential for the department to have if a representative of the department is going to audit that training course.

Item C is necessary to ensure that language stating "Permitted by the State of Minnesota under Minnesota Rules, parts 4620.3702 to 4620.3722", is included on the training diploma so the trained individual will have a record of which state issued a permit for the training course. This would be important if the individual decided to apply for certification in a state other than Minnesota, using a training diploma issued in Minnesota.

4620.3710 **ADVANCE NOTICE AND AMENDMENTS**

Most of the requirements in part 4620.3710 are included in existing rule part 4620.3700, subpart 2, item A. The department currently does not have a specific form on which the training course providers must notify the commissioner. The form to be provided by the commissioner is necessary because it will ensure consistency of information on the form and will simplify the process of recording the data from those forms onto the department's data base. It is reasonable to require the use of a specific form so that notifications are not lost and are processed quicker. This is expected to assist training course providers in notification to the commissioner of training courses to be held.

Item A is necessary to inform the training course provider that the required information must be mailed or faxed to the commissioner.

Subitem (1) is necessary to allow the commissioner 14 calendar days to schedule time to observe the training course. This requirement is similar in existing rule part 4620.3700, subpart 3, item B. The department has reduced the time required for notice prior to presenting a class. This has been done to simplify this process for the training course providers and to provide training course providers with an easier notification process.

Subitem (2) is necessary to inform the commissioner of changes to training

courses. Advancement of training course dates differs from other changes, and is addressed under item B.

Item B is necessary because changing the training course information provided in item A may have an effect on the training course. It is reasonable to inform the department of the changes to enable the department to ensure that the training course is adequate to train individuals.

Item C is necessary to ensure the department knows about changes made to the dates of asbestos training courses. To schedule audits of training courses, it is imperative that the commissioner have a fourteen calendar day notification before the course is presented.

Item D is necessary to ensure that the department is aware of changes to the training course or the training course instructors. Thirty days provides the department with time to approve of additional training course instructors.

Item E is necessary to ensure that at least 7 calendar days before the training course is offered the department is notified of changes for instructors. Seven days is a reasonable time period to know who will be teaching a training course.

4620.3712 ATTENDANCE REQUIREMENTS

The requirements of this part are consistent with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (B) of the Model Accreditation Plan published on February 3, 1994 (Code of Federal Regulations, title 40, 1995).

Item A remains necessary and is in existing rule part 4620.3700, subpart 4, item A.

Item B is necessary to ensure that the sign-in logs correlate with the applications the department receives for certification of individuals. Daily sign-in logs were not previously required to be sent to the commissioner within 48 hours of completion of the training course. Without a required submittal period, sign-in logs are often lost or misplaced, therefore it is reasonable to require the training course provider to submit the sign-in log to the commissioner within 48 hours of completion of the training course.

4620.3714 ENROLLMENT LIMITS

Requirements of part 4620.3714 are included in existing rule part 4620.3700, subpart 4, item B. The requirements of this part are consistent with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (B) of the Model Accreditation Plan published on February 3, 1994 (Code of Federal Regulations, title 40, part 763, 1995).

Item A is in existing rule 4620.3700, subpart 4, item B, with respect to asbestos worker and site supervisor training courses. It is reasonable to limit the number of participants in training courses for other asbestos-related disciplines because the smaller number of participants helps to ensure that the students will receive the attention they need, have their questions answered, and will allow for a better learning environment.

Item B is a requirement in existing rule 4620.3700, subpart 4, item B for asbestos worker and asbestos site supervisor training courses. This ratio is also required in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (B) of the Model Accreditation Plan published on February 3, 1994 (Code of Federal Regulations, title 40, part 763, 1995). It is reasonable to require a limit for hands-on training for other asbestos-related disciplines because experience working with training asbestos workers shows that when hands-on experience is required, the limit of 24 is a workable number to provide adequate training to those students.

4620.3716 TRAINING COURSE CONDITIONS

Subpart 1. **General.** All training courses issued a permit must comply with this subpart. Many of the requirements are in existing rule part 4620.3700. Requirements of this part are also consistent with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C of the Asbestos Model Accreditation Plan (Code of Federal Regulations, title 40, part 763, 1995).

Subp. 2. **Separation of training courses.** Subpart 2 is necessary to meet requirements in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C - Asbestos Model Accreditation Plan that requires each asbestos-related discipline be taught separately. Prior to the Model Accreditation Plan published on February 3, 1994 (Code of Federal Regulations, title 40, part 763, 1995, the courses for asbestos worker and asbestos site supervisor could be taught together. All training courses provide information specific to a discipline or job category. It follows that the training must be specific to the asbestos-related discipline or job.

Subp. 3. **Training course instructors.** Requirements in this subpart are modified from requirements in existing rule part 4620.3700, subpart 4, item C, which requires that training course instructors be qualified to teach asbestos-related training courses.

Item A is necessary to ensure that instructors are familiar with the subject matter they teach and are qualified to be instructors for asbestos-related disciplines. The instructor's qualifications are assessed by the paperwork submitted to the commissioner. Resumes for approval of training course instructors are currently being submitted for approval of training courses.

Item B is necessary to ensure quality instructors are providing training courses. Because the knowledge gained from taking an training course is a significant factor in understanding how

to safely perform one's job duties, this item is reasonable.

Subitem (1) is necessary to ensure that the instructors are qualified to teach training courses. Originally the department had considered requiring training course instructors to take a "Train the Trainer" course. To provide trainers with flexibility of what course they take yet maintain the standards of providing quality training courses, the department is allowing trainers to take any training course teaching methods of adult education. The "Train the Trainer" course would fulfill the requirements under this provision.

A course in adult education ensures that a provider will know how to organize a class and be able to monitor and evaluate student progress. By completing an adult education course, a person gains knowledge of how to conduct a training course with a variety of methods needed to be an effective instructor. The Environmental Protection Agency (EPA) is encouraging states to require this type of teacher training. The EPA has organized regional meetings to discuss requirements of "train the trainer" courses. As part of the more recent lead abatement laws, EPA has included requirements for instructors of lead abatement disciplines to take a "train-the-trainer" course.

Subitem (2) is necessary to ensure that the training providers possess the knowledge to present the material which is required in part 4620.3718. Some of the training course material to be presented is quite technical and therefore requires that the instructor be familiar and knowledgeable about the material.

Subitem (3) is necessary to ensure that quality training courses are provided. The training course providers must use the methods and principles learned in their adult education courses or the provider risks not getting his/her point across to the students. This subitem is written to ensure that training course instructors do not simply read to the students for a few hours from an asbestos-related regulation. Methods of instruction need to be varied and the instructor must keep a handle on what is not being understood by the students.

Subp. 4. **Written examinations.** Requirements in subpart 4 modify written exam requirements in existing rule part 4620.3700, subpart 4, item D and E. The requirements have been modified to comply with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C - Asbestos Model Accreditation Plan (Code of Federal Regulations, title 40, part 763, 1995).

Item A is necessary to ensure that quality exams are administered to the students. Review by the department is reasonable to ascertain whether an exam actually tests for relevant information. It is reasonable to require that training course providers only give the test at the end of the training course or the refresher training course. For refresher training courses, the student may be capable of passing the test prior to attending the refresher training course. The primary objective of providing refresher training courses is to ensure that individuals are kept up-to-date on regulations, work practices and other pertinent issues. If the student takes the test and leaves prior to the instruction, the student may miss all the related discussion and information necessary for the safety and well being of the student and the public.

Item B is necessary to ensure that the student is given the appropriate test. The Minnesota Department of Health is working with other states, Michigan, Indiana, Ohio, Illinois and Wisconsin, in U.S. EPA Region V to provide a standardized test which could be used for both asbestos worker and asbestos site supervisor courses. Although standardized tests are not available at this point in time, eventually they will be. Standardized tests have the advantage of placing all applicants on an even playing field. Test questions are reviewed by knowledgeable individuals to reduce ambiguity of test questions, prevent poorly written test questions, and test the knowledge necessary to perform the job.

Item C is necessary to ensure that Minnesota regulations are consistent with those of the federal Environmental Protection Agency (EPA). The EPA allows each state to provide the examination or a designee by the state to provide the exam under Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (C).

Item D is necessary to ensure the training course provider maintains the integrity of the test. This ensures that all students will have an equal chance at succeeding. It is reasonable to hold the training provider responsible if a breech in security of the test occurs. The following items contribute to maintaining security of the exam.

Subitem (1) is necessary so training course providers do not divulge test questions prior to the students taking the exam.

Subitem (2) is necessary to ensure that the training course providers do not leave copies of the exam around for the students to look at before they take the exam.

Subitem (3) is necessary to ensure that the participant passes the training course on the participant's merit. Subitem 3 contains the same information found in existing rule part 4620.3700, subpart 4, item D, subitem (3).

Subitem (4) is necessary to ensure that students have enough room so that they can not copy from one another. Subitem 4 expands on the information found in existing rule part 4620.3700, subpart 4, item D, subitem (3).

Subitem (5) is necessary to ensure that notebooks and other materials which may provide answers to the exam questions are not left in clear viewing of the students. Subitem 5 contains the same information found in existing rule part 4620.3700, subpart 4, item D, subitem (3).

Item E is necessary to ensure that the training course provider monitors administration of the exam. Information in Item E is found in existing rule part 4620.3700, subpart 4, item D, subitem (3).

Item F is necessary to ensure that Minnesota specific law and rules are tested during the examination. This is consistent with the rest of this rule part which requires integration of Minnesota law and rules into the course work of each asbestos-related discipline.

Item G is necessary to ensure that the final exam for initial and refresher training courses is adequate and complies with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (C), subparagraph (2) - Asbestos Model Accreditation Plan (Code of Federal Regulations, title 40, part 763, 1995).

Subitem 1 is necessary to ensure that the asbestos worker exam is consistent with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (C), subparagraph (2) - Asbestos Model Accreditation Plan (Code of Federal Regulations, title 40, part 763, 1995).

Subitem 2 is necessary to ensure that the asbestos site supervisor exam is consistent with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (C), subparagraph (2) - Asbestos Model Accreditation Plan (Code of Federal Regulations, title 40, part 763, 1995).

Subitem 3 is necessary to ensure that the asbestos inspector exam is consistent with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (C), subparagraph (2) - Asbestos Model Accreditation Plan (Code of Federal Regulations, title 40, part 763, 1995).

Subitem 4 is necessary to ensure that the asbestos management planner exam is consistent with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (C), subparagraph (2) - Asbestos Model Accreditation Plan (Code of Federal Regulations, title 40, part 763, 1995).

Subitem 5 is necessary to ensure that the asbestos project designer exam is consistent with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (C), subparagraph (2) - Asbestos Model Accreditation Plan (Code of Federal Regulations, title 40, part 763, 1995).

Subitem 6 is necessary to ensure that the asbestos air sampling course must consist of at least 50 multiple-choice questions. Subitem 6 is reasonable because multiple-choice questions can test specific items the student must know to do a job and multiple-choice questions are easily corrected. It is reasonable to require 50 questions because there needs to be enough questions so that if one or two are missed, the student may still pass the training course.

Item H is necessary to provide equal opportunity to individuals who are unable to read to become asbestos workers. Item H is in existing rule part 4620.3700, subpart 4, item E with respect to the asbestos worker exam. For the disciplines of asbestos site supervisor, inspector, management planner and project designer, reading and writing are necessary to perform the job functions.

Subp. 5. **Completion of initial training course.** The requirements in this subpart modify existing requirements of rule part 4620.3700, subpart 4, items A, H, and J.

Item A is required to ensure that the student attends the entire training course to successfully complete that training course. Item A is consistent with providing the written exam only at the end of the training course 4620.3716, subpart 4, item A.

Item B is required to ensure that the hands-on portion of the training course is monitored and that the students satisfactorily demonstrate proficiency of the hands-on portion of the asbestos-related training course. Demonstration testing may be included as part of the examination, if it complies with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (C) (Code of Federal Regulations, title 40, part 763, 1995).

Item C is necessary to comply with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (C), subparagraph (2) (Code of Federal Regulations, title 40, part 763, 1995).

Subp. 6. **Requirements for completion of refresher training courses.** Requirements in subpart 6 modify existing rule part 4620.3700, subpart 4, item J. Requirements of this subpart now include provisions for refresher courses for asbestos inspector, asbestos management planner and asbestos project designer and to comply with requirements in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (C), subparagraph (2) (Code of Federal Regulations, title 40, 1995).

Item A is necessary to ensure that the students attend the entire refresher training course for the appropriate discipline. It is reasonable to make students attend the entire course to ensure that each student is available to learn new information about asbestos and current regulations and work practices for asbestos-related disciplines.

Item B is necessary to ensure that students leave the training course with the information they need to follow Minnesota and federal law and rules pertaining to their work. This is reasonable because the knowledge of law and rules will help to keep the asbestos worker and the general public safe during asbestos-related work and after its completion. Item B is followed for asbestos worker and asbestos site supervisor refresher training courses in existing rule part 4620.3700, subpart 4, item J. If the refresher training course is for worker recertification, the exam may be provided to the student in oral form. This is consistent with requirements in part 4620.3716, subpart 4, item H of this proposed rule.

Subp. 7. **Training site.** Subpart 7 is necessary to ensure that the department is able to audit the training course. Auditing of training courses is necessary to ensure that quality training courses are being provided. Because the information provided during the training course is crucial to maintaining the safety of the asbestos worker and the public health, it is imperative that the training courses are carefully monitored. This monitoring can only be done if the training course is held in the State of Minnesota, due to time and budgetary constraints of the department.

Subp. 8. **Time limits for training courses.** Subpart 8 is necessary to keep the amount of course work reasonable.

Item A is necessary to optimize learning. One day is defined as "8 hours, including breaks and lunch" according to Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (B).

Item B is necessary to prevent training course providers from presenting courses where evenings and weekends off are not provided. The department believes that asbestos-related courses should be taught in a regular work week of 8 hours per day, five days per week. This provides a necessary break for individuals taking the training course.

4620.3718 COURSE CONTENT

Subpart 1. **General.** Part 4620.3718 modifies requirements in existing rule part 4620.3700, subpart 4, item G. The requirements are modified to comply with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C of the Asbestos Model Accreditation Plan (Code of Federal Regulations, title 40, 1995).

Subp. 2. **Incorporation of Minnesota law and rules.** This subpart is necessary to ensure that requirements specific to Minnesota laws and rules governing asbestos-related activities are integrated into the course work required for certification of each individual discipline. It is essential that individuals accredited to perform asbestos-related work within the State of Minnesota are familiar with Minnesota law and rules governing asbestos-related work. The Model Accreditation Plan also requires that relevant state regulatory requirements must be a part of training courses.

Subp. 3. **Incorporation of new material into the asbestos-related course.** This subpart is necessary to ensure that new information including changes in law or rules is incorporated into training course curriculum. The primary reason for requiring refresher courses to be taken on an annual basis is to update individuals on current information about asbestos-related law and rules.

Subp. 4. **Length and content of initial training courses.** The length and content of initial asbestos-related courses correspond to the minimum requirements set forth in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (B) (Code of Federal Regulations, title 40, 1995).

Item A is in existing rule part 4620.3700, subpart 4, item F. The reference to the Code of federal regulations has been updated (Code of Federal Regulations, title 40, 1995).

Item B is in existing rule part 4620.3700, subpart 4, item F. The reference to the Code of federal regulations has been updated (Code of Federal Regulations, title 40, 1995).

Item C is necessary to refer to the federal standard for training as required by the Model Accreditation Plan (Code of Federal Regulations, title 40, 1995).

Item D is necessary to refer to the federal standard for training as required by the Model Accreditation Plan (Code of Federal Regulations, title 40, 1995).

Item E is necessary to refer to the federal standard for training as required by the Model Accreditation Plan (Code of Federal Regulations, title 40, 1995).

Subp. 5. **Length and content of air sampling training.** Subpart 5 is necessary to ensure that individuals performing air sampling are adequately trained. Since the definition of "asbestos related work" in Minnesota Statutes, section 326.71, subdivision 4, was amended to include air quality monitoring, it is reasonable to implement additional air sampling training requirements to those requirements existing rule part 4620.3500, subpart 3. The proposed requirements for training those who perform air sampling was discussed at length with the advisory work group who agreed that additional requirements were necessary. A two-day training course for asbestos air sampling is necessary to ensure that those individuals whose are responsible for performing air monitoring during asbestos-related work are properly trained. In addition to the two day air sampling course, those persons who perform asbestos air sampling also must take either the asbestos worker or asbestos site supervisor course for compliance with Minnesota Statutes, section 326.73, subdivision 1, as amended through Laws of Minnesota 1993, chapter 303, section 11.

Part 4620.3500, subpart 3 requires that individuals who perform the microscopic work and analysis regarding the air monitoring can obtain training by taking a National Institute Of Safety and Health (NIOSH) course number 582. This course does not always teach an individual where to place sampling pumps, how to set pumps and pull samples. Correct placement of pumps and sampling of the air during a project may determine whether contamination has or has not occurred outside of the containment and therefore is of utmost importance. Because air monitoring is so important, Minnesota requires that an air monitoring course be completed for those individuals without prior training and tested proficiency, thus the need for an air monitoring course outline. The air monitoring course is recommended by EPA.

Item A is necessary because the National Institute of Safety and Health (NIOSH) 7400 sampling method is required under part 4620.3597, subpart 1. With an understanding of the problems in analysis of samples, the air monitor will be aware of reasons why he or she should follow specific air sampling procedures.

Item B is necessary to specify which rule parts the air monitor must be instructed on. Parts 4620.3592 through 4620.3598 contain information required for air monitoring of projects.

Item C is necessary to that students taking the asbestos air monitoring course are provided with the terminology and knowledge to appropriately use the terms and sampling techniques specific to compliance with Minnesota laws and rules. Subitems (1) to (9) list the items or terms which are specific to Minnesota and need to be understood before the individual can comply with Minnesota statute and rules. It is reasonable to require an air monitor to be familiar with subitems (1) to (9) because all of these terms are integral items in rule parts 4620.3559 to 4620.3585.

Item D is necessary because it is common practice when air monitoring is performed that the air monitor also perform air sampling for compliance with Occupational Safety and Health (OSHA) requirements. Understanding OSHA regulations will assist the air monitor in understanding what is occurring on the work site regarding fiber counts and levels and air monitoring.

Item E is necessary because the air monitor may also be called upon for completing monitoring requirements and procedures to comply with Asbestos Hazard Emergency Response Act (AHERA).

Item F is necessary to clarify similarities and differences between the three sets of requirements governing air monitoring for asbestos-related work.

Item G is necessary to understand the impact that air monitoring has on analysis procedures.

Item H is necessary to ensure that the air monitoring equipment is properly working and that the sample pulled was actually the amount of air recorded.

Item I is necessary to deal with unforeseen and unusual circumstances which may arise during air monitoring.

Item J is necessary to understand methods by which to sample that equipment has been safely decontaminated to ensure that further contamination will not occur.

Item K, subitems (1) to (7), are necessary for the air monitor to gain experience in calibration methods using different types of calibration equipment, setting up sampling trains, attachment of samplers, and calculations of numerical data needed to perform air sampling.

Subp. 6. **Hands-on training required.** Subpart 6 is necessary to comply with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (B), subparagraph (1) and subparagraph (2) (Code of Federal Regulations, title 40, 1995). As part of the requirements, EPA has changed the required hands-on training from six hours to 14 hours. Because of this change, new items are added to the list of topics to be covered in the hands-on training session (items I and K of this subpart).

Item A is necessary because it contains the same information in existing rule part 4620.3700, subpart 4, item G. It has been moved for formatting purposes.

Items B to D are necessary to provide specific hands-on activities for compliance with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (B), subparagraph (1) and subparagraph (2) (Code of Federal Regulations, title 40, 1995) which requires hands-on training for fitting and using respirators.

Item E is necessary because it contains information that is in existing rule part 4620.3700,

subpart 4, item G. It has been moved for formatting purposes.

Item F is necessary because it contains information that is in existing rule part 4620.3700, subpart 4, item G. It has been moved for formatting purposes.

Item G is necessary because it contains modified information that is in existing rule part 4620.3700, subpart 4, item G. It has also been moved for formatting purposes.

Item H is necessary because it contains information that is in existing rule part 4620.3700, subpart 4, item G. It has been moved for formatting purposes.

Item I is necessary because the building of a containment equipped with a high efficiency particulate air (HEPA)-filtered negative air machine is the primary method of containing asbestos fibers to prevent contamination of areas outside of the containment with asbestos fibers. Many of the current training course providers already employ this aspect of hands-on training.

Item J is necessary because it contains information that is in existing rule part 4620.3700, subpart 4, item G. It has been moved for formatting purposes.

Item K is necessary to ensure that correct filtration is occurring during the HEPA-filtering of air through the negative air machine. For appropriate filtration, the HEPA filters need to be changed occasionally. Asbestos workers and asbestos site supervisors are the individuals on site who are responsible for changing the filters. It is important to have experience changing filters in a non-health threatening situation where the filters are not contaminated with asbestos fibers.

Subp. 7. **Annual refresher courses.** Annual refresher courses must be taken to renew certification as an asbestos worker, asbestos site supervisor, asbestos inspector, asbestos management planner or asbestos project designer. This is consistent with requirements of Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (D) (Code of Federal Regulations, title 40, 1995).

Item A is necessary to comply with requirements in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (D) (Code of Federal Regulations, title 40, 1995). Although hourly requirements are specified for initial courses, refresher courses are expressed as days or parts thereof. Days have been expressed in terms of 8 hour refresher courses to help clarify requirements in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (D) (Code of Federal Regulations, title 40, 1995). Although hourly requirements are specified for initial courses, refresher courses are expressed as days or parts thereof. Days have been expressed in terms of hours to simplify requirements of Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (D) (Code of Federal Regulations, title 40, 1995). The refresher course for asbestos inspector is not a full day like the refresher courses listed in item A.

Item B is necessary to ensure that training providers incorporate changes of all laws and

rules, especially those of the State of Minnesota, into the curriculum for training courses. In addition to law and rule changes, it is consistent with the rule that the training course instructors review new methods and techniques of asbestos removal, encapsulation or enclosure, and briefly review subjects taught as part of the initial training course, especially those specifically relating to Minnesota laws and rules. Asbestos workers, asbestos site supervisors, asbestos inspectors, asbestos management planners and asbestos project designers, who received their initial training in other states, are allowed to apply for Minnesota certification after taking a refresher training course which has been issued a permit. The curriculum for each training course is listed in part 4620.3718, subpart 4.

Item C is necessary as a requirement for renewal of certification of the individual asbestos-related discipline. Examinations for refresher courses are required under Minnesota Statutes, section 326.73. These examinations are necessary to ensure that knowledge and information about the asbestos-related discipline is updated and that certified individuals thoroughly review important information about their work. This item contains the same information in existing rule part 4620.3700, subpart 4, item J. It is reasonable to require the same number of questions and the same passing score as required for initial training course exams because of the potential threat to public health caused by individuals who have not had the proper training or have failed to update and maintain knowledge about asbestos-related work.

Subp. 8. **Change in content of training courses.** Subpart 8 is necessary to ensure that the commissioner is informed of curriculum being taught in training courses. This requirement is included in existing rule part 4620.3700, subpart 3, item C.

Item A is necessary to keep the department informed of deletions and additions to training course curricula. It is reasonable to inform the department of curriculum change because knowledge of the materials taught for an asbestos-related discipline can be the difference of an individual performing a job safely or unsafely. This directly affects public health.

Item B is necessary to ensure that the department receives the changes to be made in training course curricula and that the training course provider is informed as to whether those changes are acceptable or unacceptable to the commissioner.

4620.3720 RECORD KEEPING REQUIREMENTS FOR TRAINING COURSE PROVIDERS

Part 4620.3720 is necessary to comply with Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (F) (Code of Federal Regulations, title 40, 1995).

Item A is necessary to allow for the department to check that the training course provider is maintaining training course records required under Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (F), subparagraph (6)(b) (Code of Federal Regulations, title 40, 1995).

Item B is necessary to ensure that the commissioner can go back to check training course records. Training course records must be kept for a minimum of three years under Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (F), subparagraph (6)(b) (Code of Federal Regulations, title 40, 1995). Record keeping was discussed during the work group meeting held on December 9, 1993. According to work group recommendations, Minnesota proposes to require that training course records be maintained for six years. Once the training course records are filed, it is not burdensome to maintain those files. Six years provides enough time so that if a problem certificate is found, the commissioner can reasonably track the training history of the individual.

Subitem (1) is required in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (F), subparagraph (1) (Code of Federal Regulations, title 40, 1995).

Subitem (2) is required in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (F), subparagraph (2) (Code of Federal Regulations, title 40, 1995).

Subitem (3) includes information required in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (F), subparagraph (3) (Code of Federal Regulations, title 40, 1995).

Subitem (4) is required in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (F), subparagraph (4) (Code of Federal Regulations, title 40, 1995).

Subitem (5) is required in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (F), subparagraph (2) (Code of Federal Regulations, title 40, 1995. The information required in subitem 5 provides another method for verifying training course information. It is important to verify records because the commissioner requires that training courses be held in the state of Minnesota to allow for the commissioner to audit all training courses issued a Minnesota permit.

Item C is required in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (F), subparagraph (6)(c) (Code of Federal Regulations, title 40, 1995). A 60-day period for notification is required here instead of having no time-frame as in the Model Accreditation Plan. A 60-day period is necessary to provide a time-frame for notification because if a training course provider ceases to do business, the provider may move on to other things and totally forget about notifying the commissioner. Sixty days provides the training course provider with enough time to notify the commissioner and provides the commissioner with necessary information so that updates to the trainer will be stopped along with other now unnecessary correspondence.

4620.3722 **TRAINING COURSES WITH PROVISIONAL OR FINAL APPROVAL BEFORE EFFECTIVE DATE.**

Part 4620.3722 is necessary to give the providers of training courses a 90-day notification period to maintain their provisional training course approval which had been approved under the existing rule. The department believes that 90 days is a reasonable amount of time for written notification from training course providers. The benefit of already having provisional or final approval from the department is that the training course provider does not have to resubmit all documentation pertaining to that training course. Those training course providers with current full approval will remain with that approval until the expiration date of the training course approval.

4620.3724 **VARIANCE.**

Part 4620.3724 is necessary to ensure that individuals regulated under this rule are familiar with the parts of this rule which may be varied. Variances will be granted only if it is appropriate and when the contractor can not meet the requirements of this rule where space limitations prohibit the use of requirements in this rule or where following the rule requirements would create a greater hazard to the public. Parts allowed for variance include parts 4620.3566, 4620.3567, 4620.3568 (subparts 1 to 4), 4620.3569, 4620.3571 (subparts 1 and 2), 4620.3575 (subpart 3) and part 4620.3566. Only certain parts of the asbestos rule are safely varied and meet the criteria for variances which states that variances may be granted for projects where space limitations prohibit the use of the requirements in this rule or where the use of the specified requirements creates a greater hazard.

The following rule parts are subject to variance:

4620.3567 - Installation of critical barriers

4620.3568, subparts 1 to 4 - Placement of the containment barriers except for posting of the area

4620.3569 - Decontamination units

4620.3571, subparts 1 and 2 - Removal of asbestos-containing material (wet removal and removal of entire components)

4620.3575, subpart 3 - Removal of containment walls and floors

4620,3510, item A, subitem (1) - Requires the asbestos training course providers to notify the commissioner of training courses to be held.
It is reasonable to allow for variance of the notification requirements for training courses because if an emergency occurred and there were no trained individuals to handle the situation, a variance would need to be applied for to obtain trained individuals to perform asbestos-related work.

It is reasonable to inform the individual who may be considering submittal of a variance where he or she may go for further direction on submittal of that variance. Therefore, it is necessary

to list parts 4717.7000 to 4717.7050.

It is necessary for part 4620.3568, subparts 2 and 3; part 4620.3569; part 4620.3571, subparts 1 and 2; and part 4620.3575, subpart 3 be subject to the variance procedures and criteria in parts 4717.7000 to 4717.7050 because unique physical space limitations may necessitate consideration of alternate work practices. During work group meetings, the work practices were reviewed by the work group in detail (See MDH Minutes, 1993-1995). Though no specific circumstances were provided for which the proposed rule would not work, during the work group meeting held on September 8, 1993, concern was raised that the practices specified may not work in all residential situations (MDH Minutes, September 8, 1993). Because there have been cases which required a variance in the existing rule relating to industrial and commercial sites, the commissioner believes it necessary to allow for variance consideration on the parts of the rule listed in part 4620.3559. Minnesota Statutes 14.05 mandates that an agency have procedures and criteria adopted under chapter 14 for the consideration of variances to adopted rules. The environmental health division has adopted procedures and criteria in rule parts 4717.7000 to 4717.7050 which it uses for consideration of variances in its regulatory programs. Use of a variance procedure to consider case specific alternatives to adopted standards is a reasonable means to provide uniform criteria and procedures for consideration of alternatives to regulated parties and to provide for the development of a written record that may be relied upon for future rule making.

4717.7000 VARIANCE REQUEST

Subpart 1, item C. This item has been amended because it is necessary to allow certain provisions listed in this item to be varied.

Part 4620.3568, subparts 1 to 4; part 4620.3569; part 4620.3571, subparts 1 and 2; and part 4620.3575, subpart 3 are all items which pertain to work practices in asbestos abatement. These work practices are subject to the variance procedures and criteria in parts 4717.7000 to 4717.7050 because unique physical space limitations may necessitate consideration of alternate work practices.

Part 4620.3710, item A, subitem (1) must be left open for variance. Previously there was a change in Minnesota Statutes which required training course providers to conduct courses for which there was not enough time to provide the commissioner with the 14-day notice. This was a unique situation. Use of a variance procedure to consider case specific alternatives to adopted standards is a reasonable means to provide uniform criteria and procedures for consideration of alternatives to regulated parties and to provide for the development of a written record that may be relied upon for future rulemaking.

Subpart 1, items J, N, and P. These items have been amended to reflect rule numbering changes made by the Office of the Revisor.

REPEALER

Part 4620.3100

Subp. 12. Contingent EPA approval. This definition is proposed for repeal because the U.S. EPA does not require contingent approval. Either a course is issued a permit or not. Contingency has no meaning.

Subp. 15. Emergency demolition. This definition is proposed for repeal because it is no longer necessary. Removal of asbestos containing material from an unsound structure poses an unsafe condition for asbestos workers. In such a situation, the facility would be demolished without asbestos removal prior to the demolition therefore, this definition is not needed.

Subp. 18. Employer. This definition is proposed for repeal to be consistent with Minnesota Statutes section 326.71, subdivision 8, which changes the word "employer" to the broader term "person".

Subp. 22. Full EPA approval. This definition is proposed for repeal because EPA does not require contingent nor full approval. Either a course is approved or not approved. Full approval no longer is meaningful.

Subp. 26. Minnesota approved. This definition is proposed for repeal because courses provided by Minnesota trainers to be accepted by the State of Minnesota are not only courses accepted by the State of Minnesota, but also by the EPA and some other states.

4620.3200

Subp. 6 is repealed because denial of contractor licensure is addressed in subpart 3. Once the contractor license has been obtained, the commissioner would either need to suspend or revoke the contractor license.

Subp. 7. **Licensure; suspension, revocation, or conditions.** Subpart 7 is amended by deleting requirements that are included in subparts 4 and 4a. The proposed language now addresses the reasons for which a contractor may have the contractor's license revoked, suspended, or have conditions placed on the license. The reasons for suspension, revocation or conditional licensure may be found in the Minnesota Statute which is referenced in this subpart. It is reasonable to refer to Minnesota Statute where applicable.

Part 4620.3400

It is necessary for part 4620.3400 to be repealed. Requirements from this part have been included throughout proposed parts 4620.3401 to 4620.3450. Part 4620.3400 is proposed for repeal because of extensive reorganization and rewriting of the requirements in existing rule part 4620.3400.

Part 4620.3500

It is necessary for part 4620.3500 to be repealed. Many of the requirements from this part have been included throughout proposed parts 4620.3559 to 4620.3597. Part 4620.3500 is proposed for repeal because of extensive reorganization and rewriting of the requirements in existing rule part 4620.3500. Existing rule part 4620.3500 has been reorganized into many additional rule parts to clarify the rule and allow for easier citing of specific rule parts. The work practices and air monitoring requirements are now assigned separate rule parts. Additionally, the work practices address both residential and commercial projects throughout proposed rule parts 4620.3559 to 4620.3597. Existing rule part 4620.3500 addresses both air monitoring and work practices in the same rule part, but only for non-residential projects.

Part 4620.3700

It is necessary for part 4620.3700 to be repealed. Laws of Minnesota 1993 required extensive revision of this part because of the addition of asbestos inspector, asbestos management planner and asbestos project designer disciplines to the Minnesota Department of Health's asbestos program. A reorganization of information found in part 4620.3700 is needed for clarification purposes and for consistency with Minnesota Statutes as well as the Environmental Protection Agency's Model Accreditation Plan, published February 3, 1994 in the federal register.

12/4/95
Date

Anne Barry
Commissioner of Health

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December 20, 1993

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Appendix A

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Appendix B

STATE OF MINNESOTA

Office Memorandum

Department: of Finance

Date: May 6, 1994

To: Dave Hovet, Director of Financial Management
Department of Health

From: Michelle Harper
Budget Operations

Phone: 296-7838

RECEIVED
MAY 10 1994
FINANCIAL MANAGEMENT

Subject: Departmental Earnings Rate Change Response-Asbestos Cert. Fee & Training Course Approval Fee

Pursuant to provisions of Laws 1993, sec. 56, subd. 5 (M.S. 16A.1285), the Department of Finance has reviewed and approved the attached departmental earnings proposal submitted by the Department of Health on 4/18/94. If you have any questions or concerns, please call me at the above number.

cc Bruce Reddemann

Michelle

STATE OF MINNESOTA

Office Memorandum

Department: of Finance

Date: May 5, 1994

To: Bruce Reddemann
Director, Budget Operations

From: Kirsten J. Libby
Executive Budget Officer

Phone: 296-8674

Subject: Fee Approval

RECEIVED
MAY 10 1994
FINANCIAL MANAGEMENT

I have reviewed the attached request for fee approval and recommend that the Department of Health be allowed to charge the proposed fee.

The revenue raised will allow the department to fulfill statutory obligations certifying asbestos inspectors, asbestos management planners and asbestos project designers. It will also allow for approved asbestos-related training courses to be approved and conducted.

The fees will be deposited in the State Government Special Revenue Fund and will cover the costs of the inspection and training programs.

DEPARTMENT: HEALTH

STATE OF MINNESOTA
Office Memorandu 1

DATE: April 18, 1994

TO: Bruce Reddemann, Director of Budget Operations
Department of Finance

FROM: David Hovet, Director
Financial Management

RECEIVED
MAY 10 1994
FINANCIAL MANAGEMENT

PHONE: 623-5072

SUBJECT: Fee Approval

Please find enclosed a copy of the Departmental Earnings: Reporting/Approval for the Asbestos Certification Fee and Training Course Approval Fee. The Department was authorized in the 1993 Legislative Session to adopt rules to implement these fees to cover the costs of an inspection and training program. The fee program will cost approximately $80,000 per year and fees will raise approximately this amount each year. Please review the form, approve the fees and return one copy of the form to the Department. If you should have any questions, please contact me.

Department of Finance

Departmental Earnings: Reporting/Approval (Cont.)

($1,000,000 = 1,000)

Part B: Fiscal Detail

APID: 40300:61-17		AID: 389304	Rev. Code(s): 310		___ Dedicated	_X_ Non-Dedicated	___ Both
Item	F.Y. 1991	F.Y. 1992	F.Y. 1993	F.Y. 1994 As Shown in Biennial Budget	F.Y. 1995 As Shown in Biennial Budget	F.Y. 1994 As Currently Proposed	F.Y. 1995 As Currently Proposed
	Revenues:						
Asbestos Abatement Certification Fees and Training Course Approval Fees							80
	Expenditures:						
Direct							70
Indirect							10
Total							80
Current Deficit/Excess					0		0
Accumulated Excess/Deficit*							0

As necessary, attach detailed schedule/listing of proposed changes in departmental earnings rates.

Agency Signature: Carol L. Barry

* F.Y. 1991 beginning accumulated balance to include amount of accumulated excess/deficit (if any) carried forward from F.Y. 1990.

FI-00399-01

Department o nance

Departmental Earnings: Reporting/Approval

Part A: Explanation

Earnings Title: Certification Fees for Asbestos Industry	*Statutory Authority:* M.S. 326.75, Subd. 2 and 3(a)	*Date:* 04/18/94

Brief Description of Item: A $100 certification fee will be charged to individuals who have shown evidence of training and experience to qualify as an asbestos inspector, asbestos management planner or asbestos project designer. In addition, a $500 fee for initial approval of an asbestos-related training course and a $250 fee for renewal of approval of an asbestos-related training course will be charged.

Earnings Type (check one):

1. ___ Service/User 2. _X_ Business/Industry Regulating 3. ___ Occupational Licensure
4. ___ Special Tax/Assessment 5. ___ Other (specify):

Submission Purpose (check one):

1. _X_ Chap. 14 Review and Comment 2. ___ Approval of Allowable Inflationary Adjustment
3. ___ Reporting of Agency Initiated Change in Departmental Earnings Rate
4. ___ Other (specify):

If reporting an agency initiated action (option 3 above), does agency have explicit authority to retain and spend receipts? ___ Yes ___ No
If yes, cite pertinent statutes:

Impact of Proposed Change (change in unit rate, number of payees impacted, etc.):
The department intends to charge $100 to all applicants for asbestos inspector (125), asbestos management planner (100), and asbestos project designer (50). These fees will generate approximately $27,500 annually. In addition, a $500 initial fee (105) is to be charged for approval of training courses. This fee will generate approximately $52,500 annually (150).

12,500 Asbestos Insp.
10,000 " mgmt Planner
5,000 " project designer
27,500

52,500 training course approval
80,000

Earnings title:Certification Fees for Asbestos Inspector, Asbestos Management Planner and Asbestos Project Designer. Minnesota Statutes Section 326.75, subdivision 2.

Asbestos-related Training Course Fee. Minnesota Statutes, Section 326.75, subdivision 3a.

Brief Description of Item.

The Commissioner of Health is authorized under Minnesota Statutes, Section 326.73, Subdivisions 2 through 4 to issue certificates to individuals who have shown evidence of training and experience to qualify as an asbestos inspector, asbestos management planner or asbestos project designer. A certification fee for each of these disciplines can be established by the commissioner in rule.

The proposed rule establishes a $100 annual certification fee for asbestos inspectors, management planners and asbestos project designers.

The Commissioner of Health is also authorized under Minnesota Statutes, Section 326.75, Subdivision 3a to establish in rule a fee for approving and renewing approval of training courses for all asbestos related disciplines.

The proposed rule establishes a $500 fee for initial approval of a an asbestos related training course and $250 for renewal of approval of an asbestos related training course.

Explanation of Proposed Program Costs and Revenues.

Costs

To support the certification of asbestos inspectors, asbestos management planners and asbestos project designers, the department of health estimated that one professional position and one support position and related supplies and expenses would be necessary in fiscal year 1995 for this program activity. (See attached 1993 fiscal note for Senate File 502 that amended the Asbestos Abatement Act).

Positions	
Salary + fringe benefits for one professional and one support position	$66,000
Related Supplies and Expense	$4,000
Total	$70,000
Indirect Cost @ 15%	$10,500
GRAND TOTAL	$80,500

Revenues

In fiscal year 1995 it is estimated that the following revenues will be generated from the proposed certification and training course approval fees:

Type of Fee	# of fees	Fee Amount	Total
Asbestos Inspector	125	$100	$12,500
Asbestos Management Planner	100	$100	$10,000
Asbestos Project Designer	50	$100	$5,000
Initial Training Course Approval Fee	105	$500	$52,500
Total			$80,500

In fiscal year 1996 it is estimated that the following revenues will be generated:

Type of Fee	# of fees	Fee Amount	Total
Asbestos Inspector	125	$100	$12,500
Asbestos Management Planner	100	$100	$10,000
Asbestos Project Designer	50	$100	$5,000
Initial Training Course Approval Fee	40	$500	$20,000
Renewal Training Course Approval Fee	150	$250	$37,500
Total			$85,000

Parts of the Statement of Need and Reasonableness on Minnesota Rules related to New Fees for certification of Asbestos Inspectors, Management Planners and project designers and Approval of Asbestos Training Courses.

Part 4620.3320, Subpart 5, Initial Application for Asbestos Inspector Application.

Item A is needed so that the commissioner will have a record of a person's application. Item B which requires a $100 annual fee for certification as an asbestos inspector is necessary to allow the commissioner to collect a fee to support the staff resources necessary for certifying asbestos inspectors. The commissioner's authority for collecting a certification fee for asbestos inspectors is under Minnesota Statutes, Section 326.73, subdivision 2. (See attachment for analysis of projected program costs and revenues).

.....

Part 4620.3320, Subpart 6. Annual Renewal of Certification. This subpart is necessary to allow the commissioner to process renewal certificates for persons wishing to continue certification as asbestos inspectors after they have been initially certified.
Item A is necessary to set up timelines for renewal of certification.

Item B is necessary to allow the commissioner to require renewal applications and collect a certification renewal fee.

.....

Part 4620.3340, Subpart 5. Initial Application for Asbestos Management Planner Certification.

Item A is needed so that the commissioner will have a record of a person's application. Item B which requires a $100 annual fee for certification as an asbestos management planner is necessary to allow the commissioner to collect a fee to support the staff resources necessary for certifying asbestos management planners. The commissioner's authority for collecting a certification fee for asbestos management planners is under Minnesota Statutes, Section 326.73, subdivision 2. (See attachment for analysis of projected program costs and revenues).

.....

Part 4620.3340, Subpart 6. Annual Renewal of Certification. This subpart is necessary to allow the commissioner to process renewal certificates for persons wishing to continue certification as asbestos management planners after they have been initially certified.
Item A is necessary to set up timelines for renewal of

certification.

Item B is necessary to allow the commissioner to require renewal applications and collect a certification renewal fee.

.....

Part 4620.3350, Subpart 5. Initial Application for Asbestos Project Designer Certification.

Item A is needed so that the commissioner will have a record of a person's application. Item B which requires a $100 annual fee for certification as an asbestos project designer is necessary to allow the commissioner to collect a fee to support the staff resources necessary for certifying asbestos project designers. The commissioner's authority for collecting a certification fee for asbestos project designers is under Minnesota Statutes, Section 326.73, subdivision 2. (See attachment for analysis of projected program costs and revenues).

.....

Part 4620.3350, Subpart 6. Annual Renewal of Certification. This subpart is necessary to allow the commissioner to process renewal certificates for persons wishing to continue certification as asbestos project designers after they have been initially certified.
Item A is necessary to set up timelines for renewal of certification.

Item B is necessary to allow the commissioner to require renewal applications and collect a certification renewal fee.

.....

Part 4620.3702, Application Procedures for Approval of Asbestos-related Training Courses.
This part is necessary to allow the commissioner to require information and fees from training course providers.
It contains application procedures for approval for asbestos-related training courses that were previously in part 3700, subpart 3. Item A is necessary to provide a record of application for training course approval.

Item B is required so that fee revenues from the $500 training course approval fees can be collected and used to support staff resources necessary to approve the training courses. The authority for the Commissioner to charge a training course approval fee is under Minnesota Statutes, Section 326.75 subdivision 3a. (For extensive analysis of projected costs and revenues related to the training course approval fee see attachment..).

.....

Part 4620.3708. Renewal of Full asbestos-related training course approval. This part is necessary to allow the commissioner to clarify requirements for renewing asbestos training course approval. Procedures for renewal of training courses were previously in part 3700, subpart 7.

Item A. This item requires that only fully approved courses are eligible for renewal. This item is necessary to clarify that only fully approved courses can qualify for renewal.

Item B. This item requires that training course renewal must be applied for prior to expiration of the approval for the course. This item is necessary to clarify that training courses may not be presented when approval for a course has expired.

Item C. This item requires a renewal application and a fee for renewal of training course approval. This item is necessary to allow the commissioner to collect the renewal fee that is necessary to support the staff resources necessary to approve training courses. The commissioner's authority to charge a renewal fee is under the general authority under Minnesota Statutes, Section 326.75, subdivision 3a. (See attachment ...for analysis of projected program costs and revenues).

.....

Appendix B

STATE OF MINNESOTA

Office Memorandum

Department: of Finance

Date: May 6, 1994

To: Dave Hovet, Director of Financial Management
Department of Health

RECEIVED
MAY 10 1994
FINANCIAL MANAGEMENT

From: Michelle Harper
Budget Operations

Phone: 296-7838

Subject: Departmental Earnings Rate Change Response-Asbestos Cert. Fee & Training Course Approval Fee

Pursuant to provisions of Laws 1993, sec. 56, subd. 5 (M.S. 16A.1285), the Department of Finance has reviewed and approved the attached departmental earnings proposal submitted by the Department of Health on 4/18/94. If you have any questions or concerns, please call me at the above number.

cc Bruce Reddemann

Michelle

STATE OF MINNESOTA

Office Memorandum

Department: of Finance

Date: May 5, 1994

To: Bruce Reddemann
Director, Budget Operations

From: Kirsten J. Libby
Executive Budget Officer

Phone: 296-8674

Subject: Fee Approval

RECEIVED
MAY 10 1994
FINANCIAL MANAGEMENT

I have reviewed the attached request for fee approval and recommend that the Department of Health be allowed to charge the proposed fee.

The revenue raised will allow the department to fulfill statutory obligations certifying asbestos inspectors, asbestos management planners and asbestos project designers. It will also allow for approved asbestos-related training courses to be approved and conducted.

The fees will be deposited in the State Government Special Revenue Fund and will cover the costs of the inspection and training programs.

DEPARTMENT: HEALTH

STATE OF MINNESOTA
Office Memorandum

DATE: April 18, 1994

TO: Bruce Reddemann, Director of Budget Operations
Department of Finance

FROM: David Hovet, Director
Financial Management

PHONE: 623-5072

SUBJECT: Fee Approval

RECEIVED
MAY 10 1994
FINANCIAL MANAGEMENT

Please find enclosed a copy of the Departmental Earnings: Reporting/Approval for the Asbestos Certification Fee and Training Course Approval Fee. The Department was authorized in the 1993 Legislative Session to adopt rules to implement these fees to cover the costs of an inspection and training program. The fee program will cost approximately $80,000 per year and fees will raise approximately this amount each year. Please review the form, approve the fees and return one copy of the form to the Department. If you should have any questions, please contact me.

Department of nance

Departmental Earnings: Reporting/Approval (Cont.)

($1,000,000 = 1,000)

Part B: Fiscal Detail

APID: 40300:61-17		AID: 389304	Rev. Code(s): 310		___ Dedicated __X__ Non-Dedicated ___ Both		
Item	F.Y. 1991	F.Y. 1992	F.Y. 1993	F.Y. 1994 As Shown in Biennial Budget	F.Y. 1995 As Shown in Biennial Budget	F.Y. 1994 As Currently Proposed	F.Y. 1995 As Currently Proposed
	Revenues:						
Asbestos Abatement Certification Fees and Training Course Approval Fees							80
	Expenditures:						
Direct							70
Indirect							10
Total							80
Current Deficit/Excess					0		0
Accumulated Excess/Deficit*							0

As necessary, attach detailed schedule/listing of proposed changes in departmental earnings rates.

Agency Signature: Carol L. Baer

* F.Y. 1991 beginning accumulated balance to include amount of accumulated excess/deficit (if any) carried forward from F.Y. 1990.

FI-00399-01

Department of Finance

Departmental Earnings: Reporting/Approval

Part A: Explanation

Earnings Title: Certification Fees for Asbestos Industry	***Statutory Authority:*** M.S. 326.75, Subd. 2 and 3(a)	***Date:*** 04/18/94

Brief Description of Item: A $100 certification fee will be charged to individuals who have shown evidence of training and experience to qualify as an asbestos inspector, asbestos management planner or asbestos project designer. In addition, a $500 fee for initial approval of an asbestos-related training course and a $250 fee for renewal of approval of an asbestos-related training course will be charged.

Earnings Type (check one):

1. ___ Service/User 2. _X_ Business/Industry Regulating 3. ___ Occupational Licensure
4. ___ Special Tax/Assessment 5. ___ Other (specify):

Submission Purpose (check one):

1. _X_ Chap. 14 Review and Comment 2. ___ Approval of Allowable Inflationary Adjustment
3. ___ Reporting of Agency Initiated Change in Departmental Earnings Rate
4. ___ Other (specify):

If reporting an agency initiated action (option 3 above), does agency have explicit authority to retain and spend receipts? ___ Yes ___ No
If yes, cite pertinent statutes:

Impact of Proposed Change (change in unit rate, number of payees impacted, etc.):
The department intends to charge $100 to all applicants for asbestos inspector (125), asbestos management planner (100), and asbestos project designer (50). These fees will generate approximately $27,500 annually. In addition, a $500 initial fee (105) is to be charged for approval of training courses. This fee will generate approximately $52,500 annually (150).

12,500 Asbestos Insp.
10,000 " mgmt planners
5,000 " project designers
27,500

52,500 training course approval
80,000

Earnings title:Certification Fees for Asbestos Inspector, Asbestos Management Planner and Asbestos Project Designer. Minnesota Statutes Section 326.75, subdivision 2.

Asbestos-related Training Course Fee. Minnesota Statutes, Section 326.75, subdivision 3a.

Brief Description of Item.

The Commissioner of Health is authorized under Minnesota Statutes, Section 326.73, Subdivisions 2 through 4 to issue certificates to individuals who have shown evidence of training and experience to qualify as an asbestos inspector, asbestos management planner or asbestos project designer. A certification fee for each of these disciplines can be established by the commissioner in rule.

The proposed rule establishes a $100 annual certification fee for asbestos inspectors, management planners and asbestos project designers.

The Commissioner of Health is also authorized under Minnesota Statutes, Section 326.75, Subdivision 3a to establish in rule a fee for approving and renewing approval of training courses for all asbestos related disciplines.

The proposed rule establishes a $500 fee for initial approval of a an asbestos related training course and $250 for renewal of approval of an asbestos related training course.

Explanation of Proposed Program Costs and Revenues.

Costs

To support the certification of asbestos inspectors, asbestos management planners and asbestos project designers, the department of health estimated that one professional position and one support position and related supplies and expenses would be necessary in fiscal year 1995 for this program activity. (See attached 1993 fiscal note for Senate File 502 that amended the Asbestos Abatement Act).

Positions	
Salary + fringe benefits for one professional and one support position	$66,000
Related Supplies and Expense	$4,000
Total	$70,000
Indirect Cost @ 15%	$10,500
GRAND TOTAL	$80,500

Revenues

In fiscal year 1995 it is estimated that the following revenues will be generated from the proposed certification and training course approval fees:

Type of Fee	# of fees	Fee Amount	Total
Asbestos Inspector	125	$100	$12,500
Asbestos Management Planner	100	$100	$10,000
Asbestos Project Designer	50	$100	$5,000
Initial Training Course Approval Fee	105	$500	$52,500
Total			$80,500

In fiscal year 1996 it is estimated that the following revenues will be generated:

Type of Fee	# of fees	Fee Amount	Total
Asbestos Inspector	125	$100	$12,500
Asbestos Management Planner	100	$100	$10,000
Asbestos Project Designer	50	$100	$5,000
Initial Training Course Approval Fee	40	$500	$20,000
Renewal Training Course Approval Fee	150	$250	$37,500
Total			$85,000

Parts of the Statement of Need and Reasonableness on Minnesota Rules related to New Fees for certification of Asbestos Inspectors, Management Planners and project designers and Approval of Asbestos Training Courses.

Part 4620.3320, Subpart 5, Initial Application for Asbestos Inspector Application.

Item A is needed so that the commissioner will have a record of a person's application. Item B which requires a $100 annual fee for certification as an asbestos inspector is necessary to allow the commissioner to collect a fee to support the staff resources necessary for certifying asbestos inspectors. The commissioner's authority for collecting a certification fee for asbestos inspectors is under Minnesota Statutes, Section 326.73, subdivision 2. (See attachment for analysis of projected program costs and revenues).

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Part 4620.3320, Subpart 6. Annual Renewal of Certification. This subpart is necessary to allow the commissioner to process renewal certificates for persons wishing to continue certification as asbestos inspectors after they have been initially certified.
Item A is necessary to set up timelines for renewal of certification.

Item B is necessary to allow the commissioner to require renewal applications and collect a certification renewal fee.

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Part 4620.3340, Subpart 5. Initial Application for Asbestos Management Planner Certification.

Item A is needed so that the commissioner will have a record of a person's application. Item B which requires a $100 annual fee for certification as an asbestos management planner is necessary to allow the commissioner to collect a fee to support the staff resources necessary for certifying asbestos management planners. The commissioner's authority for collecting a certification fee for asbestos management planners is under Minnesota Statutes, Section 326.73, subdivision 2. (See attachment for analysis of projected program costs and revenues).

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Part 4620.3340, Subpart 6. Annual Renewal of Certification. This subpart is necessary to allow the commissioner to process renewal certificates for persons wishing to continue certification as asbestos management planners after they have been initially certified.
Item A is necessary to set up timelines for renewal of

certification.

Item B is necessary to allow the commissioner to require renewal applications and collect a certification renewal fee.

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Part 4620.3350, Subpart 5. Initial Application for Asbestos Project Designer Certification.

Item A is needed so that the commissioner will have a record of a person's application. Item B which requires a $100 annual fee for certification as an asbestos project designer is necessary to allow the commissioner to collect a fee to support the staff resources necessary for certifying asbestos project designers. The commissioner's authority for collecting a certification fee for asbestos project designers is under Minnesota Statutes, Section 326.73, subdivision 2. (See attachment for analysis of projected program costs and revenues).

.....

Part 4620.3350, Subpart 6. Annual Renewal of Certification. This subpart is necessary to allow the commissioner to process renewal certificates for persons wishing to continue certification as asbestos project designers after they have been initially certified.
Item A is necessary to set up timelines for renewal of certification.

Item B is necessary to allow the commissioner to require renewal applications and collect a certification renewal fee.

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Part 4620.3702, Application Procedures for Approval of Asbestos-related Training Courses.
This part is necessary to allow the commissioner to require information and fees from training course providers.
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Part 4620.3708. Renewal of Full asbestos-related training course approval. This part is necessary to allow the commissioner to clarify requirements for renewing asbestos training course approval. Procedures for renewal of training courses were previously in part 3700, subpart 7.

Item A. This item requires that only fully approved courses are eligible for renewal. This item is necessary to clarify that only fully approved courses can qualify for renewal.

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