

AHERA vs. NESHAP

Guide

Exclusions under the Asbestos Hazard Emergency Response Act (AHERA), specifically **40 CFR §763.99(a)(7)**. This provision states that a thorough inspection of building materials is not required under certain conditions. However, under AHERA, these conditions only apply to maintenance or monitoring of asbestos and do not apply to the disturbance or removal of asbestos-containing materials (ACM).

While AHERA provides limited exemptions for certain maintenance activities, **it does not override the requirements of 40 CFR §61.145 under the Asbestos NESHAP**. All facilities regulated under AHERA are also subject to NESHAP when undergoing demolition or renovation. AHERA exemptions **do not apply under NESHAP** for demolition or renovation activities. The NESHAP mandates that a thorough inspection for asbestos-containing material (ACM) must be conducted prior to any demolition or renovation activity, regardless of AHERA exclusions or **the building's age**.

Applicability

Under **40 CFR §61.145**, the asbestos NESHAP applies to any demolition or renovation activity involving a **“Facility,”** which is defined in **40 CFR §61.141**.

This means:

- **Multi-unit residential buildings with five or more units**, or any residential structure operated as part of a commercial enterprise (e.g., apartment complexes, cooperatives), are subject to NESHAP.
- **Single-family homes and duplexes** are generally excluded from NESHAP unless part of a larger project or commercial operation.
- **All commercial, industrial, public, and institutional buildings** are subject to NESHAP.

AHERA vs. NESHAP – Regulatory Sequence and Inspection Requirements

If a school is regulated under AHERA (**40 CFR Part 763, Subpart E**) and later undergoes demolition or renovation, then **NESHAP requirements (40 CFR §61.145, Subpart M)** apply in addition to the school's asbestos management plan.

- **AHERA** ensures asbestos is **identified and documented ahead of time**.
- **NESHAP** ensures asbestos is **handled properly during disturbance activities**.

Sequence:

- **AHERA** = proactive identification + recordkeeping
- **NESHAP** = action-based regulation triggered by demolition/renovation

Inspections:

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- Under **AHERA**, inspections and re-inspections must be conducted by **accredited inspectors** and documented in **asbestos management plans**.
- Under **NESHAP**, a **thorough inspection** is required **before any demolition or renovation** (per §61.145(a)), but it does **not require long-term management plans**—only **project-specific compliance**.
- Under NESHAP, only the materials that could be disturbed during renovation must be sampled. If the entire building is being demolished or “gutted,” then the entire building must be sampled.

Summary of Requirements

- **Presumptive identification is not accepted.**
- **PLM analysis by an NVLAP-accredited laboratory is required.**
- **AHERA exemptions do not apply to NESHAP-regulated demolition or renovation.**
- **Facilities as defined above must comply with 40 CFR §61.145 and NMAC 20.11.20.**

Notifications submitted without PLM-based documentation will not be accepted by the Air Quality Program. Compliance is required to avoid enforcement actions, penalties, and work stoppages.