BENCHBOOK ON LEAD PAINT POISONING FOR THE CIRCUIT COURT OF COOK COUNTY MUNICIPAL DIVISION HOUSING COURT

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I INTRODUCTION & PROBLEM STATEMENT

A. INTRODUCTION

According to the U.S. Centers for Disease Control and Prevention, lead poisoning is one of the top environmental threats to children's health. The Illinois Department of Public Health reports that in 2005 approximately 8,100 Illinois children were identified as lead-poisoned, with almost 4,200 of these children living in Chicago.[1] Since most children are not tested—even when required under state law[2]—it is likely that the actual number of Illinois children poisoned by lead is much higher. In addition, research suggests that children are being harmed by lead paint and showing adverse health effects at lower lead levels than earlier thought. These children are not yet counted in the reported numbers. The Illinois Department of Public Health estimates that over 81,000 children in Illinois are being harmed by lead paint.[3]

The purpose of this *Benchbook on Lead Paint Poisoning* is to provide judges at all experience levels with a comprehensive and easily accessible reference guide as they conduct hearings and enter orders in Housing Court proceedings concerning lead hazards. The Benchbook addresses both procedural and substantive issues. It is not intended to function as a legal treatise. Instead, it educates judges and administrative hearing officers on the dangers of lead poisoning and on the relevant laws, rules, and regulations to assure lead-safe housing for children and their families.

Part I of the Benchbook offers an overview of the problem of lead paint poisoning. The City and State laws and regulations, as they pertain to lead poisoning, are provided under Parts II and III. A summary of the law and accompanying rules and regulations precedes each part. The City of Chicago Law Department prosecutes lead-based paint violations under Title 7 of the Municipal Code. In addition, the Cook County State's Attorney's Office and the Illinois Attorney General's office may prosecute under the Illinois Lead Poisoning Prevention Act.

Appendices are included in Part IV of the Benchbook. The appendices include a description of the process by which a housing unit may be identified as having lead paint, sample forms used by the Chicago Department of Public Health, and sample complaints and order forms.

Appendix H provides the Department of Housing and Urban Development (HUD) guidelines for paint inspection and the Residential Lead-Based Paint Hazard Reduction Act of 1992. These regulations apply to HUD programs, including those that provide assistance for rehabilitation and tenant-based rental assistance.

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[1] ILLINOIS DEPARTMENT OF PUBLIC HEALTH, CHILDHOOD LEAD POISONING SURVEILLANCE REPORT, (2005) *at* http://www.idph.state.il.us. *Hereafter*, LEAD POISONING SURVEILLANCE REPORT.

[2] Illinois law requires that children who live in high risk zip codes have their blood tested for lead. In all other communities, children are to be assessed for exposure to risks and tested when a risk is present. 410 ILCS 45/6.2(a); 77 Ill. Adm. Code 845.15.

[3] ILLINOIS DEPARTMENT OF PUBLIC HEALTH, GET THE LEAD OUT-ILLINOIS CHILDHOOD LEAD POISONING SURVEILLANCE REPORT 2001. *Hereafter*, GET THE LEAD OUT.

Appendix I provides the U.S. Environmental Protection Agency 2008 Lead Renovation, Repair and Painting Rule. This rule establishes lead safe work practices for renovators. It also sets forth requirements for training, certifying, and accrediting renovators, workers, and lead dust technicians, and for recordkeeping.

B. PROBLEM STATEMENT

Lead poisoning is a potentially devastating, but entirely preventable, disease caused by exposure to dust from deteriorated paint on old housing.[4] More than 310,000 children nationwide are lead poisoned.[5] Lead poisoning crosses all barriers of race, income, and geography.

Lead has no positive value to the human body and has not been shown to be safe at any level.[6] Lead poisoning causes permanent brain damage in children. At high levels, lead poisoning causes damage to the child's central nervous system, kidneys, and reproductive system.[7] At low and moderate levels, lead poisoning causes subtle brain damage resulting in reduced intelligence, learning disabilities, speech disorders, hyperactivity, shortened attention span and behavioral disorders.[8] Research also links low levels of lead exposure to lower IQ scores and to juvenile delinquency.[9] Studies are also beginning to show that early lead exposure is a risk factor for criminal behavior, including violent crime, in adulthood.[10]

The number of lead poisoned children in Illinois is among the highest in the nation. More than 8,000 Illinois children were identified as lead poisoned in 2005.[11] It is likely that the actual number of Illinois children harmed by lead is much higher since not all children are tested. Even in areas where testing is required for all children, fewer than 40 percent of the children are being tested. Children in Chicago account for 51% of the Illinois children identified as lead poisoned.[12] One out of every 22 children, ages six and younger, tested for

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[4] CENTERS FOR DISEASE CONTROL AND PREVENTION, LEAD POISONING PREVENTION PROGRAM, (2004) *at* http://www.cdc.gov/nceh/lead/factsheets/leadfcts.htm. *Hereafter*, LEAD POISONING PREVENTION PROGRAM.

[5] CENTERS FOR DISEASE CONTROL AND PREVENTION, *Surveillance for Elevated Blood Lead Levels Among Children – United States 1997-2001*, MORBIDITY AND MORTALITY WEEKLY REPORT, Sept. 12, 2003 at 4.

[6] RICHARD M. STAPLETON, LEAD IS A SILENT HAZARD, 2 (1994).

[7] LEAD POISONING PREVENTION PROGRAM, *supra* note 4.

[8] Joel T. Nigg, et al., *Low Blood Lead Level Associated with Clinically Diagnosed Attention-Deficit/Hyperactivity Disorder and Mediated by Weak Cognitive Control*, SOCIETY OF BIOLOGICAL PSYCHIATRY 63, 325-31 (2008).
Bruce P. Lanphear, et al., *Low-Level Environmental Lead Exposure and Children's Intellectual Function : An International Pooled Analysis*, Environmental Health Perspectives, July 2005, 894-99.
COMMITTEE ON MEASURING LEAD IN CRITICAL POPULATIONS, NATIONAL RESEARCH COUNCIL, MEASURING LEAD EXPOSURE IN INFANTS, CHILDREN, AND OTHER SENSITIVE POPULATIONS, 3, 16, 64 (1993).

[9] Jessica Wolpaw Reyes, *Environmental Policy as Social Policy? The Impact of Childhood Lead Exposure on Crime*, 7 The B.E. Journal of Economic Analysis & Policy 51, (2007).
Lynch, Michael L., and Paul B. Stretesky. *The relationship between lead and crime.* JOURNAL OF HEALTH AND SOCIAL BEHAVIOR 45(2) (2004).
Herbert Needleman, et. al, *Bone Lead Levels in Adjudicated Delinquents: A Case Control Study*, 24 NEUROTOXICOLOGY AND TERATOLOGY 711, 715 (2002).
Kim Dietrich, et. al., *Early Exposure to Lead and Juvenile Delinquency*, 25 NEUROTOXICOLOGY AND TERATOLOGY 511, 517 (2001).
Herbert L. Needleman, et. al., *Bone Lead Levels and Delinquent Behavior*, 275 JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 363, 363-69 (1996).

[10] Wright JP, Dietrich KN, Ris MD, Hornung RW, Wessel SD, et al. (2008) Association of Prenatal and Childhood Blood Lead Concentrations with Criminal Arrests in Early Adulthood.

[11] LEAD POISONING SURVEILLANCE REPORT, *supra* note 1.

[12] LEAD POISONING SURVEILLANCE REPORT, *supra* note 1. Of the 8,123 Illinois children six and under who had blood lead levels 10 μg/dL and above, 4,159 were in Chicago.

lead in Chicago is lead poisoned.[13] These figures are based on the Centers for Disease Control and Prevention's definition of lead poisoning as a blood lead level of 10 μg/dL (micrograms of lead per deciliter of blood) or above. Research suggests that children are being harmed by lead paint and showing adverse health effects at lead levels below the 10μg/dL. These children are not yet counted in the reported numbers.[14] Even at concentrations below 10μg/dL, lead may affect cognitive abilities, including arithmetic skills, reading, nonverbal reasoning, and short term memory.[15] Based on this information, the Illinois Department of Public Health estimates that over 81,000 children in Illinois are being harmed by lead paint.[16]

The blood lead levels of U.S. children aged one through six years old dramatically declined from the late 1970s through the early 1990s due primarily to the phase-out of leaded gasoline, the resulting decrease in lead emissions, the elimination of lead used in water pipes, and the ban on lead paint. Since lead is not biodegradable, however, it continues to be a source of lead poisoning in children unless it is properly removed or contained. Most children are lead poisoned in their own homes through exposure to lead dust or paint chips from deteriorated lead paint surfaces, or when lead painted surfaces are disturbed during home renovation or repainting. The greatest risk is lead-contaminated dust generated from the friction of opening and closing windows and doors.[17]

Because older homes are more likely to have lead paint on their windows, doors and walls, and fall into disrepair, the age of housing stock affects the risk of children's exposure to lead hazards. For example, even though lead paint has been banned in the United States since 1978, the Department of Housing and Urban Development found in 2002 that an estimated 24 million housing units still had significant lead based paint hazards in the form of deteriorated paint, dust lead, or bare soil lead.[18] The State of Illinois ranks 10th out of the 50 states in the age of its housing stock.[19] In Chicago, more than 70% of the housing units

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[13] LEAD POISONING SURVEILLANCE REPORT, *supra* note 1. Of the 101,033 Chicago children under age six who were tested in 2005, 4,466 had blood lead levels at or above 10 μg/dL in 2005.

[14] In 2008, the City of Chicago Department of Public Health lowered the threshold at which it defines lead poisoned. In Chicago, a confirmed level of lead in human blood of greater than 5μg/dL (five micrograms per deciliter) is now considered lead poisoned. Future Chicago statistics will account for children who are negatively being affected by lead at levels lower than 10μg/dL.

[15] Todd A. Jusko, et al., *Blood Lead Concentrations Less than 10 Micrograms per Deciliter and Child Intelligence at 6 Years of Age*, Environmental Health Perspectives, November 2007.
Richard Canfield, et. al., *Intellectual Impairment in Children with Blood Lead Concentrations below 10 microg per Deciliter*, 348 NEW ENGLAND JOURNAL OF MEDICINE 1517 (2003).
Bruce P. Lanphear, *Cognitive Deficits Associated with Blood Lead Concentrations ≥10 μg/dL in U.S. Children and Adolescents*, 115 PUBLIC HEALTH REPORTS 521, 521-529 (2000).

[16] GET THE LEAD OUT, *supra* note 3.

[17] ILLINOIS DEPARTMENT OF PUBLIC HEALTH, GET THE LEAD OUT: RENOVATION- HOW TO SAFELY REMOVE PAINT, 1 (2002). *Also at* http://www.idph.state.il.us/envhealth/pdf/Lead_Renovation.pdf.

[18] OFFICE OF HEALTHY HOMES AND LEAD HAZARD CONTROL, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *The Prevalence of Lead-Based Paint Hazards in U.S. Housing*, Environmental Health Perspectives, October 2002, at A601.

[19] CENTERS FOR DISEASE CONTROL AND PREVENTION, SCREENING YOUNG CHILDREN FOR LEAD POISONING: GUIDANCE FOR STATE AND LOCAL PUBLIC HEALTH OFFICIALS, 15-16 (1997). *Also at* http://www.cdc.gov/nceh/lead/guide/1997/pdf/chapter1.pdf.

were built prior to 1960,[20] and an estimated 88,000 Chicago units are at high risk for lead hazards.

Lead is most hazardous to the nation's 24 million children ages six and under because their brains and nervous systems are still developing. Children ages one to three years are at greatest risk of lead poisoning because of normal hand-to-mouth activity and the increase in mobility, which makes lead hazards more accessible.[21] Children absorb up to 50 percent of the lead they ingest, compared to adults who retain only 10 percent.[22]

Lead can also be transmitted to a fetus if the mother ingests lead while pregnant or has been exposed to lead in the past.[23] During pregnancy, the lead stored in bones is released into the blood stream, and lead crosses the placental barrier throughout the gestation period, including the period during which the central nervous system is formed.[24]

Lead Poisoning and Housing Court

Most lead cases in Chicago's Housing Court originate when a child has been poisoned.[25] Cases may also be filed in Housing Court before a child has been poisoned if a lead hazard has been identified.[26] Illinois law requires that all children in communities identified as high risk be tested for lead.[27] All other children must be assessed for risk beginning at age 6 months.[28] If a child is found to have an elevated lead level, an inspection of the child's home, childcare facility, and school is done. If the inspector identifies a lead hazard, the property owner receives a notice that includes instructions for abating or mitigating the lead hazard within a set time period. *Abatement* means the removal or encapsulation of all lead-bearing substances in a residential building or dwelling unit.[29] *Mitigation* is defined as the remediation of lead hazards so that the lead bearing substance no

[20] Of the 1,061,921 housing units in Chicago, 338,945 owner occupied units, and 399,923 rental units were built prior to 1960. U.S. CENSUS BUREAU, CENSUS 2000 SUMMARY FILE 3, MATRICES H36, H37, H38, AND H39, (2003) *at* http://factfinder.census.gov.

[21] Stapleton, *supra* note 6, at 2.

[22] Bone serves as a repository for a large percentage of the lead absorbed or ingested by children and adults. Lead from the skeleton enters into the blood stream during periods of bone mobilization. The mobilization of bone lead is increased during times of high bone turnover, which occurs during rapid growth in early childhood and during pregnancy. *See* Steve Oliveira et. al., *Season Modifies the Relationship between Bone Lead Levels: The Normative Aging Study*, 57 ARCHIVES OF ENVIRONMENTAL HEALTH 466, 467 (2002).

[23] Brian Gulson et. al., *Pregnancy Increases Mobilization of Lead from Maternal Skeleton*, 130 JOURNAL OF LABORATORY AND CLINICAL MEDICINE 51, 51 (1997).

[24] *Id*.

[25] Jurisdictions take action at different levels of lead poisoning. For example the State of Illinois must inspect dwellings when a child has an elevated lead level of 25 μg/dL or above , but may inspect dwelling once a child's lead blood level reaches 10 μg/dL. 77 Ill. Adm. Code § 845.26(a) (2004); 410 Ill. Comp. Stat. 45/8 (2004). In contrast, Chicago's Municipal Code allows a city representative to inspect certain locales to determine the existence of a lead-bearing substance and require that any hazards be eliminated, without any blood level requirements. Chicago, Ill., Municipal Code §7-4-090 (2004). Chicago, Ill., Municipal Code §7-4-100 (2004).

[26] CHICAGO, ILL., MUNICIPAL CODE § 7-4-100 (2004).

[27] 410 ILL. COMP. STAT. 45/6.2 (2004).

[28] *Id*.

[29] 410 ILL. COMP. STAT. 45/2 (2004).

longer poses an immediate threat to people's health.[30] If the owner fails to complete the recommended abatement or mitigation a case may be filed in Housing Court.

[30] *Id*.

II LEAD LAWS OF THE CITY OF CHICAGO

SUMMARY: MUNICIPAL CODE OF THE CITY OF CHICAGO, CHAPTER 7-4 and RULES AND REGULATIONS PROMULGATED BY THE CHICAGO COMMISSIONER OF PUBLIC HEALTH

I. Purpose

A. The purpose of Chapter 7-4 of the Municipal Code of the City of Chicago is to reduce and prevent the occurrence of lead poisoning in the children of Chicago by:

1. Prohibiting the use or application of leaded substances in any structure frequented or used by children, such as child care facilities, homes, schools, and toys. (CHICAGO, ILL., MUNICIPAL CODE §7-4-020)

2. Authorizing the City or its representative to carry out inspections for lead hazards, to order the mitigation of any lead hazards, and to have a remedy against those who do not comply with the requirements of the Code. (CHICAGO, ILL., MUNICIPAL CODE §7-4-100; CHICAGO, ILL., MUNICIPAL CODE §7-4-150)

3. Authorizing the Commissioner of Public Health to establish regulations for carrying out the provisions of the Code. (CHICAGO, ILL., MUNICIPAL CODE §7-4-130)

B. The purpose of the Commissioner of Public Health's regulations is to ensure that all lead abatement, mitigation, or removal work is performed in a manner that will not endanger the health or well-being of any person. (CHICAGO, ILL., MUNICIPAL CODE §7-4-130)

II. Requirements

A. Residential Buildings, Schools, Child Care Facilities, and Health Care Providers

1. Maintenance of Housing

It is the duty of owners to maintain residential buildings, child care facilities, and schools in a manner that prevents the existence of lead hazards. (CHICAGO, ILL., MUNICIPAL CODE §7-4-030). All buildings regularly frequented by children six years of age and younger must be maintained so they are free of lead hazards. (CHICAGO DEP'T OF PUBLIC HEALTH RULES & REGULATIONS, CONTROL & MITIGATION OF LEAD BEARING SUBSTANCES §2).

2. Notice

Owners who have received a notice of a lead hazard are required to post the notices sent to them by the Department of Public Health in common areas of the building. (CHICAGO, ILL., MUNICIPAL CODE §7-4-105)

3. Reporting

Every health care provider involved in performing a test to determine the level of lead in a Chicago resident's blood is required to report the results to the Department of Public Health. The required timeframe for reporting depends on the level of lead found in the blood. (CHICAGO, ILL., MUNICIPAL CODE §7-4-115; CHICAGO DEP'T OF PUBLIC HEALTH RULES & REGULATIONS, CONTROL & MITIGATION OF LEAD BEARING SUBSTANCES §15)

4. Information

Child care facilities are required annually to send an informational pamphlet on lead poisoning to parents or guardians of children six years and under. (CHICAGO, ILL., MUNICIPAL CODE §7-4-075).

5. Screening

Children between the ages of six months through six years of age are required to present certification of lead screening before being admitted into a day care, kindergarten, or nursery school. (CHICAGO, ILL., MUNICIPAL CODE §7-4-070)

B. Commercial Establishments

1. Sales of Lead Bearing Substances

No person shall have, transfer, manufacture, offer for sale, or place in the stream of commerce any item or food product containing a lead-bearing substance that in its ordinary course of use is accessible or chewable by children. (CHICAGO, ILL., MUNICIPAL CODE §7-4-040; CHICAGO DEP'T OF PUBLIC HEALTH RULES & REGULATIONS, CONTROL & MITIGATION OF LEAD BEARING SUBSTANCES §6).

Any lead bearing substances that may be used by the general public must bear a warning statement pursuant to the Illinois Lead Poisoning Prevention Act before being offered for sale or given away. (CHICAGO, ILL., MUNICIPAL CODE §7-4-060; CHICAGO DEP'T OF PUBLIC HEALTH RULES & REGULATIONS, CONTROL & MITIGATION OF LEAD BEARING SUBSTANCES §7)

2. Information in Commercial Establishments Offering Paint or Other Supplies

Any commercial establishment that offers paint or other supplies intended for the removal of paint shall display, in a prominent and easily visible location, a poster or provide a brochure, describing the dangers of paint removal and remodeling and where to find more information of protecting against lead hazards. (CHICAGO, ILL., MUNICIPAL CODE §7-4-065)

III. Enforcement

A. Inspection.

A representative of the city is authorized to inspect any residential building, child care facility, school, or other locale frequented by a child age six and under, including commercial establishments, to determine if there are lead hazards. The city representative may apply for a warrant for inspection if entry is denied. (See Appendix C for a sample inspection report). An authorized representative of the city may also inspect soil surrounding said facilities. (CHICAGO, ILL., MUNICIPAL CODE §7-4-090)

B. Procedure

1. Residential Buildings, Schools, and Child Care Facilities

If the inspection reveals a potential lead hazard to children six years old and under, the city is required to give the owner notice of the lead hazard. The city also may take any of the following actions it deems appropriate (CHICAGO, ILL., MUNICIPAL CODE §7-4-100):

- Provide recommendations for eliminating the problem areas.
- Notify any other persons responsible for the premises where the lead-bearing substance exists.
- Set a time period and manner in which the lead hazard must be abated.

2. Commercial Establishments

The Commissioner of Public Health has the power to issue subpoenas to owners of commercial establishments suspected of violations or determined to be in violation. (CHICAGO, ILL., MUNICIPAL CODE §7-4-095) If an inspection reveals that the establishment is handling items containing a lead-bearing substance, the city may take any of the following actions to enforce provisions of the code (CHICAGO, ILL., MUNICIPAL CODE §7-4-100):

- Notify the owner of the existence of the lead-bearing substance.
- Order the owner to cease and desist handling the lead-bearing substance or to remove it from distribution.

C. Methods of Lead Mitigation.

The City of Chicago Commissioner of Public Health promulgated rules and regulations dictating safe methods of lead hazard removal or abatement and removal of debris. (CHICAGO, ILL., MUNICIPAL CODE §7-4-130)

1. Requirements

Only licensed lead risk assessors that are employed by the Chicago Department of Public Health may determine whether a structure is free from lead hazards. (CHICAGO DEP'T OF PUBLIC HEALTH RULES & REGULATIONS, CONTROL & MITIGATION OF LEAD BEARING SUBSTANCES §4)

Any person who participates in any way in the abatement and/or mitigation of a lead hazard is required to submit a Mitigation Plan, which must be approved by the Chicago Department of Public Health. The work must be carried out in accordance with the approved plan by state licensed lead workers pursuant to section 11.1 of the Lead Poisoning Prevention Act. (CHICAGO DEP'T OF PUBLIC HEALTH RULES & REGULATIONS, CONTROL & MITIGATION OF LEAD BEARING SUBSTANCES §9)

2. Covering Costs

A fee structure has been established to cover the cost of providing inspections and reviewing and approving the Mitigation Plan. It can be waived under several circumstances, including (CHICAGO DEP'T OF PUBLIC HEALTH RULES & REGULATIONS, CONTROL & MITIGATION OF LEAD BEARING SUBSTANCES §16-17):

- If the inspection was initiated by CDPH and no lead hazards were identified
- If the family income is less than 80% of the median Family Adjusted Income for Chicago
- If the inspection or mitigation was financed by a grant or loan program administered by CDPH
- If waiving the fees will improve the public health, or when waiver or reduction was requested by a non-profit or governmental program whose purpose is represented to reduce lead hazards

IV. Violations/Remedies

A. Violations of the Municipal Code of the City of Chicago

The corporation counsel may seek relief from violations of Chapter 7-4 in the Circuit Court of Cook County by seeking equitable relief and/or penalties. (CHICAGO, ILL., MUNICIPAL CODE §7-4-150)

- Relief may include a fine between $100 and $500 for each offense. Each day a violation or noncompliance exists is a separate offense. (CHICAGO, ILL., MUNICIPAL CODE §7-4-120a)
- Any person found guilty of a third or subsequent violation or failure to comply within a two year period is punishable by a fine between $500 and $1,000 and/or incarceration not in excess of 6 months. (CHICAGO, ILL., MUNICIPAL CODE §7-4-120; CHICAGO, ILL., MUNICIPAL CODE §7-4-120b).

The Commissioner of Health may cause a person who fails to comply with any order issued pursuant to Chapter 7-4 to appear before a hearing officer at the Department of Administrative Hearings. Failure to comply with such an order is subject to the same penalties as violations of Chapter 7-4. (CHICAGO, ILL., MUNICIPAL CODE §7-4-150b)

B. Violations of City of Chicago Department of Public Health Regulations

Any violation of the rules of the City of Chicago Department of Public Health is subject to the same fine as violations of the chapter. Also, if any person working under contract with the city violates any of the rules of the CDPH, the city may terminate the contract.

(CHICAGO DEP'T OF PUBLIC HEALTH RULES & REGULATIONS, CONTROL & MITIGATION OF LEAD BEARING SUBSTANCES §18)

C. Emergency Measures

If violation of this chapter creates a condition that requires immediate action to protect the health of any person, the Commissioner of Public Health may issue an order requiring the necessary actions be taken and specifying a completion time. (CHICAGO, ILL., MUNICIPAL CODE §7-4-140)

MUNICIPAL CODE OF THE CITY OF CHICAGO,

CHAPTER 7-4:

LEAD-BEARING SUBSTANCES

(updated August 2008)

Chapter 7-4: Lead-Bearing Substances

7-4-010 Definitions.

(1) “Child care facility” means any structure used by a child care provider, school or other facility frequented by children.

(2) “Children” means natural persons six years of age and younger.

(3) “Commercial establishment” means any place that provides a business service or involves the selling, leasing or renting of merchandise to the general public or the manufacture or distribution of merchandise to others who sell to the general public.

(4) “Commissioner” means the commissioner of public health or his designee.

(5) “Department” means the department of public health.

(6) “Dwelling” means any building which is wholly or partly used or intended to be used for living or sleeping by human occupants.

(7) “Exposed surface” means any interior or exterior surface of a child care facility, school, dwelling or residential building.

(8) “Lead-bearing substance” means any of the following if they contain an amount equal to or greater than the amount of lead by weight that the commissioner determines by regulation may pose a significant health hazard to humans:

(a) Soil;
(b) Dust on any permanent or nonpermanent surface of the dwelling, residential building, child care facility or school;
(c) Items, substances and surfaces that are edible or chewable by or accessible to children, including toys, furniture or decorative objects;
(d) Food or other ingestible substances or items; and
(e) Paint or other surface coating material.

The regulations promulgated by the commissioner under this subparagraph (8) shall be based upon lead levels established, utilized, recommended or offered as guidance by an agency of the federal government or by a state government.

(9) “Lead hazard” means a lead-bearing substance that poses a significant health hazard to humans.

(10) “Lead poisoning “means the condition of having blood lead levels in excess of those considered safe under applicable regulations promulgated by the commissioner.

(11) “Owner” means any person, who alone, jointly or severally with others:

(a) Has legal title to or a beneficial interest in a land trust or other entity having legal title to a child care facility, school, commercial establishment, dwelling or residential building with or without accompanying actual possession of the child care facility, school, commercial establishment, dwelling or residential building, includes any agent of the owner, or any executor, administrator, trustee or guardian of the estate of the owner;
(b) Has charge, care or control of or responsibility for a child care facility, school, commercial establishment, dwelling or residential building.
(c) Has an interest as a purchaser under a real estate installment contract in a child care facility, commercial establishment, dwelling or residential building.

(12) "Person" means "person" as defined in section 1-4-090 of the municipal code.

(13) "Residential building" means any room, group of rooms, or other interior areas of a structure designed or used for human habitation; common areas accessible by inhabitants; and the surrounding property or structures.

7-4-020 Lead-Bearing Substance Use.

No person shall use or apply lead-bearing substances;

(a) In or upon any exposed surface of a dwelling or dwelling unit;

(b) In or around the exposed surfaces of a residential building, child care facility, school or other structure frequented by children;

(c) In or upon any figures or other objects used, installed, or located in or upon any exposed surface of a dwelling or residential building, child care facility, school, or intended to be used, installed, or located and that in the ordinary course of use, are accessible to and chewable by children;

(d) In or upon any toys, furniture, or other articles used by and chewable by children;

(e) Within or upon a residential building or dwelling, child care facility, school, playground, park or recreational area, or other areas regularly frequented by children.

7-4-030 Maintenance of residential buildings, child care facilities and schools.

It is the duty of every owner of a dwelling, residential building, child care facility or school to maintain the dwelling, residential building, child care facility or school in such a manner so as to prevent the existence of a lead hazard.

7-4-040 Sale, transfer or distribution of items containing lead-bearing substances.

No person shall have, offer for sale, transfer, distribute to the public, place in the stream of commerce, or manufacture any item that contains a lead-bearing substance. These items include but are not limited to:

(a) Any jewelry item, toy, or furniture, excluding antique items, that in the ordinary course of use is accessible to or chewable by children;

(b) Any fixture or other object intended to be used, installed or located in or upon any surface of a dwelling or residential building, child care facility or school and that, in the ordinary course of use, is accessible to or chewable by children;

(c) Any food or edible item or package or container for food or edible items which contains lead either in excess of a level set by the commissioner or in any concentration that exceeds a United States Food and Drug Administration guideline; and

(d) Any non-edible item that, in the ordinary course of use, is accessible to or chewable or ingestible by children.

7-4-050 Reserved.

7-4-060 Warning statement.

No person shall have, offer for sale, sell or give away any lead-bearing substance that may be used by the general public unless it bears the warning statement as prescribed by the State of Illinois pursuant to 410 ILCS 45/6, as amended.

7-4-065 Notice - required.

Any commercial establishment that offers paint or other supplies intended for the removal of paint shall display, in a prominent and easily visible location, a poster or provide a brochure, containing at a minimum, the following: (1) a statement that dry sanding and dry scraping or paint in dwellings built before 1978 is dangerous; (2) a statement that the improver removal of old paint is a significant source of lead dust, the primary cause of lead poisoning; and (3) contact information where consumers can obtain more information. A commercial establishment may utilize the poster or brochure available from the Department or from the Illinois Department of Public Health or from another source so long as it meets the minimum criteria of this section.

7-4-070 Child care facilities must require blood lead level screening for admission.

Any person who owns or manages a day care center, day care home, preschool, nursery school, kindergarten or other child care facility licensed or approved by the State of Illinois or the department, including such programs operated by a public school district, shall require that each parent or legal guardian of a child between the ages of six months through six years provide a statement from physician or health care provider that the child has been screened for lead

poisoning. This statement must indicate that the screening of the child has been performed in accordance with applicable criteria mandated by the Illinois Department of Public Health and the commissioner. This statement shall be provided prior to admission and subsequently in conjunction with required physical examinations.

Nothing in this section shall be construed to require any child to undergo a blood lead level screening or test whose parent or guardian objects on the grounds that the screening or test conflicts with his or her religious beliefs.

7-4-075 Child care facilities must provide informational pamphlet.

Each day care center, day care home, pre-school, nursery school, kindergarten or other child care facility licensed or approved by the State of Illinois or the department, including such programs operated by a public school district, shall annually send or deliver to the parents or guardians of children six years and younger an informational pamphlet regarding awareness of lead poisoning. A pamphlet provided by the Illinois Department of Public Health for this purpose shall be acceptable.

7-4-080 Fees.

The department may establish fees according to a reasonable fee structure to cover the cost of inspections and providing a testing service for laboratory analysis of blood lead tests and any necessary follow-up. The commissioner may promulgate rules and regulations for waiving applicable fees for low-income persons.

7-4-090 Inspection of buildings and commercial establishments.

An authorized representative of the City of Chicago charged with enforcement of this ordinance, upon presentation if requested of the appropriate credentials to the owner, occupant or his representative, may inspect child care facilities, schools, dwellings, and residential buildings at reasonable times, for the purposes of ascertaining that all surfaces accessible to children are intact and in good repair, and for the purposes of ascertaining the existence of lead bearing substances. An authorized representative of the city may also inspect soil surrounding said facilities and may also inspect commercial establishments for the purposes of ascertaining whether any lead-bearing substances or lead hazards are present. Such representative may remove samples or objects necessary for laboratory analysis. If a person entitled to withhold consent to an inspection refuses to allow inspection, a representative of the city may apply for a warrant to permit entry.

7-4-095 Subpoena powers

The commissioner shall have the power to issue subpoenas to owners of commercial establishments suspected of violating sections 7-4-040 and 7-4060 of this chapter to ascertain what goods and services are being bought, sold, manufactured, distributed or resold as well as to whom and from whom they are being sold. Upon determination that there is a lead-bearing substance in or upon any dwelling, residential building, child care facility and school, the commissioner shall have the power to subpoena the owners of the dwelling, residential building, child care facility or

school only for the purposes of ascertaining who performed work or who was contracted to perform work to remove a lead-bearing substance or hazard or any work which has disturbed a lead-bearing substance or caused a lead hazard.

7-4-100 Procedures upon determination of lead-bearing substance.

(a) Upon determination that there is a lead-bearing substance in or upon any child care facility, school, dwelling or residential building which could reasonably be hazardous to children, the City of Chicago shall, as soon as is practicable, give appropriate notice to the owner of a child care facility, school, dwelling or residential building, of the existence and location of a lead hazard. In addition, regardless of whether there has been compliance with the preceding sentence, the city shall take action as needed to enforce this chapter, including, as the city or its authorized representative may determine is appropriate:

(1) Providing the owner and occupants with suitable recommendations for elimination of the problem areas;

(2) Notifying the other persons or entities with responsibility for a child care facility, school, dwelling, or residential building of the existence and location of such substances;

(3) Ordering that these substances be removed, replaced, or securely covered within a specified time period and in a manner prescribed by the department;

(4) Pursuing the remedies provided for in Sections 7-4-140 and 7-4-150

(b) Upon determination that a commercial establishment is handling goods, products or items containing a lead-bearing substance, the city may take action as needed to enforce this chapter, including the following, as the city or its authorized representative may determine is appropriate:

(1) Giving notice to the owner of the commercial establishment of the existence of a lead-bearing substance or of a lead hazard contained in the goods, products or items handled by the commercial establishment;

(2) Ordering the owner of the commercial establishment to cease and desist selling, distributing, or manufacturing the goods, products and items containing a leadbearing substance or lead hazard as provided by section 7-4-040 of this chapter;

(3) Ordering the owner of the commercial establishment to remove from distribution and sale any product, goods or items containing a lead-bearing substance. If the lead-bearing component of a product is removable, the commissioner may, at his discretion, allow the lead-bearing component to be removed and the remaining product to be sold, provided that the removal of the lead-bearing substance is noted on the product's packaging. Owners are required to dispose of said product or lead-bearing component in accordance with state or federal law or regulations promulgated by the commissioner regarding the disposal of food items; and

(4) Pursuing the remedies provided for in sections 7-4-140 and 7-4-150.

7-4-105 Owner's obligation to post notice.

The owner of a dwelling, residential building, child care facility, or school who has received a notice of a lead hazard pursuant to section 7-4-100(a) shall post notices in common areas of the building specifying the identified lead hazards. The posted notices, drafted by the department and sent to the property owner with the notification, shall indicate the following:

(1) that unit(s) in or areas of the building have been found to have lead hazards;
(2) that other units or areas of the building my have lead hazards;
(3) that the department recommends that children 6 years of age or younger receive a blood lead screening; and
(4) where to seek further information and request an inspection of additional units in the building from the department. Once the owner has abated the hazards to the satisfaction of the department and received a Notice of Compliance from the department, the owner may remove the notices posted pursuant to this Section.

7-4-110 Manner of abatement of lead hazards.

(a) The removal of the lead-bearing substance from the dwelling, residential building, child care facility, or school shall be accomplished in a manner consistent with all rules and regulations promulgated pursuant to this chapter concerning acceptable and safe methods of lead hazard removal or abatement, and in a manner which will not endanger the health or well-being of its occupants, and will result in the safe removal from the premises, and the safe disposition of flakes, chips, debris, dust and other potentially harmful materials. No person may conduct lead abatement and/or lead hazard removal in a manner that increases exposure of any person to lead-bearing substances or a lead hazard in or around a dwelling, residential building, child care facility or school.

(b) The commissioner or his authorized representative is authorized to remove from a commercial establishment a sample of any products or goods which are suspected to contain a lead-bearing substance for the purpose of testing for compliance with department rules and regulations. The commissioner or his authorized representative is further authorized to order the removal or embargo of any goods or products from a commercial establishment after the goods or products have been tested or found not to be in compliance with this ordinance or state or federal law. Tests to determine if a product is a lead-bearing substance shall be conducted using standardized methodologies, as determined by the commissioner in regulation. Test results shall be made available to the owner of the commercial establishment.

(c) The department of public health shall maintain a report of any products which were taken for testing, or otherwise removed or disposed of under subsection 7-4-110(b). Such report shall be made available for public inspection. The contents of such report shall identify the products taken, removed, or disposed of, the approximate retail value of the products, the results of any lead testing performed, and other information as determined by the commissioner by rule.

7-4-115 Reporting requirements.

Any person who orders, authorizes, analyzes or performs a test to determine the blood lead level of a Chicago resident and is required to report the results of such test pursuant to section 7 of the Illinois Lead Poisoning Prevention Act shall also report the results of such test to the department. The commissioner is authorized to promulgate regulations necessary to implement this section.

7-4-120 Violations.

(a) Violation of any section of this chapter or any failure to comply with any order authorized pursuant to this chapter shall be punishable by a fine not less than $100.00 nor more than $500.00 for each offense. Each day that such violation or noncompliance exists shall be considered a separate offense.

(b) Any person found liable or guilty of a third or subsequent violation of this chapter and/or of a third or subsequent failure to comply with any order authorized pursuant to this chapter on three different days within a two-year period shall be punished by a fine of not less than $500.00 nor more than $1,000.00 for each offense, and may be punished by a period of incarceration not to exceed six months, or both. Each day that such violation or noncompliance exists shall be considered a separate offense.

7-4-130 Rules and regulations.

The commissioner is authorized to promulgate reasonable rules and regulations for carrying out provisions of this chapter.

7-4-140 Emergency measures.

When the commissioner finds that because of a violation of this chapter, an emergency condition exists requiring immediate action to protect the health of any person, or when the commissioner makes any determination under section 7-4-100(b), the commissioner may issue an emergency order reciting the existence of the emergency condition and requiring that necessary actions be taken to meet the emergency. An emergency order shall be effective immediately, and any person to whom an emergency order is directed shall comply therewith within the period of time specified in the order. Any such person shall receive a reasonably prompt notice of their right to a prompt hearing conducted by an administrative law officer of the buildings hearing division of the department of administrative hearings, pursuant to the procedures established for such hearings. Pending the hearing, the commissioner may take whatever steps are necessary to execute the emergency order when necessary to protect the health of any person.
The entire cost of abatement and relocation actions taken or caused to be taken by the City of Chicago pursuant to this section shall be recoverable from each of the persons responsible for correcting the violations or giving rise to the emergency conditions by bringing an action in a court of competent jurisdiction or at the department of administrative hearings pursuant to chapter 1-20 of this municipal code or other applicable law.

7-4-150 Remedies.

(a) The corporation counsel may seek relief with respect to any violation of this chapter by filing an appropriate action in a court of competent jurisdiction or the department of administrative hearings seeking equitable relief or the penalties contained in Section 7-4-120, or both.

(b) Upon determining that any person has not complied with an order authorized pursuant to this chapter, the commissioner may cause such person to appear at a hearing before an

administrative law officer of the buildings hearings division of the department of administrative hearings. Hearings shall be conducted pursuant to the provisions of Article III (Buildings Hearings Division) of Chapter 2-14 of this Code.

7-4-160 Enforcement.

Any department of the City of Chicago may take appropriate action to enforce any of the provisions of this chapter when a violation of any of the provisions comes to its attention.

CHICAGO DEPARTMENT OF PUBLIC HEALTH

RULES AND REGULATIONS

PROMULGATED PURSUANT TO:

THE MUNICIPAL CODE OF THE CITY OF CHICAGO,

CHAPTER 7-4

(updated August 2008)

City of Chicago
Department of Public Health
Control and Mitigation of Lead-Bearing Substances

The Commissioner of the Chicago Department of Public Health hereby promulgates the following rules and regulations pursuant to the Municipal Code of the City of Chicago, Chapter 7-4-130 and all other chapters, sections, or subsections which provide that the Commissioner of the Chicago Department of Public Health (the Department) may promulgate rules and regulations concerning lead hazards and/or lead-bearing substances.

1. Definitions

a. Antique: An item having special value because of its age, artistry, beauty, or period of origin which is intended as a collectable and in the ordinary course of use is not accessible to Children.
b. Child Care Facility: Any structure used by a child care provider, school, or other facility frequented by Children.
c. Children: Any person six years of age and younger.
d. Clearance Test: An inspection performed by an Illinois licensed lead risk assessor or Illinois licensed lead inspector following the completion of Lead Mitigation or Lead Abatement activities. A Clearance Test will be considered passed when mitigation or abatement work identified in the mitigation plan has been determined by the risk assessor or inspector to be satisfactorily completed, quantitative dust samples taken from the work area by the risk assessor or inspector are found to have a lead load below the levels defined as a Lead Hazard, and no additional Lead Hazards are identified by the risk assessor or inspector.
e. Department: Chicago Department of Public Health
f. Dwelling: Any building which is wholly or partly used or intended to be used for living or sleeping by human occupants.
g. Lead Abatement: The removal of a Lead Hazard by component replacement, complete paint removal, enclosure system, or encapsulation, as defined in the Illinois Administrative Code at 77 Ill. Admin. Code 845.30 Mitigation or Abatement of Lead Hazards now or as amended, such that all Lead Paint and resulting hazards are removed or completely inaccessible for a period expected to be at least twenty (20) years.
h. lead-bearing Substance: Lead Paint, or any object or substance that could create a Lead Hazard.
i. Lead Hazard: The presence of any condition as defined in Section 3 of these regulations, or any item containing or coated with lead such that in the ordinary course of use it is accessible to or chewable by Children pursuant to Section 6 of these regulations.
j. Lead Mitigation: Actions taken to address Lead Hazards which do not meet the definition of Lead Abatement, including paint stabilization.
k. Lead Paint: Any paint or other surface coating that contains greater than one (1) milligram of lead per square centimeter in the dried film of paint or other surface coating or one-half of one percent (0.5%) lead by weight in the total nonvolatile content of liquid paint or surface coating.

l. Lead Poisoning: A confirmed level of lead in human blood of greater than 5 mg/dL (five micrograms per deciliter).
m. Owner: Any person, who alone, jointly or severally with others:
    1. Has legal title to or a beneficial interest in a land trust or other entity having legal title to a Regulated Facility or commercial establishment with or without accompanying actual possession of the Regulated Facility or commercial establishment, including any executor, administrator, trustee or guardian of the estate or the Owner;
    2. Has charge, care, or control of or responsibility for a Regulated Facility or commercial establishment; or
    3. Has an interest as a purchaser under a real estate installment contract in a Regulated Facility or commercial establishment
n. Regulated Facility: Any Dwelling, dwelling unit, residential building, Child Care Facility, school, playground, park, recreational area, or area regularly frequented by Children, including the premises and any associated structures of such facilities.
o. Regulated Product:
    1. Any objects or products that in the ordinary course of use are accessible to or chewable by Children, including but not limited to:
        A. Jewelry Items
        B. Toys
        C. Furniture
        D. Fixture or other object intended to be used, installed, or located in or upon any surface of a Regulated Facility
        E. Other non-edible items
    2. For purposes of this definition, Antique items shall not be considered a regulated product.
p. Regulated Food Product: Any food or edible items, or package or container for food or edible items.

2. Maintenance of Regulated Facilities

All Regulated Facilities in the City of Chicago shall be maintained so that they are free of Lead Hazards as defined by these rules.

3. Lead Hazards in Regulated Facilities

The following conditions, when in a Regulated Facility, are considered Lead Hazards:

A. Lead Paint is a hazard when any one, or any combination thereof, of the following conditions exists:
    1. It is present on any surface or fixture mouthable or chewable by a child (such as a window stool or door casing) including any surface with evidence of teeth marks, or;
    2. It is chipping, peeling, chalking, flaking, loose, or delaminating, i.e., any paint condition that could result in lead containing material being released to the air, surrounding surfaces, or upon touch;

3. It is on a surface subject to abrasion, friction, or impacts during normal use, regardless of paint condition when such condition is likely to become hazardous, including, but not limited to, window and door components and stair treads or;
4. Any visible dust, chips, or debris associated with the damage of Lead Paint or a surface coated with Lead Paint are present, including such debris or dust produced in the course of repair, renovation, or remodeling unless properly contained and removed in a manner to prevent contamination of the surrounding area or;
5. Uncorrected water damage or evidence of uncorrected water damage to a surface coated with Lead Paint regardless of paint condition.

B. Lead-contaminated dust is hazardous when lead is present in an amount equal to or in excess of the following levels:
   1. Forty micrograms per square foot (40 µg/ft^2) on interior and exterior floor surfaces, or,
   2. Two hundred micrograms per square foot (200 µg/ft^2) on all other horizontal surfaces.

C. Lead-contaminated soil is hazardous when present in, around, or on a Regulated Facility in which the accessible soil, i.e., not completely and consistently covered by grass, mulch, or an impervious barrier, contains more than 400 micrograms per gram of lead.

D. Drinking water is hazardous when it contains more than fifteen micrograms of lead per liter (15?g/L) after having been flushed for at least one minute.

4. Determination as to a Regulated Facility Being Free from Lead Hazards or Substances

Only licensed lead risk assessors who are employees or agents of the Department, are authorized to determine whether any Regulated Facility is classifiable as free from Lead Hazards or lead-bearing Substances in accordance with these rules.

5. Prohibited methods resulting in presumption of hazards

Use of any of the following methods in disturbing Lead Paint will create the presumption of a Lead Hazard and is therefore prohibited:

a. Open flame burning or use of a heat gun;
b. Dry-sanding;
c. Dry-scraping;
d. Mechanical paint removal equipment including mechanical sanders, unless such devices have complete dust containment and utilize a HEPA filtering system;
e. Uncontained abrasive or hydro blasting (Abrasive and hydro blasting may only be performed when completely contained such that all dust and debris cannot escape containment and the containment area is exhausted through a HEPA filtering system)
f. Chemical paint stripping with any substance that includes methylene chloride (dicholoromethane) or n-hexane.

6. Sale, Transfer or Distribution of Items Containing Lead-Bearing Substances

A. No person shall have, offer for sale, transfer, distribute to the public, place in the stream of commerce, or manufacture any Regulated Product containing or coated with lead such that the lead content is more than six hundredths of one percent (0.06%) lead by total weight.

B. No person shall have, offer for sale, transfer, distribute to the public, place in the stream of commerce, or manufacture any Regulated Food Product that contains lead equal to or in excess of the allowable standards set by the State of Illinois, the United States Government, as amended, or the following, whichever is lowest:

   i. One tenth of one part per million (0.1 PPM) by weight if the Regulated Food Product is a candy likely to be consumed frequently by Children, including "Mexican Style" candies as defined in the US FDA's November 2006 document "Lead in Candy Likely To Be Consumed Frequently by Small Children: Recommended Maximum Level and Enforcement Policy."

   ii. Six hundred parts per million (600 PPM) by weight if the Regulated Food Product is a wrapper or container

   iii. Five parts per million (5 PPM) by weight if the Regulated Food Product is a vitamin or supplement

   iv. The level published in *The Codex Alimentarius*, or its successor publication, as amended, for all other Regulated Food Products.

C. Whenever the Department finds, or has probable cause to believe, that any item is or would be in violation of this article, it shall affix to such item a tag or other appropriate marking, and shall give notice to one or more Owner(s) that the item or substance is suspected of being in violation of this article, that the item has been embargoed, and that no person shall remove the item from the premises until written permission for removal or disposal is given by the Department.

D. No person shall knowingly remove, sell, or dispose of a detained or embargoed item without written permission of the Department.

E. When the Department finds, or has reasonable cause to believe, that an embargo will be violated, it may remove the embargoed item to a place of safekeeping.

   i. When any items are removed to a place of safekeeping, the Department make a public report consisting of the elements in section H below.

F. This Section also applies to any item that contains a lead-bearing component that is removable. In this instance, the commissioner may, at his discretion, allow the lead-bearing component to be removed and the remaining product to be sold. Owners are required to dispose of the lead-bearing component in accordance with directives set forth by the Department, and all other applicable laws, for that particular instance. If a lead-bearing component is removed and the remaining product allowed to be sold then:

   i. The component must be replaced with an equivalent component which is not a Lead-Bearing Substance or the fact that the product does not contain the missing component is indicated on the package, and

   ii. The exterior of the package must be modified or altered in such a way so as to clearly differentiate it from the packaging of the item containing the lead-bearing Substance such that a visual inspection would readily identify if the product being sold had been corrected or was uncorrected.

G. When the Department has probable cause to believe, that any item is or would be in violation of these rules it is authorized to remove from a commercial establishment a sample of such items which are suspected to contain a lead-bearing substance for the purpose of testing for compliance with these standards.
H. When any items are taken for testing, or otherwise removed or disposed of under subsection 7-4-110(b) the Department shall make public a report that details the following:
    1. The description and quantity of all such items removed by the Department
    2. The retail value of all items removed
    3. The date and location of the removal of such items
    4. The results of all lead tests performed by the Department on such items.

7. Warning Labels

No person, firm, or corporation shall have, offer for sale, sell, or give away any lead-bearing Substance that may be used by the general public unless it bears a warning statement as prescribed by federal regulation or as proscribed by the State of Illinois pursuant to 410 ILCS 45/6, as amended.

8. Notice in Commercial Establishments

A. Any commercial establishment, as defined in subsection 7-4-010(3), that offers paint or supplies intended for the removal of paint shall display, in a prominent and easily visible location, a poster or provide a brochure, containing at a minimum, the following:
    1. A statement that dry sanding and dry scraping of paint in dwellings built before 1978 is dangerous;
    2. A statement that the improper removal of old paint is a significant source of lead dust, the primary cause of lead poisoning; and
    3. Contact information where consumers can obtain more information.
B. The poster shall be permanently affixed or the brochures made available in a location of the commercial establishment where a consumer purchasing such materials would be likely to see the information.
C. A commercial establishment may utilize a poster or brochure from the Department or from the Illinois Department of Public Health or from another source so long as the poster or brochure meets the minimum criteria in these regulations.
The purpose of requiring a poster or brochure in a commercial establishment that offers paint or supplies intended for the removal of paint is to increase the awareness that improper removal of old paint is dangerous and is the primary cause of lead poisoning.

9. Mitigation Procedure

Any person who directly supervises, participates in, and/or authorizes abatement and/or mitigation of a Lead Hazard and/or temporary, permanent, partial, or complete removal of a lead-bearing Substance, including the Owner, shall comply or cause compliance with all of the following:

a. Submit to the Department a mitigation plan in accordance with section 10 of these rules and receive official approval from the Department prior to beginning abatement or mitigation activities and,
b. Conduct the abatement or mitigation work in accordance with the approved mitigation plan, and,
c. Ensure that individuals conducting the work are lead workers, lead contractors/supervisors, and/or lead abatement contractors who are licensed by the State of Illinois pursuant to section 11.1 of the Lead Poisoning Prevention Act (410 ILCS 45/11.1) unless a wavier of this requirement has been granted by the Chicago Department of Public Health and the individuals conducting the work have received training in lead safe work practices from a Chicago Department of Public Health approved training provider prior to beginning any abatement, mitigation, or removal activity.

10. Mitigation Plans

Mitigation plans must be submitted to the Department and will be approved only if all of the following requirements are met:

a. The plan, following example formats available from the Department upon request, must adequately and completely detail where the mitigation is to occur (including street address, unit number, and Owner's name, address, and phone number), the work to be performed, how the work is to be performed, the containment and clean-up measures to be utilized, if occupant relocation is required, the clearance testing to be performed, and the names, qualifications, and contact information of the persons who will perform the work.
b. The plan must include the ongoing or continual maintenance required to maintain the Dwelling unit free from Lead Hazards after completion of the work.
c. A copy of the lead inspection or risk assessment conducted for that unit must be included if the inspection or assessment was not performed by the Department.

11. Modification of Mitigation Plan

The Department may require modifications to the Mitigation plan, including, but not limited to, changes in the methods utilized, prior to approval when such requirements are necessary in the Department's opinion to protect current or future occupants and/or workers from exposure to lead or the creation of additional Lead Hazards, or when such changes are necessary to comply with these rules or other applicable State of Illinois or Federal laws and regulations.

12. Ongoing Maintenance in Accordance with Mitigation Plan

When Mitigation plans specify ongoing or continual maintenance to be performed in order to maintain the dwelling unit or any part thereof free of Lead Hazards, it shall be the responsibility of the Owner to comply with all of the following:

a. Perform or have performed all such maintenance as necessary to prevent the occurrence of Lead Hazards; and
b. Perform or have performed all such maintenance as is specified in the Mitigation plan; and,

c. Within one year from the date of the passing Clearance Test, and on an annual basis thereafter, submit to the Department a revised Mitigation plan, including a statement regarding compliance with on-going or continual maintenance activities.

13. Failure to Comply with Mitigation Plan

Failure of an Owner to comply with any provision of section 12 will constitute failure to comply with the Mitigation plan and constitute the presumption that a Lead Hazard exists in the Dwelling.

14. Notice in Regulated Facilities of Lead Hazards

The Owner of a Regulated Facility who has received a notice of a Lead Hazard shall post notices in common areas of the building that Lead Hazards have been identified. The purpose of this Section is to notify individuals on the premises of a Regulated Facility that has received notice of a Lead Hazard:

A. That a Lead Hazard has been found at that location
B. The dangers of lead poisoning
C. How to reduce the risk of further exposure
D. Contact information where individuals can obtain more information.

The notice will be provided to the Regulated Facility by the Department and must be posted at all entrance ways of the Regulated Facility so that an individual entering or exiting the premises would be likely to see such notice.

15. Blood Lead Level Reporting Requirements

A. A. Every physician or other health care provider who has ordered, authorized, or performed a test to determine the level of lead in a Chicago Resident's blood is required to report the results of such test to the Department in the manner and timeframe as defined in these rules.
B. Physicians or other health care providers are exempted from the requirement of Section A if the analysis was performed at a Illinois Department of Public Health Laboratory, or if the provider has confirmation from the Department that the clinical laboratory where specimens are processed electronically reports all blood lead level results to the Department in accordance with Section C this rule.
C. Directors of clinical laboratories who have performed an analysis or test to determine the level of lead in a Chicago Resident's blood are required to report the results of such test to the Department in a manner and timeframe as defined in these rules.
D. All test results greater than or equal to forty-five (45) micrograms of lead per deciliter of whole blood shall be reported immediately (no more than three hours after receipt) by telephone or facsimile to the Department.
E. All test results greater than or equal to ten (10) but less than forty five (45) micrograms of lead per deciliter of whole blood shall be reported to the Department within forty-eight (48) hours after receipt of verification of said results.

F. All test results less than ten (10) micrograms of lead per deciliter of whole blood shall be reported to the Department within thirty (30) days after receipt of verification of said results.
G. With the exception of urgent results reported under part D of this Section, Directors of clinical laboratories shall report test results in an electronic format readable by the Department. Results rejected by the Department as incomplete or unreadable shall not be considered as having been reported.
H. With the exception of urgent results reported under part D of this Section, Physicians or other health care providers may report test results in an electronic format readable by the Department, or by written report delivered by facsimile or by mail. Results rejected by the Department as incomplete or unreadable shall not be considered as having been reported.
I. The information included in the report shall include:
    1. The blood lead level result, the sample type, the date the sample was obtained from the patient, the date the analysis was performed, and the date the result was reported to the Department;
    2. The patient's full name, date of birth, sex, race, and ethnicity;
    3. The patient's complete address, including apartment or unit number, and phone number if available;
    4. If the patient is less than 18 years old, the name of his parent or legal guardian;
    5. The name and address of the laboratory which performed the analysis;
    6. The name, address, and license number of the physician or other health care provider who ordered the lead test.

16. Fee Structure

In accordance with Chicago Municipal Code Section 7-4-080, the following fee structure has been established by the Department to cover the cost of providing inspections and plan review and will be collected from persons subject to this regulation:

a. The cost of a lead risk assessment shall be four hundred and fifty dollars ($450) per dwelling unit
b. The cost of a Clearance Test shall be one hundred and fifty dollars ($150) per dwelling unit, but shall be waived on the first clearance inspection needed for a unit if the risk assessment was performed by the Department (if the first clearance fails, the fee shall be charged for subsequent re-inspections)
c. The cost of reviewing and approving mitigation plans shall be twenty five dollars ($25), but shall be waived a single time if the risk assessment was performed by the Department.

17. Modification of Fee Structure

The fee structure established by section 16 may be modified under one or more of the following circumstances:

a. All fees will be waived if the inspection was initiated by the Department (i.e., the inspection was not performed at the Owner's request) AND no Lead Hazards were identified;
b. All fees will be waived for all units in an owner-occupied building if said Owner provides sufficient evidence that his or her family income is less than 80% of the median Family Adjusted Income for Chicago as published by the United States Department of Housing and Urban Development;
c. All fees will be waived when incurred in the process of conducting a Lead Mitigation or Lead Abatement project financed or assisted by a grant or loan program administered in whole or in part by the Department;
d. A fee waiver or reduction in fees was authorized by the Department Commissioner or his or her designee when such waiver or reduction will either improve the public health or when requested by a non-profit or governmental program whose purpose is to abate or mitigate Lead Hazards.

18. Termination of City Contract

In addition to any other penalty or remedy imposed under Chapter 7-4 of the Chicago Municipal Code or these rules and regulations, if any person performing work under any contract with the City of Chicago is found liable for violating any provision of these rules and regulations or their authorizing ordinance, the City may terminate said contract by giving written notice of termination to said person. The contract shall be null and void upon delivery of such notice.

19. Enforcement

Any department of the City of Chicago may take appropriate action to enforce any of the provisions of these rules when a violation of any of the provisions comes to its attention.

III LEAD LAWS OF THE STATE OF ILLINOIS

SUMMARY: ILLINOIS LEAD POISONING PREVENTION ACT and ILLINOIS LEAD POISONING PREVENTION CODE

I. Purpose

The purpose of the Illinois Lead Poisoning Prevention Act and Code is to reduce and prevent the occurrence of lead poisoning in the children of Illinois by:

- Establishing a definition of "lead bearing substance." (410 ILCS 45/2)
- Prohibiting the use or application of a lead bearing substance:
  - in or upon any exposed surface of a dwelling or dwelling unit; or
  - in or around exposed surfaces of structures frequented by children; or
  - in or upon objects used, installed, or located in or upon areas or structures that, in the ordinary course of use, are accessible to or chewable by children; or
  - in or upon any items used by or intended to be chewable by children. (410 ILCS 45/3-5)
- Prohibiting the sale of items and objects containing lead bearing substance. (410 ILCS 45/4 and 45/5)
- Providing for warning statements on certain lead bearing substances. (410 ILCS 45/6)
- Requiring the screening or risk assessment of all children six years of age and under. (410 ILCS 45/6.2)
- Establishing elevated blood lead levels (77 Ill. Adm. Code 845.20) and authorizing the Illinois Department of Public Health (IDPH) to determine high/low risk areas in Illinois. (410 ILCS 45/6.2)
- Enacting a procedure for reporting lead poisoning and for follow-up. (410 ILCS 45/7)
- Establishing a Lead Poisoning Screening, Prevention, and Abatement Fund in the State treasury. (410 ILCS 45/7.2)
- Authorizing the IDPH to enact procedures upon finding of a child with an elevated blood lead level and adopt rules regarding acceptable methods of mitigating lead hazards. (410 ILCS 45/8 and 45/9)

II. Requirements

A. Screening

Children from 6 months through 6 years of age must have their blood lead level tested if they reside in an area determined by the IDPH as "high risk."[1] If they reside in a "low risk" area, they need to be assessed for exposure to risks by a procedure developed by the department. (410 ILCS 45/6.2(a); 77 Ill. Adm. Code 845.55)

[1] All Chicago zip codes are considered high risk. See Appendix B for the Pediatric Lead Poisoning High-Risk ZIP Code Areas.

Medicaid enrolled children must be tested. (77 Ill. Adm. Code 845.55(a))

B. Reporting

IDPH has determined that for purposes of reporting permissible blood lead levels are under 10μg/dL for children under age 16 years and for pregnant or breast-feeding women and less than 25 μg/dL for all others. (77 Ill. Adm. Code 845.20)

Every health care provider who finds a blood lead level in excess of permissible levels shall report the individual's name, address, date of birth, sex, race, test type and date, and name and address of physician and reporting agency to IDPH within 48 hours of confirmation of the elevated blood lead level. All negative results must be reported within 30 days. (77 Ill. Adm. Code 845.60)

C. Inspection of Buildings

1. After an individual is found with an elevated blood lead level, a representative of the IDPH may inspect the dwelling and common areas for lead bearing substances. If the occupant of a residential building or dwelling designated for inspection under the law refuses to allow inspection, an agent of the IDPH may apply for a warrant, which will be issued upon showing that a victim of lead poisoning resides or has recently resided in the building. (410 ILCS 45/8) The inspector must prepare a report of his inspection. If a lead hazard exists, the report must describe the nature of the hazard. (410 ILCS 45/8.1)

2. Inspection of dwellings, buildings, child care facilities to determine source of lead poisoning is <u>required</u> when (77 Ill. Adm. Code 845.85):

- A child has a confirmed blood lead level at or above 20 μg/dL.
- A child has three successive confirmed blook lead levels of 15 -19 μg/dL.
- A child has a single confirmed blood lead level at or above 10 μg/dL and the child's physician requests an investigation.
- A child less than three years of age has a single confirmed blood lead level at or above 10 μg/dL.
- A mitigation notice has been issued for two or more dwelling units in a building within a five year time period (this inspection may include common areas) and
    i. a child under 6 years resides and the parent or guardian has requested the inspection <u>or</u>
    ii. a pregnant woman resides and has requested the inspection

3. Inspection of a dwelling consists at least of:

- An interview with the owner or occupant about activities that might result in lead poisoning. (77 Ill. Adm. Code 845.85(a)(2))
- A visual assessment of conditions of the dwelling. (77 Ill. Adm. Code 845.85(a)(2))

- Environmental sampling of deteriorating paint and dust. (77 Ill. Adm. Code 845.85(a)(2))
- An investigation report sent to the owner and the occupant. If lead substances are found, the report shall describe the source, nature, and location of the hazard. (77 Ill. Adm. Code 845.85(a)(5))

III. Procedure upon determination of lead hazard

A. Mitigation and Abatement

Mitigation is the remediation of lead hazards so that the lead bearing substance no longer poses an immediate threat to people's health. Abatement is the removal or encapsulation of all lead-bearing substances in a residential building or dwelling unit. (410 ILCS 45/2)

1. If the inspector identifies a lead hazard, the IDPH serves a mitigation notice on the owner, describing the activities required and setting a time period in which the owner must mitigate the hazard. (410 ILCS 45/9)

    3. The owner must mitigate within 30 days of receiving the mitigation notice if the premises were inspected because a child or pregnant woman tested with an elevated blood lead level or a child less than 6 years old or pregnant woman resides there. All other mitigation must be within 90 days of receiving the mitigation notice. (77 Ill. Adm. Code 845.85(a)(5)(E))
    4. The owner may apply to the Department for an extension of the deadline. (77 Ill. Adm. Code 845.85(a)(5)(F))

2. If, after inspecting mitigation efforts, the IDPH finds that the mitigation requirements have been satisfied, the owner is provided with a certificate of compliance. (77 Ill. Adm. Code 845.85(a)(5)(G)).

3. Lead paint or other coating is considered mitigated if there are no hazardous levels of leaded chips, flakes, or dust that can be inhaled by humans. If leaded surface is accessible to children, the coating must be removed, covered, or otherwise treated to prevent the accessibility to children. (410 ILCS 45/9 (2))

4. If the IDPH finds that the lead hazard for which the mitigation notice was issued is *not* mitigated, the Department may issue a deficiency notice indicating specific actions the owner must take to comply. This may include abatement. (77 Ill. Adm. Code 845.85(a)(5)(G)).

5. All mitigation and abatement activities shall be done in a way that will not endanger the occupants, including work area isolation, preparation and containment, safe work practices, and safe removal of all potentially harmful materials (410 ILCS 45/11) (77 Ill. Adm. Code 845.265(a))

a. To ensure the health and safety of occupants and workers, a Work Practice and Occupant Protection Plan shall be produced by a licensed lead supervisor and followed for each project. The plan shall include, among other things, the requirements for pre-cleaning, specification of the barriers and containment systems, and description of the lead safe work practices to be used. (77 Ill. Adm. Code 845.255(a))
b. The lead abatement contractor shall display caution signs outside all entrances and exits to each work area before beginning work and keep the signs posted until the abatement or mitigation is completed and final dust clearance results have been obtained. (77 Ill. Adm. Code 845.255(b))
c. Unauthorized persons are not permitted to enter the work area. The contractor shall ensure that occupants and pets use alternative entrances and exits. (77 Ill. Adm. Code 845.265(d)(2))
d. The following work practices are prohibited for any lead abatement or mitigation activities: open flame burning, dry sanding, open abrasive blasting, uncontained hydro-blasting, methylene chloride, and dry scraping. (77 Ill. Adm. Code 845.270)

B. Owner's obligation to post notice

The owner of a dwelling unit of a residential building who has received a mitigation notice shall post notices in common areas of the building specifying the following information (410 ILCS 45/9.4)

- that a unit(s) have been found to have lead hazards
- the identified lead hazards
- that other units in the building may have lead hazards
- that the Department recommends that children 6 years of age or younger receive a blood screening
- where to see further information
- whether mitigation notices have been issued for 2 or more dwelling units within a 5-year period

A. Multiple mitigation notices

When mitigation notices are issued for 2 or more dwelling units in a building within a 5 year period, the Department may inspect common areas in the building and shall inspect units where (i) children under the age of 6 reside, at the request of the child's parent or guarding or (ii) a pregnant woman resides, at the pregnant woman's request. (410 ILCS 45/9.2)

E. Financial assistance for mitigation

Whenever a mitigation notice is issued pursuant to section 9 or 9.2 of the Act, the Department shall make the owner aware of any financial assistance programs that may be available for lead mitigation. (410 ILCS 45/9.3)

F. Notice to Prospective Lessees (410 ILCS 45/9.1)

The owner must provide a prospective lessee with a copy of the written notice that a lead hazard has been identified in the dwelling unit unless there was a certificate of compliance issued.

All owners of buildings built prior to 1978 are required to give prospective lessees a copy of the brochure prepared by the department that informs of the potential health hazards posed by lead in residential dwellings.

G. Training and Licensing of Lead Contractors and Inspectors

IDPH is required to establish standards for education and training to license lead inspectors. Performing inspections without a license is a Class A misdemeanor. (410 ILCS 45/8.1 (a))

Pursuant to Section 11.1 of the Illinois Lead Poisoning Prevention Act, the IDPH establishes guidelines for training and licensing lead abatement workers and certification and approval of such training programs by the Department. Training and licensing requirements are set out in Subpart C of the Illinois Lead Poisoning Prevention Code, Sections 845.100 – 845.140.

H. Authority given to the IDPH

The IDPH may adopt any rules necessary to implement the Lead Poisoning Prevention Act. (410 ILCS 45/13)

IV. Violations/Failure to Comply

A. Reports to the State's Attorney

Any violations of this Act must be reported to the State's Attorney of the county within which the dwelling is located, and the State's Attorney may charge the owner with a class A Misdemeanor. The State's Attorney shall ensure that rent is withheld until mitigation is complete. An occupant cannot be evicted because of an elevated blood lead level or suspected lead poisoning, or because rent is withheld or the occupant acts to enforce this Act. (410 ILCS 45/10)

B. Enforcement

The State's Attorney or Attorney General may bring an action to enforce this Act and its adopted rules. In addition, the State's Attorney or Attorney General may bring an action for a temporary restraining order, a preliminary injunction or an injunction. (410 ILCS 45/12)

C. Penalties

1. Violations of the Act, other than a violation under Section 7 (regarding health care reporting of lead poisoning) and Section 6.01 (regarding warning statements where supplies are sold), shall be punishable as a Class A misdemeanor.

2. In addition to any other penalty, the court may impose a civil penalty not exceeding $2500 for each violation plus $250 for each day that a violation continues for failure to comply with a notice of deficiency and a mitigation order issued under subsection 7 of Section 9 of the Act. (410 ILCS 45/12)

3. If the owner does not act within the stated time, local health officials and building officials may use community resources to relocate occupants. (410 ILCS 45/10)

4. The IDPH may deny, suspend, or revoke a contractor or worker's license for failure to comply. (410 ILCS 45/11.2)

IV. Case Law

In an action against a landlord for damages caused by the plaintiff minor's exposure to lead, the Illinois Supreme Court held that there is no strict liability private cause of action under the Illinois Lead Poisoning Prevention Act. A common law negligence action allowed adequate remedy. However, violation of the Act can be used as prima facie evidence of negligence. Abassi v. Paraskevoulakos 718 N.E.2d 181 (Ill. 1999). (See Appendix I)

STATE OF ILLINOIS
LEAD POISONING PREVENTION ACT
410 ILCS 45

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 410. Public Health
Health Prevention and Protection
Act 45. Lead Poisoning Prevention Act (Refs & Annos)
45/1. Short title

§ 1. Short title. This Act may be cited as the Lead Poisoning Prevention Act.

45/2. Definitions

§ 2. Definitions. As used in this Act:

"Abatement" means the removal or encapsulation of all leadbearing substances in a residential building or dwelling unit.

"Child care facility" means any structure used by a child care provider licensed by the Department of Children and Family Services or public school structure frequented by children through 6 years of age.

"Delegate agency" means a unit of local government or health department approved by the Department to carry out the provisions of this Act.

"Department" means the Department of Public Health of the State of Illinois.

"Dwelling" means any structure all or part of which is designed or used for human habitation.

"High risk area" means an area in the State determined by the Department to be high risk for lead exposure for children through 6 years of age. The Department shall consider, but not be limited to, the following factors to determine a high risk area: age and condition (using Department of Housing and Urban Development definitions of "slum" and "blighted") of housing, proximity to highway traffic or heavy local traffic or both, percentage of housing determined as rental or vacant, proximity to industry using lead, established incidence of elevated blood lead levels in children, percentage of population living below 200% of federal poverty guidelines, and number of children residing in the area who are 6 years of age or younger.

"Exposed surface" means any interior or exterior surface of a dwelling or residential building.

"Lead abatement contractor" means any person or entity licensed by the Department to perform lead abatement and mitigation.

"Lead abatement worker" means any person employed by a lead abatement contractor and licensed by the Department to perform lead abatement and mitigation.

"Lead bearing substance" means any item containing or coated with lead such that the lead content is more than six-hundredths of one percent (0.06%) lead by total weight; or any dust on surfaces or in furniture or other nonpermanent elements of the dwelling; or any paint or other surface coating material containing more than five-tenths of one percent (0.5%) lead by total weight (calculated as lead metal) in the total non-volatile content of liquid paint; or lead bearing substances containing greater than one milligram per square centimeter or any lower standard for lead content in residential paint as may be established by federal law or regulation; or more than 1 milligram per square centimeter in the dried film of paint or previously applied substance; or item or dust on item containing lead in excess of the amount specified in the rules and regulations authorized by this Act or a lower standard for lead content as may be established by federal law or regulation. "Lead bearing substance" does not include firearm ammunition or components as defined by the Firearm Owners Identification Card Act.

"Lead hazard" means a lead bearing substance that poses an immediate health hazard to humans.

"Lead poisoning" means the condition of having blood lead levels in excess of those considered safe under State and federal rules and regulations.

"Low risk area" means an area in the State determined by the Department to be low risk for lead exposure for children through 6 years of age. The Department shall consider the factors named in "high risk area" to determine low risk areas.

"Mitigation" means the remediation, in a manner described in Section 9, of a lead hazard so that the lead bearing substance does not pose an immediate health hazard to humans.

"Owner" means any person, who alone, jointly, or severally with others:

(a) Has legal title to any dwelling or residential building, with or without accompanying actual possession of the dwelling or residential building, or

(b) Has charge, care or control of the dwelling or residential building as owner or agent of the owner, or as executor, administrator, trustee, or guardian of the estate of the owner.

"Person" means any one or more natural persons, legal entities, governmental bodies, or any combination.

"Residential building" means any room, group of rooms, or other interior areas of a structure designed or used for human habitation; common areas accessible by inhabitants; and the surrounding property or structures.

"Risk assessment" means a questionnaire to be developed by the Department for use by physicians and other health care providers to determine risk factors for children through 6 years of age residing in areas designated as low risk for lead exposure.

45/3. Lead bearing substance use

§ 3. Lead bearing substance use. No person shall use or apply lead bearing substances:

(a) In or upon any exposed surface of a dwelling or dwelling unit;

(b) In or around the exposed surfaces of a child care facility or other structure frequented by children;

(c) In or upon any fixtures or other objects used, installed, or located in or upon any exposed surface of a dwelling or residential building, or child care facility, or intended to be so used, installed, or located and that, in the ordinary course of use, are accessible to or chewable by children;

(d) In or upon any items, including, but not limited to, clothing, accessories, jewelry, decorative objects, edible items, candy, food, dietary supplements, toys, furniture, or other articles used by or intended to be chewable by children;

(e) Within or upon a residential building or dwelling, child care facility, school, playground, park, or recreational area, or other areas regularly frequented by children.

45/4. Sale of items containing lead bearing substance

§ 4. Sale of items containing lead bearing substance. No person shall sell, have, offer for sale, or transfer toys, furniture, clothing, accessories, jewelry, decorative objects, edible items, candy, food, dietary supplements, or other articles used by or intended to be chewable by children that contains a lead bearing substance.

45/5. Sale of objects containing lead bearing substance

§ 5. Sale of objects containing lead bearing substance. No person shall sell or transfer or offer for sale or transfer any fixtures or other objects intended to be used, installed, or located in or upon any surface of a dwelling or residential building, or child care facility, that contains a lead bearing substance and that, in the ordinary course of use, are accessible to or chewable by children.

45/6. Warning statement

§ 6. Warning statement. No person, firm, or corporation shall have, offer for sale, sell, or give away any lead bearing substance that may be used by the general public unless it bears the warning statement as prescribed by federal regulation. If no regulation is prescribed the warning statement shall be as follows when the lead bearing substance is a lead-based paint or surface coating: "WARNING--CONTAINS LEAD. DRIED FILM OF THIS SUBSTANCE MAY BE HARMFUL IF EATEN OR CHEWED. See Other Cautions on (Side or Back) Panel. Do not apply on toys, or other children's articles, furniture, or interior, or exterior exposed surfaces of any residential building or facility that may be occupied or used by children. KEEP OUT OF THE REACH OF CHILDREN.". If no regulation is prescribed the warning statement shall be as follows when the lead bearing substance contains lead-based paint or a form of lead other than lead-based paint: "WARNING CONTAINS LEAD. MAY BE HARMFUL IF EATEN OR CHEWED. MAY GENERATE DUST CONTAINING LEAD. KEEP OUT OF THE REACH OF CHILDREN.".

(a) The generic term of a product, such as "paint" may be substituted for the word "substance" in the above labeling.

(b) The placement, conspicuousness, and contrast of the above labeling shall be in accordance with 16 C.F.R. 1500.121.

45/6.01. Warning statement where supplies sold

§ 6.01. Warning statement where supplies sold.

(a) Any retailer, store, or commercial establishment that offers paint or other supplies intended for the removal of paint shall display, in a prominent and easily visible location, a poster containing, at a minimum, the following:

(1) a statement that dry sanding and dry scraping of paint in dwellings built before 1978 is dangerous;

(2) a statement that the improper removal of old paint is a significant source of lead dust and the primary cause of lead poisoning; and

(3) contact information where consumers can obtain more information.

(b) The Department shall provide sample posters and brochures that commercial establishments may use. The Department shall make these posters and brochures available in hard copy and via download from the Department's Internet website.

(c) A commercial establishment shall be deemed to be in compliance with this Section if the commercial establishment displays lead poisoning prevention posters or provides brochures to its customers that meet the minimum requirements of this Section but come from a source other than the Department.

45/6.1. Removal of leaded soil

§ 6.1. Removal of leaded soil. The Department shall, in consultation with the IEPA, specify safety guidelines for workers undertaking removal or covering of leaded soil. Soil inspection requirements shall apply to inspection of residential buildings or child care facilities subject to the requirements of this Section.

45/6.2. Physicians to screen children

§ 6.2. Physicians to screen children.

(a) Every physician licensed to practice medicine in all its branches or health care provider shall screen children 6 months through 6 years of age for lead poisoning who are determined to reside in an area defined as high risk by the Department. Children residing in areas defined as low risk by the Department shall be assessed for risk by a risk assessment procedure developed by the Department. Children shall be screened, in accordance with guidelines and criteria set forth by the American Academy of Pediatrics, at the priority intervals and using the methods specified in the guidelines.

(b) Each licensed, registered, or approved health care facility serving children from 6 months through 6 years of age, including but not limited to, health departments, hospitals, clinics, and health maintenance organizations approved, registered, or licensed by the Department, shall take the appropriate steps to ensure that the patients receive lead poisoning screening, where medically indicated or appropriate.

(c) Children 6 years and older may also be screened by physicians or health care providers, in accordance with guidelines and criteria set forth by the American Academy of Pediatrics, according to the priority intervals specified in the guidelines. Physicians and health care providers shall also screen children for lead poisoning in conjunction with the school health examination, as required under the School Code, [FN1] when, in the medical judgement of the physician, advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the advance practice nurse to perform health examinations, or physician assistant who has been delegated to perform health examinations by the supervising physician, the child is potentially at high risk of lead poisoning.

(d) Nothing in this Section shall be construed to require any child to undergo a lead blood level screening or test whose parent or guardian objects on the grounds that the screening or test conflicts with his or her religious beliefs.

[FN1]105 ILCS 5/1-1 et seq.

45/6.3. Information provided by the Department of Healthcare and Family Services

§ 6.3. Information provided by the Department of Healthcare and Family Services.

(a) The Director of Healthcare and Family Services shall provide, upon request of the Director of Public Health, an electronic record of all children less than 7 years of age who receive Medicaid, Kidcare, or other health care benefits from the Department of Healthcare and Family Services. The records shall include a history of claims filed for each child and the health care provider who rendered the services. On at least an annual basis, the Director of Public Health shall match the records provided by the Department of Healthcare and Family Services with the records of children receiving lead tests, as reported to the Department under Section 7 of this Act.

(b) The Director shall prepare a report documenting the frequency of lead testing and elevated blood and lead levels among children receiving benefits from the Department of Healthcare and Family Services. On at least an annual basis, the Director shall prepare and deliver a report to each health care provider who has rendered services to children receiving benefits from the Department of Healthcare and Family Services. The report shall contain the aggregate number of children receiving benefits from the Department of Healthcare and Family Services to whom the provider has provided services, the number and percentage of children tested for lead poisoning, and the number and percentage of children having an elevated lead level. The Department of Public Health may exclude health care providers who provide specialized or emergency medical care and who are unlikely to be the primary medical care provider for a child. Upon the request of a provider, the Department of Public Health may generate a list of individual patients treated by that provider according to the claims records and the patients' lead test results.

45/7. Reports of lead poisoning required

§ 7. Reports of lead poisoning required. Every physician who diagnoses, or a nurse, hospital administrator or public health officer who has verified information of the existence of any person found or suspected to have a level of lead in the blood in excess of the permissible limits set forth in regulations adopted by the Department, within 48 hours of receipt of verification, shall report to the Department the name, address, laboratory results, date of birth, and any other information about the person deemed essential by the Department. Directors of clinical laboratories must report to the Department, within 48 hours of receipt of verification, positive results of all blood lead analyses performed in their facility. The information included in the clinical laboratories report shall include, but not be limited to, the child's name, address, date of birth, name of physician ordering analysis, and specimen type. All negative results must be reported to the Department in accordance with rules adopted by the Department. These rules shall not require reporting in less than 30 days after the end of the month in which the negative results are obtained. All reports shall be treated in the same manner as information subject to the provisions of Part 21 of Article VIII of the Code of Civil Procedure. [FN1] Any physician, nurse, hospital administrator, director of a clinical laboratory, public health officer, or allied health professional making a report in good faith shall be immune from any civil or criminal liability that otherwise might be incurred from the making of a report.

[FN1]735 ILCS 5/8-2101 et seq.

45/7.1. Child care facilities must require lead blood level screening for admission

§ 7.1. Child care facilities must require lead blood level screening for admission. By January 1, 1993, each day care center, day care home, preschool, nursery school, kindergarten, or other child care facility, licensed or approved by the State, including such programs operated by a public school district, shall include a requirement that each parent or legal guardian of a child between the ages of 6 months through 6 years provide a statement from a physician or health care provider that the child has been risk assessed, as provided in Section 6.2, if the child resides in an area defined as low risk by the Department, or screened for lead poisoning as provided for in Section 6.2, if the child resides in an area defined as high risk. This statement shall be provided prior to admission and subsequently in conjunction with required physical examinations.

Nothing in this Section shall be construed to require any child to undergo a lead blood level screening or test whose parent or guardian objects on the grounds that the screening or test conflicts with his or her religious beliefs.

Child care facilities that participate in the Illinois Child Care Assistance Program (CCAP) shall annually send or deliver to the parents or guardians of children enrolled in the facility's care an informational pamphlet regarding awareness of lead paint poisoning. Pamphlets shall be produced and made available by the Department and shall be downloadable from the Department's Internet website. The Department of Human Services and the Department of Public Health shall assist in the distribution of the pamphlet.

45/7.2. Laboratory fees for blood lead screening; Lead Poisoning Fund

§ 7.2. Laboratory fees for blood lead screening; Lead Poisoning Fund.

(a) The Department may establish fees according to a reasonable fee structure to cover the cost of providing a testing service for laboratory analysis of blood lead tests and any necessary follow-up. Fees collected from the Department's testing service shall be placed in a special fund in the State treasury known as the Lead Poisoning Screening, Prevention, and Abatement Fund. Other State and federal funds for expenses related to lead poisoning screening, follow-up, treatment, and abatement programs may also be placed in the Fund. Moneys shall be appropriated from the Fund to the Department of Public Health solely for the purposes of providing lead screening, follow-up, and treatment programs.

(b) Any delegate agency may establish fees, according to a reasonable fee structure, to cover the costs of drawing blood for blood lead screening and any necessary follow-up.

45/8. Inspection of buildings occupied by a person screening positive

§ 8. Inspection of buildings occupied by a person screening positive. A representative of the Department, or delegate agency, may, after notification that an occupant of the dwelling unit in question is found to have a blood lead value of the value set forth in Section 7, upon presentation of the appropriate credentials to the owner, occupant, or his representative, inspect dwelling or dwelling units, at reasonable times, for the purposes of ascertaining that all surfaces accessible to children are intact and in good repair, and for purposes of ascertaining the existence of lead bearing substances. Such representative of the Department, or delegate agency, may remove samples or objects necessary for laboratory analysis, in the determination of the presence of lead-bearing substances in the designated dwelling or dwelling unit.

If a building is occupied by a child of less than 3 years of age screening positive, the Department, in addition to all other requirements of this Section, must inspect the dwelling unit and common place area of the child screening positive.

Following the inspection, the Department or its delegate agency shall:

(1) Prepare an inspection report which shall:

(A) State the address of the dwelling unit.

(B) Describe the scope of the inspection, the inspection procedures used, and the method of ascertaining the existence of a lead bearing substance in the dwelling unit.

(C) State whether any lead bearing substances were found in the dwelling unit.

(D) Describe the nature, extent, and location of any lead bearing substance that is found.

(E) State either that a lead hazard does exist or that a lead hazard does not exist. If a lead hazard does exist, the report shall describe the source, nature and location of the lead hazard. The existence of intact lead paint does not alone constitute a lead hazard for the purposes of this Section.

(F) Give the name of the person who conducted the inspection and the person to contact for further information regarding the inspection and the requirements of this Act.

(2) Mail or otherwise provide a copy of the inspection report to the property owner and to the occupants of the dwelling unit. If a lead bearing substance is found, at the time of providing a copy of the inspection report, the Department or its delegate agency shall attach an informational brochure.

45/8.1. Licensing of lead inspectors

§ 8.1. Licensing of lead inspectors.

(a) By January 1, 1994, the Department shall establish standards and licensing procedures for lead inspectors. An integral element of these procedures shall be an education and training program prescribed by the Department which shall include but not be limited to scientific sampling, chemistry, and construction techniques. No person shall make inspections without first being licensed by the Department. The penalty for inspection without a license shall be a Class A misdemeanor.

(b) The Department shall charge licensed inspectors reasonable license fees and the fees shall be placed in the Lead Poisoning Screening, Prevention, and Abatement Fund and used to fund the Department's licensing of inspectors and any other activities prescribed by this Act. An inspector employed by the Department or its delegate agency shall not be charged a license fee.

45/8.2. Warrant procedures

§ 8.2. Warrant procedures. If the occupant of a residential building or dwelling designated for inspection under Section 8 refuses to allow inspection, an agent of the Department or of the Department's delegate agency may apply for a search warrant to permit entry. A court may issue a warrant upon a showing that a victim of lead poisoning resides or has recently resided in the residential building. The findings of the inspection shall be reported to the Department and to the appropriate enforcement authorities established in this Act.

45/9. Procedures upon determination of lead hazard

§ 9. Procedures upon determination of lead hazard.

(1) If the inspection report identifies a lead hazard, the Department or delegate agency shall serve a mitigation notice on the property owner that the owner is required to mitigate the lead hazard, and shall indicate the time period specified in this Section in which the owner must complete the mitigation. The notice shall include information describing mitigation activities which meet the requirements of this Act.

(2) If the inspection report identifies a lead hazard, the owner shall mitigate the lead hazard in a manner prescribed by the Department and within the time limit prescribed by this Section. The Department shall adopt rules regarding acceptable methods of mitigating a lead hazard. If the source of the lead hazard identified in the inspection report is lead paint or any other leaded surface coating, the lead hazard shall be deemed to have been mitigated if:

(A) The surface identified as the source of the hazard is no longer in a condition that produces a hazardous level of leaded chips, flakes, dust or any other form of leaded substance, that can be ingested or inhaled by humans, or;

(B) If the surface identified as the source of the hazard is accessible to children and could reasonably be chewed on by children, the surface coating is either removed or covered, the surface is removed, or the access to the leaded surface by children is otherwise prevented as prescribed by the Department.

(3) Mitigation activities which involve the destruction or disturbance of any leaded surface shall be conducted by a licensed lead abatement contractor using licensed lead abatement workers. The Department may prescribe by

rule mitigation activities that may be performed without a licensed contractor or worker. The Department may, on a case by case basis, grant a waiver of the requirement to use licensed lead abatement contractors and workers, provided the waiver does not endanger the health or safety of humans.

(4) The Department shall establish procedures whereby an owner, after receiving a mitigation notice under this Section, may submit a mitigation plan to the Department or delegate agency for review and approval.

(5) When a mitigation notice is issued for a dwelling unit inspected as a result of an elevated blood lead level in a pregnant woman or a child, or if the dwelling unit is occupied by a child under 6 years of age or a pregnant woman, the owner shall mitigate the hazard within 30 days of receiving the notice; otherwise, the owner shall complete the mitigation within 90 days.

(6) An owner may apply to the Department or its delegate agency for an extension of the deadline for mitigation. If the Department or its delegate agency determines that the owner is making substantial progress toward mitigation, or that the failure to meet the deadline is the result of a shortage of licensed abatement contractors or workers, or that the failure to meet the deadline is because the owner is awaiting the review and approval of a mitigation plan, the Department or delegate agency may grant an extension of the deadline.

(7) The Department or its delegate agency may, after the deadline set for completion of mitigation, conduct a follow-up inspection of any dwelling for which a mitigation notice was issued for the purpose of determining whether the mitigation actions required have been completed and whether the activities have sufficiently mitigated the lead hazard as provided under this Section. The Department or its delegate agency may conduct a follow-up inspection upon the request of an owner or resident. If, upon completing the follow-up inspection, the Department or its delegate agency finds that the lead hazard for which the mitigation notice was issued is not mitigated, the Department or its delegate agency shall serve the owner with notice of the deficiency and a mitigation order. The order shall indicate the specific actions the owner must take to comply with the mitigation requirements of this Act, which may include abatement if abatement is the sole means by which the lead hazard can be mitigated. The order shall also include the date by which the mitigation shall be completed. If, upon completing the follow-up inspection, the Department or delegate agency finds that the mitigation requirements of this Act have been satisfied, the Department or delegate agency shall provide the owner with a certificate of compliance stating that the required mitigation has been accomplished.

45/9.1. Owner's obligation to give notice

§ 9.1. Owner's obligation to give notice. An owner of a dwelling unit or residential building who has received a mitigation notice under Section 9 of this Act shall, before entering into a lease agreement for the dwelling unit for which the mitigation notice was issued, provide prospective lessees of that unit with written notice that a lead hazard has previously been identified in the dwelling unit, unless the owner has obtained a certificate of compliance for the unit under Section 9. An owner may satisfy this notice requirement by providing the prospective lessee with a copy of the inspection report prepared pursuant to Section 9.

Before entering into a residential lease agreement, all owners of residential buildings or dwelling units built before 1978 shall give prospective lessees information on the potential health hazards posed by lead in residential dwellings by providing the prospective lessee with a copy of an informational brochure prepared by the Department. Within one year of the effective date of this amendatory Act of 1992, owners of residential buildings or dwelling units built before 1978 shall provide current lessees with such brochure.

45/9.2. Multiple mitigation notices

§ 9.2. Multiple mitigation notices. When mitigation notices are issued for 2 or more dwelling units in a building within a 5-year time period, the Department may inspect common areas in the building and shall inspect units where (i) children under the age of 6 reside, at the request of a parent or guardian of the child or (ii) a pregnant

woman resides, at the pregnant woman's request. All lead hazards must be mitigated in a reasonable time frame, as determined by rules adopted by the Department. In determining the time frame for completion of mitigation of hazards identified under this Section, the Department shall consider, in addition to the considerations in subsection (6) of Section 9 of this Act, the owner's financial ability to complete the mitigation.

45/9.3. Financial assistance for mitigation

§ 9.3. Financial assistance for mitigation. Whenever a mitigation notice is issued pursuant to Section 9 or Section 9.2 of this Act, the Department shall make the owner aware of any financial assistance programs that may be available for lead mitigation through the federal, State, or local government or a not-for-profit organization.

45/9.4. Owner's obligation to post notice

§ 9.4. Owner's obligation to post notice. The owner of a dwelling unit or residential building who has received a mitigation notice under Section 9 of this Act shall post notices in common areas of the building specifying the identified lead hazards. The posted notices, drafted by the Department and sent to the property owner with the notification of lead hazards, shall indicate the following:

(1) that a unit or units in the building have been found to have lead hazards;

(2) that other units in the building may have lead hazards;

(3) that the Department recommends that children 6 years of age or younger receive a blood lead screening;

(4) where to seek further information; and

(5) whether mitigation notices have been issued for 2 or more dwelling units within a 5-year period of time.

Once the owner has complied with a mitigation notice or mitigation order issued by the Department, the owner may remove the notices posted pursuant to this Section.

45/10. Report of violations; withholding rent; eviction; relocation

§ 10. The Department, or representative of a unit of local government or health department approved by the Department for this purpose, shall report any violation of this Act to the State's Attorney of the county in which the dwelling is located, who has then the authority to charge the owner with Class A misdemeanor, and who shall take additional measures to insure that rent is withheld from the owner by the occupants of the dwelling or dwelling units affected, until the mitigation requirements under Section 9 of this Act are complied with.

No tenant shall be evicted because an individual with an elevated blood lead level or with suspected lead poisoning resides in the dwelling unit, or because rent is withheld under the provisions of this Act, or because of any action required of the dwelling owner as a result of enforcement of this Act.

In cases where no action is taken which will result in the remedy of the hazard created by the lead-bearing substances within the stated time period, the local health officer and the local building officials may as practical utilize such community resources as are available to effect the relocation of the individuals who occupied the dwelling or dwelling unit affected until the remedy is made by the owner.

45/11. Manner of mitigation of lead hazards

§ 11. Manner of mitigation of lead hazards. All mitigation shall be accomplished in a manner which will not endanger the health or well-being of residential building or dwelling unit occupants, and will result in the safe removal from the premises, and the safe disposition, of flakes, chips, debris, dust, and other potentially harmful materials.

45/11.05. Advisory Council

§ 11.05. Advisory Council.

(a) The General Assembly finds the following:

(1) Lead-based paint poisoning is a potentially devastating but preventable disease and is the number one environmental threat to children's health in the United States.

(2) The number of lead-poisoned children in Illinois is among the highest in the nation, especially in older, affordable properties.

(3) Lead poisoning causes irreversible damage to the development of a child's nervous system. Even at low and moderate levels, lead poisoning causes learning disabilities, speech problems, shortened attention span, hyperactivity, and behavioral problems. Recent research links high levels of lead exposure to lower IQ scores and to juvenile delinquency.

(4) Older housing is the number one risk factor for childhood lead poisoning. Properties built before 1950 are statistically much more likely to contain lead-based paint hazards than buildings constructed more recently.

(5) Illinois ranks 10th out of the 50 states in the age of its housing stock. More than 50% of the housing units in Chicago and in Rock Island, Peoria, Macon, Madison, and Kankakee counties were built before 1960 and more than 43% of the housing units in St. Clair, Winnebago, Sangamon, Kane, and Cook counties were built before 1950.

(6) There are nearly 1.4 million households with lead-based paint hazards in Illinois.

(7) Most children are lead-poisoned in their own homes through exposure to lead dust from deteriorated lead-paint surfaces, like windows, and when lead paint deteriorates or is disturbed through home renovation and repainting.

(8) The control of lead hazards significantly reduces lead poisoning rates. Other communities, including New York City and Milwaukee, have successfully reduced lead poisoning rates by removing lead-based paint hazards on windows.

(9) Windows are considered a higher lead exposure risk more often than other components in a housing unit. Windows are a major contributor of lead dust in the home, due to both weathering conditions and friction effects on paint.

(10) There is an insufficient pool of licensed lead abatement workers and contractors to address the problem in some areas of the State.

(11) Training, insurance, and licensing costs for lead removal workers are prohibitively high.

(12) Through grants from the United States Department of Housing and Urban Development, some communities in Illinois have begun to reduce lead poisoning of children. While this is an ongoing effort, it addresses only a

small number of the low-income children statewide in communities with high levels of lead paint in the housing stock.

(b) For purposes of this Section:

"Advisory Council" means the Lead-Safe Housing Advisory Council created under subsection (c).

"Lead-Safe Housing Maintenance Standards" or "Standards" means standards developed by the Advisory Council pursuant to this Section.

"Low-income" means a household at or below 80% of the median income level for a given county as determined annually by the United States Department of Housing and Urban Development.

"Primary prevention" means removing lead hazards before a child is poisoned rather than relying on identification of a lead poisoned child as the triggering event.

(c) The Lead-Safe Housing Advisory Council is created to advise the Department on lead poisoning prevention activities. The Advisory Council shall be chaired by the Director or his or her designee and the chair of the Illinois Lead Safe Housing Task Force and provided with administrative support by the Department. The Advisory Council shall be comprised of (i) the directors, or their designees, of the Illinois Housing Development Authority and the Environmental Protection Agency; and (ii) the directors, or their designees, of public health departments of counties identified by the Department that contain communities with a concentration of high-risk, lead-contaminated properties.

The Advisory Council shall also include the following members appointed by the Governor:

(1) One representative from the Illinois Association of Realtors.

(2) One representative from the insurance industry.

(3) Two pediatricians or other physicians with knowledge of lead-paint poisoning.

(4) Two representatives from the private-sector, lead-based-paint-abatement industry who are licensed in Illinois as an abatement contractor, worker, or risk assessor.

(5) Two representatives from community based organizations in communities with a concentration of high risk lead contaminated properties. High-risk communities shall be identified based upon the prevalence of low-income families whose children are lead poisoned and the age of the housing stock.

(6) At least 3 lead-safe housing advocates, including (i) the parent of a lead-poisoned child, (ii) a representative from a child advocacy organization, and (iii) a representative from a tenant housing organization.

(7) One representative from the Illinois paint and coatings industry.

Within 9 months after its formation, the Advisory Council shall submit a written report to the Governor and the General Assembly on:

(1) developing a primary prevention program for addressing lead poisoning;

(2) developing a sufficient pool of lead abatement workers and contractors;

(3) targeting blood lead screening to children residing in high-risk buildings and neighborhoods;

(4) ensuring lead-safe work practices in all remodeling, rehabilitation, and weatherization work;

(5) funding mechanisms to assist residential property owners in costs of lead abatement and mitigation;

(6) providing insurance subsidies to licensed lead abatement contractors who target their work to high-risk communities; and

(7) developing any necessary legislation or rulemaking to improve the effectiveness of State and local programs in lead abatement and other prevention and control activities.

The Advisory Council shall develop handbooks and training for property owners and tenants explaining the Standards and State and federal requirements for lead-safe housing.

The Advisory Council shall meet at least quarterly. Its members shall receive no compensation for their services, but their reasonable travel expenses actually incurred shall be reimbursed by the Department.

45/11.1. Licensing of lead abatement contractors and workers

§ 11.1. Licensing of lead abatement contractors and workers. Except as otherwise provided in this Act, performing lead abatement or mitigation without a license is a Class A misdemeanor. The Department shall provide by rule for the licensing of lead abatement contractors and lead abatement workers and shall establish standards and procedures for the licensure. The Department may collect a reasonable fee for the licenses. The fees shall be deposited into the Lead Poisoning Screening, Prevention, and Abatement Fund and used by the Department for the costs of licensing lead abatement contractors and workers and other activities prescribed by this Act.

The Department shall promote and encourage minorities and females and minority and female owned entities to apply for licensure under this Act as either licensed lead abatement workers or licensed lead abatement contractors.

The Department may adopt any rules necessary to ensure proper implementation and administration of this Act and of the federal Toxic Substances Control Act, 15 USC 2682 and 2684, and the regulations promulgated thereunder: Lead; Requirements for Lead-Based Paint Activities (40 CFR 745). The application of this Section shall not be limited to the activities taken in regard to lead poisoned children and shall include all activities related to lead abatement, mitigation and training.

45/11.2. Administrative action

§ 11.2. Administrative action. Pursuant to the Illinois Administrative Procedure Act [FN1] and rules promulgated thereunder, the Department may deny, suspend, or revoke any license if the Department finds failure or refusal to comply with provisions of this Act or rules promulgated pursuant to the Act.

The Department may assess civil penalties against any licensed lead worker, licensed lead professional, licensed lead contractor, or approved lead training provider for violations of this Act and the rules promulgated hereunder, pursuant to rules for penalties established by the Department. Any penalties collected shall be deposited into the Lead Poisoning Screening, Prevention, and Abatement Fund.

[FN1]5 ILCS 100/1-1 et seq.

45/12. Violations of Act

§ 12. Violations of Act.

(a) Violation of any Section of this Act other than Section 6.01 or Section 7 shall be punishable as a Class A misdemeanor. A violation of Section 6.01 shall cause the Department to issue a written warning for a first offense and shall be a petty offense for a second or subsequent offense if the violation occurs at the same location within 12 months after the first offense.

(b) In cases where a person is found to have mislabeled, possessed, offered for sale or transfer, sold or transferred, or given away lead-bearing substances, a representative of the Department shall confiscate the lead-bearing substances and retain the substances until they are shown to be in compliance with this Act.

(c) In addition to any other penalty provided under this Act, the court in an action brought under subsection (e) may impose upon any person who violates or does not comply with a notice of deficiency and a mitigation order issued under subsection (7) of Section 9 of this Act or who fails to comply with subsection (3) or subsection (5) of Section 9 of this Act a civil penalty not exceeding $2,500 for each violation, plus $250 for each day that the violation continues.

Any civil penalties collected in a court proceeding shall be deposited into a delegated county lead poisoning screening, prevention, and abatement fund or, if no delegated county or lead poisoning screening, prevention, and abatement fund exists, into the Lead Poisoning Screening, Prevention, and Abatement Fund established under Section 7.2.

(d) Whenever the Department finds that an emergency exists that requires immediate action to protect the health of children under this Act, it may, without administrative procedure or notice, cause an action to be brought by the Attorney General or the State's Attorney of the county in which a violation has occurred for a temporary restraining order or a preliminary injunction to require such action as is required to meet the emergency and protect the health of children.

(e) The State's Attorney of the county in which a violation occurs or the Attorney General may bring an action for the enforcement of this Act and the rules adopted and orders issued under this Act, in the name of the People of the State of Illinois, and may, in addition to other remedies provided in this Act, bring an action for a temporary restraining order or preliminary injunction as described in subsection (d) or an injunction to restrain any actual or threatened violation or to impose or collect a civil penalty for any violation.

45/12.1. Attorney General and State's Attorney report to General Assembly

§ 12.1. Attorney General and State's Attorney report to General Assembly. The Attorney General and State's Attorney offices shall report to the General Assembly annually the number of lead poisoning cases that have been referred by the Department for enforcement due to violations of this Act or for failure to comply with a notice of deficiency and mitigation order issued pursuant to subsection (7) of Section 9 of this Act.

45/13. Rules and regulations

§ 13. The Department is authorized to promulgate reasonable rules and regulations for carrying out the provisions of this Act.

45/13.1. Administrative Procedures Act; Application

§ 13.1. Administrative Procedures Act; Application. The provisions of the Illinois Administrative Procedure Act [FN1] are adopted and shall apply to all administrative rules and procedures of the Department of Public Health under this Act, except that in cases of conflict between the Illinois Administrative Procedure Act and this Act, the provisions of this Act shall control. Section 5-35 of the Illinois Administrative Procedure Act [FN2] relating to procedures for rule-making does not apply to the adoption of any rule required by federal law in connection with which the Department is precluded by law from exercising any discretion.

[FN1]5 ILCS 100/1-1 et seq.

[FN2]5 ILCS 100/5-35.

45/14. Departmental regulations and activities

§ 14. Departmental regulations and activities. The Department shall establish and publish regulations and guidelines governing permissible limits of lead in and about residential buildings and dwellings.

The Department shall also initiate activities that:

(a) Will either provide for or support the monitoring and validation of all medical laboratories and private and public hospitals that perform lead determination tests on human blood or other tissues.

(b) Will, subject to Section 7.2 of this Act, provide laboratory testing of blood specimens for lead content to any physician, hospital, clinic, free clinic, municipality, or private organization that cannot secure or provide the services through other sources. The Department shall not assume responsibility for blood lead analysis required in programs currently in operation.

(c) Will develop or encourage the development of appropriate programs and studies to identify sources of lead intoxication and assist other entities in the identification of lead in children's blood and the sources of that intoxication.

(d) May provide technical assistance and consultation to local, county, or regional governmental or private agencies for the promotion and development of lead poisoning prevention programs.

(e) Will provide recommendations by the Department on the subject of identification and treatment of lead poisoning.

(f) Will maintain a clearinghouse of information, and will develop additional educational materials, on (i) lead hazards to children, (ii) lead poisoning prevention, (iii) lead poisoning screening, (iv) lead mitigation, abatement, and disposal, and (v) health hazards during abatement. The Department shall make this information available to the general public.

45/15. Other relief

§ 15. Other relief. Nothing in this Act shall be interpreted or applied in any manner to defeat or impair the right of any person, entity, municipality or other political subdivision to maintain an action or suit for damages sustained or for equitable relief, or for violation of an ordinance by reason of or in connection with any violation of this Act. The failure to remove lead based substances within the time prescribed by this Act shall be prima facie evidence of negligence in any action brought to recover damages for injuries incurred after the expiration of that period. This Act shall not prohibit any city, village, incorporated township or other political subdivision from enacting and enforcing ordinances establishing a system of lead poisoning control which provide the same or higher standards than those set forth in this Act.

45/16. Effect of invalid provisions or applications of Act

§ 16. Effect of invalid provisions or applications of Act. If any provision of this Act or the application of this Act to any person or circumstances shall be held invalid, the invalidity shall not affect the provisions or application of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

45/17. Effective date

§ 17. This act takes effect upon its becoming a law.

RULES OF THE ILLINOIS DEPARTMENT OF PUBLIC HEALTH

TITLE 77: PUBLIC HEALTH
PART 845 LEAD POISONING PREVENTION CODE
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER p: HAZARDOUS AND POISONOUS SUBSTANCES

PART 845
LEAD POISONING PREVENTION CODE

SUBPART A: GENERAL PROVISIONS

Section

SUBPART B: DEPARTMENT AND DELEGATE AGENCY ACTIVITIES

Section

SUBPART C: TRAINING COURSE APPROVAL AND LICENSING OF INDIVIDUALS AND FIRMS

Section

SUBPART D: RESPONSIBILITIES OF LICENSED INDIVIDUALS, CONTRACTORS AND APPROVED TRAINING PROGRAM PROVIDERS

SUBPART E: STANDARDS FOR CONDUCTING ENVIRONMENTAL INVESTIGATIONS FOR LEAD

SUBPART F: STANDARDS FOR LEAD MITIGATION AND LEAD ABATEMENT

SUBPART G: FINES, PENALTIES AND ADMINISTRATIVE HEARINGS

AUTHORITY: Implementing and authorized by the Lead Poisoning Prevention Act [410 ILCS 45].

SOURCE: Adopted July 15, 1976; amended at 2 Ill. Reg. 43, effective October 23, 1978; rules repealed; new rules adopted and codified at 6 Ill. Reg. 14849, effective November 24, 1982; amended at 7 Ill. Reg. 7652, effective June 14, 1983; amended at 8 Ill. Reg. 8242, effective May 25, 1984; amended at 10 Ill. Reg. 5138, effective April 1, 1986; amended at 17 Ill. Reg. 1884, effective February 1, 1993; amended at 19 Ill. Reg. 238, effective December 31, 1994; amended at 21 Ill. Reg. 7444, effective May 31, 1997; emergency amendment at 21 Ill. Reg. 14680, effective October 31, 1997, for a maximum of 150 days; emergency amendment modified in response to JCAR objection at 22 Ill. Reg. 6252; amended at 22 Ill. Reg. 16000, effective August 20, 1998; amended at 24 Ill. Reg. 11974, effective July 26, 2000; old Part repealed at 32 Ill. Reg. _____, and new Part adopted at 32 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 845.10 Applicability

a) Subpart A of this Part contains incorporated and referenced materials and definitions. This Subpart applies to all activities conducted in accordance with the Lead Poisoning Prevention Act (Act) and Lead Poisoning Prevention Code (Code).

b) Subpart B of this Part contains information that pertains only to activities conducted by the Illinois Department of Public Health or its delegate agency for cases in which a child has been identified with an elevated blood lead level.

c) Subpart C of this Part contains requirements for licensure of individuals and firms, approval of training program providers and requirements for the Department's third party examination.

d) Subpart D of this Part contains the responsibilities for licensed individuals, firms and approved training program providers.

e) Subpart E of this Part contains standards and requirements to be used by licensed individuals for conducting lead investigation services in regulated facilities. This Subpart also outlines the specific record keeping requirements for these activities.

f) Subpart F of this Part contains the standards and requirements for conducting lead mitigation and lead abatement activities in regulated facilities. This Subpart also outlines the specific record keeping requirements for these activities.

g) Subpart G of this Part contains provisions for administrative enforcement, including the issuance of fines and penalties and procedures governing administrative hearings for violations of applicable laws or this Part for any lead services conducted in regulated facilities.

Section 845.15 Incorporated and Referenced Materials

a) The following materials are incorporated in this Part.

1) Federal Regulations:

A) Lead Standard: 29 CFR 1910.1025 and 29 CFR 1926.62, Occupational Safety and Health Administration (OSHA) (1993)

B) Respiratory Protection Standard: 29 CFR 1910.134, OSHA (1998)

C) Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupational Facilities: 40 CFR 745, United States Environmental Protection Agency (USEPA) (1996)

D) Requirements for Hazard Education Before Renovation of Target Housing: 40 CFR 745, USEPA (1998)

E) Identification of Dangerous Levels of Lead: 40 CFR 745, USEPA (2001)

F) Protection of Identity − Research Subjects: 42 CFR 2a 4, Department of Health and Human Services (2000)

G) Lead and Copper Rule: 56 FR 26460 through 26564, USEPA (June 7, 1991)

H) Lead-Safe Housing Rule: 24 CFR 35, Department of Housing and Urban Development (HUD) (2004)

I) Lead; Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing: 40 CFR, 745, USEPA and HUD (1996)

2) Federal Guidelines:

A) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, Department of Housing and Urban Development (HUD) (June 1995); Chapter Seven of the HUD Guidelines, Lead-Based Paint Inspection, 1997

Available from: Office of Lead-Based Paint Abatement and Poisoning Prevention HUD, Room B-133, 451 Seventh Street, SW, Washington DC 20410
Also available online at:
http://www.hud.gov/officeslead/guidelines/index.cfm

B) A Field Test of Lead-Based Paint Testing Technologies (USEPA report # EPA 747-R-96-001) (March 1997)
Available from: Technical Programs Branch Chemical Management Division, Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460
Also available online at:
http://www.hud.gov/offices/lead/reports/DAT_files/LBPTTech/R96-001.pdf.

C) Residential Sampling for Lead: Protocols for Dust and Soil Sampling (USEPA report # EPA 747-R-95-001) (1995)
Available from: Technical Programs Branch Chemical Management Division, Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460
Also available online at:
http://www.hud.gov/offices/lead/reports/R95-001.pdf

D) USEPA Methodology for XRF Performance Characteristic Sheets (USEPA report # EPA 747-R-95-008) (1997)
Available from: Technical Programs Branch Chemical Management Division, Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460
Also available online at:http://www.epa.gov/lead/pub/r95-008.pdf

E) Laboratory Accreditation Guidelines; Measurement of Lead in Paint, Dust, and Soil (USEPA report # EPA 747-R-92-001) (March 1992)
Available from: Exposure Evaluation Division, TS-798, Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460
http://www.hud.gov/offfices/lead/labs/nllap.cfm

b) All incorporation by reference of federal regulations or guidelines refer to the regulation or guideline on the date specified and do not include any subsequent editions or amendments.

c) The following State statutes and rules are referenced in this Part:

1) Code of Civil Procedure [735 ILCS 5]

2) Communicable Disease Report Act [745 ILCS 45]

3) Illinois Clinical Laboratory and Blood Bank Act [210 ILCS 25]

4) Freedom of Information Act [5 ILCS 140]

5) State Records Act [5 ILCS 160]

6) Medical Studies Act [735 ILCS 5/Art. VIII, Part 21]

7) Rules of Practice and Procedure in Administrative Hearings (77 Ill. Adm. Code 100)

8) Child Health Environmental Code (77 Ill. Adm. Code 665)

d) The following federal statute is referenced in this Part:

Toxic Substance Control Act (TSCA) (15 USC 2685 405(b)), Standards for Environment Sampling Laboratories

e) The following Department of Public Health form is referenced in this Part:

Childhood Lead Risk Assessment Questionnaire
www/idph/state/il/us/envhealth/pdf/Lead_LRAQ_6_07.pdf.

Section 845.20 Definitions

For purposes of this Part, the following terms have the meanings ascribed in this Section.

"Act" means the Lead Poisoning Prevention Act [410 ILCS 45].

"Blood Lead Test" means a blood lead testing by venous or capillary methodology. The terms "blood lead test" and "screen" are used interchangeably.

"Child" means a person under the age of 16.

"Child Care Facility" means any structure used by a child care provider licensed by the Department of Children and Family Services or public school structure frequented by children under 6 years of age. (Section 2 of the Act)

"Childhood Lead Risk Assessment" means administration of the risk assessment questionnaire to the parent.

"Compliance Investigation" means the activity of performing a visual assessment and collecting dust wipe samples for the purpose of determining compliance with the Department's standard for lead dust levels.

"Confirmed Blood Lead Level" means that an elevated blood lead level is confirmed by a venous blood lead test.

"Defective Surface" means peeling, flaking, chalking, scaling or chipping paint; paint over crumbling, cracking or falling plaster or plaster with holes in it; paint over a defective or deteriorating substrate; or paint that is damaged or worn down in any manner such that a child can get paint from the damaged area.

"Delegate Agency" means a unit of local government or health department approved by the Department in accordance with Section 845.50 of this Part *to carry out the provisions of* the *Act.* (Section 2 of the Act)

"Department" means the Department of Public Health of the State of Illinois. (Section 2 of the Act)

"Director" means the Director of the Department of Public Health of the State of Illinois.

"Dwelling" means any structure all or part of which is designed or used for human habitation. (Section 2 of the Act)

"Elevated Results" means a blood lead test result of 10 micrograms/deciliter or higher.

"Encapsulant" means a substance that forms a barrier between a lead bearing substance and the environment using a liquid-applied coating or an adhesively bonded covering material.

"Health Care Provider" means any person providing health care services to children, who is authorized pursuant to the Illinois Clinical Laboratory and Blood Bank Act [210 ILCS 25] to request the testing of specimens, but does not include dentists.

"HEPA" means a high efficiency particulate air filter capable of trapping and retaining 99.97 percent of particles greater than 0.3 micrometers in mass median aerodynamic equivalent diameter.

"Intact Surface" means a surface with no loose, peeling, chipping or flaking paint. Intact surfaces that are painted must be free from crumbling, cracking or deterioration. Intact surfaces must not be damaged or worn down in any way that would make paint or debris from the damaged area accessible to children.

"Lead Abatement" means any activity that will permanently eliminate lead exposure or remove the lead bearing substances in a regulated facility.

"Lead Abatement Contractor" means any person or entity licensed by the Department to perform lead abatement or mitigation. (Section 2 of the Act)

"Lead Bearing Substance" means any item or part of an item *containing or coated with lead such that the lead content is more than 0.06% lead by total weight; or any dust on surfaces or in furniture or other nonpermanent elements of the dwelling; or any paint or other surface coating material containing more than 0.5% lead by total weight (calculated as lead metal) in the total non-volatile content of liquid paint; or lead bearing substances containing greater than one milligram per square centimeter or any lower standard for lead content in residential paint as may be established by federal law or regulation; or more than 1 milligram per square centimeter in the dried film of paint or previously applied substance; or item or dust on item containing lead in excess of the amount specified in* this Part *or a lower standard for lead content as may be established by federal law or regulation. "Lead bearing substance" does not include firearm*

ammunition or components as defined by the Firearm Owners Identification Card Act. (Section 2 of the Act)

"Lead Hazard" means a lead bearing substance that poses an immediate health hazard to humans. (Section 2 of the Act)

"Lead Hazard Screen" means a lead risk assessment that involves limited dust and paint sampling for lead bearing substances and lead hazards. This service is used as a screening tool designed to determine if further lead investigative services are required for the regulated facility.

"Lead Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint. Lead inspection includes sampling or investigation for lead associated with a lead inspection as defined in this Section and outlined in Section 845.210, and all lead sampling associated with compliance investigations defined in this Section and outlined in Section 845.225.

"Lead Inspector" means an individual who has been trained by a Department-approved training program and is licensed by the Department to conduct lead inspections; to sample for the presence of lead in paint, dust, soil, and water; and to conduct compliance investigations.

"Lead Mitigation" means the remediation of a lead hazard so that a lead bearing substance does not pose an immediate health hazard to humans.

"Lead Poisoning" means the condition of having blood lead levels in excess of those considered safe under this Part (see the definition of "permissible limits") *and federal rules and regulations.* (Section 2 of the Act)

"Lead Risk Assessment" means an on-site investigation to determine the existence, nature, severity and location of lead hazards. Lead risk assessment includes any lead sampling and visual assessment associated with conducting a lead risk assessment and lead hazard screen as defined in this Section and outlined in Sections 845.215 and 845.220, and all lead sampling associated with compliance investigations defined in this Section and outlined in Section 845.225.

"Lead Risk Assessor" means an individual who has been trained by a Department-approved training program and is licensed by the Department to conduct lead risk assessments, lead inspection, and lead hazard screens; to sample for the presence of lead in paint, dust, soil and water; and to conduct compliance investigations.

"Lead Supervisor" means any person employed by a lead abatement contractor and licensed by the Department to perform lead abatement and mitigation, and to supervise lead workers who perform lead abatement and mitigation. ("Lead Abatement Supervisor" was formerly called "Lead Abatement Contractor/Supervisor".)

"Lead Worker" means any person employed by a licensed lead abatement contractor and licensed by the Department to perform lead abatement and mitigation. (Section 2 of the Act)

"Local Health Department" means the health department or board of health, as recognized by the Department, that has jurisdiction over the particular geographical area in which the person lives.

"Negative Blood Lead Test Result" means a blood lead test with a blood lead level of less than 10 micrograms/deciliter (mcg/dL) or less of whole blood in a child under age 16 years.

"Owner" means any person who alone, jointly, or severally with others:

> *Has legal title to any dwelling or residential building, with or without accompanying actual possession of the dwelling or residential building, or*
>
> *Has charge, care or control of the dwelling or residential building as owner or agent of the owner, or as executor, administrator, trustee, or guardian of the estate of the owner.* (Section 2 of the Act)

"Permissible Limits", for reporting purposes, means a confirmed blood lead level of less than 10 micrograms/deciliter (mcg/dL) of whole blood in a child under age 16 years, less than 10 mcg/dL for a pregnant or breast-feeding woman, and less than 25 mcg/dL for all other persons.

"Person" means any one or more natural persons, legal entities, governmental bodies, or any combination. (Section 2 of the Act)

"Positive Blood Lead Test Result" means a blood lead level test with a blood lead level of 10 micrograms/deciliter (mcg/dL) or higher of whole blood in a child under age 16 years.

"Regulated Facility" means a dwelling, residential building, child care facility, or any other structure as defined in the Act or this Part.

"Renovation" means the modification of any existing structure, or portion thereof, of a regulated facility that results in the disturbance of painted surfaces.

"Renovator" means any person who conducts renovation in a regulated facility for compensation, including barter.

"Residential Building" means any room, group of rooms, or other interior areas of a structure designed or used for human habitation; common areas accessible by inhabitants; and the surrounding property or structures. (Section 2 of the Act)

"Room Equivalent" means an identifiable part of a residence, such as a room, a house exterior, a foyer, a staircase, a hallway or an exterior area.

"STELLAR" means the Systematic Tracking of Elevated Lead Levels and Remediation software developed and provided by the Centers for Disease Control and Prevention for local agencies to use in tracking lead poisoning cases.

"Testing Combination" means a unique combination of room equivalent, building component type, and substrate.

"Training Hour" means at least 50 minutes of actual teaching, including time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and/or hands-on experience.

"Work Area" means the interior and exterior areas where lead mitigation or lead abatement activities are conducted. These areas may include any room or rooms undergoing lead mitigation or lead abatement activities in a regulated facility, including any common area of these facilities.

"XRF" means X-ray fluorescence. XRF instruments are typically used to measure lead in soil, dust and paint samples.

Section 845.25 Disclosure Requirements

a) An owner of a regulated facility who has received a mitigation notice under Section 9 of the Act shall, before entering into a lease agreement for the regulated facility for which the mitigation notice was issued, provide prospective lessees of that unit with written notice that a lead hazard has previously been identified in the regulated facility. An owner may satisfy this notice requirement by providing the prospective lessee with a copy of the inspection report, mitigation notice and subsequent certificate of compliance prepared pursuant to Section 9 of the Act.

b) Before entering into a residential lease agreement, all owners of regulated facilities built before 1978 shall give prospective lessees information on the potential health hazards posed by lead in residential dwellings by providing the prospective lessee with a copy of an informational brochure on lead. The disclosure and informational brochure shall be consistent with the requirements set forth in 40 CFR 745, "Lead; Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing".

c) No more than 60 days before beginning renovation activities in any regulated facility, a renovator shall:

1) Provide the owner of the unit with the pamphlet as required in subsection (b) of this Section, and comply with one of the following:

A) Obtain from the owner a written acknowledgment that the owner has received the pamphlet; or

B) Obtain a certificate of mailing from the United States Postal Service (USPS) at least seven days prior to beginning the renovation; and

2) Provide the tenant with the pamphlet required in subsection (b) of this Section and comply with subsections (c)(1)(A) and (B) of this Section, or:

A) Obtain from the tenant a written acknowledgment that the tenant has received the pamphlet. If the renovator cannot get written acknowledgment from the tenant, the renovator shall document the attempts and the reason why the acknowledgment was not obtained (i.e., tenant refused, no tenant available); or

B) Obtain a certificate of mailing from the USPS at least seven days prior to beginning the renovation.

SUBPART B: DEPARTMENT AND DELEGATE AGENCY ACTIVITIES

Section 845.50 Approval of Units of Local Government or Health Departments as Delegate Agencies to Administer and Enforce the Act

a) The Department may approve units of local government or health departments as delegate agencies to administer and enforce the Act in accordance with individually negotiated delegate agency agreements. No unit of local government or health department shall be approved for this purpose except upon request. Approval shall be rescinded in the event that the delegate agency agreement is subsequently violated. Rescission shall become effective 30 days after the Department serves written notice on the unit of local government or local health department of the Department's intention to rescind approval.

b) The Department shall approve units of local government or local health departments as delegate agencies that enter into written cooperative agreements with the Department to conduct the activities specified in this Subpart B. The delegate agency shall provide information to the Department on any environmental inspection completed for identified cases and on remediation action taken.

Section 845.55 Lead Screening

a) *Every physician licensed to practice medicine in all its branches or health care provider shall screen children 6 months through 6 years of age for lead poisoning who are determined to reside in an area defined as high risk by the Department.* (Section 6.2 of the Act) Medicaid enrolled children must be tested as required in the Healthy Kids Early and Periodic Screening, Diagnosis and Treatment Program (89 Ill. Adm. Code 140). Children residing in areas defined as low risk by the Department shall be assessed for their risk for lead exposure by providing the information contained in the Childhood Lead Risk Assessment Questionnaire provided by the Department.

1) Children determined to be at high risk based upon a Childhood Lead Assessment shall have a blood lead measurement.

2) Children who have elevated screening results shall have follow-up testing.

3) Elevated capillary results 10 mcg/dL and above shall be confirmed by a venous sample.

b) *Each licensed, registered, or approved health care facility serving children from 6 months through 6 years of age, including, but not limited to, health departments, hospitals, clinics, and health maintenance organizations approved, registered or licensed by the Department, shall take the appropriate steps* (referral of children with identified risk factors as defined in the Department-provided Childhood Lead Risk Assessment Questionnaire to a physician or health care provider) *to ensure that the patients receive lead poisoning screening, where medically indicated or appropriate,* consistent with the risk factors in the Childhood Lead Risk Lead Assessment Questionnaire provided by the Department. (Section 6.2 of the Act) Patients are those children receiving complete health care provided by the approved health care facility.

c) Physicians and health care providers may assess children 7 years of age and older in accordance with the Childhood Lead Risk Assessment Questionnaire provided by the Department.

d) *Each day care center, day care home, preschool, nursery school, kindergarten, or other child-care facility, licensed or approved by the State, including programs operated by a public school district, shall include a requirement that each parent or legal guardian of a child between the ages of 6 months through 6 years provide a statement from a physician or health care provider that the child has been*

screened or assessed for lead poisoning. This statement shall be provided prior to admission and subsequently in conjunction with physical examinations required by 77 Ill. Adm. Code 665.140 of the Department's rules titled Child Health Examination Code. (Section 7.1 of the Act)

e) *Nothing in this Part shall be construed to require any child to undergo a lead blood level screening or test whose parent or guardian objects to such screening on the grounds that the screening or test conflicts with his or her religious beliefs.* (Section 7.1 of the Act)

Section 845.60 Reporting

a) The Department requires the following persons and facilities to report all blood levels to the Department:

1) *Every physician who diagnoses, or health care provider, nurse, hospital administrator, or public health officer who has verified information of any person who has a level of lead in the blood in excess of the permissible limits,* as defined in Section 845.20, is required to report pursuant to this Section, starting with a confirmed lead level of 10 mcg/dL. (Section 7 of the Act) If the analysis has been performed at the State laboratory, or the provider has ascertained that the clinical laboratory where specimens are processed electronically reports all blood lead level results to the Department, then duplicate reporting of elevated levels is not required. *Upon the request of a provider, the Department may generate a list of individual patients treated by that provider according to the claims records and the patients' lead test results.* (Section 6.3(b) of the Act)

2) Directors of clinical laboratories who have verified information of any positive blood lead test results, as defined in Section 845.20, are required to report the results to the Department within 48 hours after receipt of verification. Negative blood lead test results shall be reported to the Department no later than 30 days following the last day of the month in which the test results are obtained by the laboratory. The information included in the clinical laboratory report on positive and negative blood lead test results shall include the blood lead level; the child's name, address, date of birth, sex and race; date of test; test type; date of report; physician and/or clinic, with address; Medicaid identification number (if applicable); and the reporting agency. Verification and test information on positive blood lead test results shall be submitted as a distinct report separate from the cumulated negative blood lead test information. All reports submitted shall identify the report content as either negative or positive blood lead test results.

b) Reports required pursuant to this Section shall be made to the Department, and all reported information, including the source of such information, received by the Department shall be considered confidential in nature. Any information submitted to a laboratory at the request of the Department and in accordance with this Part shall be treated as confidential by the laboratory that receives the information on behalf of and as required by the Department. The reports provided under this Section shall be confidential and subject to the provisions of the

Medical Studies Act and the Communicable Disease Report Act. It is the right, however, of any patient to obtain his or her own data.

c) Reports required pursuant to this Section shall be submitted within 48 hours after receipt of verification. Methods of submission can include written or electronic reporting as detailed in Appendix A.

d) Reports of blood lead levels shall be on the form specified in Appendix A.

Section 845.65 Provision of Data

a) All reports issued by the Department, which are aggregated to make it impossible to identify any patient, reporting entity, or primary caregiver, shall be made available to the public pursuant to the Freedom of Information Act.

b) All requests by medical or epidemiologic researchers for confidential data shall be submitted in writing to the Department. The request shall include a study protocol that contains: objectives of the research; rationale for the research, including scientific literature justifying the current proposal; overall study methods, including copies of forms, questionnaires, and consent forms used to contact facilities, physicians or study subjects; methods for documenting compliance with Department of Health and Human Services − Protection of Identity – Research Subjects; 42 CFR 2a.4(a) through (j), 2a.6(a) and (b), 2a.7(a) and (b)(1); methods for processing data; storage and security measures taken to ensure confidentiality of patient identifying information; time frame of the study; a description of the funding source of the study (e.g., federal contract); the curriculum vitae of the principal investigator; and a list of collaborators. In addition, the research request must specify what patient identifying information is needed and how the information will be used. Identifying information concerning the reporting entity will not be made available by the Department. Identifying information is defined as any information, collection, or groups of data from which the identity of the patient or reporting entity to which it relates may be discerned, e.g., name, address or ID number.

c) All requests to conduct research and modifications to approved research proposals involving the use of data that includes patient identifying information shall be subject to a review to determine compliance with the following conditions:

1) The request for patient identifying information contains stated goals or objectives;

2) The request documents the feasibility of the study design in achieving the stated goals and objectives;

3) The request documents the need for the requested data to achieve the stated goals and objectives;

4) The requested data can be provided within the time frame set forth in the request;

5) The request documents that the researcher has qualifications relevant to the type of research being conducted;

6) The research will not duplicate other research already underway using the same data when both require the contact of a patient involved in the previously approved concurrent research; and

7) Other conditions relevant to the need for the patient identifying information and the patient's confidentiality rights. (The Department will release only the patient identifying information that is necessary for research.)

d) The Director or designee will review the request and approve or deny the request. The Information Agreement (Appendix B) shall contain the signatures of the Director and the applicant before data can be provided. Reasons for denial may include the following:

1) Confidentiality, privacy and/or security measures are unsatisfactory in the opinion of the Department;

2) Data requested are unavailable or unreliable in the opinion of the Department;

3) The stated purpose does not meet the Department's mission statement;

4) The Department is unable to provide the data in the requested format;

5) The applicant is not an accredited or licensed research institution, a government agency, legislative commission, or other organization with the ability to conduct research, such as a university research center or private research firm; or

6) The information cannot be provided by the requested date.

e) Denied requests may be revised and resubmitted.

f) Information Agreements

1) The Department will enter into information agreements for all approved research requests. These agreements shall specify the information that is being released and how it can be used in accordance with subsection (c) of this Section. In addition, the researcher shall include an assurance that:

A) Use of data is restricted to the specifications of the protocol;

B) All data that may lead to the identity of any patient, research subject, physician, other person, or hospital are strictly privileged and confidential, and the researcher agrees to keep all such data strictly confidential at all times;

C) All officers, agents and employees will keep all such data strictly confidential. The researcher will communicate the requirements of this Section to all officers, agents and employees, will discipline all persons who may violate the requirements of this Section, and will notify the Department in writing within 48 hours after any violation of this Section, including full details of the violation and corrective actions to be taken;

D) All data provided by the Department pursuant to the agreement may be used only for the purposes named in the agreement and any other or additional use of the data may result in immediate termination of the agreement by the Department; and

E) All data provided by the Department pursuant to the agreement are the sole property of the Department and may not be copied or reproduced in any form or manner, except for research use by the researcher, and that all data, copies and reproductions of the data made for the researcher's internal use shall be returned to the Department upon termination of the agreement.

2) Any departures from the approved protocol shall be submitted in writing and approved by the Director or designee in accordance with subsections (c) and (d) of this Section prior to initiation. A researcher shall not release identifying information to a third party.

g) Upon request, the Department shall disclose individual patient or reporting entity information to the reporting entity that originally supplied that information to the Department.

h) By written reciprocating agreement, the Department may disclose individual patient information concerning residents of another state to the Childhood Lead Poisoning Prevention Program in the individual's state of residence only if the recipient of the information is legally required to hold the information in

confidence and provides protection from disclosure of patient identifying information equivalent to the protection afforded by the Medical Studies Act.

i) The identity of any person (or any group of facts that tends to lead to the identity of any person) whose blood test result is submitted to the Illinois Childhood Lead Poisoning Prevention Program is confidential and shall not be open to public inspection or dissemination. Such information shall not be available for disclosure, inspection or copying under the Freedom of Information Act or the State Records Act. All information for specific research purposes may be released in accordance with procedures established by the Department in this Section.

j) The patient identifying information submitted to the Department by those entities required to submit information under the Act and this Part is to be used in the course of medical study under the Medical Studies Act and is privileged from disclosure by the Medical Studies Act.

Section 845.70 Laboratory Fees for Blood Lead Screening

a) The fee schedule for a sample of blood submitted to the Department for blood lead analysis and necessary follow-up by the Department shall be $25.75. The fee shall be assessed to the provider who submits the sample. Statements of fee assessment shall be mailed to the submitter of the specimens on a monthly basis. Payment and/or appropriate information as required in subsections (b) and (c) of this Section shall be submitted to the Department upon receipt of the monthly statement.

b) The Medicaid Recipient Identification Number may be provided for Medicaid eligible recipients in lieu of payment.

c) Medically indigent recipients shall be those recipients with family incomes under 185% of the federal poverty guidelines, not eligible for Medicaid, and screened by local health departments, Rural Health Clinics, Federally Qualified Health Centers and facilities designated by the Department of Health and Human Services as look-alike Federally Qualified Health Centers. No fee shall be charged for these recipients.

d) Fees collected from the Department's testing service will be placed in a special fund in the State Treasury known as the Lead Poisoning Screening, Prevention and Abatement Fund.

Section 845.75 Requirements for Licensing of Department and Delegate Agency Personnel

a) Any Department or delegate agency personnel who conduct lead inspections, lead risk assessments, lead hazard screens, compliance investigations or any combination of these services in a regulated facility in which a child with an elevated blood lead level has been identified shall comply with the following:

1) Complete the required training outlined in Subpart C of this Part to conduct lead investigation services;

2) Be licensed in accordance with Subpart C of this Part to conduct lead investigation services; and

3) Complete the appropriate third party examination as required in Subpart C of this Part.

b) Employees of the Department, a delegate agency, or a local health department shall be exempt from licensure fees and third party examination fees required by Subpart C of this Part when those employees' licenses are used only for purposes related to employment at the above-mentioned agencies.

1) Licenses issued pursuant to this Section shall be specifically noted as Health Department Employee (HDE) licenses.

2) The HDE license shall not allow the licensed individual to provide private lead investigation services for personal profit.

Section 845.80 Surveillance and Case Management

a) Surveillance and Case Management

1) Interviews shall be conducted with the parent or guardian or with attending physicians as needed to assure the accuracy and completeness of reports and to perform the activities of case follow-up for confirmed elevated blood lead levels above 15 mcg/dL.

2) The following activities shall be conducted and documented concerning patient or case follow-up:

A) Trace the case;

B) Counsel the parent or guardian of the case;

C) Educate the parent or guardian of the case;

D) Interview the parent or guardian of the case for purposes of collecting, verifying or completing the information identified in Appendix A.Exhibit A and Appendix A.Exhibit B of this Part;

E) Refer the parent or guardian of the case for medical treatment when appropriate; and

F) Submit completed reports to the Department as specified in the agreement between the delegate agency and the Department.

b) *Any delegate agency may establish fees, according to a reasonable fee structure,* to be determined by the delegate agency, *to cover the costs of drawing blood for blood lead screening and any necessary follow-up.* (Section 7.2 of the Act) Necessary follow-up includes individual case management and environmental management. In accordance with federal regulations, fees may not be charged to Medicaid recipients.

Section 845.85 Environmental Follow-Up

a) Environmental Investigation of Regulated Facilities − Child Confirmed With Elevated Blood Lead Level

1) Upon notification that a child who is an occupant or frequent inhabitant of a regulated facility is reported to have a confirmed blood lead level that would necessitate an environmental investigation, a representative of the Department or a delegate agency is authorized to inspect any regulated facility for the purpose of determining the source of lead poisoning. In the following cases, an environmental investigation and follow-up shall be conducted by the Department or delegate agency:

A) If a child has a confirmed blood lead level at or above 20 mcg/dL;

B) If a child has three successive confirmed blood lead levels of 15-19 mcg/dL with no time requirement between tests;

C) If a child has a single confirmed blood lead level at or above 10 mcg/dL and the child's physician requests an investigation to determine whether the child should be removed from the regulated facility because of the lead hazard;

D) If a child less than three years of age has a single confirmed blood lead level at or above 10 mcg/dL; or

E) If mitigation notices are issued for two or more dwelling units in a building within a five year time period, the Department may inspect common areas in the building and shall inspect units where children under the age of 6 reside, at the request of a parent or guardian of the child, or a pregnant woman resides, at the pregnant woman's request.

2) An investigation of a regulated facility to determine the source of lead poisoning as required by this Section shall be conducted using procedures and guidance outlined in this Section and the documented methodologies specified in Section 845.15, and shall consist of at least the following:

A) An interview with the owner or occupant about dwelling or facility use patterns and potential lead hazards, including inquiries regarding:

i) Improperly glazed pottery;

ii) Ethnic or folk medicines;

iii) Hobbies and occupation;

iv) Other dwellings;

v) International travel; and

vi) Recent renovations;

B) A visual assessment of the condition of the building, appurtenant structures and painted surfaces; and

C) Environmental sampling of deteriorated paint and dust based upon subsection (a)(4) of this Section.

3) Sampling shall be conducted by at least one of the following methods or a combination thereof:

A) X-Ray fluorescence (XRF) testing. XRF equipment shall be operated in accordance with work practice standards incorporated in Section 845.15 and the manufacturer's operational manual. Surfaces sampled with XRF readings equal to or greater than the levels specified in Section 845.205 are considered to be lead bearing substances.

B) Dust wipe sampling. Dust wipe samples shall be collected in accordance with documented methodologies specified in Section 845.15. Dust samples collected with laboratory analysis reported as equal to or greater than the levels specified in Section 845.205 are considered elevated and are considered lead hazards.

C) Paint chip sampling. Paint chip samples shall be collected in accordance with documented methodologies specified in Section 845.15. Surfaces where paint chip samples are collected with analysis reported as equal to or greater than the levels specified in Section 845.205 are considered to be lead bearing substances.

D) Soil sampling. Soil samples are discretionary based on the visual assessment. If collected, soil samples shall be collected in accordance with documented methodologies specified in Section 845.15. Soil samples with laboratory analysis reported as equal to or greater than the levels specified in Section 845.205 are considered elevated.

E) Water sampling. Water samples are discretionary. If collected, water samples shall be collected in accordance with documented methodologies specified in Section 845.15. Water samples with laboratory analysis reported as equal to or greater than the levels specified in Section 845.205 are considered elevated.

4) All environmental samples, excluding XRF sampling, shall be submitted to and analyzed by an accredited laboratory, as defined in Section 845.20.

5) *Following an investigation, the Department or its delegate agency shall:*

A) *Prepare an investigation report that shall*:

i) State the address of the regulated facility;

ii) *Describe the scope of the investigation, the investigation procedures used, and the method of ascertaining the existence of a lead bearing substance in the* regulated facility;

iii) *State whether any lead bearing substances were found in the* regulated facility;

iv) *Describe the nature, extent, and location of any lead bearing substance that is found;*

v) *State either that a lead hazard does exist or that a lead hazard does not exist.* If a determination is made that a lead hazard does exist, *the report shall describe the source, nature and location of the lead hazard. The existence of intact lead paint does not alone constitute a lead hazard for the purposes of this Section;* and

vi) *Give the name of the person who conducted the investigation and the person to contact for further*

information regarding the investigation and the requirements of this Part and the Act.

B) *Provide a copy of the investigation report to the property owner and to the occupants* of the regulated facility. *If a lead bearing substance is found, the Department or its delegate agency shall attach* a brochure containing information on lead abatement and mitigation to the copy of the investigation report provided to the property owner and the occupants of the regulated facility.

C) *If the investigation report identifies a lead hazard, the Department or delegate agency shall serve a mitigation notice on the property owner stating that the owner is required to mitigate the lead hazard.* The mitigation notice *shall indicate the time period in which the owner must complete the mitigation* as required by this Section, and shall include information *describing mitigation activities that meet the requirements of this* Part and the *Act. Whenever a mitigation notice is issued pursuant to Section 9 or Section 9.2 of* the *Act, the Department shall make the owner aware of any financial assistance programs that may be available for lead mitigation through the federal, State or local government or a not-for-profit organization.* (Section 9.3 of the Act)

D) If the source of the lead hazard identified in the investigation report is lead paint or any other leaded surface coating, *the lead hazard shall be deemed to have been mitigated if*:

i) *The surface identified as the source of the hazard is no longer in a condition that produces a hazardous level of leaded chips, flakes, dust or any other form of leaded substance that can be ingested or inhaled by humans; or*

ii) *The surface identified as the source of the hazard is accessible to children and could reasonably be chewed on by children, the surface coating is either removed or covered, or the access to the leaded surface by children is otherwise prevented as prescribed by the Department* in this Part.

E) *When a mitigation notice is issued for a regulated facility inspected as a result of an elevated blood lead level in a pregnant woman or a child, or if the dwelling unit is occupied by a child*

under 6 years of age or a pregnant woman, the owner shall mitigate the hazard within 30 days after *receiving the notice; otherwise, the owner shall complete the mitigation within 90 days.*

F) *An owner may apply to the Department or its delegate agency for an extension of the deadline for mitigation.*

G) *The Department or its delegate agency may, after the deadline set for completion of mitigation, conduct a follow-up inspection of any regulated facility for which a mitigation notice was issued for the purpose of determining whether the mitigation actions required have been completed and whether the activities have sufficiently mitigated the lead hazard. The Department or its delegate agency may conduct a follow-up inspection upon the request of an owner or resident. If, upon completing the follow-up inspection, the Department or its delegate agency finds that the lead hazard for which the mitigation notice was issued is not mitigated, the Department or its delegate agency shall serve the owner with notice of the deficiency and a mitigation order. The order shall indicate the specific actions the owner must take to comply with the mitigation requirements of the Act, which may include abatement if abatement is the sole means by which the lead hazard can be mitigated. The order shall also include the date by which the mitigation shall be completed. If, upon completing the follow-up inspection, the Department or delegate agency finds that the mitigation requirements of the Act have been satisfied, the Department or delegate agency shall provide the owner with a certificate of compliance stating that the required mitigation has been accomplished.* (Section 9 of the Act)

b) Mitigation or Abatement of Lead Hazards in Regulated Facilities. Lead mitigation or lead abatement activities shall not result in lead contamination of areas outside of the abatement work area. The removal of lead bearing substances from regulated facilities shall be conducted in a manner that will not endanger the health or well-being of occupants and will result in the safe removal of lead bearing substances from the work area and the safe disposal of flakes, chips, debris, dust, and other lead bearing substances. Lead hazard repairs shall be completed within the time specified after receipt of written notification. Lead mitigation or lead abatement activities required by this Section may be conducted using any or all of the procedures outlined, or as prescribed by the Department or its delegate agency.

1) All loose paint shall be moistened and carefully scraped from defective surfaces. These areas shall then be covered with contact paper, cloth, canvas, or other material that will create an intact surface for the purpose of preventing the paint chips from falling on the floor. All debris shall be collected and sealed in plastic bags for proper disposal.

2) Any surfaces that have collected dust shall be cleaned by damp mopping with a detergent and water solution or a phosphate-free, lead-dissolving detergent.

3) A mitigation plan shall be submitted by the owner or its agent to the Department or delegate agency, specifying the method or methods by which surfaces that will be managed in place are to be maintained in an intact condition. The plan shall include an inspection schedule that includes inspection by the owner or its agent at least annually, and a maintenance schedule. Any surfaces that are not intact, as determined through an inspection, shall be repaired using the mitigation techniques specified in this Section.

4) Alternative Procedures

A) The Department or delegate agency may allow an alternative procedure for lead abatement, lead mitigation, containment or cleanup of a lead paint hazard, provided that the owner submits to the Department or delegate agency a written description of the alternative procedure that demonstrates to the satisfaction of the Department or delegate agency that the proposed alternative procedure provides a level of abatement and safety at least equivalent to the requirements of this Section.

B) In all cases in which the Department or delegate agency allows the use of an alternative procedure, the owner and occupant shall, for a one-year period after completion of the lead abatement or lead mitigation project, permit the Department or delegate agency to enter and inspect the area of abatement for the purpose of determining the effectiveness and durability of the allowed alternative procedure.

c) Regulated Facilities Not Requiring Abatement or Mitigation. Notwithstanding any other provision of this Part, abatement or mitigation is not required when the property owner enters into a stipulation with the Department that will protect children from exposure to lead bearing substances. The stipulation shall be by

written agreement, and shall provide that any violation of the agreement shall cause the immediate issuance of a mitigation or abatement order. Examples of conditions that may be included in a stipulation entered into by the property owners and the Department are as follows:

1) The property shall be demolished; or

2) The property shall be vacated.

SUBPART C: TRAINING COURSE APPROVAL AND LICENSING OF INDIVIDUALS AND FIRMS

Section 845.100 Approval of Training Program Providers

a) Any firm providing lead training in Illinois to individuals seeking certification and licensure in accordance with the Act and this Part, and requirements outlined in USEPA regulations (40 CFR 745), is required to be approved in accordance with the Act and this Part.

1) A person seeking approval as a training program provider shall submit a completed written application to the Department containing the following information:

A) The training program provider's name, address and telephone number;

B) A list of courses for which approval is sought, including the requirements for each course as specified in Section 845.105;

C) A statement signed by the program training manager certifying that the training program meets all of the requirements established in this Section;

D) A copy of the student and instructor manuals to be used for each course;

E) A copy of the agenda for each course;

F) A description of the facilities and equipment to be used for lecture and hands-on training;

G) A description of the examination for each discipline indicating the percentage of examination questions relating to each course objective;

H) The final examination for each course, the answer key for the examination and the criteria for pass/fail (at least 70% correct to pass);

I) An example of the certificate of course completion, which shall include:

i) Student name;

ii) An identification number unique to each student;

iii) The course name;

iv) Dates of the course;

v) Exam date;

vi) Name, address and telephone number of the training program provider;

vii) A statement that the course is approved by the Department;

viii) A statement that the student has completed the course and passed the course examination; and

ix) Signature of the training manager;

J) A description of the activities and procedures that will be used for conducting and assessing hands-on skills requirements;

K) A quality control plan, which shall include:

i) Procedures for periodic revision of training materials and the course examination to reflect innovations in the lead industry;

ii) Procedures for the training manager's annual review of principal instructors' and guest instructors' competencies;

iii) Procedures and protocols for re-administration of course exam in case of student failure;

iv) An instructor-to-student ratio no greater than 1:30 for lecture portions and 1:15 for hands-on portions;

L) The name of the training manager employed by the training program provider, with supporting qualifications as required by this Section, including the completed Training Manager Qualifications form provided by the Department; and

M) The name of the principal instructor employed by the training program provider for each discipline, with supporting qualifications as required by this Section, including the Principle Instructor Qualifications form provided by the Department.

b) The training program provider shall employ a training manager with the following minimum requirements and responsibilities.

1) Requirements

A) A resume or letters of reference documenting at least two years of experience, education, or training in teaching adults; and

B) Education and/or work experience equivalent to the following:

i) A bachelor's degree or higher degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management or a related field; or

ii) A resume or letters of reference documenting at least two years of experience in managing a training program specializing in environmental hazards; and experience, education or training in lead or asbestos abatement, construction, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

2) Responsibilities

A) Ensuring that the training program complies at all times with the requirements of this Part;

B) All formal correspondence such as training course certificates, approval requests and renewal applications;

C) Maintaining training program records and making those records available to the Department, as specified in this Section;

D) Designating a qualified principal instructor for each discipline as required by subsection (c) of this Section; and

E) Designating guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

c) The training program provider shall employ a principal instructor for each discipline, with the following minimum requirements and responsibilities:

1) A resume or letters of reference documenting at least two years of demonstrated experience, education or training in teaching workers or adults; and

2) A current Department-approved training course certificate for the lead disciplines for which he/she is designated as principal instructor.

d) The principal instructor shall be responsible for the organization of the course and oversight of the teaching of all course material.

Section 845.105 Lead Training Course Approval Requirements

a) Requirements for Approval of Lead Inspector Training Courses. To obtain approval for a lead inspector training course, a training program provider shall submit information to confirm that the program provides:

1) A minimum of 24 training hours, with a minimum of 8 hours devoted to hands-on activities. The course topic requirements shall include the following (requirements ending in an asterisk (*) require lecture and hands-on activities):

A) Role and responsibilities of a lead inspector;

B) Information on lead and the adverse health effects of lead exposure;

C) Information on federal, State and local regulations and guidance pertaining to lead-based paint and lead-based paint activities;

D) Lead-based paint inspection methods, including selection of rooms and components for sampling or testing;*

E) Paint, dust and soil sampling methodologies;*

F) Clearance standards and testing, including random sampling;*

G) Preparation of the final inspection report;* and

H) Record keeping.

2) The one day (8 hour) Lead Inspector refresher course content shall be the same as the course content specified in subsection (a)(1) of this Section, and any current safety practices, new laws and regulations, and current technologies relating to lead-based paint activities. Requirements ending in an asterisk indicate areas that require refresher hands-on activities.

b) Requirements for Approval of Risk Assessor Training Courses. To obtain approval for a risk assessor training course, a person shall submit information to confirm that the course provides:

1) A minimum of 16 training hours, with a minimum of 4 hours devoted to hands-on activities. The course topic requirements shall include the following (requirements ending in an asterisk require lecture and hands-on activities):

   A) Assurance to the Department that a lead inspector training course certificate of completion is required of each applicant as a prerequisite for risk assessor training course attendance;

   B) Role and responsibilities of the risk assessor;

   C) Collection of necessary building information required to perform a lead risk assessment;

   D) Sources of environmental lead contamination (paint, surface dust and soil, water, air, packaging and food);

   E) Visual inspection procedures for the purpose of identifying potential sources of lead-based paint hazards;*

   F) Lead hazard screening protocol;

   G) Sampling for sources of lead exposure;*

   H) Interpretation of lead-based paint and other lead sampling results, including all applicable State and federal guidance pertaining to lead-based paint hazards (i.e., federal statutes and regulations);*

   I) Development of hazard-control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards; and

   J) Preparation of a final lead risk assessment report.

2) The one day (8 hour) lead risk assessor refresher course content shall be the same as the course content specified in subsection (b)(1) of this Section, and any current safety practices, new laws and regulations, and current technologies relating to lead-based paint activities. Requirements ending in an asterisk indicate areas that require refresher hands-on activities.

c) Requirements for Approval of Lead Worker Training Courses. To obtain approval for a lead worker training course, a person shall submit information to confirm that the course provides:

1) A minimum of 24 training hours, with a minimum of 8 hours devoted to hands-on activities. The course topic requirements shall include the following (requirements ending in an asterisk require lecture and hands-on activities):

A) Role and responsibilities of a lead worker;

B) Information on lead and the adverse health effects of lead exposure;

C) Information on federal, State and local regulations;

D) Lead-based paint hazard recognition and control;*

E) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices;*

F) Interior dust abatement methods/cleanup;*

G) Soil and exterior dust abatement methods;* and

H) Respiratory protection, including review of the OSHA Lead Standard.

2) The one day (8 hour) lead worker refresher course content shall be the same as the course content specified in subsection (c)(1) of this Section, and any current safety practices, new laws and regulations, and current technologies relating to lead-based paint activities. Requirements ending in an asterisk indicate areas that require refresher hands-on activities.

d) Requirements for Approval of Supervisor Training Courses. To obtain approval for a lead supervisor training course, a person shall submit information to confirm that the course provides:

1) A minimum of 32 training hours, with a minimum of 8 hours devoted to hands-on activities. The course topic requirements shall include the following (requirements ending in an asterisk require lecture and hands-on activities):

A) Role and responsibilities of a lead supervisor;

B) Information on lead and its adverse health effects;

C) Information on federal, State and local regulations and guidance that pertain to lead-based abatement;

D) Liability and insurance issues relating to lead-based abatement;

E) Lead risk assessment and inspection report interpretation;*

F) Development and implementation of an occupant protection plan and abatement report;

G) Lead-based paint hazard recognition and control;*

H) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices;*

I) Interior dust abatement/cleanup;*

J) Soil and exterior dust abatement;*

K) Clearance standards and testing;

L) Cleanup and waste disposal;

M) Record keeping;

N) Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large scale abatement projects; and

O) Respiratory protection, including review of the OSHA Lead Standard.

2) The one day (8 hour) lead supervisor refresher course content shall be the same as the course content specified in subsection (d)(1) of this Section, and any current safety practices, new laws and regulations, and current technologies relating to lead-based paint activities. Requirements ending in an asterisk indicate areas that require refresher hands-on activities.

e) Approval of Lead Alternative Course Schedules.

1) An Alternative Course Schedule is defined as:

A) Any training agenda that includes a training day of more than 8 hours, but fewer than 12 hours. Courses that consist of more than 12 hours of training per day will not be approved by the Department (Note: a training hour consists of 50 minutes of training time);

B) Any training agenda that includes a training day of fewer than 8 hours;

C) Any training agenda that includes more training days than required by this Part;

D) Any training agenda that includes fewer training days than required by this Part;

E) Any altered training course that may be offered in addition to the standard lead training course (an example is a training course provider offering the standard 3-day (8 hours per day) lead worker course and also a four-day lead worker course); or

F) Any combined training course that covers more than one training course discipline.

2) Application for Alternative Course Schedules shall be made in accordance with the appropriate discipline requirements set forth in this Section.

f) Approval of Foreign Language Courses. The lead worker training course discipline is the only discipline that will be approved to be offered in a foreign language. All other lead training course disciplines shall be offered in English. Foreign language lead worker disciplines shall meet all of the requirements specified in subsection (c) of this Section. All foreign language course manuals, exams and other course material required by this Section shall be provided in both the language in which the course is to be offered and English.

Section 845.110 Lead Training Course Notification Requirements

a) Notification of Course Schedules and Course Cancellations

1) Notification of upcoming lead courses shall be made to the Department no later than 7 calendar days prior to the start of all Department-approved courses. The notification shall be made for all courses offered in Illinois and all adjoining states. Prior notification is not required when courses are offered in states other than Illinois and adjoining states; however the following conditions shall apply separately and jointly:

A) Upon request by the Department, the training program provider shall provide the Department with a copy of the notification of upcoming or past lead courses as submitted to the USEPA authorized lead program in the state or tribal area where the approved lead training course is offered.

B) Upon request by the Department, the training program provider shall provide the Department with a copy of the class roster as required by this Section.

C) The Department may verify that the notification was submitted to and received by a USEPA authorized lead program in accordance with the requirements established by such state or tribal agency.

2) The Department provides a class notification form in the application package to all training program providers. If the class notification form provided by the Department is not used, the following information shall be submitted to the Department to be used as the class notification:

A) Name of training program provider;

B) Location where the course is to be held, including street address, city and state;

C) Which lead discipline is to be taught and in which language, including indication of initial or refresher course;

D) Course start date and end date (days of course need not be consecutive, but no more than 10 calendar days shall lapse

between the start date of the course and the completion of the course and/or course examination); and

E) Course start time and end time.

3) Notice of cancellation of courses shall be made to the Department no later than the day the course is scheduled to be conducted.

b) Class rosters shall be submitted to the Department within 7 calendar days after completion of the course. The Department provides a class roster report form in the application package to all training program providers. If the class roster form provided is not used, the following information shall be submitted to the Department to be used as the class roster:

1) Name of approved training program provider;

2) Name of course (lead discipline);

3) Type of course (initial or refresher);

4) Language of course;

5) Course location;

6) Course hours;

7) Start date;

8) End date;

9) Exam date;

10) Instructors;

11) Student names;

12) Social Security number or unique identification number assigned by the training program provider to each student;

13) Certificate number unique to each certificate issued; and

14) Student percent score on course examination.

Section 845.115 Application Fees for Approval and Renewal of Lead Training Courses

a) All lead training course approvals expire on October 15 of each year.

b) Application fees for all lead training courses are as follows:

1) Fees will be waived for any state or unit of local government seeking approval as a training provider;

2) Initial training course for each discipline: $500 per course;

3) Refresher training course for each discipline: $250 per course; and

4) Late fees for each discipline: $50 per course.

c) Alternative course schedules:

1) If the only course being offered in a lead discipline is an alternative course schedule, then the fees outlined in subsections (b)(2) and (3) of this Section shall apply.

2) If the training program provider is approved to conduct the standard lead course for a specific discipline, the application fee for an alternative course schedule of that discipline shall be $100.

d) Applications for renewal of all lead training course approvals must be received by September 15 of each year. If the renewal application is received after September 15, a $50 late fee shall be charged per course.

1) To renew a training course that has been expired for fewer than 3 years, the training program provider shall pay the current application fee, plus a reinstatement fee of $100 for each year the course approval is expired.

2) To renew a training course that has been expired for a period of 3 years or more, the training program provider shall re-submit the complete training course with the appropriate application and fees for review and approval as required by Section 845.105.

Section 845.120 Lead Training Program Provider Record Keeping Requirements

a) Training program records shall be made available to the Department for review as follows.

1) The training program provider shall retain records at the address specified on the training program provider approval application (or as modified) for a minimum of 4 years.

2) The training program provider shall notify the Department in writing before changing the address specified on its training program provider approval application or transferring records from that address to a new address.

3) The Department shall have the authority to enter, inspect and audit training activities and training records to determine compliance with the Act and this Part.

4) Training records that shall be maintained by the training program provider include the following:

A) All materials specified in Section 845.100 that have been submitted to the Department as part of the program's approval;

B) Current curriculum/course materials and documents reflecting any changes made to these materials;

C) Results of the students' hands-on skills assessments and course examinations and a record of each student's course completion certificate;

D) Qualifications for each guest instructor designated by the training manager in accordance with Section 845.100, including: resume, letters of reference, documentation of work experience, certifications, professional licenses, etc.; and

E) Approval letters from the Department for the training manager, principal instructors, each training course and course modifications.

Section 845.125 Individual Licensing Requirements for Lead Activities

a) To conduct any lead services, including lead inspection, lead risk assessment, lead hazard screen, lead mitigation and lead abatement work and supervision, in a regulated facility in Illinois, an individual shall be licensed in accordance with the Act and this Section. To qualify for a license as a lead inspector, lead risk assessor, lead supervisor or lead worker, an applicant shall meet the following requirements:

1) Be at least 18 years of age;

2) Submit the Department-approved lead training course certificate.

A) The training course completed shall be for the discipline for which licensure is sought.

B) Training course certificates are valid for 3 years from the date the applicant passed the approved lead training course examination.

C) Training course certificates shall be renewed every 3 years by successfully completing a Department-approved refresher training course in the appropriate discipline.

D) If 4 years have passed since the applicant passed the approved training course examination, the training course certificate cannot be refreshed. An applicant is required to complete the initial lead training course as required by this Section;

3) Submit a recent 1" x 1" photograph of the applicant for proper identification of the licensee. The picture shall have the printed name of applicant on the reverse side. The license will not be issued without an identification photograph;

4) Submit the appropriate completed application form provided by the Department;

5) Submit the required license application fee; and

6) For applicants seeking licensure as a lead inspector, lead risk assessor and lead supervisor, the applicant must meet the third party examination

requirements of subsection (e) of this Section and Section 845.135 of this Part.

b) Fees for Lead Licensure, Renewal, Late Renewals and Reinstatement of Expired Licenses

1) Applicants for an initial lead license or renewal of an existing lead license shall pay an annual non-refundable fee as specified below:

A) Lead worker license − $50;

B) Lead supervisor license − $100;

C) Lead inspector license − $100; and

D) Lead risk assessor license − $100.

2) In addition to the annual renewal license fee, an applicant shall pay a non-refundable late fee of $25:

A) If a renewal application for a lead inspector or lead risk assessor license is received after January 1; or

B) If a renewal application for a lead worker or a lead supervisor license is received after March 1.

3) An applicant whose license has been expired for a period less than 3 years may apply to the Department for reinstatement of the license. The Department shall issue a reinstated license provided that:

A) The applicant pays to the Department the current license fee applicable to the discipline to be reinstated, in accordance with subsection (b)(1).

B) The applicant pays a non-refundable reinstatement fee based on the following:

i) Lead workers: $25 for each year the license has expired; and

ii) Lead supervisors, inspectors and lead risk assessors: $50 for each year the license has expired.

4) A license that has been expired for more than 3 years may be restored only by submitting a new application in accordance with subsection (a) of this Section.

c) All lead licenses expire annually in accordance with the following:

1) Lead inspector and lead risk assessor licenses expire January 31 of each year, except that a first-time license issued after October 31 and before January 31 shall expire the next following January 31; and

2) Lead worker and lead supervisor licenses expire March 31 of each year, except that a first-time license issued after December 31 and before March 31 shall expire the next following March 31.

d) Renewal of License. Any license issued pursuant to this Part may be renewed if the licensee submits:

1) The completed renewal application;

2) The non-refundable license renewal fee outlined in subsection (b)(1);

3) A recent 1" x 1" photograph of the applicant for proper identification of the licensee. The picture shall have the printed name of the applicant on the reverse side. The license shall not be issued without an identification photograph; and

4) A current certificate of completion from a Department-approved training course in accordance with subsection (a)(2) of this Section.

e) In addition to meeting the general requirements outlined in subsections (a) and (b) of this Section, lead inspector, lead risk assessor and lead supervisor disciplines have specific training course requirements, examination and education and experience requirements as specified in this subsection (e):

1) To qualify for a license as a lead risk assessor, a person shall:

A) Submit the training course completion certificates, including one of the 2 following combinations:

i) An initial lead inspector training course certificate and any subsequent refresher certificates required to maintain

accreditation as outlined in subsection (a) of this Section, and an initial lead risk assessor training course certificate and any subsequent refresher certificates required to maintain accreditation as outlined in subsection (a) of this Section; or

ii) An initial lead risk assessor training course certificate and any subsequent refresher certificates required to maintain accreditation as outlined in subsection (a) of this Section, and a current Illinois lead inspector license;

B) Possess one of the following combinations of education and experience:

i) A bachelor of science degree in engineering, or an environmental or health-related field; or

ii) A bachelor's degree in any discipline and one year of experience in a related field (e.g., lead, asbestos or environmental remediation work, or construction); or

iii) An associate's degree in any discipline and 2 years of experience in a related field (e.g., lead, asbestos or environmental remediation work, or construction); or

iv) A high school diploma (or equivalent) and at least 3 years of experience in a related field (e.g., lead, asbestos or environmental remediation work, or construction); or

v) Licensure as an industrial hygienist, professional engineer, architect or environmental health practitioner; and

C) Pass the Department's third party examination for lead risk assessor as required by Section 845.135.

2) To qualify for a license as a lead inspector, a person shall:

A) Submit the training course completion certificates, including an initial lead inspector training course certificate and any subsequent refresher certificates required to maintain accreditation as outlined in subsection (a) of this Section; and

B) Pass the Department's third party examination for lead inspector as required by Section 845.135.

3) To qualify for a license as a lead supervisor, a person shall:

A) Submit the training course completion certificates, including an initial lead supervisor training course certificate and any subsequent refresher certificates required to maintain accreditation as outlined in subsection (a) of this Section; and

B) Meet the experience requirements as follows:

i) One year of experience as a certified lead-based paint abatement worker; or

ii) Two years of experience in a related field (e.g., lead, asbestos or environmental remediation work) or in the building trades.

C) Pass the Department's third party examination for lead supervisor as required by Section 845.135.

Section 845.130 Requirements for Lead Abatement Contractor Licensing

a) To conduct any lead mitigation or lead abatement activities in a regulated facility in Illinois, a person shall be licensed in accordance with the Act and this Section. To qualify for licensure as a lead abatement contractor, an applicant shall:

1) Submit a completed application on a form provided by the Department;

2) Submit a $500 non-refundable licensure fee.

A) A $250 non-refundable licensure fee, in lieu of the $500 fee, may be submitted for initial license applications received and approved by the Department between December 1 and March 1 for licenses that will expire on May 31 of the current year.

B) A $750 non-refundable licensure fee, in lieu of the $500 fee, may be submitted for initial license applications received and approved by the Department between December 1 and March 1 for licenses that will expire May 31 of the following year;

3) Submit the name of the person with a valid Illinois lead supervisor license who will act as the designated lead supervisor for the lead abatement contractor. The license must be held by the contractor or an employee of the contractor;

4) Submit a written statement signed by the contractor specifying that only lead workers licensed by the Department will be employed for lead abatement;

5) Submit a copy of the contractor's written standard operating procedures and employee protection plan, which shall include the following:

A) A description of medical monitoring, respirator training and personal protective equipment programs required in Respiratory Protection Standard (OSHA); and

B) A description of safe work practices to be used when conducting lead mitigation or lead abatement that ensure compliance with this Part. The supervisor training curricula used for training of the designated licensed lead supervisor provides guidance and direction on standard operating procedures for lead safe work

practices and should be referred to when preparing the work practices manual; and

6) Submit a description of all legal proceedings, lawsuits or claims that have been filed or levied against the contractor or any of his/her past or present employees or companies in regard to construction-related activities. If there are no claims against the contractor, then a signed statement to that effect shall be submitted to the Department.

b) Renewal of License. All lead abatement contractor licenses shall be renewed annually. All licenses shall expire on May 31 of each year.

1) If a renewal application is received after April 30, the applicant shall pay a non-refundable late fee of $100, in addition to the $500 non-refundable renewal fee.

2) An applicant whose license has expired for a period of 3 years or less may apply to the Department for reinstatement of the license. The license shall be reinstated if the applicant submits to the Department the current license fee and a reinstatement fee of $100 for each year the license was expired.

3) A license that has expired for more than 3 years is not eligible for renewal. In such instances, the applicant shall submit an initial application and supporting documentation as required by this Section.

Section 845.135 Third Party Examination Requirements

a) Applicants for lead inspector, risk assessor and supervisor licenses are required to pass the Department's third party examination.

1) To qualify to take the third party examination, an applicant shall:

A) Comply with the requirements of Section 845.125;

B) Submit a completed third party examination application form provided by the Department; and

C) Submit a $50 non-refundable third party examination application fee for each separate discipline examination each time the examination is taken.

2) The Department shall provide, by mail, the following to applicants who qualify to take the third party examination:

A) Date, time and location for the applicant to take the third party examination;

B) A detailed information packet, instructions for registration at the examination site, and directions to the facility where the examination is being administered; and

C) Date the Department accepted the application.

b) When an applicant receives a passing score on the third party examination, the Department shall issue the license to the applicant in the discipline for which the applicant qualifies, in accordance with Section 845.125.

c) If the applicant does not pass the third party examination:

1) The Department will notify the applicant in writing;

2) The applicant may reapply to the Department to take the third party examination again. An applicant may take the third party examination no more than 3 times within the 6 months. If an applicant does not pass the third party examination within the 6 months, the applicant must retake the initial training course for that discipline from a Department-approved

training program provider before reapplying for approval to take the third party examination.

Section 845.140 Reciprocity Requirements

a) Each applicant for licensure who is licensed or certified by another USEPA authorized state or tribal lead program in any of the disciplines specified in Section 845.125 may request reciprocal licensure.

1) The Department shall evaluate the requirements for licensure established by the other authorized state or tribal program and shall issue the license if the Department determines that the requirements for licensure by that program are as protective of health and the environment as the requirements for licensure in Illinois.

2) To be considered for reciprocal license, each applicant for licensure pursuant to this Section shall submit:

A) The appropriate application and application fee as required in Section 845.125;

B) Supporting documentation from the USEPA authorized state or tribal program for which reciprocity is being requested, including:

i) Copies of the initial training certificate and subsequent refresher certificates required to maintain accreditation as required by that authorized program;

ii) Copies of the applicant's license issued by the authorized program, if applicable; and

iii) Copies of the results of the third party examination administered by the authorized program, if applicable.

b) Applicants requesting third party examination reciprocity of an examination offered by another authorized state or tribal program shall pass the Illinois Reciprocal Supplemental Examination (IRSE) as required by this Section. The IRSE is used to evaluate the applicant's understanding of Illinois' requirements.

1) The Department shall provide, by mail, the following to applicants who are required to pass the IRSE:

A) The IRSE application;

B) The IRSE form;

C) Copies of the Act and this Part; and

D) Date the Department accepted the reciprocal application.

2) The applicant shall:

A) Complete and submit the IRSE application;

B) Submit the $50 non-refundable IRSE fee; and

C) Submit the completed IRSE form.

3) The applicant may use any resource material for completion of the IRSE form.

4) When an applicant receives a score of at least 70% on the IRSE, the Department shall issue the reciprocal license to the applicant in the discipline for which the applicant qualifies, in accordance with this Section.

5) If the applicant does not pass the IRSE:

A) The Department will notify the applicant in writing;

B) The applicant may reapply to the Department to complete the IRSE again. An applicant may attempt to pass the IRSE twice within one month after the Department accepts the application for reciprocal licensure.

c) If an applicant does not pass the IRSE within one month after the Department accepts the reciprocal application for licensure, the applicant must take a Department-approved refresher training course for the discipline for which the applicant is seeking Illinois licensure.

d) Reciprocal licenses shall expire in accordance with Section 845.125.

e) Applicants for renewal of an existing reciprocal lead license shall pay an annual non-refundable fee as specified in accordance with Section 845.125.

SUBPART D: RESPONSIBILITIES OF LICENSED INDIVIDUALS, CONTRACTORS AND APPROVED TRAINING PROGRAM PROVIDERS

Section 845.150 Lead Worker Responsibilities

a) Any individual conducting lead mitigation and lead abatement is required to be licensed as a lead worker in accordance with the Act and Section 845.125. The licensed lead worker is responsible for the following:

1) Compliance with the Act and this Part;

2) Following the direction and guidance provided by a licensed lead supervisor as outlined in the Work Practice and Occupant Protection Plan required by Section 845.255;

3) Proper implementation of lead mitigation and lead abatement methods; and

4) Using work practices that:

A) Ensure the safety of the workers involved in the lead mitigation and lead abatement activities;

B) Ensure the safety of the occupants of the regulated facility; and

C) Control dust produced during mitigation or abatement of lead bearing surfaces or coatings.

b) The lead worker shall possess the valid and current license issued by the Department on-site at any lead mitigation or lead abatement project.

c) Licensed lead workers can conduct lead mitigation and lead abatement activities only with a licensed lead abatement contractor under the direct supervision of a licensed lead supervisor.

Section 845.155 Lead Supervisor Responsibilities

a) Any individual supervising lead mitigation and lead abatement work practices is required to be licensed as a lead supervisor in accordance with the Act and Section 845.125. The licensed lead supervisor is responsible for the following:

1) Compliance with the Act and this Part;

2) Development and implementation of the Work Practice and Occupant Protection Plan required by Section 845.255;

3) Ensuring proper implementation of lead mitigation and lead abatement methods;

4) Enforcing work practices that:

A) Ensure the safety of the workers involved in the lead mitigation and lead abatement activities;

B) Ensure the safety of the occupants of the regulated facility; and

C) Control dust produced during mitigation or abatement of lead bearing surfaces or coatings;

5) Assuring that all lead workers conducting lead mitigation and lead abatement are licensed in accordance with Section 845.125.

A) The lead supervisor shall maintain on-site copies of licenses for each of the lead workers conducting lead mitigation and lead abatement; and

B) The lead supervisor shall ensure that each lead worker conducting lead mitigation and lead abatement possesses the valid and current license issued by the Department on-site;

6) Being on-site and overseeing all lead mitigation and lead abatement that are occurring;

7) Assuring that all lead mitigation and lead abatement work is conducted in accordance with the Act and Subpart F of this Part; and

8) Providing a written document stating that all lead mitigation and lead abatement identified in the Work Practice and Occupant Protection Plan have been completed. The document shall be provided to the owner of the regulated facility and the licensed lead inspector or lead risk assessor conducting the compliance investigation.

b) A licensed lead supervisor can conduct lead mitigation and lead abatement activities only with a licensed lead abatement contractor. The licensed lead supervisor can conduct lead mitigation and lead abatement without a lead worker license.

Section 845.160 Lead Inspector Responsibilities

Any individual conducting lead inspections in regulated facilities in Illinois is required to be licensed as a lead inspector in accordance with the Act and Section 845.125. The licensed lead inspector is responsible for the following:

a) Compliance with the Act and this Part;

b) Conducting lead inspections in accordance with Section 845.210;

c) Conducting compliance investigations in accordance with Section 845.225;

d) Using procedures that:

1) Ensure the safety of the occupants of the regulated facility; and

2) Control dust and debris produced during lead inspections;

e) Submitting quarterly reports to the Department identifying:

1) The number of lead inspections conducted, including the addresses of the regulated facilities; and

2) The number of compliance investigations conducted for lead mitigation and lead abatement projects, including the addresses of the regulated facilities; and

f) Maintaining records required by Section 845.230.

Section 845.165 Lead Risk Assessor Responsibilities

Any individual conducting lead risk assessment services in a regulated facility in Illinois is required to be licensed as a lead risk assessor in accordance with the Act and Section 845.125. The licensed lead risk assessor is responsible for the following:

a) Compliance with the Act and this Part;

b) Conducting lead risk assessments in accordance with Section 845.215;

c) Conducting lead inspections in accordance with Section 845.210;

d) Conducting lead hazard screens in accordance with Section 845.220;

e) Conducting compliance investigations in accordance with Section 845.225;

f) Using procedures that:

1) Ensure the safety of the occupants of the regulated facility; and

2) Control dust and debris produced during lead risk assessment services;

g) Submitting quarterly reports to the Department identifying:

1) The number of lead inspections conducted, including the addresses of the regulated facilities;

2) The number of lead risk assessments conducted, including the addresses of the regulated facilities;

3) The number of lead hazard screens conducted, including the addresses of the regulated facilities; and

4) The number of compliance investigations conducted for lead mitigation and lead abatement projects, including the addresses of the regulated facilities; and

h) Maintaining records required by Section 845.230.

Section 845.170 Lead Abatement Contractor Responsibilities

Any person conducting lead mitigation and lead abatement work in a regulated facility is required to be licensed as a lead abatement contractor in accordance with the Act and Section 845.130. The licensed lead abatement contractor is responsible for the following:

a) Compliance with the Act and this Part;

b) Comprehensive knowledge about general renovation techniques, including lead-based paint (LBP) mitigation and abatement;

c) Assuring that all lead workers and lead supervisors have received Department-approved lead training on engineering controls and good work practices relating to lead mitigation and lead abatement and on the importance of adherence to these controls and practices;

d) Assuring that all lead workers employed by the lead abatement contractor possess a current and valid lead worker license issued by the Department;

e) Employing a licensed lead supervisor;

f) Assigning a licensed lead supervisor to oversee all project activities for each lead mitigation and lead abatement project;

g) Assuring the safety of workers and preparing a personnel protection plan;

h) Assuring that all lead mitigation and lead abatement work is conducted in accordance with the Act and this Part;

i) Assuring that the Work Practice and Occupant Protection Plan required by Section 845.255 is developed and implemented for each lead mitigation and lead abatement project that is conducted;

j) Submitting the required notification outlined in Section 845.250 for any lead mitigation or lead abatement project; and

k) Maintaining records for licensure and records required for each lead mitigation or lead abatement project conducted in accordance with Section 845.300.

Section 845.175 Lead Training Program Provider Responsibilities

Any person providing lead training in Illinois to individuals seeking licensure in accordance with the Act and this Part is required to be approved in accordance with the Act and Section 845.100. The approved training program provider is responsible for the following:

a) Compliance with the Act and this Part;

b) Assuring that all lead training courses provided are approved in accordance with Subpart C of this Part;

c) Assuring that all lead training is provided in accordance with requirements set forth in Subpart C of this Part; and

d) Maintaining all records as required by Subpart C of this Part.

SUBPART E: STANDARDS FOR CONDUCTING
ENVIRONMENTAL INVESTIGATIONS FOR LEAD

Section 845.200 Environmental Lead Sampling Protocol

a) Only licensed individuals as specified in Section 845.125 shall perform the activities specified in this Section and shall do so in accordance with the appropriate methodologies referenced in this Section.

b) All samples shall be analyzed by an accredited laboratory that has been recognized by the USEPA as capable of performing analyses for lead compounds in paint chip, dust, soil or water, as appropriate.

c) Paint chip samples shall be collected using methodologies outlined in the USEPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust and Lead-Contaminated Soil. Surfaces where paint chip samples are collected with analyses reported as equal to or greater than the levels outlined in Section 845.205 are considered to be lead bearing substances.

d) XRF testing shall be performed using the USEPA Methodology for XRF Performance Characteristic Sheets and in accordance with the XRF manufacturer's instructions. Surfaces sampled with XRF readings equal to or greater than the levels outlined in Section 845.205 are considered to be lead bearing substances.

e) Dust sampling shall be collected using methodologies outlined in the USEPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling. Composite dust sampling is not permitted. Dust samples collected with laboratory analyses reported as equal to or greater than the levels set forth in Section 845.205 are considered elevated.

f) Soil sampling shall be collected using methodologies outlined in the USEPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling. Soil samples collected with laboratory analyses reported as equal to or greater than the levels outlined in Section 845.205 are considered to be elevated.

g) Water sampling shall be collected using methodologies outlined in the Lead and Copper Rule of the USEPA Safe Drinking Water Act. Water samples collected with laboratory analyses reported as equal to or greater than the levels outlined in Section 845.205 are considered to be elevated.

h) Composite sampling, as outlined in the HUD Guidelines USEPA protocols, may be applied to soil sampling only. No other environmental samples shall be collected using a composite sample method.

Section 845.205 Regulatory Limits of Lead

a) The regulatory limit of lead in any lead bearing substance on an interior or exterior surface of a regulated facility shall be 0.5% lead by weight (calculated as lead metal) in the total non-volatile content of liquid paint, or $\geq$ 1.0 mg/cm^2 in the dried film of paint.

b) The regulatory limit of lead in bare soil that is readily accessible to children shall be 400 mcg/g. The regulatory limit of lead in other bare soil areas shall be 1000 mcg/g.

c) The regulatory limit of lead in dust shall be:

1) 40 mcg/ft^2 on all interior and exterior floors; and

2) 200 mcg/ft^2 on all other horizontal surfaces.

d) The regulatory limit of lead in dust for lead hazard screens shall be:

1) 25 mcg/ft^2 on all interior and exterior floors; and

2) 100 mcg/ft^2 on all other horizontal surfaces.

e) The regulatory limit of lead in drinking water is established by the USEPA as 0.015 mg/L (i.e., 15 ppb).

f) Storage of any lead-containing or lead-contaminated article in an area accessible to children shall be prohibited. This includes automotive or marine batteries, battery casings or battery casing liners; scrap lead or lead solder; internal combustion engine parts; print or print faces; pottery glaze or pottery glaze containers; bullets or spent cartridges; or any other article containing or contaminated by lead.

Section 845.210 Procedures for Lead Inspections in Regulated Facilities

a) Licensure. A lead inspection shall be conducted only by a person licensed by the Department as set forth in Section 845.125 as a lead inspector or lead risk assessor. Licensed lead inspectors and risk assessors shall present, upon request, proof of licensure in the form of the Department-issued photo identification license.

b) Conflict of Interest. Lead inspectors and risk assessors conducting lead inspections shall avoid potential conflicts of interest by not being an employee of the client (other than as contracted for the services at hand) or of the lead abatement contractor for the abatement or mitigation project for which clearance is being evaluated.

c) Lead inspectors and risk assessors shall obtain or prepare a written statement of services in accordance with the client's specifications. The statement shall include the scope of the lead inspection, including a summary statement indicating what service was requested by the owner and the extent of service provided. The statement shall be descriptive and shall indicate if the service was a comprehensive lead inspection. If the service was not a comprehensive lead inspection, the extent and limitations of the service shall be clearly stated.

d) Visual Assessment and Property Diagram. A visual assessment of the condition of the building, structures, surfaces and/or components to be included in the lead inspection shall be performed prior to environmental sampling.

1) A detailed property diagram shall be produced using a systematic labeling system.

2) A written inventory shall be produced of each testing combination for all interior and exterior room equivalents.

e) Sampling Locations for Paint. When conducting a lead inspection, a lead inspector or risk assessor shall select the following locations according to the USEPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling and HUD Guidelines and shall test the following locations for the presence of a lead bearing substance in accordance with Section 845.200:

1) Each interior and exterior component that has a distinct painting history, except for components that the lead inspector or risk assessor determines do not contain lead bearing substances.

2) Additional samples for each component that has a distinct painting history in every common area, except for components that the lead inspector or risk assessor determines do not contain lead bearing substances.

f) Any sampling for lead in paint, dust, water or soil shall be collected using USEPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling and HUD Guidelines methodologies.

g) Preparation of Inspection Report. The lead inspection shall be documented in a written report that shall include the following:

1) The name and address of the regulated facility;

2) The name, address and telephone number of the property owner;

3) The name, license number and written signature of the lead inspector or risk assessor performing the work. A copy of the individual's license current at the time of the work shall be included in the report;

4) The date of the field work and the date of the report;

5) A summary statement indicating what service was performed as specified by the client in the contract for services. The statement shall be descriptive and shall indicate whether the service was a comprehensive lead inspection. If the service was not a comprehensive lead inspection, the extent and limitations of the service shall be clearly stated;

6) Results of the visual inspections, including a narrative description of the regulated facility, including general condition, painted surfaces condition and maintenance practices;

7) A list of the locations of the lead bearing substances identified. The list shall be cross-referenced with a basic floor plan drawing of the regulated facility inspected;

8) A copy of all XRF sampling reports and laboratory analyses;

9) Each testing method, device and XRF serial number (if applicable), and sampling procedures employed for paint analysis, including quality control data; and

10) A statement that the presence of lead bearing substances shall be disclosed to potential buyers and renters prior to obligation under a sales contract or lease in accordance with Section 845.25, 24 CFR 35 and 40 CFR 745. Sample disclosure language can be found in the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, Chapter 7.

h) The written report required by this Section shall be provided to the owner. A copy of the report shall be maintained by the licensed professional who performed the service in accordance with Section 845.230.

Section 845.215 Procedures for Lead Risk Assessments in Regulated Facilities

a) Licensure. A lead risk assessment shall be conducted only by a person licensed by the Department as set forth in Section 845.125 as a lead risk assessor. A licensed lead risk assessor shall present, upon request, proof of licensure in the form of the Department-issued photo identification license.

b) Conflict of Interest. Lead risk assessors conducting lead risk assessment activities shall avoid potential conflicts of interest by not being an employee of the client (other than as contracted for the services at hand) or of the lead abatement contractor for the abatement or mitigation project for which clearance is being evaluated.

c) Lead risk assessors shall obtain or prepare a statement of services in accordance with the client's specifications. The statement shall include the scope of the lead risk assessment, including a summary statement indicating what service was requested by the owner and the extent of service provided. The statement shall be descriptive and shall indicate whether the service was a comprehensive lead risk assessment. If the service was not a comprehensive lead risk assessment, the extent and limitations of the service shall be clearly stated.

d) Visual Assessment. A visual inspection for risk assessment to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and evaluate other potential lead hazards shall be conducted prior to environmental sampling.

e) Collection of Background Information. The lead risk assessor shall collect background information regarding the physical characteristics of the property, including use patterns that may cause exposure to a lead hazard.

f) Sample Locations for Paint. When conducting a lead risk assessment, a lead risk assessor shall select the following locations according to the USEPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling and HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing. The following locations shall be tested for the presence of a lead bearing substance, in accordance with Section 845.200. The following surfaces that are determined to be a distinct testing combination shall be tested for the presence of lead:

1) Each friction surface;

2) Each impact surface with visibly deteriorated paint; and

3) All other surfaces with visibly deteriorated paint.

g) Sample Locations for Dust. When conducting a lead risk assessment, a lead risk assessor shall select the following locations according to USEPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling and HUD Guidelines methodologies, and test for the presence of lead hazards in dust in accordance with Section 845.200. The following representative locations shall be tested for lead dust based on visual assessment of painting history and component type:

1) Two single surface dust samples shall be collected, one from the floor and one from the window in each area where occupants are likely to come into contact with dust;

2) Additionally, interior window stool and floor dust samples (single-surface samples only) shall be collected and analyzed for lead concentration in common areas where the occupants are likely to come into contact with lead. Composite samples are not permitted.

h) Soil Sampling. Soil samples are discretionary based on the visual assessment. If collected, soil samples shall be collected in accordance with USEPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling and HUD Guidelines methodologies. Soil samples collected with laboratory analyses reported as equal to or greater than the levels specified in Section 845.205 are considered elevated.

i) All environmental sampling or testing shall be conducted using methodologies that incorporate adequate quality control procedures as referenced in Section 845.200.

j) Any collected paint chip, dust, soil or water samples shall be analyzed by an accredited laboratory.

k) The lead risk assessment shall be documented in a written report that shall include the following:

1) The name and address of the regulated facility;

2) The name, address and telephone number of the property owner;

3) The name, license number and written signature of the lead risk assessor performing the work. A copy of the individual's license current at the time of the work shall be included in the report;

4) The date of the field work and the date of the report;

5) A summary statement indicating what service was requested by the owner and the extent of service provided by the lead risk assessor. The statement shall be descriptive and shall indicate whether the service was a comprehensive lead risk assessment. If the service was not a comprehensive lead risk assessment, the extent and limitations of the service shall be clearly stated. The statement shall also include a narrative description of the facility, including general condition, condition of the painted surfaces and maintenance practices;

6) A list of the location and type of lead hazards and lead bearing substances identified. The lead hazards and lead bearing substances shall be cross-referenced with a basic floor plan drawing of the facility assessed. Each lead hazard identified shall be accompanied by written hazard control options available to the owner to address each lead hazard. The lead hazard listing shall be arranged based on priority;

7) If the service was conducted for a regulated facility with multiple dwelling units, recommendations for maintenance of lead bearing substances and lead hazards that may be employed universally for all units in the complex shall be provided to the property owner;

8) A copy of all XRF sampling reports and laboratory analyses, and a statement as to how the samples were collected; and

9) A statement that the presence of lead bearing substances shall be disclosed to potential buyers and renters prior to obligation under a sales contract or lease in accordance with Section 845.25, 24 CFR 35 and 40 CFR 745. Sample disclosure language can be found in HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.

l) The written report required by this Section shall be provided to the owner. A copy of the report shall be maintained by the licensed professional who performed the service in accordance with Section 845.230.

Section 845.220 Procedures for Lead Hazard Screens in Regulated Facilities

a) Licensure. A lead hazard screen shall be conducted only by a person licensed by the Department as set forth in Section 845.125 as a lead risk assessor. The licensed lead risk assessor shall present, upon request, proof of licensure in the form of the Department-issued photo identification license.

b) Conflict of Interest. Lead risk assessors conducting lead risk assessment activities shall avoid potential conflicts of interest by not being an employee of the client (other than as contracted for the services at hand) or of the lead abatement contractor for the abatement or mitigation project for which clearance is being evaluated.

c) Lead risk assessors shall obtain or prepare a written statement of services in accordance with the client's specifications. The statement shall include the scope of the lead hazard screen, including a summary statement indicating what service was requested by the owner and the extent of service provided.

d) Collection of Background Information. The lead risk assessor shall collect background information regarding the physical characteristics of the property, including use patterns that may cause exposure to lead hazards.

e) Visual Inspection. A visual inspection of the regulated facility shall be conducted to:

1) Determine whether any deteriorated paint is present. Identification of 5 or more surfaces in poor condition constitutes failure of a lead hazard screen and requires a lead risk assessment; and

2) Locate at least 2 dust sampling locations.

f) Sample Locations for Paint. When conducting a lead hazard screen, a lead risk assessor shall select locations that have deteriorated paint and are found to have a distinct painting history to sample for the presence of lead bearing substances.

g) Sample Locations for Dust. When conducting a lead hazard screen, a lead risk assessor shall select the following locations according to the methodologies referenced in this Section, and shall test for the presence of lead hazards in dust, in accordance with Section 845.200. The following representative locations shall be tested for lead dust based on visual assessment of painting history and component type:

1) Two single surface dust samples shall be collected, one from the floor and one from the window in each area where occupants are likely to come into contact with dust; and

2) Additionally, interior window stool and floor dust samples (single-surface samples only) shall be collected and analyzed for lead concentration in common areas where the occupants are likely to come into contact with lead. Composite samples are not permitted.

h) Soil Sampling. Soil samples are discretionary based on the visual assessment. If collected, soil samples shall be collected in accordance with USEPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling and HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing methodologies. Soil samples collected with laboratory analyses reported as equal to or greater than the levels specified in Section 845.205 are considered elevated.

i) All environmental sampling or testing shall be conducted using methodologies that incorporate adequate quality control procedures as referenced in Section 845.200.

j) All collected paint chip, dust, soil or water samples shall be analyzed by an accredited laboratory.

k) The lead hazard screen shall be documented in a written report that shall include the following:

1) The name and address of the regulated facility;

2) The name, address and telephone number of the property owner;

3) The name, license number and written signature of the lead risk assessor performing the work. A copy of the individual's license current at the time of the work, shall be included in the report;

4) The date of the field work and the date of the report;

5) A summary statement indicating what service was requested by the owner as required by subsection (c) of this Section. The statement shall also include a narrative description of the facility, including general condition, condition of the painted surfaces condition and maintenance practices;

6) Results of the visual inspections, including a narrative description of the facility, including general condition and condition of the painted surfaces;

7) A list of the locations of the lead bearing substances identified. The list shall be cross-referenced with a basic floor plan drawing of the regulated facility inspected;

8) Recommendations for a follow-up lead risk assessment, as appropriate, and any further necessary actions;

9) A copy of all XRF sampling reports and laboratory analyses;

10) Each testing method, device and XRF serial number (if applicable) and sampling procedures employed for paint analysis, including quality control data; and

11) A statement that the presence of lead bearing substances shall be disclosed to potential buyers and renters prior to obligation under a sales contract or lease in accordance with Section 845.25, 24 CFR 35 and 40 CFR 745. Sample disclosure language can be found in HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.

l) The written report required by this Section shall be provided to the owner. A copy of the report shall be maintained by the licensed professional who performed the service in accordance with Section 845.230.

Section 845.225 Compliance Investigation in Regulated Facilities

a) The owner, its agent and/or the licensed lead abatement contractor shall allow access to the Department or a delegate agency authorized by the Department to inspect a work area at any time during a lead abatement or lead mitigation project to determine compliance with the Act and this Part.

b) Upon completion of the lead abatement or lead mitigation activities and the clean-up procedures outlined in Section 845.285, each work area shall pass a visual inspection and final clearance dust sampling, which shall include the following minimum requirements:

1) A licensed lead inspector or risk assessor shall review the Work Practice and Occupant Protection Plan, developed by the licensed lead supervisor as outlined in Section 845.255, to determine the areas that require final clearance.

2) A licensed lead inspector or risk assessor shall receive and review the written assurance statement provided by the licensed lead supervisor as required in Section 845.155.

3) A licensed lead inspector or risk assessor shall conduct a visual inspection of the work areas identified in the above-referenced Work Practice and Occupant Protection Plan to ensure that the surfaces have been abated or mitigated. The licensed lead inspector or risk assessor shall notify the owner or its agent and the licensed lead abatement contractor of the results of the visual inspection, and shall include the locations and characteristics of surfaces with inadequate treatment. The visual assessment shall be documented in writing by the licensed lead inspector or risk assessor.

4) For work areas that pass the final visual inspection, a licensed lead inspector or risk assessor shall collect at least the following dust wipe samples for no fewer than four rooms within the work area identified in the Work Practice and Occupant Protection Plan (if there are fewer than 4 rooms, all rooms shall be sampled):

A) At least one sample shall be collected from the floor;

B) At least one sample shall be collected from a window stool and one sample from a window well if available. If there is not a window

located within the work area, these dust samples shall be collected from alternative horizontal surfaces;

C) One sample shall be located on a horizontal surface at or near the entrance to the work area.

5) For areas that fail the final visual inspections, the licensed lead abatement contractor shall repeat the procedures outlined in Section 845.285.

6) For areas that pass the final visual inspection, but are found in non-compliance with the regulatory limits established in Section 845.205, the licensed lead abatement contractor shall repeat the procedures outlined in Section 845.285 for non-compliant surfaces and those horizontal surfaces below the non-compliant surfaces. Upon completion of these procedures, the licensed lead inspector or risk assessor shall repeat the visual assessment and dust sampling specified in subsection (b) for those non-compliant surfaces and the horizontal surfaces below the non-compliant surfaces. This process shall continue until compliance with the regulatory limits established in Section 845.205 is achieved.

c) Before a work area may be released for re-occupancy, the work area must meet the following requirements.

1) The work area shall pass the visual inspection outlined in subsection (a), ensuring that all abated or mitigated surfaces and all uncarpeted floors have been treated to provide smooth and easily cleanable surfaces.

2) Lead dust levels on horizontal surfaces are below the levels established in Section 845.205. All environmental lead samples must be submitted and analyzed by an accredited laboratory.

d) Upon achieving acceptable clearance results, the licensed lead inspector or risk assessor shall prepare a written compliance investigation report. A copy of the compliance investigation report shall be provided to the licensed lead abatement contractor and to the owner of the regulated facility. The report shall include the following:

1) The written statement required by subsection (b)(2) of this Section stating that the work area has passed the final visual inspection;

2) A written statement that the dust wipe samples collected in the work area were within acceptable limits as outlined in Section 845.205;

3) The printed name, license number and written signature of the person who conducted the clearance sampling; and

4) A copy of the field sampling forms utilized, including the locations where the samples were collected and a copy of the laboratory results.

e) The licensed lead inspector or risk assessor shall keep a copy of the compliance investigation report as required by the record keeping requirements outlined in Section 845.230.

Section 845.230 Record Keeping Requirements for Environmental Investigations for Lead

All written reports and records required in Sections 845.210, 845.215, 845.220 and 845.225 shall be maintained by the licensed lead inspector and/or lead risk assessor who performed the lead investigation service.

a) Copies of all written reports and records shall be maintained for no fewer than 6 years from the date of the investigation;

b) The licensed lead inspector and lead risk assessor shall allow the Department or its delegate agency access to such records as requested, and shall provide copies to the Department upon request;

c) Copies of all written reports and records shall be provided to the person who contracted for the lead investigation service for the regulated facility.

SUBPART F: STANDARDS FOR LEAD MITIGATION AND LEAD ABATEMENT

Section 845.250 Submissions and Notices

a) Notice to the Department. The lead abatement contractor shall notify the Department at least 7 calendar days prior to the commencement of any lead abatement or lead mitigation project of a regulated facility.

1) Notifications and changes to the notification shall be submitted on a form provided by the Department and shall be complete and accurate;

2) The notification shall reflect a start date that corresponds with the beginning of abatement setup and an end date that corresponds with the achievement of clearance. The lead abatement contractor shall submit any changes to the notification to the Department at least one day prior to the changes taking place;

3) The calendar days shall be counted starting with the day the notice is received by the Department. The date received will be based on the postmarked date if mailed and/or the facsimile receipt date. The lead abatement contractor may start work on the eighth calendar day;

4) In the event that a project is delayed for any reason, a notification shall be submitted to the Department stating so. The notification shall be updated every 7 days until the project begins again. If the notification dates expire before the job re-commences, a new 7-day notification shall be submitted to the Department in accordance with subsections (a)(1)-(3).

b) Notice to Occupants

1) The owner or its agent of any tenant-occupied regulated facility shall give notice to the occupants at least 7 calendar days, but not more than 30 calendar days, before a lead abatement contractor may commence a lead abatement or lead mitigation project. The owner of the building in which the lead abatement or lead mitigation project is to take place shall notify all residents of:

A) The area that is to be abated or mitigated;

B) The date on which abatement or mitigation is to commence;

C) The name and telephone number for the licensed lead abatement contractor;

D) The occupants' obligations under this Section to remove personal items from the proposed work area; and

E) *The owner of a dwelling unit or residential building who has received a mitigation notice under Section 9 of* the *Act shall post notices in common areas of the building specifying the identified lead hazards. The posted notice, drafted by the Department and sent to the property owner with the notification of lead hazards, shall indicate the following:*

i) *that a unit or units in the building have been found to have lead hazards;*

ii) *that other units in the building may have lead hazards;*

iii) *that the Department recommends that children 6 years of age or younger receive a blood lead screening;*

iv) *where to seek further information; and*

v) *whether mitigation notices have been issued for 2 or more dwelling units within a 5-year period of time.*

2) *Once the owner has complied with a mitigation notice or mitigation order issued by the Department, the owner may remove the notices posted pursuant to this Section.* (Section 9.4 of the Act)

Section 845.255 Work Practice and Occupant Protection Program

a) The lead abatement contractor shall protect occupants of a regulated facility undergoing lead abatement or lead mitigation activities from exposure to potential lead hazards that may be generated by the lead abatement or lead mitigation activities. To ensure the health and safety of occupants, a Work Practice and Occupant Protection Plan shall be produced and followed for each lead mitigation and lead abatement project. At a minimum, the plan shall describe the protocols, procedures and work practices to be employed by the lead abatement contractor to ensure that the occupants are properly protected from potential lead hazards that may be generated from the lead abatement or lead mitigation work. The plan shall be written and shall fulfill the following requirements:

1) Evaluate the need to remove the occupants from the regulated facility during the lead abatement or lead mitigation;

2) Be unique to each lead abatement or lead mitigation work area;

3) Be developed by a licensed lead supervisor employed by the licensed lead abatement contractor performing the lead abatement or lead mitigation work;

4) Provide the name, written signature and license number of the licensed lead supervisor who prepared the plan;

5) Be developed and implemented prior to commencement of lead abatement or lead mitigation;

6) Include the results of any lead inspection or lead risk assessment conducted in the regulated facility;

7) Evaluate and establish the requirements for pre-cleaning the work areas before establishing work place barriers and containment systems as required by Section 845.265;

8) Describe what work practices will be employed to prevent the uncontrolled release of dust and debris from the work area;

9) Describe the method of separating the work area from non-work areas and describe work area isolation methods to prevent unauthorized entry by non-licensed or non-protected individuals;

10) Describe in writing work practices to be employed to abate or mitigate the lead bearing substance and/or lead hazard;

11) Outline procedures to ensure that the work area or regulated facility is not re-occupied prior to final cleaning required in Section 845.285 and the clearance requirements specified in Section 845.225;

12) Be kept at the site and updated as necessary by the lead supervisor employed by the lead abatement contractor performing the lead abatement or lead mitigation;

13) Be kept by the lead abatement contractor after the completion of the lead mitigation or lead abatement project in accordance with the record keeping requirements outlined in Section 845.300; and

14) Be made available for review by the building owner, its agent or a representative of the Department or its delegate agency.

b) The lead abatement contractor performing a lead abatement or lead mitigation activity that is expected to break or disturb any lead bearing substances shall display a caution sign at each work area in the regulated facility in the following manner:

1) Before abating or mitigating a lead bearing substance, caution signs shall be posted by the lead abatement contractor immediately outside all entrances and exits to each work area;

2) Caution signs shall be kept posted until the lead abatement or lead mitigation is completed and final dust clearance results have been obtained. Caution signs shall:

A) Be at least 11" by 8.5";

B) State the date and place of the lead abatement or lead mitigation project; and

C) Include the phrase "Warning, Lead Work Area, Poison, No Smoking or Eating" in bold lettering, at least 2 inches high.

Section 845.260 Personnel Protection Program

a) The lead abatement contractor, its agent, or any person who is performing lead abatement or lead mitigation in a regulated facility shall take the necessary precautions to protect his or her health, the health of any supervisor or worker employed, and the health of occupants of the regulated facility during any lead abatement or lead mitigation that may produce lead chips, dust or fumes.

b) The lead abatement contractor shall comply with the requirements established for worker protection in accordance with 29 CFR 1926.62, 29 CFR 1910.1025 and 29 CFR 1910.134.

c) The lead abatement contractor shall maintain copies of the written personnel protection program on-site at each lead abatement and lead mitigation project and make those copies available for review by Department or delegate agency staff. The written plan shall include:

1) The minimum requirements for personal protective equipment to enter the work area. If protective equipment is not provided, the contractor shall have on-site air monitoring results and/or negative exposure assessment as required by OSHA, indicating that protective equipment is not required;

2) The work practices to ensure that employees are not spreading potential lead contamination to other locations by transfer on protective equipment; and

3) The personal hygiene practices to be used by personnel for decontamination prior to leaving the work area.

d) Copies of the written personnel protection program shall be maintained as part of the records required in Section 845.300.

Section 845.265 Work Area Isolation, Preparation and Containment

a) Work area isolation, preparation and containment shall be in accordance with the written Work Practice and Occupant Protection Program required by Section 845.255 and the procedures specified in this Section.

b) The licensed lead abatement contractor shall ensure that unauthorized persons are not permitted to enter a work area where lead mitigation or lead abatement is occurring.

c) The licensed lead abatement contractor shall ensure that all warning signs required by Section 845.255 are clearly displayed, identifying each work area within the regulated facility.

d) Accessibility. At all times when a lead abatement or lead mitigation project is being conducted in a regulated facility, the lead abatement contractor shall ensure that the following conditions are met:

1) The Department or its delegate agency shall have access to the work area at any time during a lead abatement or lead mitigation project to determine compliance with the requirements of this Part;

2) The lead abatement contractor shall ensure that occupants and pets use alternative entrances and exits that do not require passage through the work area. The lead abatement contractor shall use all reasonable efforts to create an uncontaminated passage for entrance and exit of all building occupants;

3) If the entrance to and exit from a building can only be through the work area, the lead abatement contractor shall provide an enclosed passage through the work area, which serves as an air-tight isolation barrier from the work area and is to be used for entrance and exit from the building. The airtight enclosed passage must remain in place until work is complete, final clean-up is conducted and the compliance investigation required by Section 845.225 has been successfully completed;

4) Restricted access to each work area shall remain in place until work is completed, final clean-up is conducted and the final dust clearance samples have passed the compliance investigation required in Section 845.225.

e) Work Area Pre-cleaning. The lead abatement contractor shall conduct the required pre-cleaning of each work area as required by the Work Practice and Occupant Protection Plan required by Section 845.255, including at least the following:

1) Turn off all forced air ventilation in the work area and seal exhaust and intake points in the work area;

2) Pre-clean movable objects within the proposed work area using HEPA-filtered vacuum equipment and/or wet cleaning methods, as appropriate, and remove such objects from the work area;

3) Clean upholstered furniture, drapes and removable carpeting twice using HEPA-filtered vacuum equipment before removal from the work area;

4) Pre-clean fixed objects using HEPA-filtered vacuum equipment and/or wet cleaning methods as appropriate; and

5) Pre-clean the proposed work area using HEPA filtered vacuum equipment and/or wet cleaning methods as appropriate.

f) Interior Containment. Before beginning to abate or mitigate a lead bearing substance that may cause lead chips, dust or fumes in the work area, a licensed lead abatement contractor performing lead abatement or lead mitigation shall, in the following order:

1) Ensure that access to the work area is restricted as required in subsection (d) of this Section;

2) Ensure that all requirements of work area pre-cleaning specified in subsection (e) of this Section have been completed;

3) Cover and seal all objects that cannot be moved, such as radiators, refrigerators, stoves, kitchen cabinets, built-in furniture, and bookcases, with plastic sheeting at least 6 mils thick;

4) Cover floors in the work area with plastic sheeting at least 6 mils thick sealed in place. For projects that will last more than one day, 2 layers of plastic sheeting 6 mils thick shall be installed. At the end of each work day the top layer of plastic sheeting shall be cleaned, removed and disposed of in accordance Section 845.285(b); and

5) Protect carpeting to ensure that contamination does not occur from the lead abatement or lead mitigation activities. Carpeting is subject to the compliance sampling outlined in Section 845.225, including meeting the regulatory limits of lead for floors as specified in Section 845.205.

g) Exterior Containment. Before beginning to abate or mitigate a lead bearing substance in an exterior work area, a licensed lead abatement contractor performing the abatement or mitigation shall ensure the following:

1) Access to the work area shall be restricted as required in subsection (d) of this Section.

2) Pre-cleaning of the work area shall be completed as required by subsection (e) of this Section, including removal and disposal of visible paint chips and debris that are on the ground.

3) When waste and debris will be generated from the lead mitigation or lead abatement activities, the lead abatement contractor shall install at least one layer of plastic sheeting at least 6 mils thick to collect any debris generated. The plastic sheeting shall be attached below the surface to be abated or mitigated to collect and contain any waste and debris. The plastic sheeting shall extend out from the foundation 3 feet per story being abated or mitigated, with a minimum of 5 feet and a maximum of 20 feet.

A) When liquid waste is produced, excluding hydro-blasting, the lead abatement contractor shall install a waste collection system capable of handling the amount of liquid waste to be generated by the procedure.

B) The waste collection system shall be attached below the surface being abated or mitigated to assure that liquid waste does not leak from the contained work area.

4) Containment systems shall be installed to withstand the forces of the weather and to contain all debris and waste generated during the lead abatement or lead mitigation activities. If inclement weather conditions persist during lead abatement or lead mitigation activities, the lead abatement contractor may be required to erect vertical shrouds to prevent dispersal or spread of generated debris.

5) If the lead abatement contractor is to employ vacuum blasting or contained hydro-blasting, interior windows shall be sealed with at least 2 layers of plastic sheeting at least 6 mils thick.

6) Plastic containment barriers that cannot be secured to prevent unauthorized access in the absence of the lead abatement contractor shall be cleaned, removed and disposed of daily in accordance with Section 845.285(c).

Section 845.270 Prohibited Work Practices

a) No person conducting lead abatement or lead mitigation of lead bearing substances shall employ the following methods:

1) Open flame burning;

2) Dry sanding;

3) Open abrasive blasting;

4) Uncontained hydro-blasting;

5) Methylene chloride; or

6) Dry scraping.

Section 845.275 Safe Work Practices

a) Lead abatement is a work practice that when completed shall remove or permanently eliminate exposure to the lead bearing substances at a regulated facility. Abatement of lead bearing substances may employ a wide range of work practices outlined in the methodologies specified in Section 845.15, including the following methods:

1) Replacement. Any component part of a building may be abated by replacement with a part free of lead bearing substances.

2) Removal. Any component part of a building may be abated by the following techniques:

A) Off-site chemical stripping;

B) Heat gun (operating temperature shall not exceed 1100^{o} F). If using heat guns, the lead abatement contractor shall ensure that appropriate fire extinguishing equipment is on-site and immediately accessible to the lead workers using the heat guns. A minimum of one fire extinguisher for each heat gun being used on-site shall be supplied by the lead abatement contractor;

C) Nonflammable chemical strippers that do not contain methylene chloride;

D) Sander equipped with HEPA vacuum attachment;

E) Wet planing to substrate;

F) Vacuum blasting in exterior work areas only;

G) Contained hydro-blasting in exterior work areas only; and

H) Mechanical paint removal systems equipped with a HEPA vacuum attachment.

3) Enclosure. A lead bearing substance may be abated by covering the lead bearing surface with any of the following materials, provided use of the material complies with local building ordinances or codes and is applied in accordance with methodologies outlined in Section 845.15.

A) Gypsum board;

B) Fiberglass mats;

C) Canvas-backed vinyl wall coverings;

D) High pressure laminated plastic sheet, such as Formica®;

E) Tile;

F) Paneling;

G) Vinyl;

H) Wood;

I) Aluminum;

J) Stone; or

K) Other durable material that does not readily tear or peel.

4) Encapsulation. A lead bearing substance may be abated by encapsulation if the encapsulating product is applied in accordance with the manufacturer's directions and is applied in accordance with methodologies specified in Section 845.15.

b) Lead mitigation is a work practice that when completed temporarily renders a lead bearing substance safe and removes an immediate health hazard to humans. Mitigation of lead bearing substances may include a wide range of interim lead hazard control work practices, including:

1) Those procedures identified as interim controls outlined in the methodologies incorporated in Section 845.15;

2) The methods outlined in subsection (a) of this Section that are not permanent;

3) Paint film stabilization;

4) Friction and impact surface treatment;

5) Dust removal and control; and

6) Reversal. A lead bearing substance may be mitigated by reversing component parts, provided that no lead bearing surface remains exposed at the completion of the process and all seams are caulked and sealed.

Section 845.280 Guidelines for Abatement and Mitigation of Lead-Contaminated Soil

a) Soil abatement, including removal of lead-contaminated soil, shall be conducted in accordance with methodologies outlined in Section 845.15 and meet the following requirements;

1) All soil removal work shall be conducted by licensed lead abatement contractors employing licensed lead workers who are supervised by a licensed lead supervisor;

2) Worker protection shall be provided as required in Section 845.260. At a minimum, all workers removing leaded soil shall be provided with a changing area equipped with a facility for washing or showering. Workers shall be required to change into personal protective clothing before entering the work area, and to remove personal protective clothing and shower or wash before leaving the work area;

3) A Work Practice and Occupant Protection Program as required by Section 845.255 shall be developed;

4) Equipment decontamination procedures shall be employed to prevent the spread of lead contamination. Disposable items are not to be reused and shall be discarded as provided in Section 845.285. The equipment decontamination procedures shall be outlined in the Work Practices and Occupant Protection Program required by Section 845.255;

5) Prior to beginning soil removal, the source of the lead contamination of the soil shall be identified and eliminated if possible, to prevent re-contamination of the abated area;

6) Removal of the lead-contaminated soil shall be accompanied by dust suppression methods to keep the generation of dust to a minimum;

7) Soil that is stockpiled prior to disposal shall be:

A) Placed on a layer of impermeable plastic;

B) Kept moist to avoid dust generation; and

C) Covered with impermeable plastic that is secured to the ground.

8) Removed lead-contaminated soil shall be transported to disposal areas in sealed containers or in a covered vehicle in accordance with disposal requirements outlined in Section 845.290. Off-site vehicular or foot tracking of contaminated soil shall be avoided;

9) Any removed soil that is to be replaced shall be replaced with soil that has been tested and confirmed to have a lead concentration less than 400 ppm. The testing shall be conducted by a licensed lead inspector or lead risk assessor, with analysis performed by an accredited laboratory as defined in Section 845.20.

b) Soil abatement, including the installation of a permanent cover, such as concrete or asphalt, over lead-contaminated soil shall be conducted in accordance with methodologies outlined in Section 845.15 and shall meet the following requirements:

1) Soil abatement work, including the installation of a permanent cover, may be conducted by non-licensed persons, provided that the abatement activities do not involve removal of the existing lead-contaminated soil;

2) Dust suppression methods shall be employed to keep the generation of dust to a minimum;

3) Equipment decontamination procedures shall be employed to prevent the spread of lead contamination. Disposable items are not to be reused and shall be discarded as provided in Section 845.290;

4) Prior to beginning soil covering, the source of the lead contamination of the soil shall be identified and eliminated, if possible, to prevent re-contamination of the work area.

c) Soil mitigation, including the installation of a non-permanent cover, such as mulch, stone, gravel, soil, sod, etc., over lead-contaminated soil shall be conducted in accordance with documented methodologies outlined in Section 845.15 and shall meet the following requirements:

1) Soil mitigation work, including the installation of a non-permanent cover, may be conducted by non-licensed persons, provided that the mitigation activities do not include the removal of the existing lead-contaminated soil;

2) Dust suppression methods shall be employed to keep the generation of dust to a minimum;

3) Equipment decontamination procedures shall be employed to prevent the spread of lead contamination. Disposable items are not to be reused and shall be discarded as provided in Section 845.290;

4) Prior to beginning soil mitigation, the source of the lead contamination of the soil shall be identified and eliminated if possible to prevent re-contamination of the mitigation area;

5) The non-permanent cover material shall be tested and confirmed to have a lead concentration less than 400 ppm. The testing shall be conducted by a licensed lead inspector or lead risk assessor, with analysis conducted by an accredited laboratory.

Section 845.285 Clean-Up Procedures

a) Clean up of interior and exterior work areas shall be conducted at least daily at the end of the work shift, and upon completion of the lead mitigation and lead abatement work.

b) Clean Up of Interior Work Areas. The lead abatement contractor shall complete the following procedures in the order that they appear:

1) All work area isolation systems required in Section 845.265 shall remain in place until completion of the compliance investigation in accordance with Section 845.225.

2) All waste and debris shall be removed from the work area and disposed of in accordance with Section 845.290.

3) All surfaces and plastic containment barriers in the work area shall be HEPA vacuumed and wet washed with a detergent and water solution or a phosphate-free lead-dissolving detergent.

4) After wet washing and allowing all surfaces to dry, HEPA vacuuming of all surfaces in the work area shall be repeated.

5) All plastic barriers used for containment, excluding isolation barriers, if present, shall be removed and disposed of.

6) All surfaces in the work area shall be HEPA vacuumed.

7) All lead waste, isolation barriers and material from clean up, including mop heads, sponges, filters and disposable clothing, shall be deposited in double plastic bags at least 4 mils thick or single bags 6 mils thick, and the bags shall be sealed.

c) Clean Up of Exterior Work Area. The lead abatement contractor shall conduct exterior clean up according to the following:

1) All waste and debris shall be removed from the work area and disposed of in accordance with Section 845.290.

2) All plastic barriers used for containment shall be removed and disposed of. The plastic sheeting shall be removed in a manner to prevent release of any remaining debris.

A) Any surface in the work area with visible debris remaining after removal of plastic sheeting shall be HEPA vacuumed.

B) All exterior horizontal components in the work area shall be wet washed with a detergent and water solution or a phosphate-free lead-dissolving detergent as appropriate.

3) All lead waste, work area barriers and material from clean up, including mop heads, sponges, filters and disposable clothing, shall be deposited in double plastic bags at least 4 mils thick or single bags 6 mils thick, and the bags shall be sealed.

Section 845.290 Disposal Procedures

Waste Disposal. The lead abatement contractor shall dispose of all waste generated from the lead abatement or lead mitigation in accordance with State, local and federal laws.

Section 845.295 Reoccupation of the Work Area

a) Before a work area may be released for reoccupancy, the work area must meet the following requirements:

1) The work area shall pass the visual inspection outlined in Section 845.225, ensuring that all abated or mitigated surfaces and all floors have been treated to provide smooth and easily cleanable surfaces; and

2) Lead dust levels on horizontal surfaces shall be below the levels established in Section 845.205. All environmental lead samples must be submitted and analyzed by an accredited laboratory, as defined in 845.20.

b) Upon the work area's passing of the visual inspection and achieving acceptable dust sample clearance results, the licensed lead abatement contractor shall obtain a signed copy of the compliance investigation report required by Section 845.225 before being released from the work area.

c) Upon receipt of the signed compliance investigation report required by Section 845.225, the licensed lead abatement contractor shall remove the remaining isolation barriers and may release the work area for reoccupancy.

Section 845.300 Record Keeping Requirements for Lead Mitigation and Lead Abatement Activities

a) The lead abatement contractor shall retain the following information for every lead abatement or lead mitigation project conducted in a regulated facility in Illinois:

1) The name and address of the owner or its agent for whom the project was conducted;

2) A copy of the abatement/mitigation notification form submitted to the Department prior to commencement;

3) Copies of the results of any lead inspection or lead risk assessment conducted in the regulated facility and provided to the lead abatement contractor;

4) A copy of the Work Practice and Occupant Protection Plan developed for the regulated facility;

5) A copy of the OSHA personal monitoring results conducted for the project;

6) A list of the names of the licensed lead workers and lead supervisors employed for each project, including their license numbers;

7) A copy of the written assurance statement provided by the licensed lead supervisor as required in Section 845.155, which states that all lead mitigation and lead abatement identified in the Work Practice and Occupant Protection Program have been completed; and

8) A copy of the written compliance investigation report required by Section 845.225, indicating that the project met the clearance criteria.

b) The records shall be retained for at least 6 years from the date the lead mitigation or lead abatement project was completed.

c) The lead abatement contractor shall provide a copy of the items listed in subsection (a)(1)-(8) to the owner of the regulated facility within 60 days after completion of the lead mitigation and/or abatement project.

d) The lead abatement contractor shall maintain the following records pertaining to lead abatement contractor license application records and supporting documents for as long as the company is licensed:

1) Completed license application form;

2) Proof of liability insurance for all of the time that the lead abatement contractor is licensed;

3) Medical monitoring records for all employees;

4) Copies of all correspondence from the Department; and

5) Records of all legal proceedings, lawsuits or claims that have been filed or levied against the Contractor during the time that it is licensed by the Department as a lead abatement contractor.

e) The lead abatement contractor shall allow the Department or its representative access to records pertaining to all lead mitigation and lead abatement projects conducted in regulated facilities.

SUBPART G: FINES, PENALTIES AND ADMINISTRATIVE HEARINGS

Section 845.350 Denial, Suspension and Revocation of Lead Training Course Approval

a) Suspension, Revocation, or Denial of Training Courses. The Director of Public Health, after notice and opportunity for hearing, may deny the application for, or suspend or revoke the approval of, a lead training program, or the approval of an individual training course, in any case in which the Department finds substantial or continued failure to comply with the requirements of this Part, including fraud, misrepresentation, working without approval, or not adhering to approved training materials.

b) The hearing notice shall be made by certified mail or by personal service and shall set forth the particular reasons for the proposed action and provide the applicant or approved provider with an opportunity to request a hearing. If a written hearing request is not received within 15 days after the date of mailing by the Department, the right to a hearing is waived.

Section 845.355 Denial, Suspension and Revocation of Licenses

a) In any case in which the Director of Public Health finds substantial or continued failure to comply with the requirements of this Part, including fraud, misrepresentation, working without a license, or not adhering to work practice standards, the Director, after notice and opportunity for hearing, may deny the application for, or suspend or revoke the license of, a lead abatement contractor, lead supervisor, lead worker, lead risk assessor or lead inspector.

b) The notice shall be made by certified mail or by personal service and shall set forth the particular reasons for the proposed action and provide the applicant or licensee with an opportunity to request a hearing. If a written hearing request is not received within 15 days after the date of mailing by the Department, the right to a hearing is waived.

Section 845.360 Fines and Penalties

a) In addition to any other action authorized by the Act or this Part, *the Department may assess civil penalties against any licensed lead worker, licensed lead professional, licensed lead abatement contractor or approved lead training provider for violation of any provision of the Act or* this Part. (Section 11.2 of the Act) The Department shall determine whether a fine will be assessed and the amount of any such fine.

b) The Department shall consider the following criteria independently and aggregately to determine whether a fine shall be assessed:

1) Whether the Department issued a stop work order and whether the person strictly obeyed the order;

2) Whether the person has previously been cited for a violation of the Act or this Part, except that any previously cited violation shall not be considered if the violation was held to be unfounded by a final order of the Department or by a court, or if any previous citations for violations occurred more than 3 years ago;

3) Whether the violation is of such nature as to result in the possibility of injury or other harm to the environment; to the person's agents or employees; to the building owner, users or occupants; or to the general public;

4) Whether the violation appears to be the result of any degree of negligence by the person or by the person's agents or employees;

5) Whether the person demonstrated good faith efforts to correct the violation upon receipt of oral or written notice of the violation and whether such actions in fact corrected the violation;

6) Whether the person has falsified any lead license or certificate or represents himself or herself as authorized to conduct work without a valid license in a fraudulent manner; and

7) Whether the person falsified any record keeping information required by the Act or this Part.

c) Criteria to determine the amount of a fine and/or penalty for a violation of any provision of the Act or of this Part are as follows. All amounts determined pursuant to these criteria shall be added together to determine the total fine against the person.

1) First violation − the person may be issued a fine of up to $1,000.

2) Each day that a violation exists shall constitute a separate or repeat violation.

3) Repeat violation − the person may be issued a minimum fine of $1,000 plus additional fines calculated according to subsection (c)(4) of this Section.

A) For each violation that may cause or result in harm or injury to the health or safety of the agents or employees of the person present: $100 multiplied by the number of agents or employees present at any time on the date of the violation.

B) For each violation that may cause or result in harm or injury to the health or safety of the building owners or users, occupants of the building or the general public: $100 multiplied by the number of persons present in or around the regulated facility at any time on the date of violation.

C) For each violation that may cause or result in contamination with lead dust or debris of any part of the regulated facility other than the work area: $1,000.

D) For each violation that may cause or result in contamination with lead dust or debris of any surrounding areas to the regulated facility: $1,000.

4) For a third violation of a provision of the Act or this Part, a licensee or approved training program provider, in addition to the fines and penalties in subsection (c)(3), may have his/her license or Department approval denied, suspended or revoked in accordance with Sections 845.350 and 845.355.

5) Notwithstanding any other provision of this Part, the Department may at any time, upon a finding of 5 or more violations during the same inspection that may cause or result in harm or injury to the health and

safety of persons, assess a fine and/or penalty pursuant to subsection (c)(3).

d) The Department shall serve notice of fine and/or penalty assessments, and shall provide the same rights and opportunity for hearing as provided in Section 12 of the Act and this Section. In the event that a person fails to request a hearing within the time provided in the notice, the person shall be deemed to have waived the right to an administrative hearing, and the fine and/or penalty assessments that are upheld in whole or in part by final order of the Department shall be due in full at the conclusion of the time period for filing for administrative review pursuant to the Administrative Review Law.

e) All fine and/or penalty assessments that are upheld in whole or in part by final order of the Department shall be due in full at the conclusion of the time period for filing for administrative review pursuant to the Administrative Review Law, unless the person has within that time filed proceedings in administrative review specifically appealing the fine and/or penalty assessment and unless the court has stayed enforcement of the fine and/or penalty assessment.

Section 845.365 Emergency Stop Work Orders for Regulated Facilities

In circumstances of substantial danger to the environment or to the health of persons, the Department may direct a person to cease and desist lead activities conducted pursuant to the Act and this Part, to halt the activity causing or contributing to the danger, or to take such other action as may be necessary. The persons, licensed lead worker, licensed lead professional, licensed lead contractor or approved lead training course provider subject to the order will be removed from the Department's list of approved and/or licensed individuals or firms. The Department shall authorize the reinstatement of the lead activities and reinstatement of the individual and/or firm to the Department's list when the activities that are the subject of the emergency stop work order have been brought into compliance with applicable State and federal requirements and this Part.

Section 845.370 Administrative Hearings

All hearings shall be conducted pursuant to the Act and the Department's Rules of Practice and Procedure in Administrative Hearings.

Section 845.APPENDIX A Instructions for Childhood Blood Lead Poisoning Reporting System

Section 845.EXHIBIT A Instructions for Completing the Laboratory-Based Report of Childhood Lead Poisoning

The Childhood Lead Poisoning Report form shall be completed for all blood lead test results on all persons 15 years of age and younger. Each laboratory in Illinois certified by the Department to conduct a blood lead analysis is required to complete the Childhood Lead Poisoning Report form, unless the laboratory is reporting to the Department using the electronic reporting system.

1) Complete the following information on the child's complete name:

   LAST NAME: Enter the child's complete last name.

   FIRST NAME: Enter the child's complete first name.

   MIDDLE INITIAL: Enter the child's middle initial.

2) Complete the following information on the child's parent or guardian, if available:

   LAST NAME: Enter the parent/guardian's complete last name.

   FIRST NAME: Enter the parent/guardian's complete first name.

   MAIDEN NAME: Enter the parent/guardian's complete maiden last name.

3) TELEPHONE NUMBER: If available, enter the child's telephone number (area code and 7-digit number).

4) DATE OF BIRTH: Enter the child's date of birth. Use 2 digits for the month, 2 digits for the day and 2 digits for the year (e.g., 01/01/01).

5) ADDRESS OF CHILD: Complete the following elements on the form. All elements refer to the current address for the child.

   NUMBER: Enter the number of the child's current street address.

   DIRECTION: Enter the direction that appears in the child's current street address (e.g., North).

   STREET NAME: Enter the name of the of the child's current street address.

TYPE: Enter the applicable type of street address (e.g., street, boulevard, avenue).

APARTMENT NUMBER: If applicable, enter the apartment number of the child's address.

COUNTY: Enter the complete name of the county where the child currently resides.

CITY: Enter the complete name of the city where the child current resides.

STATE: Enter the state where the child currently resides. Use the standard 2-character abbreviation.

ZIP: Enter the 5-digit zip code where the child currently resides.

6) SEX: Check the appropriate box to indicate the child's sex.

7) RACE: Check the appropriate box to indicate the child's race.

8) HISPANIC: Check the appropriate box to indicate whether the child is Hispanic.

TEST DATA

1) DATE OF FIRST TEST: Enter the month, day and year the first blood lead sample to be reported was collected. Use 2 digits for the month, 2 digits for the day and 2 digits for the year (e.g., 01/01/01).

2) TYPE: Check the appropriate box to indicate the specimen type (venous or capillary).

3) TEST RESULTS: Enter the blood lead level of the sample in micrograms per deciliter (mcg/dL).

4) DATE OF SECOND TEST: Enter the month, day and year that the second blood lead sample to be reported was collected. Use 2 digits for the month, 2 digits for the day and 2 digits for the year (e.g., 01/01/01).

5) TYPE: Check the appropriate box to indicate the specimen type (venous or capillary).

6) TEST RESULTS: Enter the blood lead level of the sample in micrograms per deciliter (mcg/dL).

7) NAME OF LABORATORY: Enter the name of the laboratory analyzing the blood lead sample or the laboratory code number.

8) LABORATORY TELEPHONE NUMBER: Enter the telephone number of the laboratory that analyzed the blood lead sample.

SUBMITTING PARTY DATA

1) NAME: Enter the name of the physician, hospital staff member, laboratory technician, clinic employee or other person submitting the report of blood lead results.

2) TELEPHONE NUMBER: Enter the telephone number of the submitting party (area code and 7-digit number).

3) CLINIC/HOSPITAL: Enter the name of clinic or hospital.

4) ADDRESS: Enter the address of the physician, hospital, laboratory, clinic or other person/facility submitting the report of the blood lead test. The street number, direction, street name, suite, city, state, zip code and county shall be included.

COMPLETION DATA

1) SIGNATURE/TITLE: On the line provided on the form, the usual signature of the person (first and last name) completing the form shall be affixed. Enter the title of the person completing the form.

2) DATE OF REPORT: Enter the month, day and year the form is completed. Use 2 digits for the month, 2 digits for the day and 2 digits for the year (e.g., 01/01/01).

All elevated blood lead levels of 45 mcg/dL shall be reported by telephone within 24 hours to the Childhood Lead Poisoning Prevention Program at (217) 785-9464 or (217) 782-0403.

Mail completed report within 48 hours to:

Illinois Department of Public Health
Division of Health Assessment and Screening
Childhood Lead Poisoning Prevention Program
535 West Jefferson Street
Springfield, Illinois 62761

5. Section 845.APPENDIX A Instructions for Childhood Blood Lead Poisoning Reporting System

Section 845.EXHIBIT B Instructions for Submitting Follow-Up Data for Children With Blood Lead Levels ≥ 15 mcg/dL

Medical follow-up should be completed by delegate agencies for all persons 15 years of age and younger having had a blood lead test analyzed and confirmed at 15 mcg/dL or higher.

All medical and environmental follow-up data must be entered into a STELLAR database maintained by the delegate agency. A STELLAR report and any additional reports requested by the Illinois Department of Public Health should be run regularly, at intervals determined by the Department. Detailed instructions on the STELLAR procedures are available from the Department upon request.

Section 845.APPENDIX B Information Agreement

The Illinois Department of Public Health ("Department") and

_____

("Applicant"), agree as follows:

1) The Department will provide data dealing with children who have been tested for lead poisoning in Illinois as outlined in the letter of application.

2) The applicant agrees that:

a) Use of data is restricted to the purpose outlined in the letter of application (Attachment A), and any other or additional use of the data may result in immediate termination of this agreement by the Department;

b) Any and all data that may lead to the identity of any child or parent, research subject, physician, informant, other person or hospital is strictly privileged and confidential. Applicant agrees to keep all such data strictly confidential at all times;

c) All officers, applicants and employees of Applicant will keep all such data strictly confidential. Applicant will communicate the requirements of this Section to all officers, applicants and employees, will discipline all persons who may violate the requirement of this section, and will notify the Department in writing within 48 hours after any violation of this section, including full details of the violation and corrective actions to be taken;

d) All data provided by the Department pursuant to this agreement are the sole property of the Department. Any copies by applicant of data provided by the Department pursuant to this agreement are subject to all provisions contained in this agreement. Any copies of data created by Applicant will be destroyed upon completion of the purpose outlined in the application;

e) The applicant agrees to forward to the Department copies of proposed publications containing data or interpretation of data received as a result of this agreement for the sole purpose of confirming compliance with this agreement;

f) Any breach of any of the provisions of this agreement will void the agreement.

3) The Applicant further agrees to state in publications and presentations concerning research that is the subject of this agreement that the Department was the source

of data and conclusions, opinions and recommendations are not necessarily those of the Department.

4) The Applicant and the Department understand and agree that this agreement may not be sold, assigned or transferred in any matter and that any actual or attempted sale, assignment or transfer shall render this agreement null, void and of no further effect.

5) This agreement shall take effect upon signature by the Applicant and the Director of Public Health.

6) All notices required or requested by either the Department or the Applicant shall be sent to the following addresses:

To the Department:

Illinois Department of Public Health
Childhood Lead Poisoning Prevention Program
535 West Jefferson Street
Springfield, Illinois 62761

To the Applicant:

_____
_____
_____
_____

7) The Applicant and the Department understand and agree that this agreement constitutes the total agreement between them and that no promises, terms or conditions, either oral or written, express or implied, not recited, incorporated or referenced in this agreement shall be binding.

Applicant	Department
(Signature)	(Recommended by)
(Title)	(Director, Department)
(Typed/printed name)	(Execution date)

IV APPENDICES

A. Flowchart: The Process Once a Child is Identified as Having an Elevated Blood Lead Level
Source: Chicago Department of Public Health

B. Childhood Lead Risk Assessment
1. Revised Illinois Childhood Lead Risk Assessment Guidelines
2. Childhood Lead Risk Assessment Questionnaire
3. Pediatric Lead Poisoning High-Risk ZIP Code Areas
4. Physicians Childhood Lead Risk Assessment Questionnaire
Source: Illinois Department of Public Health – Division of Family Health

C. Chicago Department of Public Health Sample Reports
1. Inspection Notice (English and Spanish)
2. Floor plan sketch
3.. "Jacket cover" used by lead inspector
4. Porch form used by lead inspector
5. Inspection Report – Violation(s) Found
6. Proof of Service/Interested Parties Service List
7. Reinspection Form

D. Chicago Department of Public Health Childhood Lead Poisoning Prevention Program
1. Homeowner Lead-Based Paint Workshop Information
2. Lead-Safe Practices Training Program for Remodelers and Renovators – Course Examination
3. Lead-Mitigation Workshop Compliance Form

E. Sample Complaints and Order
1. Notice of Violations
2. Administrative Hearings Complaint
3. Circuit Court of Cook County Complaint
4. Circuit Court of Cook County Order

F. Title X – Public Law 102-550, the Residential Lead-Based Paint Hazard Reduction Act of 1992

G. U.S. HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing,
--Chapter 7: Lead Based Paint Inspection (1997 Revision)
--Chapter 8: Resident Protection and Worksite Preparation

H. U.S. EPA Lead Renovation, Repair, and Painting Rule (2008)

I. Abbasi v. Paraskevoulakos, 718 N.E.2d 191 (Ill. 1999)

APPENDIX A

FLOWCHART: THE PROCESS ONCE A CHILD IS IDENTIFIED AS HAVING AN ELEVATED BLOOD LEAD LEVEL

CHICAGO DEPARTMENT OF PUBLIC HEALTH

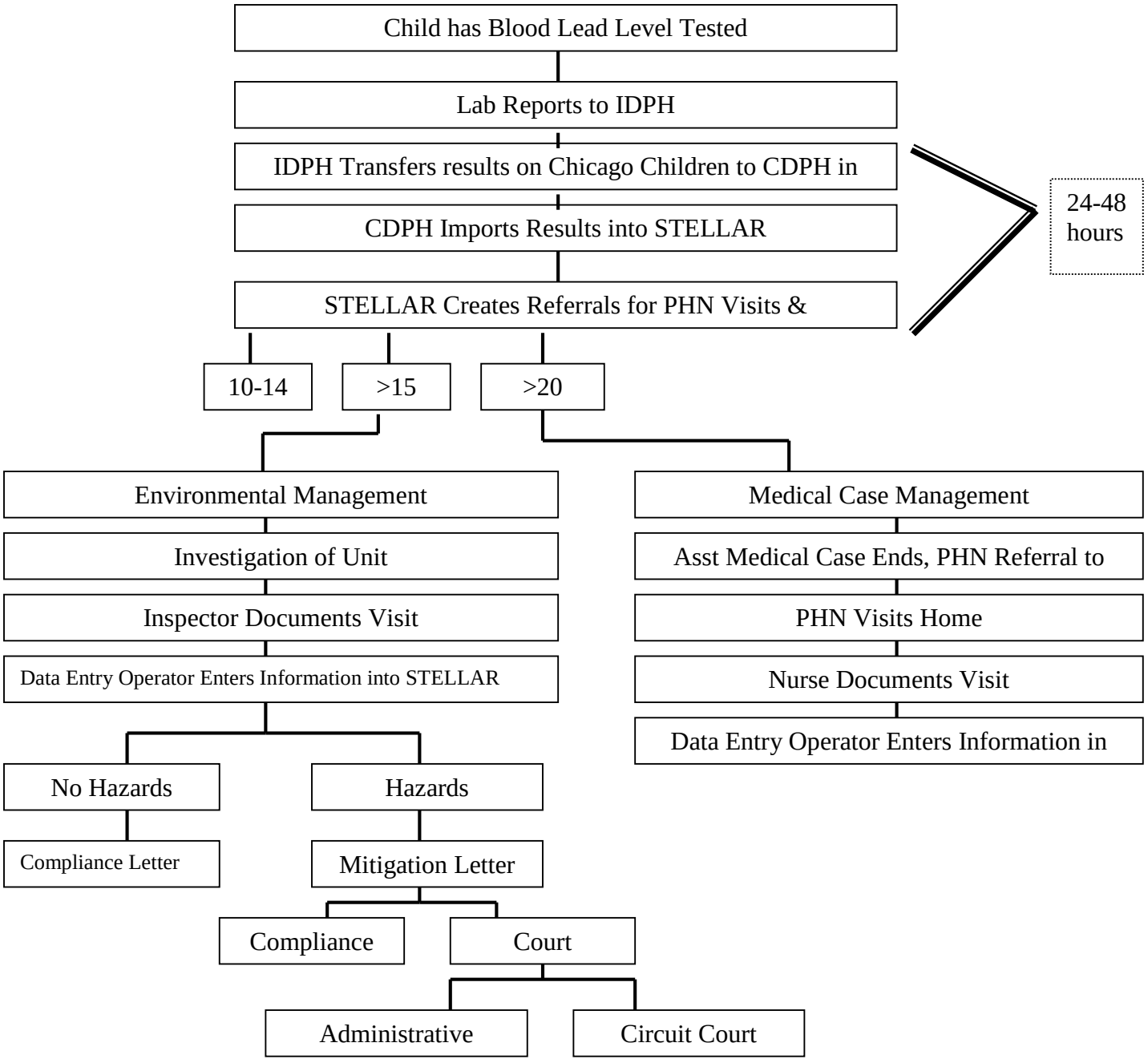
When child tests positive with an elevated blood lead level, the lab is required to send the report to the Illinois Department of Public Health (IDPH). IDPH transfers the information on Chicago's children to the Chicago Department of Public Health (CDPH) in a daily e-mail. CDPH inputs the results into STELLAR (Systematic Tracking of Elevated Lead Levels and Remediation), which creates referrals for visits from a public health nurse and environmental inspections. If the BLL is between 15 and 19 μg/dL, a home visit is advised. However, for levels over 20 μg/dL, the case is subject to environmental management and medical case management.

The first step in environmental management is an inspection for lead hazards in the home. The inspector documents the visit, and the data is entered into STELLAR. If there are no hazards found, a compliance letter is issued. If lead hazards are found in the unit, a letter is sent to the owner, requiring mitigation of the lead hazard. If the owner does not comply with the standards set out in the letter, the case is sent to either the Circuit Court or an Administrative Hearing for enforcement.

A public health nurse is sent to the home to assess the child's health and the environment. A report of that visit is also entered into the STELLAR database, and referrals for follow-up health care are made.

THE PROCESS ONCE A CHILD IS IDENTIFIED AS HAVING AN ELEVATED BLOOD LEAD LEVEL

CHICAGO DEPARTMENT OF PUBLIC HEALTH



APPENDIX B

Illinois Department of Public Health
Guidelines for Blood Lead Screening and Lead Risk Assessment

- **Blood lead screening** is defined as obtaining a blood lead test. **Lead risk assessment** is defined as evaluation of potential for exposures to lead based on questionnaire responses.

- **It is always appropriate to obtain a diagnostic blood lead test when a child is symptomatic or potential exposure to lead has been identified, regardless of child's age.**

- Illinois has defined ZIP code areas at high risk and low risk for lead exposure based on housing age and poverty rates. Review the list of ZIP codes and determine status of ZIP codes in your area.

- In Illinois, all children from **low-income families** (i.e., Medicaid-eligible children) should receive a blood lead test at ages 12 and 24 months, even if they live in a low-risk ZIP code area. If the child is 3 through 6 years old and has not been tested, a blood lead test is required.

Childhood Lead Risk Assessment Questionnaire

- Complete the Childhood Lead Risk Assessment Questionnaire during a health care visit at ages 12 and 24 months.
  - If responses to all the questions are "NO," re-evaluate at every well child visit or more often if deemed necessary.
  - If any response is "YES" or "DON'T KNOW," obtain a blood lead test
- Consider evaluating children before 12 months of age, depending on the area.
- If the child is age 3-6 years ***and***
  1) there is any "YES" or "DON"T KNOW" ***and***
  2) has had two successive blood lead test results that were each less than < 10 mcg/dL with one of these tests at age 2 years or older ***and***
  3) risks of exposure to lead have not changed, **further blood lead tests are not necessary.**
- If the child is 1) 3-6 years, ***and*** 2) all answers to the Childhood Lead Risk Assessment Questionnaire are "NO," ***and*** 3) risks of exposure to lead have not changed, a blood lead test is not necessary.
- If the child is 3-6 years of age and risks of exposures to lead have increased, obtain a blood lead test.
- Continue to use the Childhood Lead Risk Assessment Questionnaire through age 6.

For children living in Chicago:

- A blood lead test for children age 3 and younger should be obtained at 6, 12, 18, 24 and 36 months **OR** at 9, 15, 24 and 36 months.
- Children 4 through 6 years of age with prior blood lead levels <10 mcg/dL should have an annual risk assessment. A blood lead test should be performed if risk increases or if the child exhibits persistent oral behaviors.

Illinois Lead Program
866-909-3572 or 217-782-3517
TTY (hearing impaired use only) 800-547-0466

6/07

Illinois Department of Public Health

Childhood Lead Risk Assessment Questionnaire

ALL CHILDREN 6 MONTHS THROUGH 6 YEARS OF AGE MUST BE ASSESSED FOR LEAD POISONING (410 ILCS 45/6.2)

Name _____ T oday's Date_____ _____

Age _____ B irthdate _____ ZIP Code _____

Respond to the following questions by circling the appropriate answer.	**RESPONSE**
1. Is this child eligible for or enrolled in Medicaid, Head Start, All Kids or WIC?	Yes No Don't Know
2. Does this child have a sibling with a blood lead level of10 mcg/dL or higher?	Yes No Don't Know
3. Does this child live in or regularly visit a home built before 1978?	Yes No Don't Know
4. In the past year, has this child been exposed to repairs, repainting or renovation of a home built before 1978?	Yes No Don't Know
5. Is this child a refugee or an adoptee from any foreign country?	Yes No Don't Know
6. Has this child ever been to Mexico, Central or South America, Asian countries (i.e., China or India), or any country where exposure to lead from certain items could have occurred (for example, cosmetics, home remedies, folk medicines or glazed pottery)?	Yes No Don't Know
7. Does this child live with someone who has a job or a hobby that may involve lead (for example, jewelry making, building renovation or repair, bridge construction, plumbing, furniture refinishing, or work with automobile batteries or radiators, lead solder, leaded glass, lead shots, bullets or lead fishing sinkers)?	Yes No Don't Know
8. At any time, has this child lived near a factory where lead is used (for example, a lead smelter or a paint factory)?	Yes No Don't Know
9. Does this child reside in a high-risk ZIP code area?	Yes No Don't Know

---

A blood lead test should be performed on children:

- with any "Yes" or "Don't Know" response
- living in a high-risk ZIP code area

All Medicaid-eligible children should have a blood lead test at 12 months of age and at 24 months of age. If a Medicaid-eligible child between 36 months and 72 m onths of age has not been prev iously tested, a blood lead test should be performed.

If there is any "Yes" or "Don't Know" response; **and**

- there has been no change in the child's living conditions; **and**
- the child has proof of two consecutive blood lead test results (documented below) that are each less than 10 mcg/dL (with one test at age 2 or older), a blood lead test is not needed at this time.

Test 1: Blood Lead Result_____mcg/dL Date _____ Test 2: Blood Lead Result_____mcg/dL Date _____

If responses to all the questions are "NO," re-evaluate at every well child visit or more often if deemed necessary.

_____ _____ _____

Signature of Doctor/Nurse Date

Illinois Lead Program
866-909-3572 or 217-782-3517
TTY (hearing impaired use only) 800-547-0466

6/07

High-Risk ZIP Codes for Pediatric Blood Lead Poisoning

Adams	62567	**Effingham**	62367	**Knox**	62526	61466	62976	60942
62301	62570	None	62373	61401	62537	61476	62992	60960
62320	**Clark**	**Fayette**	62379	61410	62551	61486	**Putnam**	60963
62324	62420	62458	62380	61414	**Macoupin**	**Monroe**	61336	61810
62339	62442	62880	**Hardin**	61436	62009	None	61340	61831
62346	62474	62885	62919	61439	62033	**Montgomery**	61363	61832
62348	62477	**Ford**	62982	61458	62069	62015	**Randolph**	61833
62349	62478	60919	**Henderson**	61467	62085	62019	62217	61844
62365	**Clay**	60933	61418	61474	62088	62032	62242	61848
Alexander	62824	60936	61425	61485	62093	62049	62272	61857
62914	62879	60946	61454	61489	62626	62051	**Richland**	61865
62988	**Clinton**	60952	61460	61572	62630	62056	62419	61870
Bond	62219	60957	61469	**Lake**	62640	62075	62425	61876
62273	**Coles**	60959	61471	60040	62649	62077	**Rock Island**	61883
Boone	61931	60962	61480	**LaSalle**	62672	62089	61201	**Wabash**
61038	61938	61773	**Henry**	60470	62674	62091	61236	62410
Brown	61943	**Franklin**	61234	60518	62685	62094	61239	62852
62353	62469	62812	61235	60531	62686	62538	61259	62863
62375	**Cook**	62819	61238	61301	62690	**Morgan**	61265	**Warren**
62378	All Chicago	62822	61274	61316	**Madison**	62601	61279	61412
Bureau	ZIP Codes	62825	61413	61321	62002	62628	**St. Clair**	61417
61312	60043	62874	61419	61325	62048	62631	62201	61423
61314	60104	62884	61434	61332	62058	62692	62203	61435
61315	60153	62891	61443	61334	62060	62695	62204	61447
61322	60201	62896	61468	61342	62084	**Moultrie**	62205	61453
61323	60202	62983	61490	61348	62090	61937	62220	61462
61328	60301	62999	**Iroquois**	61354	62095	**Ogle**	62289	61473
61329	60302	**Fulton**	60911	61358	**Marion**	61007	**Saline**	61478
61330	60304	61415	60912	61364	None	61030	62930	**Washington**
61337	60305	61427	60924	61370	**Marshall**	61047	62946	62214
61338	60402	61431	60926	61372	61369	61049	**Sangamon**	62803
61344	60406	61432	60930	**Lawrence**	61377	61054	62625	**Wayne**
61345	60456	61441	60931	62439	61424	61064	62689	62446
61346	60501	61477	60938	62460	61537	61091	62703	62823
61349	60513	61482	60945	62466	61541	**Peoria**	**Schuyler**	62843
61359	60534	61484	60951	**Lee**	**Mason**	61451	61452	62886
61361	60546	61501	60953	60553	62617	61529	62319	**White**
61362	60804	61519	60955	61006	62633	61539	62344	62820
61368	**Crawford**	61520	60966	61031	62644	61552	62624	62821
61374	62433	61524	60967	61042	62655	61602	62639	62835
61376	62449	61531	60968	61310	62664	61603	**Scott**	62844
61379	62451	61542	60973	61318	62682	61604	62621	62887
Calhoun	**Cumberland**	61543	**Jackson**	61324	**Massac**	61605	62663	**Whiteside**
62006	62428	61544	62927	61331	62953	61606	62694	61037
62013	**DeWitt**	61563	62940	61353	**McDonough**	**Perry**	**Shelby**	61243
62036	61727	**Gallatin**	62950	61378	61411	62832	62438	61251
62070	61735	62934	**Jasper**	**Livingston**	61416	62997	62534	61261
Carroll	61749	**Greene**	62432	60420	61420	**Piatt**	62553	61270
61014	61750	62016	62434	60460	61422	61813	**Stark**	61277
61051	61777	62027	62459	60920	61438	61830	61421	61283
61053	61778	62044	62475	60921	61440	61839	61426	**Will**
61074	61882	62050	62480	60929	61470	61855	61449	60432
61078	**DeKalb**	62054	**Jefferson**	60934	61475	61929	61479	60433
Cass	60111	62078	62883	61311	62374	61936	61483	60436
62611	60129	62081	**Jersey**	61313	**McHenry**	**Pike**	61491	**Williamson**
62618	60146	62082	62030	61333	60034	62312	**Stephenson**	62921
62627	60550	62092	62063	61740	**McLean**	62314	61018	62948
62691	**Douglas**	**Grundy**	**Jo Daviess**	61741	61701	62323	61032	62949
Champaign	61930	60437	61028	61743	61720	62340	61039	62951
61815	61941	60474	61075	61769	61722	62343	61044	**Winnebago**
61816	61942	**Hamilton**	61085	61775	61724	62345	61050	61077
61845	**DuPage**	62817	61087	**Logan**	61728	62352	61060	61101
61849	60519	62828	**Johnson**	62512	61730	62355	61062	61102
61851	**Edgar**	62829	62908	62518	61731	62356	61067	61103
61852	61917	62859	62923	62519	61737	62357	61089	61104
61862	61924	**Hancock**	**Kane**	62548	61770	62361	**Tazewell**	**Woodford**
61872	61932	61450	60120	62543	**Menard**	62362	61564	61516
Christian	61933	62311	60505	62635	62642	62363	61721	61545
62083	61940	62313	**Kankakee**	62643	62673	62366	61734	61570
62510	61944	62316	60901	62666	62688	62370	**Union**	61760
62517	61949	62318	60910	62671	**Mercer**	**Pope**	62905	61771
62540	**Edwards**	62321	60917	**Macon**	61231	None	62906	
62546	62476	62330	60954	62514	61260	**Pulaski**	62920	
62555	62806	62334	60969	62521	61263	62956	62926	
62556	62815	62336	**Kendall**	62522	61276	62963	**Vermilion**	
62557	62818	62354	None	62523	61465	62964	60932	

ILLINOIS DEPARTMENT OF PUBLIC HEALTH
CHILDHOOD LEAD RISK ASSESSMENT QUESTIONNAIRE
Physicians Office/Clinic Use

The lead risk assessment questionnaire may be used to complete the lead assessment component of the well-child visit. The assessment is recommended annually for all children from 6 months through 84 months of age.

NAME	DATE OF BIRTH

AGE	6 mo.		9 mo.		1 yr.		15 mo.		18 mo.		2 yrs.		3 yrs.		4 yrs.		5 yrs.		6 yrs.		7 yrs.	
	/ /		/ /		/ /		/ /		/ /		/ /		/ /		/ /		/ /		/ /		/ /	
Does the child, ages 6 to 84 months of age—	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. Live in a high-risk ZIP code area (refer to ZIP codes on reverse side). (A "yes" answer requires a blood lead test.)																						
2. Live in, have ever lived in, or regularly visit a home or building (school or day care) built before 1960?																						
3. Live in or regularly visit a home or building built before 1960 that has recently or is currently under renovation or remodeling?																						
4. Live with a person whose occupation or hobby involves exposure to lead?																						
5. Receive or ever received herbal medicines or home remedies?																						
6. Live close to an active lead smelter, battery recycling plant, or other industry likely to release lead?																						
7. Does the family use imported or glazed ceramics for food preparation, storage or eating?																						
8. Has the child ever been to Central or South America or to Mexico?																						

CHILDREN WITH A POSITIVE RESPONSE TO ANY ONE OF THE QUESTIONS NOTED ABOVE WILL NEED BLOOD LEAD TESTING TO COMPLETE THE SCREENING PROCESS. DUE TO SIMILAR ENVIRONMENTAL EXPOSURE, CHILDREN WITH SIBLINGS WHO HAVE ELEVATED BLOOD LEAD LEVELS SHOULD HAVE BLOOD LEAD TESTING.

Printed by Authority of the State of Illinois

P.O. 316197 15M 5/96 SP0053

APPENDIX C

City of Chicago
Richard M. Daley, Mayor

Chapter 1 Department of Public Health

John L Wilhelm, M.D., M.P.H
Commissioner

Childhood Lead Poisoning Prevention Program

2nd Floor
2133 West Lexington Street
Chicago, Illinois 60612
(312) 746-7820
(312) 747-9888 (24 Hours)

http://www.cityofchicago.org

NOTICE

DATE:

RE:

Dear

The Chicago Department of Public Health has been notified by the Illinois Department of Public Health that there has been a report of a child with lead poisoning residing in the above stated dwelling unit. Lead poisoning represents one of the greatest preventable health problems to our children today. Your help is needed. **The Department of Public Health is required by law to inspect this unit for possible lead hazards.** (Lead Poisoning Prevention Act 410 ILCS 45/1 ETSEQ and City Ordinance 9-7-4-14).

Your cooperation is requested in order for an inspector to gain entry and inspect for possible lead hazards. Please contact Inspector_____ at (312) 746-7820 between 8:00 a.m. and 9:00 a.m. Monday - Friday to arrange an appointment.

Failure to comply may increase your liability in this matter and subject you to further legal action.

Sincerely,

Building Inspector
Environmental Lead Program

AA:ms

City of Chicago
Richard M. Daley, Mayor

Chapter 1 Department of Public Health

John L Wilhelm, M.D., M.P.H
Commissioner

Childhood Lead Poisoning Prevention Program

2nd Floor
2133 West Lexington Street
Chicago, Illinois 60612
(312) 746-7820
(312) 747-9888 (24 Hours)

http://www.cityofchicago.org

NOTIFICACION

FECHA:

SOMETIDO:

ESTIMADO:

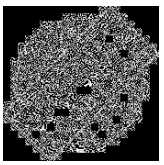
El Departamento de Salud de Chicago a sido notificado por el Departamento de Salud de Illinois, que se a reportado un nino/a con envenenamiento de plomo viviendo en este edificio. El envenenamiento por plomo representa uno de los mas graves pero prevenibles problemas de salud que afectan a los ninos hoy en dia. Las leyes requieren que el Departamento de Salud inspeccione la unidad de vivienda para asesorarce de algun peligro de plomo. (Acto de Prevencion de Plomo 410s 45/1ETSEQ Ordenansa de la Ciudad 9-7-4-14).

Su cooperacion es requerida para que un inspector pueda entrar e inspeccionar la vivienda por algun peligro de plomo. Por favor llame al Inspector_____ al (312) 746-7820 entre 8:00 a.m. y 9:00 a.m. de Lunes a Viernes para fijar una cita.

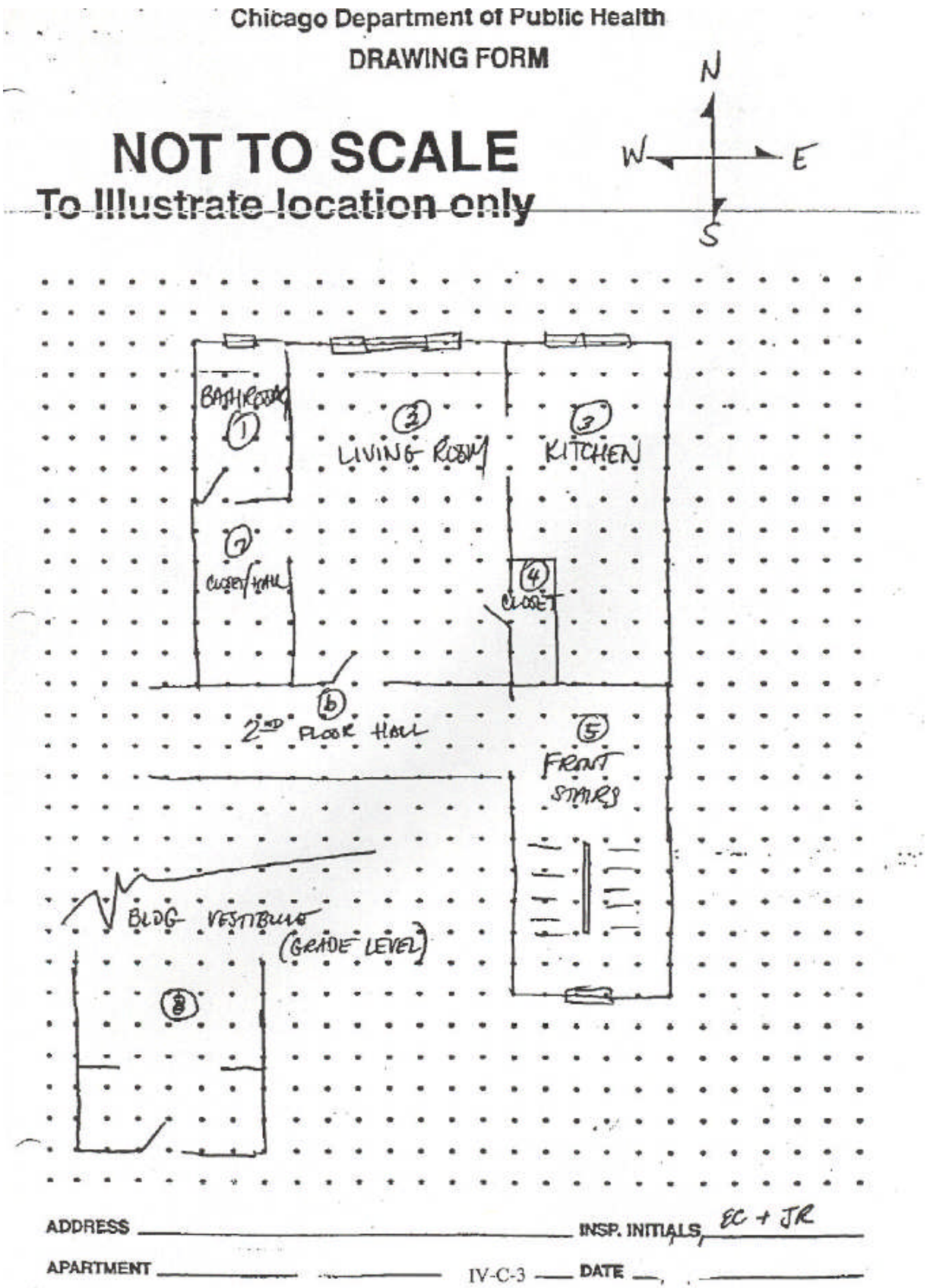
Falta de cooperacion en este caso puede aumentar su responsabilidad y exponerlo a acciones legales.

Atentamente,

Inspector
Programa Ambiental de Plomo



Floor plan sketch made by inspector to identify locations of lead hazards



“Jacket Cover” – the cover sheet of the case file that the City inspector takes into the field.

CHICAGO DEPARTMENT OF PUBLIC HEALTH
ENVIRONMENTAL LEAD PROGRAM
XRF PAINT INSPECTION & TESTING REPORT

ADDRESS / APT	DATE	INITIAL	PAGE ____ OF ____

ROOM NAME				NUMBER		ROOM NAME				NUMBER	
NOTES						NOTES					
□ ALL COMPONENTS TIGHT						□ ALL COMPONENTS TIGHT					
□ ALL OTHER COMPONENTS TIGHT						□ ALL OTHER COMPONENTS TIGHT					
DIR	COMPONENT	SAMP	READ / RESULT	PAINT COND	RISK	DIR	COMPONENT	SAMP	READ / RESULT	PAINT COND	RISK
		C W		P F G	O L M H			C W		P F G	O L M H
		C W		P F G	O L M H			C W		P F G	O L M H
		C W		P F G	O L M H			C W		P F G	O L M H
		C W		P F G	O L M H			C W		P F G	O L M H
		C W		P F G	O L M H			C W		P F G	O L M H
		C W		P F G	O L M H			C W		P F G	O L M H
		C W		P F G	O L M H			C W		P F G	O L M H
		C W		P F G	O L M H			C W		P F G	O L M H
		C W		P F G	O L M H			C W		P F G	O L M H
		C W		P F G	O L M H			C W		P F G	O L M H

"Porch Form" – used by City lead inspectors to make referrals to the Department of Buildings for porches that are in disrepair and in need of structural inspection.

CHICAGO DEPARTMENT OF PUBLIC HEALTH
FRONT-REAR PORCH/DOB REFERRAL FORM

Address:_____ Apt._____ Initials_____ Date_____

FRONT PORCH	Reading	FAIL	Comment
Deck			
Railings			
Pickets			
Uprights			
Ceiling			
Siding N/elev.			
Siding E/elev.			
Siding S/elev.			
Siding W/elev.			
Steps			
System T			

REAR PORCH	Reading	FAIL	Comment
Deck			
Railings			
Pickets			
Uprights			
Ceiling			
Siding N/elev.			
Siding E/elev.			
Siding S/elev.			
Siding W/elev.			
Steps			
System T			

Environmental Health and Building Referrals

1. Unsanitary condtions y_____ n_____ _____
2. Rodents y_____ n_____ _____
3. Roaches y_____ n_____ _____
4. Defective plumbing y_____ n_____ _____
5. Defective electrical y_____ n_____ _____
6. D & H Front Porch y_____ n_____ _____
7. D & H Rear Porch y_____ n_____ _____
8. Poor Heat y_____ n_____ _____
9. _____ y_____ n_____ _____
10. _____ y_____ n_____ _____

Notice of Violation – a letter sent to the owner, with a copy to the tenant, listing the violations found.

CITY OF CHICAGO
DEPARTMENT OF PUBLIC HEALTH
333 S. State St. - Room 200
Chicago, IL 60604-3972

INSPECTION REPORT
VIOLATION(S) FOUND

Last Inspection Date: _____

Property Address: _____

On the date noted above, an inspection of the property was performed and the following violations of Chapter 7-4-030 of the Municipal Code of Chicago were found to exist at the premises. These violations have not been mitigated. A diagram of the subject premises is attached hereto as (Exhibit A) and made a part of this notice of violation.

The apartment located at . . has chipping, flaking, or peeling lead paint and/or lead dust in the following locations:

Violation Number	Location
	Bathroom
1.	North Exterior Window System
2.	Tub
	Front Stairs
3.	South Exterior Window System
	Kitchen
4.	North Exterior Window System
	Living Room
5.	North Exterior Window System
	Building Vestibule
6.	South Wall
7.	North Wall
8.	East Wall
9.	West Wall
10.	Ceiling

End of Violations

SAMPLE PROOF OF SERVICE

I, Earl Coleman, an employee of the City of Chicago's Department of Public Health, certify that I have conducted an inspection of the above referenced premises on the date indicated. I further certify that I have observed the alleged violations cited and believe that the violation as set forth in this instrument are true and correct.

Inspector Earl Coleman

REINSPECTION FORM

Address _____ Apt. _____

Original Reinspection Date_____ Mailing Date _____

U H M L DOB Collat. Spec. Insp. School

First Reinspection Date _____

Second Reinspection Date _____

To Suit (date) _____ Supvr. _____

	Yes	No
Did owner attend Compliance Hearing?	☐	☐

Building Construction:
Brick_____ Frame_____ No. of Floors _____ No. of Apts. _____
Attic Y___ N ____ Basement Y ___ N ____
Lot Size _____ x _____ Area _____
Building Size _____ x _____ Floor Area _____

Revised 7/93

Revised

_____

Address of Owner _____ Phone _____

Owner _____

Samples _____ Machine Readings _____ W/A? Y__ N__

Reviewed by _____ Field Checked _____

Inspectors _____

Phone _____ Insp. Date _____ Complaint Date _____

Parent or Guardian _____ Sp. Insp. ___ School ___

Name of Victim _____ Collat. ___

DOB ___

_____ M__ L__

U__ H__

Complete Building Address _____

Address of Victim _____ Apt. ___

Address of Insp. _____ Apt. ___

Zip: 606__ District ___ CHA ___

CA ___

APPENDIX D

City of Chicago Department of Public Health
Childhood Lead Poisoning Prevention Program
Homeowner Lead-Based Paint Workshop

Purpose: To provide homeowners with the knowledge and skills necessary to perform interim controls to make their home lead safe. This workshop shows homeowners how to perform in a manner that creates the least amount of lead dust possible, how to contain the lead dust, and how to clean up the dust they create so that it does not spread throughout the house or neighboring properties. This workshop also addresses the scope of the lead poisoning problem in Chicago and the effects of poisoning in children and pregnant mothers as well as worker exposure.

Who Can Take This Course: Owners of properties with lead-based paint hazards can use this course to learn how to correct these hazards using interim controls such as paint stabilization. Those owners with properties that contain significant lead hazards that require abatement will not be able to perform abatement as a result of this workshop. EPA defines abatement to mean measures intended to permanently eliminate lead-based paint hazards. Abatement work requires special training and Illinois state licensing not covered by this workshop.

Topics Covered: The workshop takes a "hands on" approach when teaching containment and cleanup procedures. The trainer has all necessary tools and supplies available to demonstrate these procedures. Instructional videos and handouts are also available for the participants.

1. The lead problem in Chicago, and the nation as a whole. (Show statistics)
2. The toxic effects of lead on children. (Symptoms, complications)
3. How lead presents itself as a problem in the home. (Deteriorated paint, dust on windowsills, tracking of soil, bare soil in children's play areas, etc.)
4. Setup prior to beginning paint stabilization. (Containment procedures)
5. Method of paint removal. (Wet scraping)
6. Cleanup. (Hepa-vac, mopping, etc.)
7. Clearance.

How to Enroll: Eligibility is based upon the level of hazards present in the unit. As mentioned previously, those housing units with significant lead hazards will require abatement. Those that only require paint stabilization in conjunction with safe work practices will be eligible. CDPH has expanded eligibility to not only owners of property with lead poisoned children, but to include recipients of HUD funding (to satisfy new requirements), section 8 landlords, and owners of childcare facilities. Owners of properties that require hazard reduction will attend a mitigation plan meeting with the inspector. At that time the inspector will instruct the owner to call 312-746-7839 to get scheduled for the workshop. More than one participant is allowed per property to enroll in the workshop, but no more than four.

Completion of Workshop: At the end of the workshop, each attendee will receive a 20 question multiple choice test on the covered material (see attached). Each attendee must score at least 70%. Any students not receiving at least a 70% score will be required to repeat the workshop until they pass. Upon passing the test the attendee will sign the attached written statement. This statement must be available on-site while any work is being performed. Only the individual whose name in on this statement will be eligible to perform the work. East participant will receive mops, buckets, spic-n-span, brushes, and will

have the availability to borrow a hepa-vac from CDPH. CDPH inspectors will monitor work to ensure that all work is done in accordance with the HUD/IDPH/CDPH standards for safe work practices.

LEAD-SAFE WORK PRACTICES TRAINING PROGRAM FOR REMODELERS AND RENOVATORS

COURSE EXAMINATION

Read the following questions or statements and select the best answer.

1. What is a good indicator that a house or housing unit may contain lead-based paint?

   A. Its location
   B. Age of the tenants
   C. Date of construction
   D. Date the owner purchased the property
   E. None of the above

2. Circle one: True or False

   Paint that contains lead and is intact is not an immediate hazard, but if such paint is disturbed, it may create lead-contaminated dust or paint chips that can create immediate hazards.

3. How does lead enter the body?

   A. Ingestion
   B. Inhalation
   C. Through pores of the skin
   D. All of the above
   E. A and B

4. The best way to check for lead exposure in children and adults is to take samples of:

   A. Blood
   B. Urine
   C. Sputum
   D. Skin cells
   E. Lung tissue

5. Circle one: True or False

   Remodelers, renovators, painters, general contractors and others paid to do work that disturbs paint must give owners and occupants of pre-1978 houses or housing units a pamphlet that informs them about potential hazards of lead-based paint.

6. Which of the following activities could create a high level of leaded dust?

   A. Dry sanding of lead-based paint
   B. Dry scraping of lead-based paint
   C. Using shop vacuums and brooms for clean up of lead-contaminated dust
   D. Abrasive blasting of lead-based paint
   E. All of the above

7. How can dust be controlled on lead-safe renovation jobs?

   A. Use a HEPA vacuum
   B. Keep debris picked up in the work area
   C. Mist work surface with water
   D. Keep occupants away from the work area
   E. All of the above

8. Lead <u>abatement</u> work can be done by:

   A. Construction workers as part of their regular duties without any special training
   B. Renovators and remodelers as part of their regular duties without any special training
   C. Trained and certified lead-abatement workers and supervisors
   D. Utility workers

9. Which of the following are things you can do to protect yourself and family from lead hazards in your occupation?

   A. Wash your hands before you eat
   B. Launder your clothes separately from the rest of your family's laundry
   C. Use wet methods to minimize dust during work
   D. Wash or vacuum your work shoes
   E. All of the above

10. "Interim controls" are designed to:
   A. permanently eliminate lead hazards
   B. prevent OSHA citations
   C. keep insurance rates down
   D. temporarily reduce human exposure to lead-based paint hazards
   E. none of the above

11. Which of the following remodelling jobs may involve lead-based paint?
    A. kitchen renovation
    B. window replacement
    C. recreation room conversion
    D. bathroom remodelling
    E. all of the above

12. Which of the following procedures are considered good work site preparation?
    A. posting warning signs
    B. educating the occupants about the work to be done and restricting them from the worksite during the work
    C. relocating occupants' belongings
    D. placing plastic barriers to contain the work area when necessary
    E. all of the above

13. Which of the following equipment is appropriate for use on remodelling and renovation jobs where lead may be disturbed?
    A. leaf blowers and fans
    B. HEPA vacuum, cleaning detergents, mops and buckets
    C. blow torch to burn off paint
    D. power sander with shop vacuum for dust control
    E. shop vacuum for clean-up

14. "Paint stabilization" includes:
    A. high-speed sanding to achieve a smooth surface
    B. total abatement of the lead-based paint
    C. repair of the substrate and cause of deteriorated paint
    D. wet scraping of deteriorated paint and repainting
    E. C and D

15. Which of the following is (are) prohibited lead hazard control methods?
    A. HEPA vacuum for dust control
    B. Heat guns operating above 1,100 degrees F.
    C. Dry scraping and dry sanding
    D. Wet scraping and wet sanding
    E. B and C

16. Why is clearance test performed after a job?
    A. It provides data for research
    B. It will find dust that is left behind but not easily seen
    C. Is ensures the work area is safe for re-occupancy
    D. It provides more work for contractors
    E. B and C

17. Clean-up is done:
    A. using wet methods and HEPA vacuums
    B. during the job and at the end of each day
    C. once during each job
    D. immediately before the supervisor arrives
    E. A and B

18. Principles of Lead-safe work include
    A. Minimize dust by using wet methods
    B. Thoroughly clean up
    C. Protect the worker
    D. Contain dust and debris
    E. All of the above

19. On lead-safe renovation jobs, waste material should be collected for proper disposal in:
    A. Open dumpsters
    B. Thick plastic bags or sheeting, preferably 6 mil. or equivalent.
    C. Dump trucks
    D. Pick-up trucks and passenger vehicles
    E. The living and dining areas of the dwelling unit

20. Circle True or False:

    This course allows renovation and remodeling employees to perform visual assessments for deteriorated paint in pre-1978 federally owned or assisted housing.

CHICAGO DEPARTMENT OF PUBLIC HEALTH
ENVIRONMENTAL LEAD PROGRAM

ADDRESS: _____ APT: _____

INSPECTOR:_____

THIS IS TO VERIFY THAT ON_____

MR/MS(PRINT)_____

ATTENDED THE CHICAGO DEPARTMENT OF PUBLIC HEALTH OWNER LEAD MITIGATION WORK SHOP. THIS WILL ALLOW THE ABOVE LISTED PERSON TO CONDUCT LEVEL 1 LEAD MITIGATION ON THE ABOVE PROPERTY.

_____

C.D.P.H. STAFF DATE

I AGREE TO COMPLY WITH ALL REQUIREMENTS AS SET FORTH IN THIS TRAINING WORKSHOP. I UNDERSTAND THAT FAILURE TO COMPLY FULLY AND PROPERLY WITH THESE REQUIREMENTS WILL NEGATE THE AGREEMENT ALLOWING ME TO MITIGATE THE EXISTING LEAD VIOLATION AND MAY SUBJECT ME TO CRIMINAL PROSECUTION.

_____

PARTICIPANT'S SIGNATURE

APPENDIX E

IN THE CITY OF CHICAGO
DEPARTMENT OF ADMINISTRATIVE HEARINGS

CITY OF CHICAGO,
Health Department Petitioner,
V.

NOV. No.: 04LP000

Respondent,
Address:

NOTICE OF VIOLATIONS AND SUMMONS

YOU ARE HEREBY NOTIFIED THAT THE Health Department HAS CITED THE ABOVE PROPERTY FOR ALLEGED VIOLATION(S) OF THE CHICAGO MUNICIPAL CODE, EXISTING ON _____ AND ON EACH SUCCEEDING DATE THEREAFTER, AND THAT THE DEPARTMENT OF ADMINISTRATIVE HEARINGS WILL CONDUCT A HEARING ON THE MATTER AT 400 W. SUPERIOR ST., ROOM , CHICAGO, IL., ON: _____ AT 12:00 NOON.

You, your attorney or an authorized representative must appear at the hearing at the date and time scheduled above and be prepared to proceed to a hearing. Hearing dates and times cannot be rescheduled by telephone. This hearing is your opportunity to answer and defend against the alleged violations. You are required to have all evidence and/or witnesses with you on the above hearing date and may present evidence (i.e. photos, repair invoices or paid receipts, etc.) and/or testimony as to the existence, non-existence or correction of the violations.

If a violation is determined to exist, the administrative law officer may issue an order to correct the violations and impose fines, costs and/or other penalties that will attach to the property and the property owner. Each violation may carry a fine of up to FIVE Hundred Dollars ($500.00) per day for each day the violation exists.

Evidence of full correction of the violations as of the hearing date may be presented as a valid defense at the hearing. Evidence of substantial steps towards full correction (i.e., permit applications, repair work contracts, as of the hearing date, will not avoid a finding of liability, but may be considered in whether to grant addition time to complete the work prior to the determination on the amount of fines and/or penalties imposed.

Failure of an owner, or other party, or authorized representative to appear at the hearing may result in a finding of liability and imposition of the maximum fines, costs, compliance orders and/or penalties under law entered against you in your absence.

Copies of the Rules and Regulations--for the conduct of hearings before the Department of Administrative Hearing are available at 400 W. Superior, Chicago, IL during regular business hours. Copies of the Rules and Regulations regarding abatement of lead paint hazards are available by calling 312-746-_____.

If you have any questions regarding the violations, why they were issued, the building inspections or how to schedule a follow-up building inspection you must contact the Health Department at 312-746-_____.

IN THE CITY OF CHICAGO, ILLINOIS
DEPARTMENT OF ADMINISTRATIVE HEARINGS

CITY OF CHICAGO, a Municipal Corporation, Petitioner	Docket #
v.)	
_____)	Issuing City Dept.:
)	Health
_____ Respondent(s))	

COMPLAINT AND SUMMONS

You are hereby notified that the Department of Health has cited you for alleged violations of rules and regulations promulgated on 6/26/00 by said Department under Chapter of the Chicago Municipal Code at the property located at _____, observed on , and that the Department of Administrative Hearings will conduct a hearing on the matter in Room 112, 400 W. Superior, Chicago, Illinois, on _____ at _____ p.m. The violations alleged are as follows:

___Failure to allow an authorized representative of the City of Chicago with the enforcement of this ordinance. Upon presentation of the appropriate credentials, to inspect the unit or building.

___Conducting mitigation, abatement, or lead-bearing-substance removal activities at a site classifiable as Level 1-4 without either having obtained training from the Department of Health o being a duly licensed lead worker, lead contractor/supervisor, or lead abatement contractor.

___Failing to carry out mitigation, abatement, or lead-bearing-substance removal activities at a site classifiable as Level 1 according to the most current Owner Mitigation Checklist of the Environmental Lead Program of the Chicago Department of Health, as listed below:

___Participating in, or permitting anyone other than duly licensed lead workers, lead contractors/supervisors, or lead abatement contractors to mitigate or abate a lead hazard or remove a lead-bearing substance at a site classifiable as Level 2 as listed below.

___Participating in, or permitting anyone other than duly licensed lead abatement contractors to mitigate or abate a lead-hazard or remove a lead-bearing substance at a site classifiable as Level 3 or 4 as listed below:

No Mitigation Plan	Improper treatment of furniture
Improper containment	Improper clean up
Improper worker protection	Use of prohibited methods
Improper resident location	Improper security or barriers
Improper treatment of unmovable items other than furniture	Improper warning signs
Improper treatment of moveable items other than furniture	Improper Ventilation
Conducting exterior work when wind speed exceeds 20 m.p.h.	Exceeding time limit
Conducting exterior work during rain	Failure to admit inspector

Failing to clean up exterior work area before rainfall or nightfall begins
More specifically the inspector observed:

I, _____, an employee of the City of Chicago, Department of Health, certify that I have conducted an inspection of the above-referenced premises on the date indicated. I further certify that I have observed the alleged violations cited and believe that the violations as set forth in this instrument are true and correct.

You, your attorney, or an authorized representative must appear at the hearing indicated on the front of this Complaint and Summons, on the date and time indicated there, and be prepared to proceed to a hearing. Hearing dates and times cannot be rescheduled by telephone. This hearing is your opportunity to answer and defend against the violations alleged on the front of this Complaint and Summons, and you are required to have all evidence and/or witnesses with you on the above hearing date. You may present evidence (i.e., photographs, repair invoices, paid receipts, etc.) and/or testimony as to the existence, nonexistence, or correction of the violations alleged.

If one or more violations are determined to exist, the Administrative Law Officer may issue an order to correct the violation(s) and impose fines, costs, and/or other penalties that will attach to the property and the property owner, and/or to the violator. Each violation may carry a fine of up to $500 dollars per day for each day the violation exists.

Failure to appear at, or to send an authorized representative to, the scheduled hearing may result in a finding of liability and imposition of the maximum fines, costs, compliance orders, and/or penalties under law entered against you in your absence.

Copies of the Rules and Regulations governing the conduct of hearings before the Department of Administrative Hearings are available at 400 W. Superior, Chicago, Illinois, during regular business hours. You may contact the Department of Health for copies of the Rules and Regulations promulgated on 6/26/00 by calling (312) 746-6585. For questions regarding hearing procedures only please call (312) 742-0433

IF YOU HAVE ANY QUESTIONS REGARDING THE VIOLATIONS, WHY THEY WERE ISSUED, THE INSPECTION, OR HOW TO SCHEDULE A FOLLOW-UP INSPECTION, YOU MUST CONTACT THE DEPARTMENT OF PUBLIC HEALTH AT (312)-746-6585

PROOF OF SERVICE

I, _____, an employee of the City of Chicago Department of Health, under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, certify that I served a Complaint and Summons form upon each person named in the List below, at the address indicated below, in a manner specified below, on _____ date. If service was made by mail, it was deposited in the United States Mail a 333 S. State Street, Chicago, Illinois with postage prepaid.

INTERESTED PARTIES SERVICE LIST

RESPONDENT NAME	ADDRESS	DELIVERY
(1)_____	_____	__PERSONAL SERVICE
	_____	__US MAIL
(2)_____	_____	__PERSONAL SERVICE
	_____	__US MAIL
(3)_____	_____	__PERSONAL SERVICE
	_____	__US MAIL

LEAD

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DISTRICT – FIRST DISTRICT

CITY OF CHICAGO, a municipal corporation,

Plaintiff,

v.

et al.,

Defendants*

Case No.

Property Address:

Amount claimed per day of Violation: $20,000.00

Courtroom 1101
Richard J. Daley Center

COMPLAINT FOR EQUITABLE AND OTHER RELIEF

Plaintiff, the City of Chicago ("Chicago"), by its attorney, Mara S. Georges, Corporation Counsel, states the following:

COUNT ONE

1. Located within the corporate limits of Chicago is a parcel of real estate commonly known by the above address.**

2. Upon information and belief, at all times set forth in paragraph three (3) below, defendants owned, maintained, operated, collected rents for, or had an interest in the premises.

* refer to attached addendum one for defendants.
** refer to attached addendum two for legal description.

3. On 01-26-01 the date this complaint was filed, and on numerous other occasions, the following violations of Chapter 7-4 of the Municipal Code of Chicago existed at the premises and said violations have not been corrected:

#101045 The dwelling located at has defective lead-bearing paint found in the following location:

1st Floor
VESTIBULE
1. East Exterior Window System

LIVING ROOM
2. East Exterior Window System

BEDROOM #1
3. East Wall
4. South Interior Window System
5. West Interior Window System
6. South Exterior Window System
7. West Exterior Window System

DINING ROOM
8. North Exterior Window System
9. South Exterior Window System
10. West Exterior Window System

BATHROOM
11. South Interior Window System
12. South Exterior Window System

BEDROOM #2
13. North Interior Window System
14. North Exterior Window System
15. East Wall

STORAGE
16. South Wall

REAR PORCH
17. Deck
18. Pickets
19. Uprights
20. Steps

2nd Floor
SUNROOM
21. North Interior Window System
22. East Interior Window System
23. South Interior Window System
24. North Exterior Window System
25. East Exterior Window System
26. South Exterior Window System

LIVING ROOM
27. East Exterior Window System
28. South Exterior Window System
29. East Interior Window System
30. South Interior Window System

DINING ROOM
31. West Interior Window System

BEDROOM #2
32. East Interior Window System
33. South Interior Window System
34. West Interior Window System
35. East Exterior Window System

36. South Exterior Window System
37. West Exterior Window System

BEDROOM #3

38. North Interior Window System
39. North Exterior Window System

KITCHEN

40. North Interior Window System
41. North Exterior Window System

BATHROOM

42. South Interior Window System

OPEN REAR PORCH

43. Rails
44. Pickets
45. Uprights

End of Violations

4. John L. Wilhelm, M.D., M.P.H., is the Commissioner of the City of Chicago, Department of Health. Through reports of environmental lead inspectors of that department, she or the undersigned knows the facts stated in this complaint.

5. This lawsuit is brought pursuant to the police powers inherent in the state, delegated to the municipality pursuant to Illinois Compiled Statues, Chapter 65, Sec. 5-11-31-1, 5-11-31-2, and 5-11-13-15, and the Municipal Code of Chicago.

   Wherefore, plaintiff requests the court fine the defendant(s) who possess or control the premises in the amount claimed for each day the violations described have existed and/or exist.

COUNT TWO

As a second and further cause of action, plaintiff:

6. Re-alleges the allegations of paragraphs one through five as if pleaded in full, and further alleges;

7. The levying of a fine is not an adequate remedy for the abatement of a nuisance. Instead, a temporary and permanent injunction should issue to bring the subject premises into compliance with the Municipal Code of Chicago;

8. John L. Wilhelm, M.D., MPH, Commissioner of the City of Chicago Department of Health, has determined the premises are dangerous and unsafe.

   Wherefore, plaintiff requests the court:

   A. Enter a temporary and permanent injunction requiring defendants to correct the enumerated violations and to restrain future violations permanently;
   B. Appoint a receiver, if necessary, to correct the conditions alleged in the complaint with the full powers of receivership, including the right to issue and sell receiver's certificates pursuant to Section 5-11-31-2 of Chapter 65 of the Illinois Compiled Statues, as amended;
   C. Enter an order permitting foreclosure of a statutory lien obtained in this proceeding of such a statutory lien is obtained
   D. Render such further relief as may be necessary and which the court shall deem proper and just;
   E. Award reasonable attorneys fees and court costs.

CITY OF CHICAGO, a municipal corporation
Corporation Counsel

By:_____
Assistant Corporation Counsel

The undersigned, being first duly sworn on oath, states he is the duly authorized agent of the plaintiff for the purpose of making this affidavit; he has read the foregoing Complaint, knows the contents thereof, and states the matters set forth therein are true in substance and in fact, and as to matters alleged on information and belief, he believes them to be true.

_____
Department of Public Health
Lead Poisoning Prevention Program

Subscribed and sworn to

Before me on_____, 2004

Notary Public
Cook County, Illinois

My commission expires:_____

For further information, contact:

Department of Public Health
Lead Poisoning Prevention Program
(312) 746-6585

Mara S. Georges, Atty. #90909
By: Joe Ramano/Demetris Kare
Assistant Corporation Counsel
Attorney for Plaintiff
30 N. LaSalle St., Suite 700
Chicago, IL 60602
(312) 744-8791

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT – FIRST DISTRICT

CITY OF CHICAGO,	)	
A municipal corporation,	)	Case No:_____
Plaintiff	)	
	)	Address:_____
v.	)	
	)	Courtroom 1101, Daley Center
Defendant(s).	)	Chicago, IL

MANDATORY ORDER

This cause coming on to be heard on the set call, the Court having jurisdiction over the Defendant(s) and the subject matter, being fully advised in the premises and having heard evidence and testimony:

THE COURT ENTERS A MANDATORY ORDER THAT Defendant(s)_____
_____

[ ] **Must personally appear before this Court at the next scheduled hearing.**

[ ] **Must arrange with the Department of Health an interior inspection of the entire subject premises**

[ ] **Must complete all work to correct violations on the Plaintiff's complaint in according to the standards set forth in Department of Health's Rules and Regulations governing the removal of lead paint.**

[ ] **Must insure that no children under 12 years of age or pregnant women be present while lead abatement is in progress.**

[ ] Shall have an ex-parte judgment entered against said defendant(s) in the amount of $_____ plus court costs of $60.00 for a total amount of $_____

[ ] Shall have a finding of guilty entered against said defendant(s) in the amount of $_____ plus court costs of $60.00 for a total amount of $_____

[ ] Must board and secure the premises in question.

[ ] Shall be subject to a preliminary injunction not to rent, use, lease, or occupy_____ until further order of court.

[ ] **This matter is sent for case management**.

[ ] **This matter is set for trial, settlement, or dismissal.**

[ ] _____

IT IS FURTHER ORDERED THAT this cause to be continued to _____ at 9:30 a.m., courtroom 1101, Daley Center, without further notice.

HEARING DATE:_____

By:_____
Assistant Corporation Counsel
Mara S. Georges, Corporation Counsel #90909
30 N. LaSalle St., Room 700
Chicago, IL (312) 744-8791

_____
Judge Room 1101

APPENDIX F

Title X – Residential Lead-Based Paint Hazard Reduction Act of 1992

Title X, or the federal Lead Based Paint Hazard Reduction Act of 1992, was enacted to protect families from exposure to lead from paint, dust, and soil and to educate the public concerning the hazards and sources of lead-based paint poisoning.

Section 1018, known as the Lead Disclosure Rule, directs U.S. Department of Housing and Urban Development (HUD) and the U.S. Environmental Protection Agency (EPA) to require sellers and landlords to disclose known lead-based paint and lead-based paint hazards and provide reports to buyers and renters. Sellers and landlords must also provide all buyers and renters with the EPA pamphlet entitled, *Protect Your Family from Lead in Your Home*. Buyers and renters have ten days to inspect or test for lead hazards. This time period may be shortened or lengthened by mutual agreement. Sales contracts and leasing agreements must contain disclosure statements. Records certifying compliance with applicable federal requirements must be maintained for three years.

The Act also gives the Secretary of HUD authority to provide grants to eligible applicants to evaluate and reduce lead-based paint hazards in priority housing; establishes requirements to evaluate and reduce lead-based paint hazards in federally assisted housing; and regulates lead based paint activities, training, and certification to ensure the protection of workers and lead exposure reduction.

SEC. 1001. SHORT TITLE.

This title may be cited as the "Residential Lead-Based Paint Hazard Reduction Act of 1992".

SEC. 1002. FINDINGS.

The Congress finds that--

(1) low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under age 6, with minority and low-income communities disproportionately affected;

(2) at low levels, lead poisoning in children causes intelligence quotient deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems;

(3) pre-1980 American housing stock contains more than 3,000,000 tons of lead in the form of lead-based paint, with the vast majority of homes built before 1950 containing substantial amounts of lead-based paint;

(4) the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children;

(5) the health and development of children living in as many as 3,800,000 American homes is endangered by chipping or peeling lead paint, or excessive amounts of lead-contaminated dust in their homes;

(6) the danger posed by lead-based paint hazards can be reduced by abating lead-based paint or by taking interim measures to prevent paint deterioration and limit children's exposure to lead dust and chips;

(7) despite the enactment of laws in the early 1970's requiring the Federal Government to eliminate as far as practicable lead-based paint hazards in federally owned, assisted, and insured housing, the Federal response to this national crisis remains severely limited; and

(8) the Federal Government must take a leadership role in building the infrastructure--including an informed public, State and local delivery systems, certified inspectors, contractors, and laboratories, trained workers, and available financing and insurance--necessary to ensure that the national goal of eliminating lead-based paint hazards in housing can be achieved as expeditiously as possible.

SEC. 1003. PURPOSES.

The purposes of this Act are--

(1) to develop a national strategy to build the infrastructure necessary to eliminate lead-based paint hazards in all housing as expeditiously as possible;

(2) to reorient the national approach to the presence of lead-based paint in housing to implement, on a priority basis, a broad program to evaluate and reduce lead-based paint hazards in the Nation's housing stock;

(3) to encourage effective action to prevent childhood lead poisoning by establishing a workable framework for lead-based paint hazard evaluation and reduction and by ending the current confusion over reasonable standards of care;

(4) to ensure that the existence of lead-based paint hazards is taken into account in the development of Government housing policies and in the sale, rental, and renovation of homes and apartments;

(5) to mobilize national resources expeditiously, through a partnership among all levels of government and the private sector, to develop the most promising, cost-effective

methods for evaluating and reducing lead-based paint hazards;

(6) to reduce the threat of childhood lead poisoning in housing owned, assisted, or transferred by the Federal Government; and

(7) to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards.

SEC. 1004. DEFINITIONS.

For the purposes of this Act, the following definitions shall apply:

(1) ABATEMENT.--The term "abatement" means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by appropriate Federal agencies. Such term includes--

(A) the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead contaminated soil; and

(B) all preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures.

(2) ACCESSIBLE SURFACE.--The term "accessible surface" means an interior or exterior surface painted with lead-based paint that is accessible for a young child to mouth or chew.

(3) CERTIFIED CONTRACTOR.--The term "certified contractor" means--

(A) a contractor, inspector, or supervisor who has completed a training program certified by the appropriate Federal agency and has met any other requirements for certification or licensure established by such agency or who has been certified by any State through a program which has been found by such Federal agency to be at least as rigorous as the Federal certification program; and

(B) workers or designers who have fully met training requirements established by the appropriate Federal agency.

(4) CONTRACT FOR THE PURCHASE AND SALE OF RESIDENTIAL REAL PROPERTY.--The term "contract for the purchase and sale of residential real property" means any contract or agreement in which one party agrees to purchase an interest in real <<PUB#PG=1000457,3899>>property on which there is situated 1 or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons.

(5) DETERIORATED PAINT.--The term "deteriorated paint" means any interior or exterior paint that is peeling, chipping, chalking or cracking or any paint located on an interior or exterior surface or fixture that is damaged or deteriorated.

(6) EVALUATION.--The term "evaluation" means risk assessment, inspection, or risk assessment and inspection.

(7) FEDERALLY ASSISTED HOUSING.--The term "federally assisted housing" means residential dwellings receiving project-based assistance under programs including--

(A) section 221(d)(3) or 236 of the National Housing Act;

(B) section 1 of the Housing and Urban Development Act of 1965;

(C) section 8 of the United States Housing Act of 1937; or

(D) sections 502(a), 504, 514, 515, 516 and 533 of the Housing Act of 1949.

(8) FEDERALLY OWNED HOUSING.--The term "federally owned housing" means residential dwellings owned or managed by a Federal agency, or for which a Federal agency is a trustee or conservator. For the purpose of this paragraph, the term "Federal agency" includes the Department of Housing and Urban Development, the Farmers Home Administration, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the General Services Administration, the Department of Defense, the Department of Veterans Affairs, the Department of the Interior, the Department of

Transportation, and any other Federal agency.

(9) FEDERALLY SUPPORTED WORK.--The term "federally supported work" means any lead hazard evaluation or reduction activities conducted in federally owned or assisted housing or funded in whole or in part through any financial assistance program of the Department of Housing and Urban Development, the Farmers Home Administration, or the Department of Veterans Affairs.

(10) FRICTION SURFACE.--The term "friction surface" means an interior or exterior surface that is subject to abrasion or friction, including certain window, floor, and stair surfaces.

(11) IMPACT SURFACE.--The term "impact surface" means an interior or exterior surface that is subject to damage by repeated impacts, for example, certain parts of door frames.

(12) INSPECTION.--The term "inspection" means a surface-by-surface investigation to determine the presence of lead-based paint as provided in section 302(c) of the Lead-Based Paint Poisoning Prevention Act and the provision of a report explaining the results of the investigation.

(13) INTERIM CONTROLS.--The term "interim controls" means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

(14) LEAD-BASED PAINT.--The term "lead-based paint" means paint or other surface coatings that contain lead in excess of limits established under section 302(c) of the Lead-Based Paint Poisoning Prevention Act.

(15) LEAD-BASED PAINT HAZARD.--The term "lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.

(16) LEAD-CONTAMINATED DUST.--The term "lead-contaminated dust" means surface dust in residential dwellings that contains an area or mass concentration of lead in excess of levels determined by the appropriate Federal agency to pose a threat of adverse health effects in pregnant women or young children.

(17) LEAD-CONTAMINATED SOIL.--The term "lead-contaminated soil" means bare soil on residential real property that contains lead at or in excess of the levels determined to be hazardous to human health by the appropriate Federal agency.

(18) MORTGAGE LOAN.--The term "mortgage loan" includes any loan (other than temporary financing such as a construction loan) that--

(A) is secured by a first lien on any interest in residential real property; and

(B) either--

(i) is insured, guaranteed, made, or assisted by the Department of Housing and Urban Development, the Department of Veterans Affairs, or the Farmers Home Administration, or by any other agency of the Federal Government; or

(ii) is intended to be sold by each originating mortgage institution to any federally chartered secondary mortgage market institution.

(19) ORIGINATING MORTGAGE INSTITUTION.--The term "originating mortgage institution" means a lender that provides mortgage loans.

(20) PRIORITY HOUSING.--The term "priority housing" means target housing that qualifies as affordable housing under section 215 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12745), including housing that receives assistance under subsection (b) or (o) of section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f(b) or (o)).

(21) PUBLIC HOUSING.--The term "public housing" has the same meaning given

the term in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(1)).

(22) REDUCTION.--The term "reduction" means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

(23) RESIDENTIAL DWELLING.--The term "residential dwelling" means--

(A) a single-family dwelling, including attached structures such as porches and stoops; or

(B) a single-family dwelling unit in a structure that contains more than 1 separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons.

(24) RESIDENTIAL REAL PROPERTY.--The term "residential real property" means real property on which there is situated 1 or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons.

(25) RISK ASSESSMENT.--The term "risk assessment" means an on-site investigation to determine and report the existence, nature, severity and location of lead-based paint hazards in residential dwellings, including--

(A) information gathering regarding the age and history of the housing and occupancy by children under age 6;

(B) visual inspection;

(C) limited wipe sampling or other environmental sampling techniques;

(D) other activity as may be appropriate; and

(E) provision of a report explaining the results of the investigation.

(26) SECRETARY.--The term "Secretary" means the Secretary of Housing and Urban Development.

(27) TARGET HOUSING.--The term "target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0- bedroom dwelling. In the case of jurisdictions which banned the sale or use of lead-based paint prior to 1978, the Secretary, at the Secretary's discretion, may designate an earlier date.

Subtitle A--Lead-Based Paint Hazard Reduction

SEC. 1011. GRANTS FOR LEAD-BASED PAINT HAZARD REDUCTION IN TARGET HOUSING.

(a) GENERAL AUTHORITY.--The Secretary is authorized to provide grants to eligible applicants to evaluate and reduce lead-based paint hazards in priority housing that is not federally assisted housing, federally owned housing, or public housing, in accordance with the provisions of this section.

(b) ELIGIBLE APPLICANTS.--A State or unit of local government that has an approved comprehensive housing affordability strategy under section 105 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705) is eligible to apply for a grant under this section.

(c) FORM OF APPLICATIONS.--To receive a grant under this section, a State or unit of local government shall submit an application in such form and in such manner as the

Secretary shall prescribe. An application shall contain--

(1) a copy of that portion of an applicant's comprehensive housing affordability strategy required by section 105(b)(16) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 et seq.);

(2) a description of the amount of assistance the applicant seeks under this section;

(3) a description of the planned activities to be undertaken with grants under this section, including an estimate of the amount to be allocated to each activity;

(4) a description of the forms of financial assistance to owners and occupants of priority housing that will be provided through grants under this section; and

(5) such assurances as the Secretary may require regarding the applicant's capacity to carry out the activities.

(d) SELECTION CRITERIA.--The Secretary shall award grants under this section on the basis of the merit of the activities proposed to be carried out and on the basis of selection criteria, which shall include--

(1) the extent to which the proposed activities will reduce the risk of lead- based paint poisoning to children under the age of 6 who reside in priority housing;

(2) the degree of severity and extent of lead-based paint hazards in the jurisdiction to be served;

(3) the ability of the applicant to leverage State, local, and private funds to supplement the grant under this section;

(4) the ability of the applicant to carry out the proposed activities; and

(5) such other factors as the Secretary determines appropriate to ensure that grants made available under this section are used effectively and to promote the purposes of this Act.

(e) ELIGIBLE ACTIVITIES.--A grant under this section may be used to--

(1) perform risk assessments and inspections in priority housing;

(2) provide for the interim control of lead-based paint hazards in priority housing;

(3) provide for the abatement of lead-based paint hazards in priority housing;

(4) provide for the additional cost of reducing lead-based paint hazards in units undergoing renovation funded by other sources;

(5) ensure that risk assessments, inspections, and abatements are carried out by certified contractors in accordance with section 402 of the Toxic Substances Control Act, as added by section 1021 of this Act;

(6) monitor the blood-lead levels of workers involved in lead hazard reduction activities funded under this section;

(7) assist in the temporary relocation of families forced to vacate priority housing while lead hazard reduction measures are being conducted;

(8) educate the public on the nature and causes of lead poisoning and measures to reduce exposure to lead, including exposure due to residential lead-based paint hazards;

(9) test soil, interior surface dust, and the blood-lead levels of children under the age of 6 residing in priority housing after lead-based paint hazard reduction activity has been conducted, to assure that such activity does not cause excessive exposures to lead; and

(10) carry out such other activities that the Secretary determines appropriate to promote the purposes of this Act.

(f) FORMS OF ASSISTANCE.--The applicant may provide the services described in this section through a variety of programs, including grants, loans, equity investments, revolving loan funds, loan funds, loan guarantees, interest write-downs, and other forms of assistance approved by the Secretary.

(g) TECHNICAL ASSISTANCE AND CAPACITY BUILDING.--

(1) IN GENERAL.--The Secretary shall develop the capacity of eligible applicants to carry out the requirements of section 105(b)(16) of the Cranston-Gonzalez National Affordable Housing Act and to carry out activities under this section. In fiscal years 1993 and 1994, the Secretary may make grants of up to $200,000 for the purpose of establishing State training, certification or accreditation programs that meet the requirements of section 402 of the Toxic Substances Control Act, as added by section 1021 of this Act.

(2) SET-ASIDE.--Of the total amount approved in appropriation Acts under subsection (o), there shall be set aside to carry out this subsection $3,000,000 for fiscal year 1993 and $3,000,000 for fiscal year 1994.

(h) MATCHING REQUIREMENT.--Each recipient of a grant under this section shall make contributions toward the cost of activities that receive assistance under this section in an amount not less than 10 percent of the total grant amount under this section.

(i) PROHIBITION OF SUBSTITUTION OF FUNDS.--Grants under this subtitle may not be used to replace other amounts made available or designated by State or local governments for use for the purposes under this subtitle.

(j) LIMITATION ON USE.--An applicant shall ensure that not more than 10 percent of the grant will be used for administrative expenses associated with the activities funded.

(k) FINANCIAL RECORDS.--An applicant shall maintain and provide the Secretary with financial records sufficient, in the determination of the Secretary, to ensure proper accounting and disbursing of amounts received from a grant under this section.

(l) REPORT.--An applicant under this section shall submit to the Secretary, for any fiscal year in which the applicant expends grant funds under this section, a report that--

(1) describes the use of the amounts received;

(2) states the number of risk assessments and the number of inspections conducted in residential dwellings;

(3) states the number of residential dwellings in which lead-based paint hazards have been reduced through interim controls;

(4) states the number of residential dwellings in which lead-based paint hazards have been abated; and

(5) provides any other information that the Secretary determines to be appropriate.

(m) NOTICE OF FUNDING AVAILABILITY.--The Secretary shall publish a Notice of Funding Availability pursuant to this section not later than 120 days after funds are

appropriated for this section.

(n) RELATIONSHIP TO OTHER LAW.--Effective 2 years after the date of promulgation of regulations under section 402 of the Toxic Substances Control Act, no grants for lead-based paint hazard evaluation or reduction may be awarded to a State under this section unless such State has an authorized program under section 404 of the Toxic Substances Control Act.

(o) AUTHORIZATION OF APPROPRIATIONS.--For the purposes of carrying out this Act, there are authorized to be appropriated $125,000,000 for fiscal year 1993 and $250,000,000 for fiscal year 1994.

SEC. 1012. EVALUATION AND REDUCTION OF LEAD-BASED PAINT HAZARDS IN FEDERALLY ASSISTED HOUSING.

(a) GENERAL REQUIREMENTS.--Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822) is amended--

(1) by striking the title of the section and inserting:

"REQUIREMENTS FOR HOUSING RECEIVING FEDERAL ASSISTANCE";

(2) in the first sentence of subsection (a)--

(A) by striking "The Secretary" and inserting the following:

“(1) ELIMINATION OF HAZARDS.--The Secretary"; and

(B) by inserting before the period "or otherwise receives more than $5,000 in project-based assistance under a Federal housing program";

(3) by striking the second sentence of subsection (a) and inserting: "Beginning on January 1, 1995, such procedures shall apply to all such housing that constitutes target housing, as defined in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, and shall provide for appropriate measures to conduct risk assessments, inspections, interim controls, and abatement of lead-based paint hazards. At a minimum, such procedures shall require--

"(A) the provision of lead hazard information pamphlets, developed pursuant to section 406 of the Toxic Substances Control Act, to purchasers and tenants;

"(B) periodic risk assessments and interim controls in accordance with a schedule determined by the Secretary, the initial risk assessment of each unit constructed prior to 1960 to be conducted not later than January 1, 1996, and, for units constructed between 1960 and 1978--

"(i) not less than 25 percent shall be performed by January 1, 1998;

"(ii) not less than 50 percent shall be performed by January 1, 2000; and

"(iii) the remainder shall be performed by January 1, 2002;

"(C) inspection for the presence of lead-based paint prior to federally-funded renovation or rehabilitation that is likely to disturb painted surfaces;

"(D) reduction of lead-based paint hazards in the course of rehabilitation projects receiving less than $25,000 per unit in Federal funds;

"(E) abatement of lead-based paint hazards in the course of substantial rehabilitation projects receiving more than $25,000 per unit in Federal funds;

"(F) where risk assessment, inspection, or reduction activities have been undertaken, the provision of notice to occupants describing the nature and scope of such

activities and the actual risk assessment or inspection reports (including available information on the location of any remaining lead-based paint on a surface-by-surface basis); and

"(G) such other measures as the Secretary deems appropriate."; and

(4) in the third sentence, by striking "The Secretary may" and inserting the following:

"(2) ADDITIONAL MEASURES.--The Secretary may".

(b) MEASUREMENT CRITERIA.--Section 302(b) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822(b)) is amended by striking "for the detection" and all that follows through the end of paragraph (2) and inserting "for the risk assessment, interim control, inspection, and abatement of lead-based paint hazards in housing covered by this section shall be based upon guidelines developed pursuant to section 1017 of the Residential Lead-Based Paint Hazard Reduction Act of 1992.".

(c) INSPECTION.--Section 302(c) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822(c)) is amended--

(1) in the second sentence, by striking "qualified" and inserting "certified"; and

(2) in the third and fourth sentences, by inserting "or 0.5 percent by weight" after "squared".

(d) PUBLIC HOUSING.--Section 302(d)(1) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822(d)(1)) is amended--

(1) in the heading, by striking "CIAP" and inserting "MODERNIZATION"; and

(2) in the fourth sentence, by striking "to eliminate the lead-based paint poisoning hazards" and inserting "of lead-based paint and lead-based paint hazards".

(e) HOME INVESTMENT PARTNERSHIPS.--Section 212(a) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12742(a)) is amended by adding at the end the following new paragraph:

"(5) LEAD-BASED PAINT HAZARDS.--A participating jurisdiction may use funds provided under this subtitle for the evaluation and reduction of lead-based paint hazards, as defined in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992.".

(f) COMMUNITY DEVELOPMENT BLOCK GRANTS.--Section 105(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)) is amended--

(1) in paragraph (19), by striking "and" at the end;

(2) in paragraph (20), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(21) lead-based paint hazard evaluation and reduction, as defined in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992.".

(g) SECTION 8 RENTAL ASSISTANCE.--Section 8(c)(2)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(B)) is amended by adding at the end the following: "The Secretary may (at the discretion of the Secretary and subject to the availability of appropriations for contract amendments), on a project by project basis for projects receiving project-based assistance, provide adjustments to the maximum monthly rents

to cover the costs of evaluating and reducing lead-based paint hazards, as defined in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992.".

(h) HOPE FOR PUBLIC AND INDIAN HOUSING HOMEOWNERSHIP.-- The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) is amended—

(1) in section 302(b)--

(A) by redesignating paragraphs (4) through (8) as paragraphs (5) through (9), respectively; and

(B) by inserting after paragraph (3) the following:

"(4) inspection for lead-based paint hazards, as required by section 302(a) of the Lead-Based Paint Poisoning Prevention Act;"; and

(2) in section 303(b)--

(A) by redesignating paragraphs (4) through (13) as paragraphs (5) through (14), respectively; and

(B) by adding after paragraph (3) the following:

"(4) Abatement of lead-based paint hazards, as required by section 302(a) of the Lead-Based Paint Poisoning Prevention Act.".

(i) HOPE FOR HOMEOWNERSHIP OF MULTIFAMILY UNITS.--The Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 et seq.) is amended--

(1) in section 422(b)--

(A) by redesignating paragraphs (4) through (8) as paragraphs (5) through (9), respectively; and

(B) by inserting after paragraph (3) the following:

"(4) inspection for lead-based paint hazards, as required by section 302(a) of the Lead-Based Paint Poisoning Prevention Act;"; and

(2) in section 423(b)--

(A) by redesignating paragraphs (4) through (13) as paragraphs (5) through (14), respectively; and

(B) by inserting after paragraph (3) the following:

"(4) Abatement of lead-based paint hazards, as required by section 302(a) of the Lead-Based Paint Poisoning Prevention Act.".

(j) HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES.--The Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 et seq.) is amended--

(1) in section 442(b)--

(A) by redesignating paragraphs (4) through (8) as paragraphs (5) through (9), respectively; and

(B) by inserting after paragraph (3) the following:

"(4) inspection for lead-based paint hazards, as required by section 302(a) of the Lead-Based Paint Poisoning Prevention Act;"; and

(2) in section 443(b)--

(A) by redesignating paragraphs (4) through (10) as paragraphs (5) through (11), respectively; and

(B) by inserting after paragraph (3) the following:

"(4) Abatement of lead-based paint hazards, as required by section 302(a) of the Lead-Based Paint Poisoning Prevention Act.".

(k) FHA INSURANCE FOR SINGLE FAMILY HOMES.

(1) HOME IMPROVEMENT LOANS.--Section 2(a) of the National Housing Act (12 U.S.C. 1703(a)) is amended in the fifth paragraph--

(A) by inserting after the first sentence the following: "Alterations, repairs, and improvements upon or in connection with existing structures may also include the evaluation and reduction of lead-based paint hazards."; and

(B) by adding at the end the following:

"(4) the terms 'evaluation', 'reduction', and 'lead-based paint hazard' have the same meanings given those terms in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992.".

(2) REHABILITATION LOANS.--Section 203(k)(2)(B) of the National Housing Act (12 U.S.C. 1709(k)(2)(B)) is amended by adding at the end the following: "The term 'rehabilitation' may also include measures to evaluate and reduce lead-based paint hazards, as such terms are defined in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992.".

(l) FHA INSURANCE FOR MULTIFAMILY HOUSING.--Section 221(d)(4)(iv) of the National Housing Act (12 U.S.C. 1715l(d)(4)(iv)) is amended by inserting after "rehabilitation" the first time it appears the following: "(including the cost of evaluating and reducing lead-based paint hazards, as such terms are defined in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992)".

(m) RURAL HOUSING.--Section 501(a) of the Housing Act of 1949 (42 U.S.C. 1471) is amended by adding at the end the following:

"(5) DEFINITIONS.--For purposes of this title, the terms 'repair', 'repairs', 'rehabilitate', and 'rehabilitation' include measures to evaluate and reduce lead-based paint hazards, as such terms are defined in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992.".

SEC. 1013. DISPOSITION OF FEDERALLY OWNED HOUSING.

Section 302(a) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822(a)) (as amended by section 1012(a)) is amended by striking the fourth sentence and adding at the end the following:

"(3) DISPOSITION OF FEDERALLY OWNED HOUSING.--

"(A) PRE-1960 TARGET HOUSING.--Beginning on January 1, 1995, procedures established under paragraphs (1) and (2) shall require the inspection and abatement of lead-based paint hazards in all federally owned target housing constructed prior to 1960.

"(B) TARGET HOUSING CONSTRUCTED BETWEEN 1960 AND 1978.--Beginning on January 1, 1995, procedures established under paragraphs (1) and (2) shall require an inspection for lead-based paint and lead-based paint hazards in all federally owned target housing constructed between 1960 and 1978. The results of such inspections shall be made available to prospective purchasers, identifying the presence of lead-based paint and lead-based paint hazards on a surface-by-surface basis. The

Secretary shall have the discretion to waive the requirement of this subparagraph for housing in which a federally funded risk assessment, performed by a certified contractor, has determined no lead-based paint hazards are present.

"(C) BUDGET AUTHORITY.--To the extent that subparagraphs (A) and (B) increase the cost to the Government of outstanding direct loan obligations or loan guarantee commitments, such activities shall be treated as modifications <<PUB#PG=1000457,3908>>under section 504(e) of the Federal Credit Reform Act of 1990 and shall be subject to the availability of appropriations. To the extent that paragraphs (A) and (B) impose additional costs to the Resolution Trust Corporation and the Federal Deposit Insurance Corporation, its requirements shall be carried out only if appropriations are provided in advance in an appropriations Act. In the absence of appropriations sufficient to cover the costs of subparagraphs (A) and (B), these requirements shall not apply to the affected agency or agencies.

"(D) DEFINITIONS.--For the purposes of this subsection, the terms 'inspection', 'abatement', 'lead-based paint hazard', 'federally owned housing', 'target housing', 'risk assessment', and 'certified contractor' have the same meaning given such terms in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992.

"(4) DEFINITIONS.--For purposes of this subsection, the terms 'risk assessment', 'inspection', 'interim control', 'abatement', 'reduction', and 'lead-based paint hazard' have the same meaning given such terms in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992.

SEC. 1014. COMPREHENSIVE HOUSING AFFORDABILITY STRATEGY.

Section 105 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705) is amended--

(1) in subsection (b)(14), by striking "and" at the end;

(2) in subsection (b)(15), by striking the period at the end and inserting "; and";

(3) by inserting after paragraph (15) of subsection (b) the following new paragraph:

"(16) estimate the number of housing units within the jurisdiction that are occupied by low-income families or very low-income families and that contain lead-based paint hazards, as defined in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, outline the actions proposed or being taken to evaluate and reduce lead-based paint hazards, and describe how lead-based paint hazard reduction will be integrated into housing policies and programs."; and

(4) in subsection (e)--

(A) by striking "When preparing" and inserting the following:

"(1) IN GENERAL.--When preparing"; and

(B) by adding at the end the following new paragraph:

"(2) LEAD-BASED PAINT HAZARDS.--When preparing that portion of a housing strategy required by subsection (b)(16), a jurisdiction shall consult with State or local health and child welfare agencies and examine existing data related to lead-based paint hazards and poisonings, including health department data on the addresses of housing units in which children have been identified as lead poisoned.".

SEC. 1015. TASK FORCE ON LEAD-BASED PAINT HAZARD REDUCTION AND FINANCING.

(a) IN GENERAL.--The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall establish a task force to make recommendations

on expanding resources and efforts to evaluate and reduce lead-based paint hazards in private housing.

(b) MEMBERSHIP. The task force shall include individuals representing the Department of Housing and Urban Development, the Farmers Home Administration, the Department of Veterans Affairs, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Environmental Protection Agency, employee organizations in the building and construction trades industry, landlords, tenants, primary lending institutions, private mortgage insurers, single-family and multifamily real estate interests, nonprofit housing developers, property liability insurers, public housing agencies, low-income housing advocacy organizations, national, State and local lead-poisoning prevention advocates and experts, and community-based organizations located in areas with substantial rental housing.

(c) RESPONSIBILITIES.--The task force shall make recommendations to the Secretary and the Administrator of the Environmental Protection Agency concerning--

(1) incorporating the need to finance lead-based paint hazard reduction into underwriting standards;

(2) developing new loan products and procedures for financing lead-based paint hazard evaluation and reduction activities;

(3) adjusting appraisal guidelines to address lead safety;

(4) incorporating risk assessments or inspections for lead-based paint as a routine procedure in the origination of new residential mortgages;

(5) revising guidelines, regulations, and educational pamphlets issued by the Department of Housing and Urban Development and other Federal agencies relating to lead-based paint poisoning prevention;

(6) reducing the current uncertainties of liability related to lead-based paint in rental housing by clarifying standards of care for landlords and lenders, and by exploring the "safe harbor" concept;

(7) increasing the availability of liability insurance for owners of rental housing and certified contractors and establishing alternative systems to compensate victims of lead-based paint poisoning; and

(8) evaluating the utility and appropriateness of requiring risk assessments or inspections and notification to prospective lessees of rental housing.

(d) COMPENSATION.--The members of the task force shall not receive Federal compensation for their participation.

SEC. 1016. NATIONAL CONSULTATION ON LEAD-BASED PAINT HAZARD REDUCTION.

In carrying out this Act, the Secretary shall consult on an ongoing basis with the Administrator of the Environmental Protection Agency, the Director of the Centers for Disease Control, other Federal agencies concerned with lead poisoning prevention, and the task force established pursuant to section 1015.

SEC. 1017. GUIDELINES FOR LEAD-BASED PAINT HAZARD EVALUATION AND REDUCTION ACTIVITIES.

Not later than 12 months after the date of enactment of this Act, the Secretary, in

consultation with the Administrator of the Environmental Protection Agency, the Secretary of Labor, and the Secretary of Health and Human Services (acting through the Director of the Centers for Disease Control), shall issue guidelines for the conduct of federally supported work involving risk assessments, inspections, interim controls, and abatement of lead-based paint hazards. Such guidelines shall be based upon criteria that measure the condition of the housing (and the presence of children under age 6 for the purposes of risk assessments) and shall not be based upon criteria that measure the health of the residents of the housing.

SEC. 1018. DISCLOSURE OF INFORMATION CONCERNING LEAD UPON TRANSFER OF RESIDENTIAL PROPERTY.

(a) LEAD DISCLOSURE IN PURCHASE AND SALE OR LEASE OF TARGET HOUSING.--

(1) LEAD-BASED PAINT HAZARDS.--Not later than 2 years after the date of enactment of this Act, the Secretary and the Administrator of the Environmental Protection Agency shall promulgate regulations under this section for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease. The regulations shall require that, before the purchaser or lessee is obligated under any contract to purchase or lease the housing, the seller or lessor shall--

(A) provide the purchaser or lessee with a lead hazard information pamphlet, as prescribed by the Administrator of the Environmental Protection Agency under section 406 of the Toxic Substances Control Act;

(B) disclose to the purchaser or lessee the presence of any known lead-based paint, or any known lead-based paint hazards, in such housing and provide to the purchaser or lessee any lead hazard evaluation report available to the seller or lessor; and

(C) permit the purchaser a 10-day period (unless the parties mutually agree upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint hazards.

(2) CONTRACT FOR PURCHASE AND SALE.--Regulations promulgated under this section shall provide that every contract for the purchase and sale of any interest in target housing shall contain a Lead Warning Statement and a statement signed by the purchaser that the purchaser has--

(A) read the Lead Warning Statement and understands its contents;

(B) received a lead hazard information pamphlet; and

(C) had a 10-day opportunity (unless the parties mutually agreed upon a different period of time) before becoming obligated under the contract to purchase the housing to conduct a risk assessment or inspection for the presence of lead-based paint hazards.

(3) CONTENTS OF LEAD WARNING STATEMENT.--The Lead Warning Statement shall contain the following text printed in large type on a separate sheet of paper attached to the contract:

"Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.".

(4) COMPLIANCE ASSURANCE.--Whenever a seller or lessor has entered into a contract with an agent for the purpose of selling or leasing a unit of target housing, the regulations promulgated under this section shall require the agent, on behalf of the seller or lessor, to ensure compliance with the requirements of this section.

(5) PROMULGATION.--A suit may be brought against the Secretary of Housing and Urban Development and the Administrator of the Environmental Protection Agency under section 20 of the Toxic Substances Control Act to compel promulgation of the regulations required under this section and the Federal district court shall have jurisdiction to order such promulgation.

(b) PENALTIES FOR VIOLATIONS.--

(1) MONETARY PENALTY.--Any person who knowingly violates any provision of this section shall be subject to civil money penalties in accordance with the provisions of section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545).

(2) ACTION BY SECRETARY.--The Secretary is authorized to take such lawful action as may be necessary to enjoin any violation of this section.

(3) CIVIL LIABILITY.--Any person who knowingly violates the provisions of this section shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual.

(4) COSTS.--In any civil action brought for damages pursuant to paragraph (3), the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.

(5) PROHIBITED ACT.--It shall be a prohibited act under section 409 of the Toxic Substances Control Act for any person to fail or refuse to comply with a provision of this section or with any rule or order issued under this section. For purposes of enforcing this section under the Toxic Substances Control Act, the penalty for each violation applicable under section 16 of that Act shall not be more than $10,000.

(c) VALIDITY OF CONTRACTS AND LIENS.--Nothing in this section shall affect the validity or enforceability of any sale or contract for the purchase and sale or lease of any interest in residential real property or any loan, loan agreement, mortgage, or lien made or arising in connection with a mortgage loan, nor shall anything in this section create a defect in title.

(d) EFFECTIVE DATE.--The regulations under this section shall take effect 3 years after the date of the enactment of this title.

SEC. 1021. CONTRACTOR TRAINING AND CERTIFICATION.

(a) AMENDMENT TO THE TOXIC SUBSTANCES CONTROL ACT.--The Toxic Substances Control Act (15 U.S.C. 2601 et seq.) is amended by adding after title III the following new title:

"TITLE IV--LEAD EXPOSURE REDUCTION

"SEC. 401. DEFINITIONS.

"For the purposes of this title:

"(1) ABATEMENT.--The term 'abatement' means any set of measures designed to

permanently eliminate lead-based paint hazards in accordance with standards established by the Administrator under this title. Such term includes--

"(A) the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil; and

"(B) all preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures.

"(2) ACCESSIBLE SURFACE.--The term 'accessible surface' means an interior or exterior surface painted with lead-based paint that is accessible for a young child to mouth or chew.

"(3) DETERIORATED PAINT.--The term 'deteriorated paint' means any interior or exterior paint that is peeling, chipping, chalking or cracking or any paint located on an interior or exterior surface or fixture that is damaged or deteriorated.

"(4) EVALUATION.--The term 'evaluation' means risk assessment, inspection, or risk assessment and inspection.

"(5) FRICTION SURFACE.--The term 'friction surface' means an interior or exterior surface that is subject to abrasion or friction, including certain window, floor, and stair surfaces.

"(6) IMPACT SURFACE.--The term 'impact surface' means an interior or exterior surface that is subject to damage by repeated impacts, for example, certain parts of door frames.

"(7) INSPECTION.--The term 'inspection' means

(A) a surface-by-surface investigation to determine the presence of lead-based paint, as provided in section 302(c) of the Lead-Based Paint Poisoning Prevention Act, and

(B) the provision of a report explaining the results of the investigation.

"(8) INTERIM CONTROLS.--The term 'interim controls' means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

"(9) LEAD-BASED PAINT.--The term 'lead-based paint' means paint or other surface coatings that contain lead in excess of 1.0 milligrams per centimeter squared or 0.5 percent by weight or

(A) in the case of paint or other surface coatings on target housing, such lower level as may be established by the Secretary of Housing and Urban Development, as defined in section 302(c) of the Lead-Based Paint Poisoning Prevention Act, or

(B) in the case of any other paint or surface coatings, such other level as may be established by the Administrator.

"(10) LEAD-BASED PAINT HAZARD.--The term 'lead-based paint hazard' means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the Administrator under this title.

"(11) LEAD-CONTAMINATED DUST.--The term 'lead-contaminated dust' means surface dust in residential dwellings that contains an area or mass concentration of lead in excess of levels determined by the Administrator under this title to pose a threat of adverse health effects in pregnant women or young children.

"(12) LEAD-CONTAMINATED SOIL.--The term 'lead-contaminated soil' means bare soil on residential real property that contains lead at or in excess of the levels determined to be hazardous to human health by the Administrator under this title.

"(13) REDUCTION.--The term 'reduction' means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

"(14) RESIDENTIAL DWELLING.--The term 'residential dwelling' means--

"(A) a single-family dwelling, including attached structures such as porches and stoops; or

"(B) a single-family dwelling unit in a structure that contains more than 1 separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons.

"(15) RESIDENTIAL REAL PROPERTY.--The term 'residential real property' means real property on which there is situated 1 or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons.

"(16) RISK ASSESSMENT.--The term 'risk assessment' means an on-site investigation to determine and report the existence, nature, severity and location of lead-based paint hazards in residential dwellings, including--

"(A) information gathering regarding the age and history of the housing and occupancy by children under age 6;

"(B) visual inspection;

"(C) limited wipe sampling or other environmental sampling techniques;

"(D) other activity as may be appropriate; and

"(E) provision of a report explaining the results of the investigation.

"(17) TARGET HOUSING.--The term 'target housing' means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling. In the case of jurisdictions which banned the sale or use of lead-based paint prior to 1978, the Secretary of Housing and Urban Development, at the Secretary's discretion, may designate an earlier date.

"SEC. 402. LEAD-BASED PAINT ACTIVITIES TRAINING AND CERTIFICATION.

"(a) REGULATIONS.--

"(1) IN GENERAL.--Not later than 18 months after the date of the enactment of this section, the Administrator shall, in consultation with the Secretary of Labor, the Secretary of Housing and Urban Development, and the Secretary of Health and Human Services (acting through the Director of the National Institute for Occupational Safety and Health), promulgate final regulations governing lead-based paint activities to ensure that individuals engaged in such activities are properly trained; that training programs are accredited; and that contractors engaged in such activities are certified. Such regulations shall contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety. Such regulations shall require that all risk assessment, inspection, and abatement activities performed in target housing shall be performed by certified contractors, as such term is defined in section 1004 of the Residential Lead- Based Paint Hazard Reduction Act of 1992. The provisions of this section shall supersede the provisions set forth under the heading 'Lead Abatement Training and Certification' and under the heading 'Training Grants' in title III of the Act entitled 'An Act making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1992, and for other purposes', Public Law 102-139, and upon the enactment of this section the provisions set forth in such public law under such headings shall cease to have any force and effect.

"(2) ACCREDITATION OF TRAINING PROGRAMS.--Final regulations promulgated under paragraph (1) shall contain specific requirements for the accreditation of lead-based paint activities training programs for workers, supervisors, inspectors and planners, and other individuals involved in lead-based paint activities, including, but not limited to, each of the following:

"(A) Minimum requirements for the accreditation of training providers.

"(B) Minimum training curriculum requirements.

"(C) Minimum training hour requirements.

"(D) Minimum hands-on training requirements.

"(E) Minimum trainee competency and proficiency requirements.

"(F) Minimum requirements for training program quality control.

"(3) ACCREDITATION AND CERTIFICATION FEES.--The Administrator (or the State in the case of an authorized State program) shall impose a fee on--

"(A) persons operating training programs accredited under this title; and

"(B) lead-based paint activities contractors certified in accordance with paragraph (1).

The fees shall be established at such level as is necessary to cover the costs of administering and enforcing the standards and regulations under this section which are applicable to such programs and contractors. The fee shall not be imposed on any State, local government, or nonprofit training program. The Administrator (or the State in the case of an authorized State program) may waive the fee for lead-based paint activities contractors under subparagraph (A) for the purpose of training their own employees.

"(b) LEAD-BASED PAINT ACTIVITIES.--For purposes of this title, the term 'lead-based paint activities' means--

"(1) in the case of target housing, risk assessment, inspection, and abatement; and

"(2) in the case of any public building constructed before 1978, commercial building, bridge, or other structure or superstructure, identification of lead-based paint and materials containing lead-based paint, deleading, removal of lead from bridges, and demolition.

For purposes of paragraph (2), the term 'deleading' means activities conducted by a person who offers to eliminate lead-based paint or lead-based paint hazards or to plan such activities.

"(c) RENOVATION AND REMODELING.--

"(1) GUIDELINES.--In order to reduce the risk of exposure to lead in connection with renovation and remodeling of target housing, public buildings constructed before 1978, and commercial buildings, the Administrator shall, within 18 months after the enactment of this section, promulgate guidelines for the conduct of such renovation and remodeling activities which may create a risk of exposure to dangerous levels of lead. The Administrator shall disseminate such guidelines to persons engaged in such renovation and remodeling through hardware and paint stores, employee organizations, trade groups, State and local agencies, and through other appropriate means.

"(2) STUDY OF CERTIFICATION.--The Administrator shall conduct a study of the extent to which persons engaged in various types of renovation and remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings are exposed to lead in the conduct of such activities or disturb lead and create a lead-based paint hazard on a regular or occasional basis. The Administrator shall complete such study and publish the results thereof within 30 months after the enactment of this section.

"(3) CERTIFICATION DETERMINATION.--Within 4 years after the enactment of this section, the Administrator shall revise the regulations under subsection (a) to apply the regulations to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards. In determining which contractors are engaged in such activities, the Administrator shall utilize the results of the study under paragraph (2) and consult with the representatives of labor organizations, lead-based paint activities contractors, persons engaged in remodeling and renovation, experts in lead health effects, and others. If the Administrator determines that any category of contractors engaged in renovation or remodeling does not require certification, <<PUB #PG=1000457,3916>>the Administrator shall publish an explanation of the basis for that determination.

"SEC. 403. IDENTIFICATION OF DANGEROUS LEVELS OF LEAD.

"Within 18 months after the enactment of this title, the Administrator shall promulgate regulations which shall identify, for purposes of this title, and the Residential Lead-Based Paint Hazard Reduction Act of 1992, lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil.

"SEC. 404. AUTHORIZED STATE PROGRAMS.

"(a) APPROVAL.--Any State which seeks to administer and enforce the standards, regulations, or other requirements established under section 402 or 406, or both, may, after notice and opportunity for public hearing, develop and submit to the Administrator an application, in such form as the Administrator shall require, for authorization of such a State program. Any such State may also certify to the Administrator at the time of submitting such program that the State program meets the requirements of paragraphs (1) and (2) of subsection (b). Upon submission of such certification, the State program shall be deemed to be authorized under this section, and shall apply in such State in lieu of the corresponding Federal program under section 402 or 406, or both, as the case may be, until such time as the Administrator disapproves the program or withdraws the authorization.

"(b) APPROVAL OR DISAPPROVAL.--Within 180 days following submission of an application under subsection (a), the Administrator shall approve or disapprove the application. The Administrator may approve the application only if, after notice and after opportunity for public hearing, the Administrator finds that--

"(1) the State program is at least as protective of human health and the environment as the Federal program under section 402 or 406, or both, as the case may be, and

"(2) such State program provides adequate enforcement.

Upon authorization of a State program under this section, it shall be unlawful for any person to violate or fail or refuse to comply with any requirement of such program.

"(c) WITHDRAWAL OF AUTHORIZATION.--If a State is not administering and enforcing a program authorized under this section in compliance with standards, regulations, and other requirements of this title, the Administrator shall so notify the State and, if corrective action is not completed within a reasonable time, not to exceed 180 days, the Administrator shall withdraw authorization of such program and establish a Federal program pursuant to this title.

"(d) MODEL STATE PROGRAM.--Within 18 months after the enactment of this title, the Administrator shall promulgate a model State program which may be adopted by any State which seeks to administer and enforce a State program under this title. Such model program shall, to the extent practicable, encourage States to utilize existing State and local certification and accreditation programs and procedures. Such program shall encourage reciprocity among the States with respect to the certification under section 402.

"(e) OTHER STATE REQUIREMENTS.--Nothing in this title shall be construed to prohibit any State or political subdivision thereof from imposing any requirements which are

more stringent than those imposed by this title.

"(f) STATE AND LOCAL CERTIFICATION.--The regulations under this title shall, to the extent appropriate, encourage States to seek program authorization and to use existing State and local certification and accreditation procedures, except that a State or local government shall not require more than 1 certification under this section for any lead-based paint activities contractor to carry out lead-based paint activities in the State or political subdivision thereof.

"(g) GRANTS TO STATES.--The Administrator is authorized to make grants to States to develop and carry out authorized State programs under this section. The grants shall be subject to such terms and conditions as the Administrator may establish to further the purposes of this title.

"(h) ENFORCEMENT BY ADMINISTRATOR.--If a State does not have a State program authorized under this section and in effect by the date which is 2 years after promulgation of the regulations under section 402 or 406, the Administrator shall, by such date, establish a Federal program for section 402 or 406 (as the case may be) for such State and administer and enforce such program in such State.

"SEC. 405. LEAD ABATEMENT AND MEASUREMENT.

"(a) PROGRAM TO PROMOTE LEAD EXPOSURE ABATEMENT.--The Administrator, in cooperation with other appropriate Federal departments and agencies, shall conduct a comprehensive program to promote safe, effective, and affordable monitoring, detection, and abatement of lead-based paint and other lead exposure hazards.

"(b) STANDARDS FOR ENVIRONMENTAL SAMPLING LABORATORIES.--(1) The Administrator shall establish protocols, criteria, and minimum performance standards for laboratory analysis of lead in paint films, soil, and dust. Within 2 years after the enactment of this title, the Administrator, in consultation with the Secretary of Health and Human Services, shall establish a program to certify laboratories as qualified to test substances for lead content unless the Administrator determines, by the date specified in this paragraph, that effective voluntary accreditation programs are in place and operating on a nationwide basis at the time of such determination. To be certified under such program, a laboratory shall, at a minimum, demonstrate an ability to test substances accurately for lead content.

"(2) Not later than 24 months after the date of the enactment of this section, and annually thereafter, the Administrator shall publish and make available to the public a list of certified or accredited environmental sampling laboratories.

"(3) If the Administrator determines under paragraph (1) that effective voluntary accreditation programs are in place for environmental sampling laboratories, the Administrator shall review the performance and effectiveness of such programs within 3 years after such determination. If, upon such review, the Administrator determines that the voluntary accreditation programs are not effective in assuring the quality and consistency of laboratory analyses, the Administrator shall, not more than 12 months thereafter, establish a certification program that meets the requirements of paragraph

(1).

"(c) EXPOSURE STUDIES.—

(1) The Secretary of Health and Human Services (hereafter in this subsection referred to as the 'Secretary'), acting through the Director of the Centers for Disease Control, (CDC), and the Director of the National Institute of Environmental Health Sciences, shall jointly conduct a study of the sources of lead exposure in children who have elevated blood lead levels (or other indicators of elevated lead body burden), as defined by the Director of the Centers for Disease Control.

"(2) The Secretary, in consultation with the Director of the National Institute for Occupational Safety and Health, shall conduct a comprehensive study of means to reduce hazardous occupational lead abatement exposures. This study shall include, at a minimum, each of the following--

"(A) Surveillance and intervention capability in the States to identify and prevent hazardous exposures to lead abatement workers.

"(B) Demonstration of lead abatement control methods and devices and work practices to identify and prevent hazardous lead exposures in the workplace.

"(C) Evaluation, in consultation with the National Institute of Environmental Health Sciences, of health effects of low and high levels of occupational lead exposures on reproductive, neurological, renal, and cardiovascular health.

"(D) Identification of high risk occupational settings to which prevention activities and resources should be targeted.

"(E) A study assessing the potential exposures and risks from lead to janitorial and custodial workers.

"(3) The studies described in paragraphs (1) and (2) shall, as appropriate, examine the relative contributions to elevated lead body burden from each of the following:

"(A) Drinking water.

"(B) Food.

"(C) Lead-based paint and dust from lead-based paint.

"(D) Exterior sources such as ambient air and lead in soil.

"(E) Occupational exposures, and other exposures that the Secretary determines to be appropriate.

"(4) Not later than 30 months after the date of the enactment of this section, the Secretary shall submit a report to the Congress concerning the studies described in paragraphs (1) and (2).

"(d) PUBLIC EDUCATION.--(1) The Administrator, in conjunction with the Secretary of Health and Human Services, acting through the Director of the Agency for Toxic Substances and Disease Registry, and in conjunction with the Secretary of Housing and Urban Development, shall sponsor public education and outreach activities to increase public awareness of--

"(A) the scope and severity of lead poisoning from household sources;

"(B) potential exposure to sources of lead in schools and childhood day care centers;

"(C) the implications of exposures for men and women, particularly those of childbearing age;

"(D) the need for careful, quality, abatement and management actions;

"(E) the need for universal screening of children;

"(F) other components of a lead poisoning prevention program;

"(G) the health consequences of lead exposure resulting from lead-based paint hazards;

"(H) risk assessment and inspection methods for lead-based paint hazards; and

"(I) measures to reduce the risk of lead exposure from lead-based paint.

"(2) The activities described in paragraph (1) shall be designed to provide educational services and information to--

"(A) health professionals;

"(B) the general public, with emphasis on parents of young children;

"(C) homeowners, landlords, and tenants;

"(D) consumers of home improvement products;

"(E) the residential real estate industry; and

"(F) the home renovation industry.

"(3) In implementing the activities described in paragraph (1), the Administrator shall assure coordination with the President's Commission on Environmental Quality's education and awareness campaign on lead poisoning.

"(4) The Administrator, in consultation with the Chairman of the Consumer Product Safety Commission, shall develop information to be distributed by retailers of home improvement products to provide consumers with practical information related to the hazards of renovation and remodeling where lead-based paint may be present.

"(e) TECHNICAL ASSISTANCE.--

"(1) CLEARINGHOUSE.--Not later than 6 months after the enactment of this subsection, the Administrator shall establish, in consultation with the Secretary of Housing and Urban Development and the Director of the Centers for Disease Control, a National Clearinghouse on Childhood Lead Poisoning (hereinafter in this section referred to as 'Clearinghouse'). The Clearinghouse shall--

"(A) collect, evaluate, and disseminate current information on the assessment and reduction of lead-based paint hazards, adverse health effects, sources of exposure, detection and risk assessment methods, environmental hazards abatement, and clean-up standards;

"(B) maintain a rapid-alert system to inform certified lead-based paint activities contractors of significant developments in research related to lead-based paint hazards; and

"(C) perform any other duty that the Administrator determines necessary to achieve the purposes of this Act.

"(2) HOTLINE.--Not later than 6 months after the enactment of this subsection, the Administrator, in cooperation with other Federal agencies and with State and local governments, shall establish a single lead-based paint hazard hotline to provide the public with answers to questions about lead poisoning prevention and referrals to the Clearinghouse for technical information.

"(f) PRODUCTS FOR LEAD-BASED PAINT ACTIVITIES.--Not later than 30 months after the date of enactment of this section, the President shall, after notice and opportunity for comment, establish by rule appropriate criteria, testing protocols, and performance characteristics as are necessary to ensure, to the greatest extent possible and consistent

with the purposes and policy of this title, that lead-based paint hazard evaluation and reduction products introduced into commerce after a period specified in the rule are effective for the intended use described by the manufacturer. The rule shall identify the types or classes of products that are subject to such rule. The President, in implementation of the rule, shall, to the maximum extent possible, utilize independent testing laboratories, as appropriate, and consult with such entities and others in developing the rules. The President may delegate the authorities under this subsection to the Environmental Protection Agency or the Secretary of Commerce or such other appropriate agency.

"SEC. 406. LEAD HAZARD INFORMATION PAMPHLET.

"(a) LEAD HAZARD INFORMATION PAMPHLET.--Not later than 2 years after the enactment of this section, after notice and opportunity for comment, the Administrator of the Environmental Protection Agency, in consultation with the Secretary of Housing and Urban Development and with the Secretary of Health and Human Services, shall publish, and from time to time revise, a lead hazard information pamphlet to be used in connection with this title and section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992. The pamphlet shall--

"(1) contain information regarding the health risks associated with exposure to lead;

"(2) provide information on the presence of lead-based paint hazards in federally assisted, federally owned, and target housing;

"(3) describe the risks of lead exposure for children under 6 years of age, pregnant women, women of childbearing age, persons involved in home renovation, and others residing in a dwelling with lead-based paint hazards;

"(4) describe the risks of renovation in a dwelling with lead-based paint hazards;

"(5) provide information on approved methods for evaluating and reducing lead-based paint hazards and their effectiveness in identifying, reducing, eliminating, or preventing exposure to lead-based paint hazards;

"(6) advise persons how to obtain a list of contractors certified pursuant to this title in lead-based paint hazard evaluation and reduction in the area in which the pamphlet is to be used;

"(7) state that a risk assessment or inspection for lead-based paint is recommended prior to the purchase, lease, or renovation of target housing;

"(8) state that certain State and local laws impose additional requirements related to lead-based paint in housing and provide a listing of Federal, State, and local agencies in each State, including address and telephone number, that can provide information about applicable laws and available governmental and private assistance and financing; and

"(9) provide such other information about environmental hazards associated with residential real property as the Administrator deems appropriate.

"(b) RENOVATION OF TARGET HOUSING.--Within 2 years after the enactment of this section, the Administrator shall promulgate regulations under this subsection to require each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

"SEC. 407. REGULATIONS.

"The regulations of the Administrator under this title shall include such recordkeeping and reporting requirements as may be necessary to insure the effective implementation of this title. The regulations may be amended from time to time as necessary.

"SEC. 408. CONTROL OF LEAD-BASED PAINT HAZARDS AT FEDERAL FACILITIES.

"Each department, agency, and instrumentality of executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in a lead-based paint hazard, and each officer, agent, or employee thereof, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for certification, licensing, recordkeeping, or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief) respecting lead-based paint, lead-based paint activities, and lead-based paint hazards in the same manner, and to the same extent as any nongovernmental entity is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines regardless of whether such penalties or fines are punitive or coercive in nature, or whether imposed for isolated, intermittent or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order, or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this section include, but are not limited to, fees or charges assessed for certification and licensing, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local lead-based paint, lead-based paint activities, or lead-based paint hazard activities program. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local law relating to lead-based paint, lead-based paint activities, or lead-based paint hazards with respect to any act or omission within the scope of his official duties.

"SEC. 409. PROHIBITED ACTS.

"It shall be unlawful for any person to fail or refuse to comply with a provision of this title or with any rule or order issued under this title.

"SEC. 410. RELATIONSHIP TO OTHER FEDERAL LAW.

"Nothing in this title shall affect the authority of other appropriate Federal agencies to establish or enforce any requirements which are at least as stringent as those established pursuant to this title.

"SEC. 411. GENERAL PROVISIONS RELATING TO ADMINISTRATIVE PROCEEDINGS.

"(a) APPLICABILITY.--This section applies to the promulgation or revision of any regulation issued under this title.
"(b) RULEMAKING DOCKET.--Not later than the date of proposal of any action to which this section applies, the Administrator shall establish a rulemaking docket for such action (hereinafter in this subsection referred to as a 'rule'). Whenever a rule applies only within a particular State, a second (identical) docket shall be established in the appropriate regional office of the Environmental Protection Agency.
"(c) INSPECTION AND COPYING.--(1) The rulemaking docket required under subsection (b) shall be open for inspection by the public at reasonable times specified in the notice of proposed rulemaking. Any person may copy documents contained in the docket. The Administrator shall provide copying facilities which may be used at the expense of the person seeking copies, but the Administrator may waive or reduce such expenses in such instances as the public interest requires. Any person may request copies by mail if the person pays the expenses, including personnel costs to do the copying.

"(2)(A) Promptly upon receipt by the agency, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket. The transcript of public hearings, if any, on the proposed rule shall also be included in the docket promptly upon receipt from the person who transcribed such hearings. All documents which become available after the proposed rule has been published and which the Administrator determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability.

"(B) The drafts of proposed rules submitted by the Administrator to the Office of Management and Budget for any interagency review process prior to proposal of any such rule, all documents accompanying such drafts, and all written comments thereon by other agencies and all written responses to such written comments by the Administrator shall be placed in the docket no later than the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of promulgation.

"(d) EXPLANATION.--(1) The promulgated rule shall be accompanied by an explanation of the reasons for any major changes in the promulgated rule from the proposed rule.

"(2) The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.

"(3) The promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation.

"(e) JUDICIAL REVIEW.--The material referred to in subsection (c)(2)(B) shall not be included in the record for judicial review.

"(f) EFFECTIVE DATE.--The requirements of this section shall take effect with respect to any rule the proposal of which occurs after 90 days after the date of the enactment of this section.

"SEC. 412. AUTHORIZATION OF APPROPRIATIONS.
"There are authorized to be appropriated to carry out the purposes of this title such

sums as may be necessary.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.--The Toxic Substances Control Act (15 U.S.C. 2610) is amended as follows:

(1) In paragraph (1) of section 7(a), strike "or 6" and insert "6, or title IV" and after "5" insert "or title IV".

(2) In the first sentence of subsection (a) of section 11:

(A) Strike "or mixtures" before "are manufactured" and insert ", mixtures, or products subject to title IV".

(B) Insert "such products," before "or such articles".

(3) In paragraph (1) of subsection (b) of section 11, strike "or mixtures" and insert ", mixtures, or products subject to title IV".

(4) In paragraph (1) of section 13(a), strike "or 6" in each place it appears and insert ", 6, or title IV" and strike "or 7" and insert ", 7 or title IV".

(5) In section 16, insert "or 409" after "section 15" each place it appears.

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(6) In section 17, amend subsection (a) to read as follows:

"(a) SPECIFIC ENFORCEMENT.--(1) The district courts of the United States shall have jurisdiction over civil actions to--

"(A) restrain any violation of section 15 or 409,

"(B) restrain any person from taking any action prohibited by section 5, 6, or title IV, or by a rule or order under section 5, 6, or title IV,

"(C) compel the taking of any action required by or under this Act, or

"(D) direct any manufacturer or processor of a chemical substance, mixture, or product subject to title IV manufactured or processed in violation of section 5, 6, or title IV, or a rule or order under section 5, 6, or title IV, and distributed in commerce, (i) to give notice of such fact to distributors in commerce of such substance, mixture, or product and, to the extent reasonably ascertainable, to other persons in possession of such substance, mixture, or product or exposed to such substance, mixture, or product, (ii) to give public notice of such risk of injury, and (iii) to either replace or repurchase such substance, mixture, or product, whichever the person to which the requirement is directed elects.".

(7) In the first sentence of subsection (b) of section 17--

(A) strike "or mixture" after "Any chemical substance" and inserting ", mixture, or product subject to title IV"; and

(B) insert "product," before "or article" in each place that it appears.

(8) In section 19--

(A) In the first sentence of subsection (a), after "title II" insert "or IV".

(B) Before the semicolon at the end of subsection (a)(3)(B) insert "and in the case of a rule under title IV, the finding required for the issuance of such a rule".

(9) In section 20(a)(1) after "title II" insert "or IV" in each place it appears.

(10) Add at the end of the table of contents in section 1 the following:

‘TITLE IV--LEAD EXPOSURE REDUCTION

"Sec. 401. Definitions.
"Sec. 402. Lead-based paint activities training and certification.
"Sec. 403. Identification of dangerous levels of lead.
"Sec. 404. Authorized State programs.
"Sec. 405. Lead abatement and measurement.
"Sec. 406. Lead hazard information pamphlet.
"Sec. 407. Regulations.
"Sec. 408. Control of lead-based paint hazards at Federal facilities.
"Sec. 409. Prohibited acts.
"Sec. 410. Relationship to other Federal law.
"Sec. 411. General provisions relating to administrative proceedings.
"Sec. 412. Authorization of appropriations.".

(c) SHORT TITLE.--This subtitle may be cited as the "Lead-Based Paint Exposure Reduction Act".

Subtitle C--Worker Protection

SEC. 1031. WORKER PROTECTION.

Not later than 180 days after the enactment of this Act, the Secretary of Labor shall issue an interim final regulation regulating occupational exposure to lead in the construction industry. Such interim final regulation shall provide employment and places of employment to employees which are as safe and healthful as those which would prevail under the Department of Housing and Urban Development guidelines published at Federal Register 55, page 38973 (September 28, 1990) (Revised Chapter 8). Such interim final regulations shall take effect upon issuance (except that such regulations may include a reasonable delay in the effective date), shall have the legal effect of an Occupational Safety and Health Standard, and shall apply until a final standard becomes effective under section 6 of the Occupational Safety and Health Act of 1970.

SEC. 1032. COORDINATION BETWEEN ENVIRONMENTAL PROTECTION AGENCY AND DEPARTMENT OF LABOR.

The Secretary of Labor, in promulgating regulations under section 1031, shall consult and coordinate with the Administrator of the Environmental Protection Agency for the purpose of achieving the maximum enforcement of title IV of the Toxic Substances Control Act and the Occupational Safety and Health Act of 1970 while imposing the least burdens of duplicative requirements on those subject to such title and Act and for other purposes.

SEC. 1033. NIOSH RESPONSIBILITIES.

Section 22 of the Occupational Safety and Health Act of 1970 is amended by adding the

following new subsection at the end thereof:

"(g) LEAD-BASED PAINT ACTIVITIES.--

"(1) TRAINING GRANT PROGRAM.—

(A) The Institute, in conjunction with the Administrator of the Environmental Protection Agency, may make grants for the training and education of workers and supervisors who are or may be directly engaged in lead-based paint activities.

"(B) Grants referred to in subparagraph (A) shall be awarded to nonprofit organizations (including colleges and universities, joint labor-management trust funds, States, and nonprofit government employee organizations)--

"(i) which are engaged in the training and education of workers and supervisors who are or who may be directly engaged in lead-based paint activities (as defined in title IV of the Toxic Substances Control Act),

"(ii) which have demonstrated experience in implementing and operating health and safety training and education programs, and

"(iii) with a demonstrated ability to reach, and involve in lead-based paint training programs, target populations of individuals who are or will be engaged in lead-based paint activities.

Grants under this subsection shall be awarded only to those organizations that fund at least 30 percent of their lead-based paint activities training programs from non-Federal sources, excluding in-kind contributions. Grants may also be made to local governments to carry out such training and education for their employees.

"(C) There are authorized to be appropriated, at a minimum, $10,000,000 to the Institute for each of the fiscal years 1994 through 1997 to make grants under this paragraph.

"(2) EVALUATION OF PROGRAMS.--The Institute shall conduct periodic and comprehensive assessments of the efficacy of the worker and supervisor training programs developed and offered by those receiving grants under this section. The Director shall prepare reports on the results of these assessments addressed to the Administrator of the Environmental Protection Agency to include recommendations as may be appropriate for the revision of these programs. The sum of $500,000 is authorized to be appropriated to the Institute for each of the fiscal years 1994 through 1997 to carry out this paragraph.".

Subtitle D--Research and Development

PART 1--HUD RESEARCH

SEC. 1051.--RESEARCH ON LEAD EXPOSURE FROM OTHER SOURCES.

The Secretary, in cooperation with other Federal agencies, shall conduct research on strategies to reduce the risk of lead exposure from other sources, including exterior soil and interior lead dust in carpets, furniture, and forced air ducts.

SEC. 1052. TESTING TECHNOLOGIES.

The Secretary, in cooperation with other Federal agencies, shall conduct research to--

(1) develop improved methods for evaluating lead-based paint hazards in housing;

(2) develop improved methods for reducing lead-based paint hazards in housing;

(3) develop improved methods for measuring lead in paint films, dust, and soil samples;

(4) establish performance standards for various detection methods, including spot test kits;

(5) establish performance standards for lead-based paint hazard reduction methods, including the use of encapsulants;

(6) establish appropriate cleanup standards;

(7) evaluate the efficacy of interim controls in various hazard situations;

(8) evaluate the relative performance of various abatement techniques;

(9) evaluate the long-term cost-effectiveness of interim control and abatement strategies; and

(10) assess the effectiveness of hazard evaluation and reduction activities funded by this Act.

SEC. 1053. AUTHORIZATION.

Of the total amount approved in appropriation Acts under section 1011(o), there shall be set aside to carry out this part $5,000,000 for fiscal year 1993, and $5,000,000 for fiscal year 1994.

PART 2--GAO REPORT

SEC. 1056. FEDERAL IMPLEMENTATION AND INSURANCE STUDY.

(a) FEDERAL IMPLEMENTATION STUDY.--The Comptroller General of the United States shall assess the effectiveness of Federal enforcement and compliance with lead safety laws and regulations, including any changes needed in annual inspection procedures to identify lead-based paint hazards in units receiving assistance under subsections (b) and (o) of section 8 of the United States Housing Act of 1937.

(b) INSURANCE STUDY.--The Comptroller General of the United States shall assess the availability of liability insurance for owners of residential housing that contains lead-based paint and persons engaged in lead-based paint hazard evaluation and reduction activities. In carrying out the assessment, the Comptroller General shall--

(1) analyze any precedents in the insurance industry for the containment and abatement of environmental hazards, such as asbestos, in federally assisted housing;

(2) provide an assessment of the recent insurance experience in the public housing lead hazard identification and reduction program; and

(3) recommend measures for increasing the availability of liability insurance to owners and contractors engaged in federally supported work.

Subtitle E--Reports

SEC. 1061. REPORTS OF THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT.

(a) ANNUAL REPORT.--The Secretary shall transmit to the Congress an annual report that--

(1) sets forth the Secretary's assessment of the progress made in implementing the various programs authorized by this title;

(2) summarizes the most current health and environmental studies on childhood lead poisoning, including studies that analyze the relationship between interim control and abatement activities and the incidence of lead poisoning in resident children;

(3) recommends legislative and administrative initiatives that may improve the performance by the Department of Housing and Urban Development in combating lead hazards through the expansion of lead hazard evaluation and reduction activities;

(4) describes the results of research carried out in accordance with subtitle D; and

(5) estimates the amount of Federal assistance annually expended on lead hazard evaluation and reduction activities.

(b) BIENNIAL REPORT.--

(1) IN GENERAL.--24 months after the date of enactment of this Act, and at the end of every 24-month period thereafter, the Secretary shall report to the Congress on the progress of the Department of Housing and Urban Development in implementing expanded lead-based paint hazard evaluation and reduction activities.

(2) CONTENTS.--The report shall--

(A) assess the effectiveness of section 1018 in making the public aware of lead-based paint hazards;

(B) estimate the extent to which lead-based paint hazard evaluation and reduction activities are being conducted in the various categories of housing;

(C) monitor and report expenditures for lead-based paint hazard evaluation and reduction for programs within the jurisdiction of the Department of Housing and Urban Development;

(D) identify the infrastructure needed to eliminate lead-based paint hazards in all housing as expeditiously as possible, including cost-effective technology, standards and regulations, trained and certified contractors, certified laboratories, liability insurance, private financing techniques, and appropriate Government subsidies;

(E) assess the extent to which the infrastructure described in subparagraph (D) exists, make recommendations to correct shortcomings, and provide estimates of the costs of measures needed to build an adequate infrastructure; and

(F) include any additional information that the Secretary deems appropriate.

APPENDIX G

U.S. HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing

U.S. Department of Housing and Urban Development

Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing

Chapter 7: Lead-Based Paint Inspection

1997 Revision

Chapter 7: Lead-Based Paint Inspection
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Step-by-Step Summary

Lead-Based Paint Inspection: How to Do It

Note: This 1997 Revision replaces Chapter 7 of the 1995 *HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*

1. See Chapters 3, 5 and 16 for guidance on when a lead-based paint inspection is appropriate. A lead-based paint inspection will determine:

   - Whether lead-based paint is present in a house, dwelling unit, residential building, or housing development, including common areas and exterior surfaces; and

   - If present, which building components contain lead-based paint.

   The U.S. Department of Housing and Urban Development (HUD) and the U.S. Environmental Protection Agency (EPA) define an inspection as a surface-by-surface investigation to determine the presence of lead-based paint (see 40 CFR part 745 and Title X of the 1992 Housing and Community Development Act). The sampling protocols in this chapter fulfill that definition.

2. The client should hire a certified (licensed) lead-based paint inspector or risk assessor (see 40 CFR part 745). Lists of inspectors and laboratories can be obtained by calling 1-888-LEADLIST or through the Internet at www.leadlisting.org. Lists are also available through State agencies (call 1-800-LEAD-FYI for the appropriate local contact). More than half of all States now require a license or certification to perform a lead-based paint inspection. If the State does not yet have a certification law, an inspector or risk assessor certified under another State's law should be used. By the fall of 1999, all lead-based paint inspections must be performed by a certified lead-based paint inspector or risk assessor in accordance with 40 CFR part 745, section 227.

3. The inspector should use the HUD/EPA standard for lead-based paint of 1.0 mg/cm² or 0.5% by weight, as defined by Title X of the 1992 Housing and Community Development Act. If the applicable standard in the jurisdiction is different, the procedures in this chapter will need to be modified. For the purposes of the HUD/EPA lead-based paint disclosure rule, 1.0 milligrams per square centimeter (mg/cm²) or 0.5% by weight are the standards that must be used.

4. Obtain the *XRF Performance Characteristic Sheet* for the X-Ray Fluorescence (XRF) lead paint analyzer to be used in the inspection. It will specify the ranges where XRF results are positive, negative or inconclusive, the calibration check tolerances, and other important information. Contact the National Lead Information Center Clearinghouse (1-800-424-LEAD) to obtain the appropriate *XRF Performance Characteristic Sheet*, or download it from the Internet at www.hud.gov/lea/leahome.html. *XRF Performance Characteristic Sheets* have been developed by HUD and EPA for most commercially available XRFs (see Addendum 3 of this chapter).

5. Report lead paint amounts in mg/cm² because this unit of measurement does not depend on the number of layers of non-lead-based paint and can usually be obtained without damaging the painted surface. All measurements of

lead in paint should be in mg/cm², unless the surface area cannot be measured or if all paint cannot be removed from the measured surface area. In such cases, concentrations may be reported in weight percent (%) or parts per million by weight (ppm).

. Follow the radiation safety procedures explained in this chapter, and as required by the U.S. Nuclear Regulatory Commission and applicable State and local regulations when using XRF instruments.

. Take at least three calibration check readings before beginning the inspection. Additional calibration check readings should be made every 4 hours or after inspection work has been completed for the day, or according to the manufacturer's instructions, whichever is most frequent. Calibration checks should always be done before the instrument is turned off and again after it has been warmed up (calibration checks do not need to be done each time an instrument enters an automatic "sleep" state while still powered on).

. When conducting an inspection in a multifamily housing development or building, obtain a complete list of all housing units, common areas, and exterior site areas. Determine which can be grouped together for inspection purposes based on similarity of construction materials and common painting histories. In each group of similar units, similar common areas, and similar exterior sites, determine the minimum number of each to be inspected from the tables in this chapter. Random selection procedures are explained in this chapter.

. For each unit, common area, and exterior site to be inspected, identify all testing combinations in each room equivalent. A testing combination is characterized by the room equivalent, the component type, and the substrate. A room equivalent is an identifiable part of a residence (e.g., room, house exterior, foyer, etc.). Painted surfaces include any surface coated with paint, shellac, varnish, stain, paint covered by wallpaper, or any other coating. Wallpaper should be assumed to cover paint unless building records or physical evidence indicates no paint is present.

0. Take at least one individual XRF reading on each testing combination in each room equivalent. For walls, take at least four readings (one reading on each wall) in each room equivalent. A different visible color does not by itself result in a separate testing combination. It is not necessary to take multiple XRF readings on the same spot, as was recommended in the 1990 Interim Guidelines for Public and Indian Housing.

1. Determine whether to correct the XRF readings for substrate interference by consulting the *XRF Performance Characteristic Sheet*. If test results for a given substrate fall within the substrate correction range, take readings on that bare substrate scraped completely clean of paint, as explained in this chapter.

2. Classify XRF results for each testing combination. Readings above the upper limit of the inconclusive range are considered positive, while readings below the lower limit of the inconclusive range are considered negative. Readings within the inconclusive range (including its boundary values) are classified as inconclusive. Some instruments have a threshold value separating ranges of readings considered positive from readings considered negative for a given substrate. Readings at or above the threshold are considered positive, while readings below the threshold are considered negative.

3. In single-family housing inspections, all inconclusive readings must be confirmed in the laboratory, unless the client wishes to assume that all inconclusive results are positive. Such an assumption may reduce the cost of an inspection, but it will probably increase subsequent abatement, interim control, and maintenance costs, because laboratory analysis often shows that testing combinations with inconclusive readings do not in fact contain lead-based paint. Inconclusive readings cannot be assumed to be negative.

14. In multifamily dwelling inspections, XRF readings are aggregated across units and room equivalents by component type. Use the flowchart provided in this chapter (Figure 7.1) to make classifications of all testing combinations or component types in the development as a whole, based on the percentages of positive, negative, and inconclusive readings.

15. If the inspector collected paint-chip samples for analysis, they should be analyzed by a laboratory recognized under the EPA's National Lead Laboratory Accreditation Program (NLLAP). Paint-chip samples are collected when the overall results for a component type are inconclusive. They may be collected by a properly trained and certified inspector, client, or third party, if permitted by State law. Paint-chip samples should contain all layers of paint (not just peeled layers) and must always include the bottom layer. If results will be reported in mg/cm^2, including a small amount of substrate with the sample will not significantly bias results. Substrate material should not, however, be included in samples reported in weight percent. Paint from 4 square inches (25 square centimeters) should provide a sufficient quantity for laboratory analysis. Smaller surface areas may be used, if the laboratory indicates that a smaller sample is acceptable. In all cases, the surface area sampled must be recorded.

16. The client or client's representative should evaluate the quality of the inspection using the procedures in this chapter.

17. The inspector should write an inspection report indicating if and where lead-based paint is located in the unit or the housing development (or building). The report should include a statement that the presence of lead-based paint must be disclosed to potential new buyers (purchasers) and renters (lessees) prior to obligation under a sales contract or lease, based on Federal law (see 24 CFR part 35, subpart H or 40 CFR part 745, subpart F). The suggested language below may be used. The inspection report should contain detailed information on the following:

    - Who performed the inspection;
    - Date(s);
    - Inspector's certification number;
    - All XRF readings;
    - Classification of all surfaces into positive or negative (but not inconclusive) categories, based on XRF and laboratory analyses;
    - Specific information on the XRF and laboratory methodologies;
    - Housing unit and sampling location identifiers;
    - Results of any laboratory analyses; and
    - Additional information described in Section IV of this chapter.

This chapter also contains language that may be used in an inspection report in the case where no lead-based paint has been identified (see the suggested language below).

Recommended Report Language On Disclosure For Use In Lead-Based Paint Inspections

"A copy of this summary must be provided to new lessees (tenants) and purchasers of this property under Federal law (24 CFR part 35 and 40 CFR part 745) before they become obligated under a lease or sales contract. The complete report must also be provided to new purchasers and it must be made available to new tenants. Landlords (lessors) and sellers are also required to distribute an educational pamphlet approved by the U.S. Environmental Protection Agency and include standard warning language in their leases or sales contracts to ensure that parents have the information they need to protect their children from lead-based paint hazards."

(See Section IV of Chapter 7 of the HUD *Guidelines* for further details)

Recommended Report Language for Inspections Where No Lead-Based Paint Was Identified

"The results of this inspection indicate that no lead in amounts greater than or equal to 1.0 mg/cm² in paint was found on any building components, using the inspection protocol in Chapter 7 of the *HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1997 Revision)*. Therefore, this dwelling qualifies for the exemption in 24 CFR part 35 and 40 CFR part 745 for target housing being leased that is free of lead-based paint, as defined in the rule. However, some painted surfaces may contain levels of lead below 1.0 mg/cm², which could create lead dust or lead-contaminated soil hazards if the paint is turned into dust by abrasion, scraping, or sanding. This report should be kept by the inspector and should also be kept by the owner and all future owners for the life of the dwelling."

(See Section IV of Chapter 7 of the HUD *Guidelines* for further details)

Chapter 7: Lead-Based Paint Inspection

Note: This 1997 Revision replaces Chapter 7 of the 1995 *HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*

I. Introduction

A. Purpose

This chapter explains methods for performing lead-based paint inspections in housing to determine:

- Whether lead-based paint is present in a house, dwelling unit, residential building, or housing development, including common areas and exterior surfaces; and
- If present, which building components contain lead-based paint.

The information presented here is intended for both inspectors and persons who purchase inspection services (clients). Both an inspection protocol and methods for determining the quality of an inspection are provided. Means for locating certified lead inspectors are also described.

1. Disclosure of Inspections

Federal law now requires that the results of lead-based paint inspections and risk assessments be disclosed to prospective renters (lessees, tenants) entering into a new lease and renters renewing an old lease, and to prospective purchasers prior to obligation under a sales contract, if lead-based paint is found. If the inspection described in this chapter finds that lead-based paint is not present in units which are to be leased, the dwelling unit and, for multifamily housing, all other dwelling units characterized by the inspection are exempt from disclosure requirements. However, for dwelling units which are being sold (not leased), the owner still has certain legal responsibilities to fulfill under Federal

law *even if no lead-based paint is identified*. See the HUD and EPA regulations in 24 CFR part 35 or 40 CFR part 745, respectively, for additional details.

You may contact the National Lead Information Center Clearinghouse (1-800-424-LEAD) to obtain HUD and EPA brochures, question-and-answer booklets, the regulations mentioned above (and the descriptive preamble to those regulations), and other information on lead-based paint disclosure. See Section IV for recommended inspection report language regarding these disclosure requirements.

2. Limitation of this Inspection Protocol

The protocol described here is not intended for investigating housing units where children with elevated blood lead levels are currently residing. Such a protocol can be found in Chapter 16 or may be available from a State or local health department.

3. Documentation of Results

The complete set of forms provided at the end of this chapter may be used in single-family and multifamily housing. Equivalent forms or computerized reports may also be used to document the results of inspections.

B. Qualifications of Inspectors and Laboratories

1. Where to Find Inspectors and Laboratories

Lists of State-licensed (certified) inspectors and accredited laboratories recognized under the U.S. Environmental Protection Agency (EPA) National Lead Laboratory Accreditation Program (NLLAP) are often available from State or local agencies. Call the National Lead Information Center Clearinghouse (1-800-424-LEAD) to locate the appropriate local contact.

A nationwide listing of certified inspectors, risk assessors, and accredited laboratories is also available on the Internet at www.leadlisting.org. The lists are

also available through an automated telephone system by calling 1-888-LEADLIST (1-888-532-3547).

2. Qualifications of Inspectors

The inspector must be certified (licensed) in lead-based paint inspection by the State where the testing is to be done if it has an inspection certification program; if the State does not have such a program, the inspector should be certified by another State. Currently, more than half of all States have such licensing laws. By the fall of 1999, all lead-based paint inspections must be performed only by a certified lead-based paint inspector or risk assessor in accordance with the work practices of 40 CFR part 745, section 227 (see the regulation for specific effective dates for States and Indian Tribes).

C. Other Sources of Information Required to Use This Protocol

The other sources of information and materials needed for using this protocol include an *XRF Performance Characteristic Sheet*, U.S. Nuclear Regulatory Commission and State radiation protection regulations, and standards issued by the American Society for Testing and Materials (ASTM). The National Institute of Standards and Technology (NIST) produces Standard Reference Materials (SRMs) and provides supporting documentation for these materials.

1. XRF Performance Characteristic Sheet

An *XRF Performance Characteristic Sheet* defines acceptable operating specifications and procedures for each model of X-Ray Fluorescence (XRF) lead-based paint analyzer. An inspector should follow the *XRF Performance Characteristic Sheet* for all inspection activities. For most commercially available XRFs, *XRF Performance Characteristic Sheets* are available from the National Lead Information Center Clearinghouse or through the Internet at www.hud.gov/lea/leahome.html. They are also included in a new, easy-to-use format in Addendum 3 to this chapter.

2. XRF Radiation Protection Regulations

Regulations that govern radioactive sources used in XRFs are available from State radiation protection agencies, and the Nuclear Regulatory Commission (301-415-7000).

3. ASTM and NIST Standards

Other helpful information and standards are available from ASTM (610-832-9585), including:

- ASTM E 1583 on evaluating laboratories used to determine lead levels
- ASTM E 1605 on terminology
- ASTM E 1613 on determining lead by atomic emission or atomic absorption spectroscopy
- ASTM E 1645 on laboratory preparation of paint-chip samples
- ASTM E 1729 on collecting paint-chip samples
- ASTM E 1775 on-site extraction and field-portable stripping voltammetry analysis for lead
- ASTM PS 53 on identifying and managing lead in facilities
- ASTM PS 87 on ultrasonic extraction for later analysis for lead
- ASTM PS 88 on determining lead by portable electroanalysis

NIST (301-975-6776) has developed series of paint films that have known amounts of lead-based paint and can be used for calibration check purposes. NIST Standard Reference Material 2579 is available as of mid-1997; NIST is planning to release additional series of paint films in late 1997 or early 1998 (see Section IV.D, below).

D. Paint Testing for Inspections and Risk Assessments

Risk assessments determine the presence of lead-based paint *hazards*, while inspections determine the presence of lead-based paint. The paint-chip sampling and measurement techniques used for paint inspections are similar to the techniques used for risk assessment. However, the number of paint measurements or samples taken for a paint inspection is considerably greater than the number of paint samples required for a risk assessment, because risk assessments measure lead only in deteriorated paint (risk assessments also measure lead in dust and soil). Inspections measure lead in both deteriorated and

intact paint, which involves many more surfaces. Risk assessments always note the condition of paint films; inspections may not. For dwellings in good condition, a full risk assessment may be unnecessary, and a lead hazard screen risk assessment may be conducted. In a lead hazard screen or risk assessment, the certified risk assessor tests only painted surfaces in "deteriorated" condition for their lead content, either by XRF or laboratory analysis. See Chapter 5 for methods to determine the condition of paint films when conducting a risk assessment.

E. Most Common Inspection Method

Portable XRF lead-based paint analyzers are the most common primary analytical method for inspections in housing because of their demonstrated abilities to determine if lead-based paint is present on many surfaces and to measure the paint without destructive sampling or paint removal, as well as their high speed and low cost per sample. Portable XRF instruments expose a building component to X rays or gamma radiation, which causes lead to emit X rays with a characteristic frequency or energy. The intensity of this radiation is measured by the instrument; the inspector must then compare this displayed value (reading) with the inconclusive range or threshold specified in the *XRF Performance Characteristic Sheet* for the specific XRF instrument being used, and the specific substrate beneath the painted surface (see Section IV.G, below). If the reading is less than the lower boundary of the inconclusive range, or less than the threshold, then the reading is considered negative. If the reading is greater than the upper boundary of the inconclusive range, or greater than or equal to the threshold, then the reading is considered positive. Readings within the inconclusive range, including its boundary values, are considered inconclusive. Because the inconclusive ranges and/or thresholds shown in the Performance Characteristic Sheet are based on 1.0 mg/cm^2, positive and negative readings are consistent with the HUD definition of lead-based paint for identification and disclosure purposes.

F. XRF Performance Characteristic Sheets and Manufacturer's Instructions

Only XRF instruments that have a HUD/EPA-issued or equivalent *XRF Performance Characteristic Sheet* should be used. XRFs must be used in accordance with the manufacturer's instructions and the *XRF Performance Characteristic Sheet*. The *XRF Performance Characteristic Sheet* contains information about XRF readings taken on specific substrates, calibration check tolerances, interpretation of XRF readings (see section I.E, above), and other aspects of the model's performance. If discrepancies exist between the *XRF Performance Characteristic Sheet*, the HUD *Guidelines* and the manufacturer's instructions, the most stringent guidelines should be followed. For example, if the *XRF Performance Characteristic Sheet* has a lower (more stringent) calibration check tolerance than the manufacturer's instructions, the *XRF Performance Characteristic Sheet* should be followed. These *Guidelines* and the *XRF Performance Characteristic Sheets* are applicable to all XRF instruments that detect K X rays, L X rays, or both.[1]

G. Inspection by Paint Chip Analysis

Performing inspections by the sole use of laboratory paint chip analysis is not recommended because it is time-consuming, costly, and requires extensive repair of painted surfaces. Laboratory analysis of paint-chip samples *is* recommended for inaccessible areas or building components with irregular (non-flat) surfaces that cannot be tested using XRF instrumentation. Laboratory analysis is also recommended to confirm inconclusive XRF results, as specified on the applicable *XRF Performance Characteristic Sheet*. Some newer laboratory analytical methods can provide results within minutes (see section I.H, below). Only laboratories recognized under the EPA NLLAP should be used. Laboratory analysis is more accurate and precise than XRF but only if great care is used to collect and analyze the paint-chip sample. Laboratory results should be reported as mg/cm^2. Appendix 1 of these *Guidelines* explains why units of mg/cm^2 are not dependent on the number of overcoats of lead-free paint and why such units of measure are therefore more reliable than weight percent. The dimensions of the area from which a paint-chip sample is removed must be measured as accurately as possible (to the nearest millimeter or 1/16th of an inch).

Although laboratory results can also be reported as a percentage of lead by weight of the paint sample, percents should only be used when it is not feasible to use mg/cm^2. These two units of measure are not interchangeable. Laboratory results should be reported as mg/cm^2 if the surface area can be accurately measured and if all paint within that area is collected.

In mg/cm² measurements, collecting small amounts of substrate material with the sample does not bias the results significantly, although having any amount of substrate in the sample can result in less precise results. In weight percent measurements, however, no substrate may be included because the substrate will "dilute" the amount of lead reported. Regardless of the units of measurement selected, the bottom layer of paint must always be included in the sample. If a visual examination shows that the bottom layer of paint appears to have "bled" into the substrate, a very thin upper portion of the substrate should be included in the sample to ensure that all lead within the sample area has been included in the sample. In cases where significant amounts of substrate are included in the sample, the results should always be reported in mg/cm².

See Section VI for additional information on laboratory analysis.

H. Additional Means of Analyzing Paint

Methods of analyzing lead in paint are available in addition to XRF and laboratory paint chip analysis, including transportable instruments and chemical test kits. Because these methods involve paint removal or disturbance, repair is needed after sampling, unless the substrate will be removed, encapsulated, enclosed, or repainted before occupancy (see Section VI), or if analysis shows that the paint is not lead-based paint, and leaving the damage is acceptable to the client and/or the owner.

1. Mobile Laboratories

Portable instruments that employ anodic stripping voltammetry and potentiometric stripping voltammetry are now available. Their use is described in ASTM Provisional Standard Practice PS 88. Also, ASTM Standard Guide E 1775 may be used as a basis for evaluating the performance of on-site extraction and electrochemical and spectrophotometric analyses. If the organization using a portable instrument is recognized under the EPA NLLAP and used that type of instrument to obtain the laboratory's recognition, they can be used in the same way as any other NLLAP-recognized laboratory. In short, both fixed-site and mobile laboratories may be used, provided they are recognized under NLLAP.

2. Chemical Test Kits

Chemical test kits are intended to show a color change when a part of the kit makes contact with the lead in lead-based paint. One type of chemical test kit is based on the formation of lead sulfide, which is black, when lead in paint reacts with sodium sulfide. Another is based on the formation of a red or pink color when lead in paint reacts with sodium rhodizonate.

EPA did not find that chemical spot test kits are sufficiently reliable for use in lead-based paint inspection, and recommended that they not be used (EPA 1995). HUD and EPA may recommend them in the future for inspections if chemical test kit technology is demonstrated to be equivalent to XRF or laboratory paint chip analysis in its ability to properly classify painted surfaces into positive, negative, and inconclusive categories, with appropriate estimates of the magnitude of sampling and analytical error. *XRF Performance Characteristic Sheets* currently provide such estimates for XRFs, and analytical error is well-described for laboratory analysis. HUD is currently funding the National Institute for Standards and Technology (NIST) and other researchers to evaluate commercially available chemical test kits and provide the basis for improved chemical test kits. Information on test kits or other new technologies for testing for lead in paint can be obtained from the National Lead Information Center Clearinghouse (1-800-424-LEAD).

II. Summary of XRF Radiation Safety Issues

Radiation hazards associated with the use of XRFs are covered in detail in Section VII. The shutter of an XRF must never be pointed at anyone, even if the shutter is closed. Inspectors should wear radiation dosimeters to measure their exposure, although excessive exposures are highly unlikely if the instruments are used in accordance with the manufacturer's instructions. If feasible, persons should not be near the other side of a wall, floor, ceiling, or other surface being tested.

III. Definitions

Definitions of several key terms used in this chapter are provided here. Some additional definitions may be found in ASTM Standard E 1605, Standard Terminology Relating to Abatement of Hazards from Lead-based Paint on Buildings and Related Structures, and in other standard chemical, statistical, architectural and engineering dictionaries and texts. For terms discussed both here and in the ASTM document, the definitions and descriptions in this chapter should be used.

Lead-based paint - Lead-based paint means paint or other surface coatings that contain lead equal to or greater than 1.0 mg/cm² or 0.5 percent by weight (equivalent units are: 5,000 µg/g, 5,000 mg/kg, or 5,000 ppm by weight). Surface coatings include paint, shellac, varnish, or any other coating, including wallpaper which covers painted surfaces.

Lead loading - The mass of lead in a given surface area on a substrate. Lead loading is typically measured in units of milligrams per square centimeter (mg/cm²). It is also called area concentration.

Room equivalent - A room equivalent is an identifiable part of a residence, such as a room, a house exterior, a foyer, staircase, hallway, or an exterior area (exterior areas contain items such as play areas, painted swing sets, painted sandboxes, etc.). Closets or other similar areas adjoining rooms should not be considered as separate room equivalents unless they are obviously dissimilar from the adjoining room equivalent. Most closets are not separate room equivalents. Exteriors should be included in all inspections. An individual side of an exterior is not considered to be a separate room equivalent, unless there is visual or other evidence that its paint history is different from that of the other sides. All sides of a building (typically two for row houses or four for freestanding houses) are generally treated as a single room equivalent if the paint history appears to be similar. For multifamily developments or apartment buildings, common areas and exterior sites are treated as separate types of units, not as room equivalents (see section V.C.1 for further guidance).

Substrate - The substrate is the material underneath the paint. Substrates should be classified into one of six types: brick, concrete, drywall, metal, plaster, or wood. These substrates cover almost all building materials that are painted and are linked to those used in the *XRF Performance Characteristic Sheets*. For example, the concrete substrate type includes poured concrete, precast concrete, and concrete block.

If a painted substrate is encountered that is different from the substrate categories shown on the *XRF Performance Characteristic Sheet*, select the substrate type that is most similar in density and composition to the substrate being tested. For example, for painted glass substrates, an inspector should select the concrete substrate, because it has about the same density (2.5 g/cm^3) and because the major element in both is silicon.

For components that have layers of different substrates, such as plaster over concrete, the substrate immediately adjacent to (underneath) the painted surface should be used. For example, plaster over concrete block is recorded as plaster.

Testing Combination - A testing combination is a unique combination of room equivalent, building component type, and substrate. Visible color may not be an accurate predictor of painting history and is not included in the definition of a testing combination. Table 7.1 lists common building component types that could make up distinct testing combinations within room equivalents. The list is not intended to be complete. Unlisted components that are coated with paint, varnish, shellac, wallpaper, stain, or other coating should also be considered as a separate testing combination.

Certain building components that are adjacent to each other and not likely to have different painting histories can be grouped together into a single testing combination, as follows:

- Window casings, stops, jambs and aprons are a single testing combination
- Interior window mullions and window sashes are a single testing combination--do not group interior mullions and sashes with exterior mullions and sashes
- Exterior window mullions and window sashes are a single testing combination
- Door jambs, stops, transoms, casings and other door frame parts are a single testing combination
- Door stiles, rails, panels, mullions and other door parts are a single testing combination

- Baseboards and associated trim (such as quarter-round or other caps) are a single testing combination (do not group chair rails, crown molding or walls with baseboards)
- Painted electrical sockets, switches or plates can be grouped with walls

Each of these building parts should be tested separately if there is some specific reason to believe that they have a different painting history. In most cases, separate testing will not be necessary.

Table 7.1: Examples of Interior and Exterior Building Component Types

Commonly Encountered Interior Painted Components That Should Be Tested Include:	
Air Conditioners	Fireplaces
Balustrades	Floors
Baseboards	Handrails
Bathroom Vanities	Newel Posts
Beams	Other Heating Units
Cabinets	Radiators
Ceilings	Shelf Supports
Chair Rails	Shelves
Columns	Stair Stringers
Counter Tops	Stair Treads and Risers
Crown Molding	Stools and Aprons
Doors and Trims	Walls
Painted Electrical Fixtures	Window Sashes and Trim

Exterior Painted Components That Should Be Tested Include:	
Air Conditioners	Handrails
Balustrades	Lattice Work
Bulkheads	Mailboxes
Ceilings	Painted Roofing
Chimneys	Railing Caps
Columns	Rake Boards
Corner boards	Sashes
Doors and Trim	Siding
Fascias	Soffits
Floors	Stair Risers and Treads
Gutters and Downspouts	Stair Stringers
Joists	Window and Trim

Other Exterior Painted Components Include:	
Fences	Storage Sheds & Garages
Laundry Line Posts	Swing sets and Other Play Equipment

Table 7.2 provides six examples of different testing combinations. The first example is a wooden bedroom door. This is a testing combination because it is described by a room equivalent (bedroom), component (door), and substrate (wood). If one of these variables is different for another component, that component is a different testing combination. For example, if a second door in the room equivalent is metal, two testing combinations, not one, would be present.

For doors separating rooms, each side of the door is assigned to the room equivalent it faces and is tested separately. The same is true of door casings. For prefabricated metal doors where it is apparent that both sides of the door have the same painting history, only one side needs to be tested.

Table 7.2: Examples of Distinct Testing Combinations

Room Equivalent	Building Component	Substrate
Master Bedroom (Room 5)	Door	Wood
Master Bedroom (Room 5)	Door	Metal
Kitchen (Room 3)	Wall	Plaster
Garage (Room 10)	Floor	Concrete
Exterior	Siding	Wood
Exterior	Swing set	Metal

Building Component Types - A building component type consists of doors, windows, walls, and so on that are repeated in more than one room equivalent in a unit and have a common substrate. If a unique building component is present in only one room, it is considered to be a testing combination. Each testing combination may be composed of more than one building component (such as two similar windows within a room equivalent). Component types can be located inside or outside the dwelling. For example, typical component types in a bedroom would be the ceiling, walls, a door and its casing, the window sash, window casings, and any other distinct surface, such as baseboards, crown molding, and chair rails. If trends or patterns of lead-based paint classifications are found among building component types in different room equivalents, an inspection report may summarize results by building component type, as long as all measurements are included in the report. For example, the inspection may find that all doors and door casings in a dwelling unit are positive.

Test Location - The test location is a specific area on a testing combination where either an XRF reading or a paint-chip sample will be taken.

IV. Inspections in Single-Family Housing

Single-family housing inspections should be conducted by a State- or EPA-certified (licensed) lead-based paint inspector using the following seven steps, some of which may be done at the same time:

- List all testing combinations, including those that are painted, stained, shellacked, varnished, coated, or wallpaper which covers painted surfaces.
- Select testing combinations.
- Perform XRF testing (including the calibration check readings).
- Collect and analyze paint-chip samples for testing combinations that cannot be tested with XRF or that had inconclusive XRF results.
- Classify XRF and paint-chip results.
- Evaluate the work and results to ensure the quality of the paint inspection.
- Document all findings in a plain language summary and a complete report; include language in both the summary and the report indicating that the information must be disclosed to tenants and prospective purchasers in accordance with Federal law (24 CFR part 35 or 40 CFR part 745).

A. Listing Testing Combinations

Develop a list of all testing combinations in all interior rooms, on all exterior building surfaces, and on surfaces in other exterior areas, such as fences, playground equipment, and garages. The "Single-Family Housing LBP Testing Data Sheet" (see Form 7.1 at the end of this chapter) or a comparable data collection instrument may be used for this purpose. An inventory of a house may be completed either before any testing or on a room-by-room basis during testing.

1. Number of Room Equivalents to Inspect

Test all room equivalents inside and outside the dwelling unit. The final report must include a final determination of the presence or absence of lead-based paint on each testing combination in each room equivalent.

For varnished, stained, or similar clear-coated floors, measurements in only one room equivalent are permissible if it appears that the floors in the other room equivalents have the same coating.

2. Number of Testing Combinations to Inspect

Inspect each testing combination in each room equivalent, unless similar building component types with identical substrates (such as windows) are all found to contain lead-based paint in the first five interior room equivalents. In that case, testing of that component type in the remaining room equivalents may be discontinued, *if and only if* the purchaser of the inspection services agrees beforehand to such a discontinuation. The inspector should then conclude that similar building component types in the rest of the dwelling unit also contain lead-based paint. See item 6 entitled, "Conditions for Abbreviation of Testing," later in this section for additional details.

Because it is highly unlikely that testing combinations *known* (and not just presumed) to have been replaced or added to the building after 1977 will contain lead-based paint, they need not be tested. If the age of the testing combination is in doubt, it should be tested.

Some testing combinations have multiple parts. For example, a window testing combination could theoretically be broken down into the interior sill (stool), exterior sill, trough, sash, apron, parting bead, stop bead, casing, and so on. Because it is highly unlikely that all these parts will have different painting histories, they should not usually be considered separate testing combinations. (Inspectors should regard parts of building components as separate testing combinations if they have evidence that different parts have separate, distinct painting histories). See the definition of testing combination (Section III, above) for guidance on which building component parts may and which may not be grouped together.

3. Painted Furniture

Painted furniture that is physically attached to the unit (for example, a desk or dresser that is built-in) should be included in the inspection as a testing combination. Other painted furniture may also be tested, depending on the client's wishes. Children's furniture (such as cribs or playpens), especially if built before 1978, may contain lead-based paint and can be tested, subject to the client's wishes.

4. Building Component Types

Results of an inspection may be summarized by classifying component types across room equivalents if patterns or trends are supported by the data.

5. Substrates

All substrates across all room equivalents should be grouped into one of the six substrate categories (brick, concrete, drywall, metal, plaster, or wood) shown on the *XRF Performance Characteristic Sheet* for the instrument being used. Substrate correction procedures can then be applied for all building component types with the same substrate. For example, the substrate correction procedure for wooden doors and wooden baseboards can use the same substrate correction value (see Section IV.E, below).

6. Conditions for Abbreviation of Testing

If lead-based paint is determined to be present (a "positive" finding) for a building component type with

the same substrate in all of the first five room equivalents inspected, further testing of that component type may be discontinued in the remaining room equivalents within that dwelling unit, *if and only if* the purchaser of inspection services agrees beforehand to such a discontinuation. The inspector should then conclude that the similar building component types in the rest of the dwelling unit also contain lead-based paint. For example, if an inspector finds that baseboards in the first five room equivalents are all positive, the inspector -- with the client's permission -- may conclude that all remaining room equivalents in the unit contain positive baseboards.

B. Number and Location of XRF Readings

1. Number of XRF Readings for Each Testing Combination

XRF testing is required for at least one location per testing combination, except for interior and exterior walls, where four readings should be taken, one on each wall. Previous editions of this chapter stated that three readings for each testing combination were needed to control for spatial variation and other sources of error. Recent analysis[2] of EPA data show a median difference in spatial variation of only 0.1 mg/cm² and a change in classification (positive, negative, or inconclusive) occurs less than 5 percent of the time as a result of different test locations on the same testing combination. Multiple readings on the same testing combination or testing location are, therefore, unnecessary, except for interior and exterior walls.

Because of the large surface areas and quantities of paint involved, and the possibility of increased spatial variation, take at least four readings (one reading on each wall) in each room equivalent. (For room equivalents with fewer than four walls, test each wall.) For each set of walls with the same painting history in a room equivalent, test the four largest walls. Classify each wall based on its individual XRF reading. If a room equivalent has more than four walls, calculate the average of the readings, round the result to the same number of decimal places as the XRF instrument displays, and classify the remaining walls with the same painting history as the tested walls, based on this rounded average. When the remaining walls in a room equivalent clearly do not have the same painting history as that of the tested walls, test and classify the remaining walls individually. For exterior walls, select at least four sides and average the readings (rounding the result as described above) to obtain a result for any remaining sides. If there are more than four walls and the results of the tested walls do not follow a classification pattern (for example, one is positive and the other three are negative), test each wall individually.

2. Location of XRF Readings

The selection of the test location for a specific testing combination should be representative of the paint over the areas which are most likely to be coated with old paint or other lead-based coatings. Thus, locations where the paint appears to be thickest should be selected. Locations where paint has worn away or been scraped off should not be selected. Areas over pipes, electrical surfaces, nails, and other possible interferences should also be avoided if possible. All layers of paint should be included and the XRF probe faceplate should be able to lie flat against the surface of the test location.

If no acceptable location for XRF testing exists for a given testing combination, a paint-chip sample should be collected. The sample should include all paint layers and should be taken as unobtrusively as possible. Because paint chip sampling is destructive, a single sample may be collected from a wall and used to characterize the other walls in a room equivalent (see section VI for additional details on paint chip sampling).

3. Documentation of XRF Reading Locations

Descriptions of testing combinations should be sufficiently detailed to permit another individual to find them. While it is not necessary to document the *exact* spot or the *exact* building component on which the reading was taken, it is necessary to record the *exact* testing combination measured. Current room uses or colors can change and should not be the only way of identifying them. A numbering system, floor plan, sketch or other system may be used to document which testing combinations were tested. While HUD does not require a standard identification system, one that could be used is as follows:

a. Side identification

Identify perimeter wall sides with letters A, B, C, and D (or numbers or Roman numerals). Side A for single-family housing is the street side for the address. Side A in multifamily housing is the apartment entry door side.

Side B, C, and D are identified clockwise from Side A as one faces the dwelling; thus Wall B is to the left, Wall C is across from Side A, and Side D is to the right of Side A.

Each room equivalent's side identification follows the scheme for the whole housing unit. Because a room can have two or more entries, sides should not be allocated based on the entry point. For example, giving a closet a side allocation based on how the room is entered would make it difficult for another person to make an easy identification, especially if the room had two closets and two entryways.

b. Room Equivalent Identification

Room equivalents should be identified by both a number and a use pattern (for example, Room 5-Kitchen). Room 1 can always be the first room, at the A-D junction at the entryway, or it can be the exterior. Rooms are consecutively numbered clockwise. If multiple closets exist, they are given the side allocation: for example, Room 3, Side C Closet. The exterior is always assigned a separate room equivalent identifier.

c. Sides in a Room

Sides in an interior room equivalent follow the overall housing unit side allocation. Therefore, when standing in any four-sided room facing Side C, the room's Side A will always be to the rear, Side B will be to the left, and Side D will be to the right.

d. Building Component Identification

Individual building components are first identified by their room number and side allocation (for example, the radiator in Room 1, Side B is easily identified). If multiple similar component types are in a room (for example, three windows), they are differentiated from each other by side allocation. If multiple components are on the same wall side, they are differentiated by being numbered left to right when facing the components. For example, three windows on Wall D are identified as windows D1, D2, and D3, left to right. If window D3 has the only old original sash, it is considered a separate testing combination from the other two windows.

A sketch of the dwelling unit's floor plan is often helpful, but is not required by this protocol. Whatever documentation is used, a description of the room equivalent and testing combination identification system must be included in the final inspection report.

C. XRF Instrument Reading Time

The recommended time to open an XRF instrument's shutter to obtain a single XRF result for a testing location depends on the specific XRF instrument model and the mode in which the instrument is operating. The *XRF Performance Characteristic Sheet* provides information on this issue.

To ensure that a constant amount of radiation is delivered to the painted surface, the open-shutter time must be increased as the source ages and the radiation source weakens. Almost all commercially available XRF instruments automatically adjust for the age of the source. (Some instruments adjust for source decay in some but not all modes; operators should check with the manufacturers of their instruments to determine whether these differences need to be accommodated). The following formula should be employed for instruments requiring manual adjustment of the open-shutter time:

$$\text{Open-Shutter Time} = 2^{(\text{Age}/\text{Half-life})} \times \text{Nominal Time}$$

where:

Age is the age (in days) of the radioactive source, starting from the date the manufacturer says the source had its full radiation strength;

Half-life is the time (in days) it takes for the radioactive material's activity to decrease to one-half its initial level; and

Nominal Time is the recommended nominal number of seconds for open-shutter time,

when the source is at its full radiation strength, and is obtained from the *XRF Performance Characteristic Sheet*.

For example, if the age of the source is equal to its half-life, the open-shutter time should be twice the nominal time. Thus, if the recommended nominal time is 15 seconds, the open-shutter time should be doubled to 30 seconds.

XRFs typically use Cobalt-57 (with a half life of 270 days) or Cadmium-109 (with a half life of 464 days).

XRF Performance Characteristic Sheets typically report different inconclusive ranges or thresholds (see section IV.G, below) for different nominal times and different substrates. This may affect the number of paint-chip samples that must be collected as well as the length of time required for the inspection. Some XRF devices have different modes of operation with different nominal reading times. Inspectors must use the appropriate inconclusive ranges and other criteria specified on the *XRF Performance Characteristic Sheet* for each XRF model, mode of operation and substrate. For example, inconclusive ranges specified for a 30-second nominal reading cannot be used for a 5-second nominal reading, even for the same instrument and the same substrate.

D. XRF Calibration Check Readings

In addition to the manufacturer's recommended warm up and quality control procedures, the XRF operator should take the quality control readings recommended below, unless these are less stringent than the manufacturer's instructions. Quality control for XRF instruments involves readings to check calibration. Most XRFs cannot be calibrated on-site; actual calibration can only be accomplished in the factory.

1. Frequency and Number of Calibration Checks

For each XRF instrument, two sets of XRF calibration check readings are recommended at least every 4 hours. The first is a set of three nominal-time XRF calibration check readings to be taken before the inspection begins. The second occurs either after the day's inspection work has been completed, or at least every 4 hours, whichever occurs first. To reduce the amount of data that would be lost if the instrument were to go out of calibration between checks, and/or if the manufacturer recommends more frequent calibration checks, the calibration check can be repeated more frequently than every 4 hours. If the XRF manufacturer recommends more frequent calibration checks, the manufacturer's instructions should be followed. Calibration should also be checked before the XRF is turned off (for example, to replace a battery or before a lunch break) and after it is turned on again. For example, if an inspection of a large house took 6 hours, there would be three calibration checks: one at the beginning of the inspection, another after 4 hours, and a third at the end of the inspection.

If the XRF is not turned off as the inspector travels from one dwelling unit to the next, calibration checks do not need to be done after each dwelling unit is completed. For example, in multifamily housing, calibration checks do not need to be done after each dwelling unit is inspected; once every 4 hours is usually adequate.

Some instruments automatically enter a "sleep" or "off" state when not being used continually to prolong battery life. It is not necessary to perform a calibration check before and after each "sleep" state episode, unless the manufacturer recommends otherwise.

2. Calibration Check Standard Materials

XRF calibration check readings are taken on the Standard Reference Material (SRM) paint film nearest to 1.0 mg/cm² within the National Institute of Standards and Technology (NIST) SRM used. These films can be obtained by calling (301) 975-6776 and referencing SRM 2579 (NIST is planning to release additional series of paint films in late 1997 or early 1998; the film nearest to 1.0 mg/cm² should be used for XRF calibration checks). The cost as of September 26, 1997, for the SRM 2579 set of five films, was $320, including 2-day delivery. Calibration checks should be taken through the SRM paint film with the film positioned at least 1 foot (0.3 meters) away from any potential source of lead. The NIST SRM film should not be placed on a tool box, suitcase, or surface coated with paint, shellac, or any other coating to take calibration check readings. Rather, the NIST SRM film should be attached to a solid (not plywood) wooden board or other nonmetal rigid

substrate such as drywall, or attached directly to the XRF probe. The SRM should be positioned so that readings of it are taken when it is more than 1 foot (0.3 meters) away from a potential source of error. For example, the NIST SRM film can be placed on top of a 1 foot (0.3 meter) thick piece of Styrofoam or other lead-free material, as recommended by the manufacturer before taking readings.

3. Recording and Interpreting Calibration Check Readings

Each time calibration check readings are made, three readings should be taken. These readings should be taken using the nominal time which will be used during the inspection, selected from among those specified in the XRF's Performance Characteristic Sheet. The open shutter time should be adjusted, if necessary, to reflect the age of the radioactive source (see section IV.C, above). The readings can be recorded on the "Calibration Check Test Results" form (Form 7.2), on a comparable form, or stored in the instrument's memory, and printed out or transferred to a computer later. The average of the three calibration check readings should be calculated, rounded to the same number of decimal places as the XRF instrument displays, and recorded on the form.

Large deviations from the NIST SRM value will alert the inspector to problems in the instrument's performance. If the observed calibration check average is outside of the acceptable calibration check tolerance range specified in the instrument's *XRF Performance Characteristic Sheet*, the manufacturer's instructions should be followed to bring the instrument back into control. A successful calibration check should be obtained before additional XRF testing is conducted. Readings not accompanied by successful calibration checks at the beginning and end of the testing period are unreliable and should be repeated after a successful calibration check has been made. If a backup XRF instrument is used as a replacement, it must successfully pass the initial calibration check test before retesting the affected test locations.

This procedure assumes that the HUD/EPA lead-based paint standard of 1.0 mg/cm^2 is being used. If a different standard is being used, other NIST SRMs should be used to determine instrument performance against the different standard. At this time, however, no method for determining performance characteristics using different standards has been developed.

E. Substrate Correction

XRF readings are sometimes subject to systematic biases as a result of interference from substrate material beneath the paint. The magnitude and direction of bias depends on the substrate, the specific XRF instrument being used, and other factors such as temperature and humidity. Results can be biased in either the positive or negative direction and may be quite high.

1. When Substrate Correction Is Not Required

Some XRF instruments do not need to have their readings corrected for substrate bias. Other instruments may only need to apply substrate correction procedures on specific substrates and/or when XRF results are below a specific value. The *XRF Performance Characteristic Sheet* should be consulted to determine the requirements for a specific instrument and each mode of operation (e.g., nominal time, or time required for intended precision). XRF instruments which do not require correction for any substrate, or require corrections on only a few substrates, have an advantage in that they simplify and shorten the inspection process.

2. Substrate Correction Procedure

XRF results are corrected for substrate bias by subtracting a correction value determined separately in each house for each type of substrate where lead paint values are in the substrate correction range indicated on the *XRF Performance Characteristic Sheet*. In single-family housing, the substrate correction value is determined using the specific instrument(s) used in that house. The correction value (formerly called "Substrate Equivalent Lead" or "SEL") is an average of six XRF readings, with three taken from each of two test locations that have been scraped visually clean of their paint coating. The locations selected for removal of paint should have an initial XRF reading on the painted surface of less than 2.5 mg/cm², if possible. If all initial readings on a substrate type are greater than 2.5 mg/cm², the locations with the lowest initial reading should be chosen. Because available data indicate that surfaces with XRF readings in excess of about 3.0 mg/cm² or 4.0 mg/cm² are almost always coated with lead-based paint, and since bleed-through of lead into the substrate may occur, or pipes and similarly interfering building components may be behind the material being evaluated, locations with such high readings should be avoided for substrate correction.

After all XRF testing has been completed but before the final calibration check test has been conducted, XRF results for each substrate type should be reviewed. If any readings fall within the range for substrate correction for a particular substrate, obtain the substrate correction value.

On each selected substrate requiring correction, two different testing combinations must be chosen for paint removal and testing. For example, if the readings are inconclusive for some wooden baseboards, select two baseboards, each from a different room. If some wooden doors also require substrate correction, the inspector should take substrate correction readings on one door and one baseboard. Selecting the precise location of substrate correction should be based on the inspector's ability to remove paint thoroughly from the substrates, the similarity of the substrates, and their accessibility. The XRF probe faceplate must be able to be placed over the scraped area, which should be completely free of paint or other coatings.

The size of the area from which paint is taken depends on the size of the analytical area of the XRF probe faceplate; normally, the area is specified by the manufacturer. To ensure that no paint is included in the bare substrate measurement, the bare area on the substrate should be slightly larger than the analytical area on the XRF probe faceplate.

In all, six readings must be taken for each substrate type that requires correction. All six must be averaged together. Take three readings on the first *bare* substrate area. Record the substrate and XRF readings on the "Substrate Correction Values" form (Form 7.3) or a comparable form. Repeat this procedure for the second *bare* substrate area and record the three readings on the same form. Substrate correction values should be determined using the same instrument used to take readings on the painted surfaces. If more than one XRF model was used to take readings, apply the substrate correction values as specified on each instrument's *XRF Performance Characteristic Sheet*.

Compute the correction value for each substrate type that requires correction by computing the average of all six readings as shown below and recording the results on the "Substrate Correction Values" form. The formula given below should be used to compute the substrate bias correction value for XRF readings taken on a bare substrate that is not covered with NIST SRM film. A different formula should be used when SRM film must be placed over the bare substrate. The *XRF Performance Characteristic Sheet* specifies when this correction is necessary and provides the formula for computing the correction value.

For each substrate type requiring substrate correction, transfer the correction values to the "Single-Family Housing LBP Testing Data Sheet" (Form 7.1). Correct XRF readings for substrate interference by subtracting the correction value from each XRF reading.

Example: Suppose that a house has 50 testing combinations with wood substrates. The *XRF Performance Characteristic Sheet* states that a correction value for XRF results taken on those wood testing combinations that have values less than 4.0 mg/cm² must be computed. Select two test locations from the testing combinations that had uncorrected XRF results of less than 2.5 mg/cm².

Completely remove the paint from these two test locations and take three nominal-time XRF readings on the bare substrate at each location. The six XRF readings at the two random locations are:

Selected Location	Reading (mg/cm²)		
	First	Second	Third
Wood Master Bedroom Door	1.32	0.91	1.14
Kitchen Wood Baseboard (Room 4)	1.21	1.03	1.43

The correction value is the average of the six values:

Correction value = (1.32 + 0.91 + 1.14 + 1.21 + 1.03 + 1.43) mg/cm² / 6 = 1.17 mg/cm²

In this same house, three different wood testing combinations were inspected for lead-based paint and the XRF results are: 1.63 mg/cm², 3.19 mg/cm², and 1.14 mg/cm². Correcting these three XRF measurements for substrate bias produces the following results:

First corrected measurement =
1.63 mg/cm² - 1.17 mg/cm² = 0.46 mg/cm²

Second corrected measurement =
3.19 mg/cm² - 1.17 mg/cm² = 2.02 mg/cm²

Third corrected measurement =
1.14 mg/cm² - 1.17 mg/cm² =-0.03 mg/cm²

The third corrected result shown above is an example of how random error in XRF measurements can cause the corrected result to be less than zero. (Random measurement error is present whenever measurements are taken). Note that correction values can be either positive or negative. In short, negative corrected XRF values should be reported if supported by the data.

Finally, suppose an XRF result of 1.24 mg/cm² has a correction value of negative 0.41 mg/cm². Subtracting a negative number is the same as adding its positive value. Therefore, the corrected measurement would be:

Corrected result = 1.24 mg/cm² - (-0.41 mg/cm²) =
1.24 mg/cm² + 0.41 mg/cm² = 1.65 mg/cm²

3. Negative Values

If more than 20 percent of the corrected values are negative, the instrument's lead paint readings and/or the substrate readings are probably in error. Calibration should be checked and substrate measurements should be repeated.

F. Discarding Readings

If the manufacturer's instructions call for the deletion of readings at specific times, *only* readings taken at those specific times should be deleted. Similarly, readings between a successful calibration check and a subsequent unsuccessful calibration check must be discarded. Readings should not be deleted based on any criteria other than what is specified by the manufacturer's instructions or the *HUD Guidelines*. For example, a manufacturer may instruct operators to discard the first XRF reading after a substrate change. If so, *only* the first reading should be discarded after a substrate change.

G. Classification of XRF Results

XRF results are classified as positive, negative, or inconclusive.

A *positive* classification indicates that lead is present on the testing combination at or above the HUD/EPA standard of 1.0 mg/cm². A positive XRF result is any

value greater than the upper bound of the inconclusive range, or greater than or equal to the threshold, as specified on the applicable *XRF Performance Characteristic Sheet*.

A *negative* classification indicates that lead is not present on the testing combination at or above the HUD/EPA standard. A negative XRF result is any value less than the lower bound of the inconclusive range, or less than the threshold, specified on the performance characteristic sheet.

An *inconclusive* classification indicates that the XRF cannot determine with reasonable certainty whether lead is present on the testing combination at or above the HUD/EPA standard. An inconclusive XRF result is any value falling within the inconclusive range on the performance characteristic sheet (including the boundary values defining the range). In single-family housing, all inconclusive results should be confirmed by laboratory analysis, unless the client wishes to assume that all inconclusive results are positive.

Positive, negative, and inconclusive results apply to the actual testing combination and to any repetitions of the testing combination that were not tested in the room equivalents. Positive results also apply to similar component types in room equivalents that were not tested. For example, suppose that one baseboard in a room equivalent is tested, and that the inspector decided that all four baseboards are a single testing combination. The single XRF result applies to all four baseboards in that room equivalent.

When an inconclusive range is specified on the *XRF Performance Characteristic Sheet*, XRF results are classified as positive if they are greater than the upper boundary of the inconclusive range, negative if they are less than the lower boundary of the inconclusive range, or inconclusive if in between. The inconclusive range on the *XRF Performance Characteristic Sheets* in Addendum 3 of these *Guidelines* includes its upper and lower bounds. Earlier editions of this guide and earlier *XRF Performance Characteristic Sheets* did not include the bounds of the inconclusive range as "inconclusive." This 1997 edition of Chapter 7 of the HUD Guidelines changes that system, but the specific XRF readings that are considered positive, negative, or inconclusive for a given XRF model and substrate remain unchanged, so previous inspection results are not affected.

For example, if the inconclusive range given in the *XRF Performance Characteristic Sheet* is 0.51 mg/cm² to 1.49 mg/cm², an XRF result of 0.50 mg/cm² is considered negative, because it is less than 0.51; a result of 0.6 mg/cm² is inconclusive; and a result of 1.5 mg/cm² is positive. A result of 0.51 mg/cm², 1.00 mg/cm², or 1.49 mg/cm² would be inconclusive.

Different XRF models have different inconclusive ranges, depending on the specific XRF model and the mode of operation. The inconclusive range may also be substrate-specific.

In some cases, the upper and lower limits of the inconclusive range are equal; that value is called the *threshold*. If the reading is less than the threshold, then the reading is considered negative. If the reading is equal to or greater than the threshold, then the reading is considered positive.

Use of the inconclusive range and threshold is detailed in the performance characteristic sheet. The categories include substrate-corrected results, if substrate correction is indicated. XRF's with *only* threshold values listed on the *XRF Performance Characteristic Sheet* are advantageous in that classifications of results are either positive or negative (no XRF readings are inconclusive).

H. Evaluation of the Quality of the Inspection

The person responsible for purchasing inspection services -- the homeowner, property owner, housing authority, prospective buyer, occupant, etc.; also known as the client -- should evaluate the quality of the work using one or more of the methods listed below. Evaluation methods include direct observation, immediate provision of results, repeated testing, and time-and-motion analysis. Direct observation of the inspection should be used whenever possible. The inspection contract should outline the financial penalties that will occur if an inspector fails to perform as contracted during any visit.

1. Direct Observation

An evaluation of a lead-based paint inspection is best made if a knowledgeable observer is present for as much of the XRF testing as possible. This is the only way to ensure that all painted, varnished, shellacked, wallpapered, stained, or other coated testing combinations are actually tested, and that all XRF

readings are recorded correctly. If possible, employ as the observer someone who is trained in lead-based paint inspection and who is independent of the inspection firm.

If it is not feasible for the client or the client's representative to be present throughout the inspection, that person should conduct unannounced and unpredictable visits to observe the inspection process. The number of unannounced visits will depend on the results of prior visits. When observing ongoing XRF testing, review the test results for the room equivalent currently being tested and for the previously inspected room equivalent. Even if the first visit is fully satisfactory, follow-up visits should be conducted throughout the inspection.

2. Immediate Provision of Results

The client, or a representative, should ask the inspector to provide copies or printouts of results on completed data forms immediately following the completion of the inspection or on a daily basis. Alternatively, visually review the inspector's written results to ensure that they are properly recorded for all surfaces that require XRF testing. If surfaces have been overlooked or recorded incorrectly, the inspection process should be stopped and considered deficient. Clients should retain daily results to ensure that the data in the final report are the same as the data collected in the home.

3. Repeated Testing of 10 Surfaces

Data from HUD's private housing lead-based paint hazard control program show that it is possible to successfully retest painted surfaces without knowing the exact spot which was tested.

Select 10 testing combinations at random from the already compiled list in the "Single-Family Housing LBP Testing Data Sheet" for retesting (see forms in Addendum 2 of this chapter). Observe the inspector during the retesting. If possible, the same XRF instrument used in the original inspection should be used in the retesting. If the XRF instrument used in the original inspection is not available and cannot be returned to the site, use an XRF of the same model for retesting. Use the same procedures to retest the 10 testing combinations. The 10 repeat XRF results should be compared with the 10 XRF results previously made on the same testing combinations. The repeat readings and the original readings should not be corrected for substrate bias for the purpose of this comparison. The average of the 10 repeat XRF results should not differ from the 10 original XRF results by more than the retest tolerance limit. The procedure for calculating the retest tolerance limit is specified in the *XRF Performance Characteristic Sheet*. If the limit is exceeded, the procedure should be repeated using 10 different testing combinations. If the retest tolerance limit is exceeded again, the original inspection is considered deficient.

4. Time-and-Motion Analysis

Anyone who contracts for a lead-based paint inspection can also perform a simple check to determine if the inspector had sufficient time to complete the number of housing units reported as being tested in the time allotted. Usually, inspections require at least 1 to 2 hours per unit using existing technology. If the inspector's on-site time is significantly less than that, further investigation should be conducted to determine if the inspector actually completed the work in the report.

I. Documentation in Single-Family Housing

1. Data Forms

Data can be recorded on hand written forms, electronically, or by a combination of these two methods. XRF readings can be entered on handwritten forms, such as the set of forms (7.1, 7.1A, 7.2, and 7.3) provided at the end of this chapter (or comparable forms). Because handwriting can result in transcription errors, handwritten forms should be examined for missing data and copying errors.

2. Electronic Data Storage

Electronic data storage is recommended only if the data recorded are sufficient to allow another person to find the testing combination that corresponds to each XRF reading. Electronically stored data should be printed in hard copy either daily or at the completion of the inspection. The printout should be examined for extraneous symbols or missing data, including missing test location identification. In most cases, electronic data storage is supplemented by manual data recording of sampling location, operator name, and other information.

3. Final Report

The final report must include both a summary and complete information about the site, the inspector, the inspection firm, the inspection process, and the inspection results. The full report should include a complete data set, including:

- Housing unit identifiers;
- Date of the inspection;
- Identity of the inspector and the inspection firm and any relevant certifications or licenses held by the inspector and/or the firm;
- Building component and room equivalent identification or numbering system or sketches;
- All XRF readings (including calibration check readings);
- All paint chip analyses;
- Testing protocol used;
- Instrument manufacturer, model, serial number, mode(s) of operation and age of radioactive source;
- Information on the owner's legal obligation to disclose the inspection results to tenants and/or purchasers before obligation under 24 CFR part 35 and 40 CFR part 745 (published in the *Federal Register,* Volume 61, Number 45, March 6, 1996, starting on p. 9064; copies of the regulations and related materials can be obtained from the National Lead Information Center Clearinghouse, 1-800-424-LEAD); and
- Final classification of all testing combinations into positive or negative categories, including a list of testing combinations, or building component types and their substrates, that were classified but not individually tested. *(Note that the final report should not list inconclusive readings as a third category. If the client wishes to assume all inconclusive readings are positive, the report should state that assumption and present all readings and testing combinations for which the readings were inconclusive. It is not permissible to assume all inconclusive readings are negative. The report should include the actual readings for any testing combinations for which readings were inconclusive, but were classified as positive. Also note that final classifications are needed for building component types and their substrates that were not actually tested. For example, if the client wants to suspend testing on testing combinations that were found to be positive in the first five room equivalents and are assumed to be positive in the remaining rooms, the final report should list those testing combinations that are assumed to be positive).*

The report should also contain a summary that answers two questions:

(1) Is there lead-based paint in the house? *and*
(2) if lead-based paint is present, where is it located?

The summary report should also include the house address where the inspection was performed, the date(s) of the inspection, the name, address and phone numbers of the inspector and inspection firm, any appropriate license or certification numbers, and the starting and ending times for each day when XRF testing was done. The summary should also contain language regarding disclosure, such as:

> "A copy of this summary must be provided to new lessees (tenants) and purchasers of this property under Federal law (24 CFR part 35 and 40 CFR part 745) before they become obligated under a lease or sales contract. The complete report must also be provided to new purchasers and it must be made available to new tenants. Landlords (lessors) and sellers are also required to distribute an educational pamphlet and include standard warning language in their leases or sales contracts to ensure that parents have the information they need to protect their children from lead-based paint hazards."

Although 24 CFR part 35 and 40 CFR part 745 do not require that inspectors and owners keep copies of inspection reports for any specified period of time, future buyers are entitled to all available inspection reports, should the property be re-sold.

If no lead-based paint has been detected in the house, the summary should say so. The following language may be used:

"The results of this inspection indicate that no lead in amounts greater than or equal to 1.0 mg/cm² in paint was found on any building components, using the inspection protocol in Chapter 7 of the *HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1997)*. Therefore, this dwelling qualifies for the exemption in 24 CFR part 35 and 40 CFR part 745 for target housing being leased that is free of lead-based paint, as defined in the rule. However, some painted surfaces may contain levels of lead below 1.0 mg/cm², which could create lead dust or lead-contaminated soil hazards if the paint is turned into dust by abrasion, scraping, or sanding. This report should be kept by the inspector and should also be kept by the owner and all future owners for the life of the dwelling."

Detailed documentation of the XRF testing should also be provided in the full report, including the raw data upon which it was based. The single-family housing forms provided at the end of this chapter or comparable forms would serve this purpose.

For a leased home, where no lead-based paint is identified during an inspection, the building owner is exempt from the requirements of the disclosure rule. However, when a housing unit with no lead-based paint is being sold, the owner still has responsibilities under the disclosure rule (e.g., providing a lead hazard information pamphlet to potential buyers). For selling and leasing properties where no lead-based paint is identified, it is strongly recommended that owners and inspectors retain inspection reports for the life of the building.

V. Inspections in Multifamily Housing

This section emphasizes the differences between single-family and multifamily housing paint inspections. The protocols mentioned in earlier sections are not repeated here. It will be necessary to read Section IV on single-family housing to implement the protocol for multifamily housing.

Use of the multifamily protocol is less time-consuming and more cost effective than inspecting all units in a given housing development or building because in most instances a pattern can be determined after inspecting a fraction of the units. The number of units tested is based on the date of construction and the number of units in the housing development.

For purposes of this chapter only, multifamily housing is defined as any group of units that are similar in construction from unit to unit, with:

- 21 or more units, if any were built before 1960 or are of unknown age, or
- 10 or more units, if they were all built from 1960 through 1977.

Developments with fewer units should be treated as a series of single-family housing units.

A. Statistical Confidence in Dwelling Unit Sampling

The number of similar units, similar common areas or exterior sites to be tested (the sample size) is based on the total number units, similar common areas or exterior sites in the building(s), as specified in Table 7.3. Use the table for sampling each set of similar units, each set of similar common areas and each set of exterior sites. For pre-1960 or unknown-age buildings or developments with 1,040 or more similar units, similar common areas or exterior sites, test 5.8 percent of them, and round up any fraction to the next whole number. For 1960-77 buildings or developments with 1,000 or more units, test 2.9 percent of the units, and round up any fraction to the next whole number. For reference, the table shows entries from 1500 to 4000 in steps of 500. For example, in a development built in 1962, with 200 similar units, 20 similar common areas, and 9 similar exterior sites, sample 27 units, 16 common areas, and all 9 exterior sites.

If lead levels in *all* units, common areas or exterior sites tested are found to be below the 1.0 mg/cm² standard, these sample sizes provide 95 percent confidence that:

- For pre-1960 housing units, less than 5 percent or fewer than 50 (whichever is less) units, common areas or exterior sites, have lead at or above the standard; and

- For 1960 to 1977 housing units, less than 10 percent or fewer than 50 (whichever is less) units, common areas or exterior sites, have lead at or above the standard.

Refer to Appendix 12 of these Guidelines for the statistical rationale for this table. The Appendix shows the details of the calculation for pre-1960 housing; the calculation is the same for 1960-1977 housing, except for using the 10 percent criterion for 1960-1977 housing, rather than the 5 percent used for older housing.[3]

Table 7.3: Number of Units to be Tested in Multifamily Developments

Number of Similar Units, Similar Common Areas or Exterior Sites in a Building or Development	Pre-1960 or Unknown-Age Building or Development: Number to Test	1960-1977 Building or Development: Number to Test
1-9	All	All
10-13	All	10
14	All	11
15	All	12
16-17	All	13
18	All	14
19	All	15
20	All	16
21-26	20	16
27	21	17
28	22	18
29	23	18
30	23	19
31	24	19
32	25	19
33-34	26	19
35	27	19
36	28	19
37	29	19
38-39	30	20
40-48	31	21
49-50	31	22
51	32	22
52-53	33	22
54	34	22
55-56	35	22

Number of Similar Units, Similar Common Areas or Exterior Sites in a Building or Development	Pre-1960 or Unknown-Age Building or Development: Number to Test	1960-1977 Building or Development: Number to Test
57-58	36	22
59	37	23
60-69	38	23
70-73	38	24
74-75	39	24
76-77	40	24
78-79	41	24
80-88	42	24
89-95	42	25
96-97	43	25
98-99	44	25
100-109	45	25
110-117	45	26
118-119	46	26
120-138	47	26
139-157	48	26
158-159	49	26
160-177	49	27
178-197	50	27
198-218	51	27
219-258	52	27
259-279	53	27
280-299	53	28
300-279	54	28
380-499	55	28
500-776	56	28
777-939	57	28

Number of Similar Units, Similar Common Areas or Exterior Sites in a Building or Development	Pre-1960 or Unknown-Age Building or Development: Number to Test	1960-1977 Building or Development: Number to Test
940-1004	57	29
1005-1022	58	29
1023-1032	59	29
1033-1039	59	30
1500	87	44
2000	116	58
2500	145	73
3000	174	87
3500	203	102
4000	232	116

hough the data set used to develop sample sizes in ltifamily housing[4] was not randomly selected from multifamily housing developments in the nation (no h data set is available), analyses drawn from the a are likely to err on the side of safety and public lth for at least two reasons: First, the prevalence l amounts of lead-based paint are highest in pre-50 housing developments. The sampling approach d here focuses inspection efforts on buildings where reater chance of lead-based paint hazards exist.

cond, and perhaps more important, none of the 65 elopments had lead-based paint in 5 to 10 percent of units. That indicates lead-based paint in this range ikely to be quite rare and that plausible increases in apling to improve detection in this range will fail to prove confidence in the results significantly. Most nting follows a pattern: Property owners or nagers often paint all surfaces, all components hin a room, or similar components in all rooms in a t when there is tenant turnover. It is unlikely that d-based paint distributions are completely random, assumed in the 1995 edition of the *Guidelines*. m the available data, there appears to be no nificant benefit to increasing the number of units to sampled to detect a prevalence rate of 5 to 10 percent, because few developments are likely to be in that range. In short, the sampling design presented here will yield a more targeted, cost-effective approach to identifying lead-based paint where it is most likely to exist.

B. Selection of Housing Units

The first step in selecting housing units is to identify buildings in the development with a common construction based on written documentation or visual evidence of construction type. Such buildings can be grouped together for sampling purposes. For example, if two buildings in the development were built at the same time by the same builder and appear to be of similar construction, all of the units in the two buildings can be grouped for sampling purposes. Units can have different sizes, floor plans, and number of bedrooms and still be grouped.

The specific units to be tested should be chosen *randomly* from a list of all units in each building or buildings. The "Selection of Units" form (Form 7.4) or a comparable form may be used to aid in the selection process. A complete list of all units in each group should be used and a separate identifying sequential number must be assigned to each unit. For

example, if apartment addresses are shown as 1A, 1B, 2A, 2B etc., they must be given a sequence number (1, 2, 3, 4, etc.).

Obviously, units without identifiers could not be selected for inspection and would thus bias the sampling scheme. The list of units should be complete and verified by consulting building plans or by a physical inspection of the development.

Specific units to be tested should be selected randomly using the formula below, and a table of random numbers or the random number function on a calculator. Tables of random numbers are often included in statistics books. Calculators with a random number function key can be obtained for less than $20 and are easier to use than tables. Inspectors are, therefore, advised to use them to obtain the random numbers, which can then be used to select the specific numbered units. A unit number is selected by rounding up the product of the random number times the total number of units in the development to the *next* whole number. That is:

Housing Unit number = Random number *times* Total number, rounded *up,*

where:

Housing Unit number = the identification number for a unit in a list;
Random number = a random number between 0 and 1; *and*
Total number = the total number of units in a list of units.

The same unit may be selected more than once by this procedure. Because each unit should be tested only once, duplicate selection should be documented and then discarded. The procedure should be continued until an adequate number of units has been selected.

The "Selection of Units" form (Form 7.4) is completed by filling in as many random numbers as are needed in the appropriate column. Numbers for the third column are obtained by multiplying the total development size by each random number. Numbers for the fourth column are obtained by rounding up from the previous calculation to the next whole number. If the whole number in the fourth column has already been selected, that selection should not be entered again. The notation "DUP" should be entered to show that the selection was a duplicate. This process should continue until the required number of distinct sample numbers have been selected. Common areas and exterior room equivalents should be identified at this time, but they are not considered to be separate units.

C. Listing Testing Combinations

The "Multifamily Housing LBP Testing Data Sheet" form (Form 7.5) -- or a comparable form -- should be used to list the testing combinations in each unit, common area and exterior site that was selected for inspection. In multifamily housing, the inventory of testing combinations often will be similar for units that have the same number of bedrooms. The inspector should, however, list testing combinations that are unique to each tested unit. For example, some units may contain built-in cabinets while others do not. The selection of testing combinations should, therefore, be carried out independently in each inspected unit.

As in single family housing, take readings on all testing combinations in all room equivalents in each unit selected for testing.

1. Common Areas

Similar common areas and similar exterior sites must always be tested, but in some cases they can be sampled in much the same way that dwelling units are. Common areas and building exteriors typically have a similar painting history from one building to the next. In multifamily housing, each common area (such as a building lobby, laundry room, or hallway) can be treated like a dwelling unit. If there are multiple similar common areas, they may be grouped for sampling purposes in exactly the same way as regular dwelling units are. However, dwelling units, common areas and exterior sites cannot all be mixed together in a single group.

All testing combinations within each common area or on building exteriors selected for testing must be inspected. This includes playground equipment, benches and miscellaneous testing combinations located throughout the development. The specific

common areas and building exteriors to test should be randomly selected, in much the same way as specific units are selected using random numbers. (See Section IV.B, above).

The number of common areas to test should be taken from Table 7.3. In this instance, common areas and building exteriors can be treated in the same way as housing units (although they are not to be confused with true housing units).

D. Number of Readings on Each Testing Combination

The method for collecting XRF readings is identical for multifamily and single-family housing (see Section IV).

E. XRF Calibration Check Readings

The method for collecting and evaluating XRF calibration check readings is identical for multifamily and single-family housing (see Section IV.D).

F. Substrate Correction in Multifamily Housing

The method for correcting XRF readings for substrate bias is identical for multifamily and single-family housing (see Section IV.E) with one exception: For multifamily housing, randomly select two housing units to be used to collect substrate measurements for all substrates within the development that need correction, and use the results from those two units to perform substrate correction calculations in all tested units within the development or building. If substrates exist in common areas or on exterior sites that do not exist in residential areas, select two locations from these areas for substrate correction. Otherwise, the same substrate correction readings can be applied to dwelling units, common areas and exterior sites.

G. Classification of XRF Results in Multifamily Housing

The inspector should record each XRF reading for each testing combination on the "Multifamily Housing LBP Testing Data Sheet," (Form 7.5) or a comparable form, and indicate whether that testing combination was classified as positive, negative, or inconclusive as described previously for single-family housing.

When the inspection is completed in all of the selected units and the classification rules have been applied to all XRF results, the "Multifamily Housing: Component Type Report" form (Form 7.6) or a comparable form should be completed. Building component types -- groups of like components constructed of the same substrate in the multifamily housing development -- are aggregated on this form. For example, grouping all interior walls would create an appropriate component type if all walls are plaster. Grouping all doors would not be appropriate, however, if some doors are metal and some are wood. At least 40 testing combinations of a given component type in a multifamily housing development must be tested to obtain the desired level of confidence in the results. (Refer to Appendix 12 of these *Guidelines* for the statistical rationale for this minimum number of component types to test.) If fewer than 40 testing combinations of a given component type were tested, test additional combinations of that component type. If less than 40 components of a given type exist in the units to be tested, test all of the components that do exist.

In some cases additional sampling of the specific component may not be necessary. If no lead at or above the standard is found on that component type, additional measurements should be taken in other units to increase the sample size to 40. However, if all or most of the sampled component types are positive, no further sampling is needed, provided that the building owner agrees with this reduction of testing. For example, if 20 out of 60 doors are tested, and the majority are positive for lead-based paint, all similar doors in the buildings may be presumed positive. Note, however, that all required XRF testing and laboratory analysis, if necessary, must be completed to conclude that all components included in a given component type are negative.

On the "Multifamily Housing: Component Type Report" form, the substrate, and component for each component type should be recorded under the heading "Description" (for example, wooden interior doors) as well as the total number of testing combinations included in the component type. In addition, for each component type, the aggregated positive, negative, and inconclusive classifications should be recorded as

described below. Record the number and percentage of testing combinations classified as:

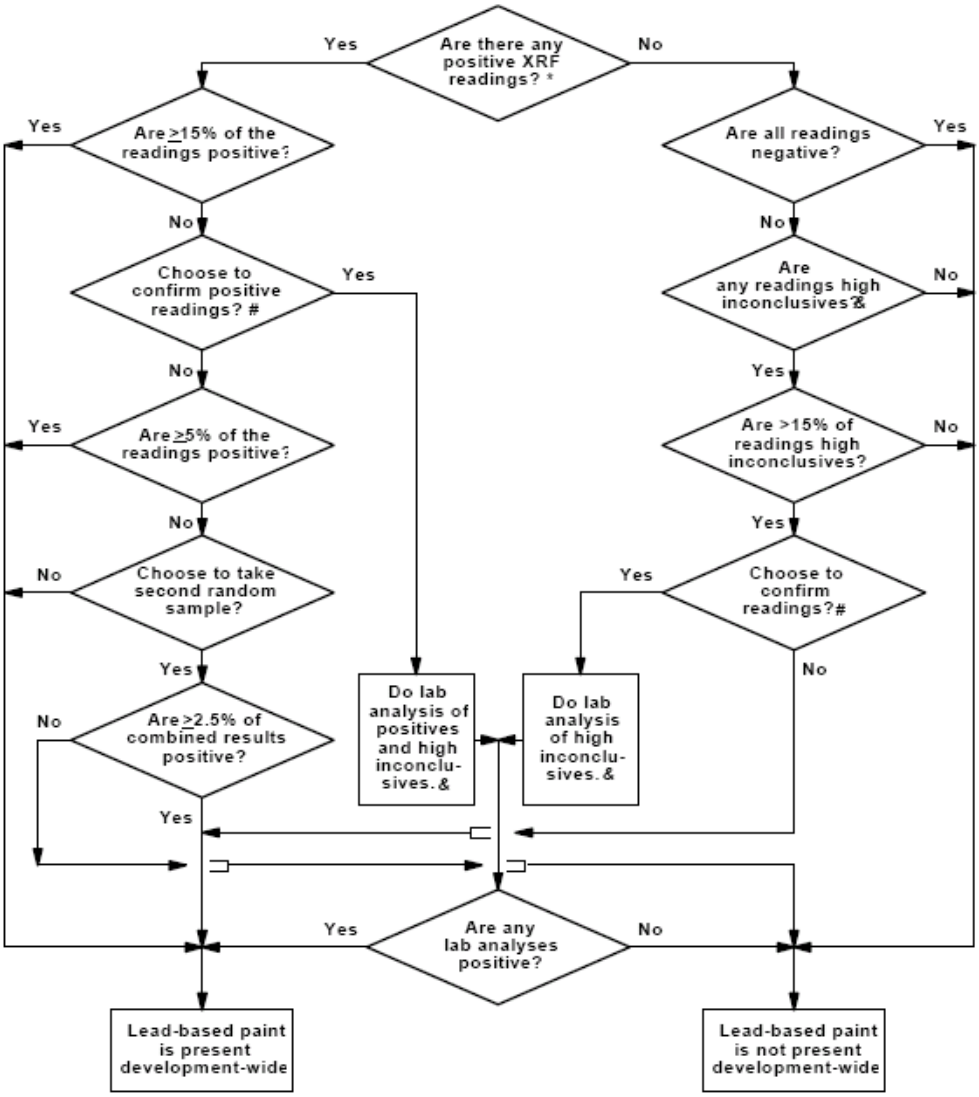
- Positive for lead-based paint. This is based upon a positive XRF reading in accordance with the XRF's Performance Characteristic Sheet;
- Inconclusive and having XRF readings less than the midpoint of the XRF's inconclusive range ("low inconclusive");
- Inconclusive and having XRF readings equal to or greater than the midpoint of the XRF's inconclusive range ("high inconclusive"); and
- Negative for lead-based paint.

The "Multifamily Decision Flowchart" (Figure 7.1) should be used to interpret the aggregated XRF testing results in the "Multifamily Housing: Component Type Report" form. The flowchart is applied separately to each component/substrate type (wood doors, metal window casings, etc.) and shows one of the following results:

- **Positive**: Lead based-paint is present on one or more of the components.
- **Negative**: Lead based-paint is not present on the components throughout the development. (Lead may still be present at lower loadings and hazardous leaded dust may be generated during modernization, renovation, remodeling, maintenance, or other disturbances of painted surfaces.)

These results are obtained by following the flowchart. The decision that lead-based paint is present is reached with 99 percent confidence if 15 percent or more of the components are positive. (Refer to Appendix 12 for the statistical rationale for this percentage.) The decision that lead-based paint is not present throughout the development is reached if: (1) 100 percent of the tested component types are negative, or (2) 100 percent of the tested component types are classified as either negative or inconclusive *and* all of the inconclusive classifications have XRF readings less than the midpoint of the inconclusive range for the XRF in use. Note that the midpoint of the inconclusive range is *not* a threshold; it is used only for classifying XRF readings in multifamily housing in conjunction with information about other XRF readings as described here. (See section 2 below for guidance on what to do when the percentage of positive readings is less than 5%). For cases with greater than or equal to 5% positives *and* less than 15% positives, as well as no positives but greater than 15% high inconclusives, some confirmatory laboratory testing may be needed to reach a final conclusion, unless the client wishes to assume the validity of the XRF results and that all inconclusives are positive. For each testing combination with an inconclusive XRF reading at or above the midpoint of the inconclusive range, a paint-chip sample should be analyzed by a laboratory recognized by the EPA National Lead Laboratory Accreditation Program. If all the laboratory-analyzed samples are negative, it is not necessary to test inconclusive XRF results below the midpoint of the inconclusive range. If, however, *any* laboratory results are positive on a component type, all inconclusives equal to or above the midpoint of the inconclusive range should be analyzed. Once all laboratory results have been reported, the "Multifamily Housing: Component Type Report" form should be updated to include the laboratory results and classifications (either positive or negative).

The "Multifamily Decision Flowchart" is based on data collected by EPA in a large field study of XRF instruments (EPA 1995). Percentages were chosen so that, for each component type, there is a 98 percent chance of correctly concluding that lead-based paint is either absent on all components or present on at least one component of a given



* *"Positive," "negative," and "inconclusive" XRF readings are determined in accordance with the XRF instrument's Performance Characteristics Sheet as described in the HUD Guidelines for the Evaluation and Control of Lead Hazards in Housing, chapter 7.*

& *A high inconclusive reading is an XRF reading at or above the midpoint of the inconclusive range. For example, if the inconclusive range is 0.41 to 1.39, its midpoint (average) is 0.90; a reading in the range from 0.90 to 1.39 would be a high inconclusive reading.*

\# *Any paint or coating may be assumed to be lead-based paint, even without XRF or laboratory analysis. Similarly, any XRF reading may be confirmed by laboratory analysis.*

Figure 7.1 Multifamily Decision Flowchart

type. Thus, the probability that a tested component type will be correctly classified is very high.

Percentages of positive or inconclusive results are computed by dividing the number in each classification group by the total number of testing combinations of the component type that were tested. For example, if 245 wooden doors in a multifamily housing development were tested and 69 were classified as inconclusive with XRF readings less than the midpoint of the inconclusive range, 28 percent [(69 / 245) x 100 percent = 28.2 percent] should be recorded on the form in the "<1.0 percent" columns under the heading "Inconclusive."

1. Unsampled Housing Units

If a particular component type in the sampled units is classified as positive, that same component type in the unsampled units is also classified as positive. For those cases where the number of positive components is small, further analysis may determine if there is a systematic reason for the specific mixture of positive and negative results.

For example, suppose that a few porch railings tested negative, but most tested positive. Examination of the sample results in conjunction with the building records showed that the porch railings classified as positive were all original and the railings classified as negative were all recent replacements. The records did not reveal which units had replaced railings, and due to historic preservation requirements, the replacement railings were identical in appearance to the old railings. Thus, all unsampled original porch railings could be classified as positive, and all unsampled recently replaced porch railings could be classified as negative if at least 40 of the replaced porch railings had been tested.

2. Fewer than 5% Positive Results

Where a small fraction of XRF readings, less than 5 percent, of a particular component type are positive, several choices are available:

- First, the inspector may confirm the results by laboratory analysis, which is considered definitive when performed as described in Section VI, below; a laboratory lead result of 1.0 mg/cm² or greater (or 0.5 percent by weight or greater) is considered positive.

- Second, the inspector may select a second random sample (using unsampled units only) and test the component type in those units. If less than 2.5% of the combined set of results is positive, the component type may be considered as not having lead-based paint development-wide, but, rather, having lead-based paint in isolated locations, with a reasonable degree of confidence. Individual components that are classified positive should be considered as being lead-based painted and managed or abated appropriately.

- Finally, if the client chooses not to confirm the results by laboratory analysis and not to take a second set of measurements, then the component type should be considered as having lead-based painted development-wide.

The inspector may wish to advise the client that the cost of additional XRF testing or laboratory analysis is usually much less than the cost of lead abatement or interim control projects, and that this is of particular interest in the situation where few results are positive, because there is a significant chance that the paint, development-wide, may not be lead-based.

Whatever approaches are used, all painted individual surfaces found to be positive for lead must be included in the inspection report, regardless of development-wide conclusions.

H. Evaluation of the Inspection

The methods for evaluating inspection services in multifamily housing are identical to those described for single-family housing (see Section IV.H) except for the retesting option: In multifamily housing, a total of 10 testing combinations should be selected for retesting in two units.

I. Documentation in Multifamily Housing

The method for documentation is identical for multifamily and single-family housing (see Section IV.I), with the following exception: Use forms 7.2

through 7.6 for multifamily housing (see Addendum 2) or comparable forms, not the single-family housing forms.

When lead-based paint has been found in some units it must be managed or treated as such in those units, even if the inspection indicates that it is not present development wide.

VI. Laboratory Testing for Lead in Paint

For inconclusive XRF results and areas that cannot be tested using an XRF instrument, a paint-chip sample should be collected using the protocol outlined here and in Appendix 13.2 of these *Guidelines*. The sample should be analyzed by a laboratory recognized under the EPA National Lead Laboratory Accreditation Program (NLLAP) using the analytical method(s) it used to obtain the laboratory's recognition. If a paint chip sample cannot be collected, the inspection report should include a list of surfaces where paint chip samples were needed but not taken (in this case, the client would assume that inconclusives requiring confirmation by laboratory analysis are positive).

A. Number of Samples

Only one paint-chip needs to be taken for each testing combination. Additional samples can be collected as a quality control measure, if desired.

B. Size of Samples

The paint-chip sample should be taken from a 4-square-inch (25-square-centimeter) area that is representative of the paint on the testing combination, as close as possible to any XRF reading location and, if possible, unobtrusive. This area may be a 2 by 2 inch (5 by 5 centimeter) square, or a 1 by 4 inch (2½ by 10 centimeter) rectangle, or have any other dimensions that equal at least 4 square inches (25 square centimeters). Regardless of shape, the dimensions of the surface area must be accurately measured (to the nearest millimeter or 1/16th of an inch) so that laboratory results can be reported in mg/cm². Results should be reported as percent by weight if the dimensions of the surface area cannot be accurately measured or if all paint within the sampled area cannot be removed. In these cases, lead should be reported in ppm or percent by weight, *not* in mg/cm². Smaller surface areas can be used if acceptable to the laboratory.

The 4-square-inch (25-square-centimeter) area practically guarantees that a sufficient amount of paint will be collected for laboratory analysis. As a result, samples will sometimes weigh more than required for some laboratory analysis methods. Smaller-sized paint chips may be collected if permitted by the laboratory. (See ASTM E 1729). In all cases, the inspector should consult with the NLLAP recognized laboratory selected regarding specific requirements for the submission of samples for lead-based paint analysis.

C. Inclusion of Substrate Material

Inclusion of small amounts of substrate material in the paint-chip sample will result in minimal error if results are reported in mg/cm², but including any amount of substrate can result in less precise results, with worse effect as the amount of substrate increases. Substrate material may not be included if results are to be reported in weight percent (or ppm).

D. Repair of Sampled Locations

Areas from which paint-chip samples are collected should be repaired and cleaned, unless the area will be removed, encapsulated, enclosed, or repainted before occupancy. Repairs can be completed by repainting, spackling, or any other method of covering that renders the bare surface inaccessible. Cleanup should be done with wet wiping and rinsing, and it should be done on both the surface and the floor underneath the surface sampled. The new covering or coating should have the same expected longevity as new paint or primer. Repair is not necessary if analysis shows that the paint is not lead-based paint and leaving the damage is acceptable to the client and/or the owner.

E. Classification of Paint-Chip Sample Results

Any paint inspections may be carried out using only paint-chip sampling and laboratory analysis at the option of the purchaser of the inspection services. This option is not recommended because it is time consuming, costly, and requires extensive repairs. Paint-chip sampling also has opportunities for errors,

such as inclusion of substrate material (for results in weight percent), failure to remove all paint from an area (including paint that has bled into a substrate) and laboratory error. Nevertheless, paint-chip sampling generally has a smaller error than does XRF and is, therefore, appropriate as a final decisionmaking tool. Laboratory results of 1.0 mg/cm² or greater, or 0.5 percent or greater, are to be considered positive. If the laboratory reports both mg/cm² and weight percent for a sample, use whichever result is positive (if any) for final classification. In the rare situation where more than one paint-chip sample from a single testing combination is analyzed, the combination is considered positive if any of those samples is positive. All other results are negative. No inconclusive range is reported for laboratory measurements.

F. Units of Measure

Results should be reported in mg/cm², the primary unit of measure for lead-based paint analyses of surface coatings. Results should be reported as percent by weight only if the dimensions of the surface area cannot be accurately measured or if not all paint within the sampled area can be removed. In these cases, results should not be reported in mg/cm², but in weight percent.

Weight measurements are usually reported as micrograms per gram (μg/g), milligrams per kilogram (mg/kg), or parts per million (ppm) by weight. For example, a sample with 0.2 percent lead may also be reported as 2,000 μg/g lead, 2,000 mg/kg lead, or 2,000 ppm lead.

G. Sample Containers

Samples should be collected in sealable rigid containers such as screw-top plastic centrifuge tubes, rather than plastic bags which generate static electricity and make quantitative transfer of the entire paint sample in the laboratory impossible. Paint-chip collection should include collection of all the paint layers from the substrate, but collection of actual substrate should be minimized. Refer to ASTM E 1729 and Appendix 13 of these *Guidelines* for further details on collection of paint-chip samples.

H. Laboratory Analysis Methods

Several standard laboratory technologies are useful in quantifying lead levels in paint-chip samples. These methods include, but are not limited to, Atomic Absorption Spectroscopy (AAS), Inductively Coupled Plasma-Atomic Emission Spectroscopy (ICP-AES), Anodic Stripping Voltammetry (ASV), and Potentiometric Stripping Voltammetry (PSV).

For analytical methods that require sample digestion, samples should be pulverized so that there is adequate surface area to dissolve the sample before laboratory instrument measurement. In some cases, the amount of paint collected from a 4-square-inch (25-square-centimeter) area may exceed the amount of paint that can be analyzed successfully. It is important that the actual sample mass analyzed not exceed the maximum mass the laboratory has successfully tested using the specified method. If subsampling is required to meet analytical method specifications, the laboratory must homogenize the paint-chip sample (unless the entire sample will eventually be analyzed and the results of the subsamples combined). Without homogenization, subsampling would likely result in biased, inaccurate lead results (see ASTM E 1645). See ASTM PS 87 for an ultrasonic extraction method for preparing paint samples for subsequent analysis for lead.

If the sample is properly homogenized and substrate inclusion is negligible, the result can be reported in either milligrams per square centimeter (mg/cm²; the preferred unit), percent by weight, or both. The following equation should be used to report the results in milligrams per square centimeter:

$$\text{mg/cm}^2 = \frac{\text{weight of lead from subsample (in mg)} \times \frac{\text{total sample weight (in g)}}{\text{subsample weight (in g)}}}{\text{sample area (in cm}^2\text{)}}$$

To report results in weight percent, the following equation should be used:

Weight percent = weight of lead in the subsample/weight of subsample x 100.

To report results in micrograms per gram (μg/g), the following equation should be used:

$$\mu g/g = \frac{\text{weight of lead from subsample (in } \mu g)}{\text{subsample weight (in g)}}$$

If the laboratory reports results in both mg/cm² and weight percent, and if one result is positive and the other negative, the sample is classified as positive.

Whatever the preparation techniques of paint-chip samples (including homogenization, grinding, and digestion), and instrument selection and operation selected, the inspector should verify, prior to the collection and submission of samples, that the laboratory is approved to perform the appropriate analytical methodologies. Methods should be applied to paint-chip materials of approximately the same mass and lead loading (also called area concentration, measured in mg/cm²) as those samples anticipated from the field.

Because of the potential for sample mass to affect the precision of lead readings, laboratory analysis reference materials processed with field samples for quality assurance purposes should have close to the same mass as those used for paint-chip samples. Refer to ASTM E 1645 or equivalent methods for further details on laboratory preparation of paint-chip samples, and refer to ASTM E 1613, ASTM E 1775, ASTM PS 88, or equivalent methods on analysis of samples for lead.

I. Laboratory Selection

Only a laboratory recognized under EPA's National Lead Laboratory Accreditation Program (NLLAP) should be used for lead-based paint analysis. Such a laboratory is required to use the same analytical methods that it used to obtain accreditation. EPA established NLLAP to provide the public with laboratories that have a demonstrated capability for analyzing lead in paint chip, dust, and soil samples at the levels of concern stated in these *Guidelines*. In some states, an NLLAP laboratory *must* be used. To participate in NLLAP, a laboratory must:

- Participate successfully in the Environmental Lead Proficiency Analytical Testing Program (ELPAT). ELPAT is administered by the American Industrial Hygiene Association (AIHA) in cooperation with the Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH), and EPA. The proficiency testing samples used in ELPAT consist of variable levels of lead in paint, dust, and soil matrices.

- Undergo a systems audit, including an on-site visit. The systems audit must be conducted by an accrediting organization with a program recognized by EPA through a Memorandum of Understanding (MOU). Laboratory accrediting organizations participating in NLLAP have accrediting program requirements that meet or exceed NLLAP laboratory quality system requirements stated in the MOU.

An up-to-date list of fixed-site and mobile laboratories recognized by the EPA NLLAP for analysis of paint-chip samples may be obtained from the National Lead Information Center Clearinghouse by calling 1-800-424-LEAD or from the Lead Listing at http://www.leadlisting.org. Since December 1993, the American Association for Laboratory Accreditation (A2LA) and AIHA have been recognized as laboratory-accrediting organizations participating in NLLAP. NLLAP specifies quality control and data reporting requirements, as described in "Laboratory Quality System Requirements," which can be found in Appendix A of the NLLAP Model MOU. The MOU can also be obtained by calling the National Lead Information Center Clearinghouse, at the number above. The evaluation approach in ASTM E 1583 may be considered in selecting laboratories to use

from among available NLLAP-recognized laboratories.

J. Laboratory Report

The laboratory report for analysis of paint samples for lead should include both identifying information and information about the analysis. At a minimum, this should include:

- Laboratory identifying information: including the laboratory's name, address, and phone number, and NLLAP and other applicable certification and accreditation information; similarly, the client and/or project's name and address should be provided.

- Analytical method information: including the information provided in accordance with NLLAP procedures, and ASTM E 1613, ASTM PS 88 or equivalent method(s) for analysis for lead.

- Sample information: including field sample number and any information (e.g., sample type and/or location) given to the laboratory about the sample, unique laboratory sample number, analytical method (including a description of any variations from the standard method), quality control/quality assurance results, date of analysis, operational or testing problems or unusual occurrences.

VII. Radiation Hazards

Portable XRF instruments used for lead-based paint inspections contain radioactive isotopes that emit X rays and gamma radiation. Proper training and handling of these instruments is required to protect the instrument operator and any other persons in the immediate vicinity during XRF usage. The XRF instrument should be in the operator's possession at all times. The operator should never defeat or override any safety mechanisms of XRF equipment.

A. XRF Use Licenses and Certification

In addition to training and certification in lead-based paint inspection, a person using a portable XRF instrument for inspection must have valid licenses or permits from the appropriate Federal, State, and local regulatory bodies to operate XRF instruments because of radioactive materials they contain. All portable XRF instrument operators should be trained by the instrument's manufacturer (or equivalent). XRF operators should provide related training, licensing, permitting, and certification information to the person who has contracted for their services before an inspection begins. Depending on the State, operators may be required to hold three forms of proof of competency: manufacturer's training certificate (or equivalent), a radiation safety license, and a State lead-based paint inspection certificate or license. To help ensure competency and safety, HUD and EPA recommend that clients hire only those inspectors who hold all three.

The regulatory body responsible for oversight of the radioactive materials contained in portable XRF instruments depends on the type of material being handled. Some radioactive materials are Federally regulated by the U.S. Nuclear Regulatory Commission (NRC); others are regulated at the State level. States are generally categorized as "agreement" and "non-agreement" States. An agreement State has an agreement with NRC to regulate radioactive materials that are generally used for medical or industrial applications. (Most radioactive materials found in XRF instruments are regulated by agreement States). For non-agreement States, NRC retains this regulatory responsibility directly. At a minimum, however, most State agencies require prior notification that a specific XRF instrument is to be used within the State. Fees and other details regarding the use of portable XRF instruments vary from State to State. Contractors who provide inspection services must hold current licenses or permits for handling XRF instruments, and must meet any applicable State or local laws or notification requirements.

Requirements for radiation dosimetry by the XRF instrument operator (wearing dosimeter badges to monitor exposure to radiation) are generally specified by State regulations, and vary from State to State. In some cases, for some isotopes, no radiation dosimetry is required. Because the cost of dosimetry is low, it should be conducted, even when not required, for the following four reasons:

- XRF instrument operators have a right to know the level of radiation to which they are exposed during the performance of the job. In virtually all cases, the exposure will be far below applicable exposure limits.

- Long-term collection of radiation exposure information can aid both the operator (employee) and the employer. The employee benefits by knowing when to avoid a hazardous situation; the employer benefits by having an exposure record that can be used in deciding possible health claims.

- The public benefits by having exposure records available to them.

- The need for equipment repair can be identified more quickly.

B. Safe Operating Distance

XRF instruments used in accordance with manufacturer's instructions will not cause significant exposure to ionizing radiation. But the instrument's shutter should never be pointed at anyone, even if the shutter is closed.

The safe operating distance between an XRF instrument and a person during inspections depends on the radiation source type, radiation intensity, quantity of radioactive material, and the density of the materials being surveyed. As the radiation source quantity and intensity increases, the required safe distance also increases. Placing materials, such as a wall, in the direct line of fire, reduces the required safe distance. According to NRC rules, a radiation dose to an individual in any unrestricted area must not exceed 2 millirems per hour. One of the most intense sources currently used in XRF instruments is a 40-millicurie ^{57}Co (Cobalt-57) radiation source. Other radiation sources in current use for XRF testing of lead-based paint generally produce lower levels of radiation. Generally, an XRF operator conducting inspections according to manufacturer's instructions would be exposed to radiation well below the regulatory level (State of Wisconsin 1994). Typically, XRF instruments with lower gamma radiation intensities can use a shorter safe distance provided that the potential exposure to an individual will not exceed the regulatory limit.

Persons should not be near the other side of a wall, floor, ceiling or other surface being tested. Verify that this is indeed the case prior to initiating XRF testing activities, and check on it during testing.

If these practices are observed, the risk of excessive exposure to ionizing radiation is extremely low and will not endanger any inspectors or occupants present in the dwelling.

VIII. REFERENCES

EPA 1995. "A Field Test of Lead-Based Paint Testing Technologies: Technical Report, EPA 747-R-95-002b, U.S. Environmental Protection Agency, Washington DC, May 1995.

EPA and HUD 1996. 24 CFR 35, subpart H, and 40 CFR 745, subpart F. Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing. Published, along with their preamble, in the *Federal Register,* volume 61, pp. 9064-9088, March 6, 1996. Implements Section 1018 of Title X.

EPA 1996. 40 CFR 745, subparts L and Q. Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities. Published, along with its preamble, in *Federal Register*, volume 61, pp. 45777-45830, August 29, 1996. Implements Sections 402 and 404 of the Toxic Substances Control Act.

State of Wisconsin 1994. Wisconsin Department of Health and Social Services, memo from Mark Chamberlain dated April 28, 1994. Measurements showed that exposures to radiation during operation of a Scitec MAP 3 XRF were 132 µrem/day, which can be compared to about 1,400 µrem/day from natural background radiation.

Addendum 1

Examples of Lead-Based Paint Inspections

A. Example of a Single-Family Housing Inspection

The inspector completed the "Single-Family Housing LBP Testing Data Sheet," recording "bedroom (room 5)" as the room equivalent and listing "plaster" as the first substrate. The completed inventory of testing combinations in the bedroom indicated the presence of wood, plaster, metal, and drywall substrates. Brick and concrete substrates were not present in the bedroom. Descriptions of all testing combinations in the bedroom were recorded. Completed Form 7.1 shows the completed inventory for all testing combinations in the bedroom. (Completed Forms are found in Addendum 3, after the blank forms.)

Before any XRF testing, the inspector performed the manufacturer's recommended warm up procedures. The film was placed more than 12 inches (0.3 meters) away from a painted or other surface. The inspector then took three calibration check readings (1.18 mg/cm², 0.99 mg/cm², and 1.07 mg/cm²) on the NIST SRM with a lead level of 1.02 mg/cm². Results of the first calibration check readings were recorded on the "Calibration Check Test Results" form (see Completed Form 7.2).

The inspector then averaged the three readings (1.08 mg/cm²), and computed the calibration difference (1.08 mg/cm² - 1.02 mg/cm² = 0.06 mg/cm²) and compared this to the calibration check tolerance shown in the *XRF Performance Characteristic Sheet* (see Completed Form 7.2). The calibration difference was not greater than the 0.20 calibration check limits around the NIST SRM standard of 1.02 mg/cm², that is, the difference was within the range of 0.82 mg/cm² to 1.22 mg/cm², inclusive. The instrument was considered in calibration, and XRF testing could begin.

The inspector recorded the results from the XRF testing in the bedroom on the "Single-Family Housing LBP Testing Data Sheet." At that point, the inspector was able to complete this form only through the XRF Reading column (see Completed Form 7.1). The remainder of the form was completed after the testing combinations in the house were inspected and correction values for substrate bias were computed. The inspector then moved on to inspect the next room equivalent.

The other bedroom, the kitchen, a living room, and a bathroom were also inspected. Three substrates -- wood, drywall, and plaster -- were found in these room equivalents. XRF testing for lead-based paint was conducted, using the same methodology employed in the first bedroom (room 5). After these five room equivalents were tested, the inspector noticed that all baseboards and all crown molding of the same substrate had XRF values of more than 5.0 mg/cm². The client had agreed earlier that testing could be abbreviated in this situation, so no further baseboard and crown molding testing combinations were tested in the remaining room equivalents. All similar remaining untested baseboard and crown molding with identical substrates were classified as positive in the final report based on the results of those tested. The raw data for the tested baseboards and crown moldings were also included in the final report.

Four hours after the initial calibration check readings, the inspector took another set of three calibration check readings. (If the inspection had taken less than 4 hours, as is common, the second calibration check test would have been conducted at the end of the inspection.) The readings were 1.45 mg/cm², 1.21 mg/cm², and 1.10 mg/cm²; the inspector recorded the results on the "Calibration Check Test Results" form (Completed Form 7.2). The inspector then averaged the three readings (1.25 mg/cm²), and computed the calibration difference (1.25 mg/cm² - 1.02 mg/cm² = 0.23 mg/cm²) and compared this to the calibration check tolerance shown in the *XRF Performance Characteristic Sheet* on Completed Form 7.2. The calibration difference exceeded the 0.20 calibration check tolerance. The inspector then marked "Failed calibration check" on the data sheets for those room equivalents that had been inspected since the last

successful calibration check test, and consulted the manufacturer's recommendations. After trying, the instrument could not be brought back into control. Consequently, the inspector began using a backup instrument, after performing a calibration check and manufacturer's warm up and quality control procedure. The calibration check test showed that the backup instrument was operating acceptably. The inspector used the backup instrument to reinspect the room equivalents checked with the first instrument, and then all the other room equivalents in the home. Next, because substrate correction was required for all results on wood and metal below 4.0 mg/cm² as specified in the *XRF Performance Characteristic Sheet* for the XRF model in use, the inspector prepared to take readings for use in the substrate correction computations. Using the random number function on a calculator and the list of sample location numbers, the inspector randomly selected two testing combinations each with wood and metal substrates where initial readings were less than 2.5 mg/cm², removed the paint from an area on each selected testing combination slightly larger than the faceplate of the XRF instrument, took three readings on the bare substrates, and recorded the readings on the "Substrate Correction Values" form (Completed Form 7.3). The inspector calculated the correction values for each substrate by averaging the six readings from the two test locations, rounded the result to the 2 places after the decimal point that the XRF instrument displayed, and recorded the information in the Correction Value row. The inspector then transferred the correction values to the "Single-Family Housing LBP Testing Data Sheet" for each corresponding substrate.

After the inspector had finished taking the readings needed to compute the substrate correction values, the inspector took another set of three calibration check readings. The inspector recorded the results on the "Calibration Check Test Results" form, under Second Calibration Check, for readings taken by the backup XRF instrument (Completed Form 7.2). The second (and final) calibration check average did not exceed the 0.20 calibration check tolerance. The inspector, therefore, deemed the XRF testing to be complete.

The inspector then calculated the corrected readings by subtracting the substrate correction value from each XRF result taken on a wood or metal substrate. The substrate correction value was obtained by averaging readings on bare surfaces that had initially measured less than 2.5 mg/cm² with the paint still on the surface (Completed Form 7.3). The inspector also used the inconclusive ranges obtained from the XRF Performance Characteristic Sheet (0.41 mg/cm² to 1.39 mg/cm²) for all substrates except plaster (inconclusive range 1.01 mg/cm² to 1.09 mg/cm²). Based on the valid window sill XRF readings, including substrate corrections for wood, there were initially 10 positive results, 2 inconclusive results, and 3 negative results in the bedroom. The two inconclusive results required paint-chip sampling with laboratory confirmation; this resulted in one positive and one negative result. The inspector then filled out the "Single-Family Housing: Component Type Report" (Completed Form 7.1A). A description of each component type was recorded in the first column, the total number of each tested component type was entered in the second column, and the number of testing combinations classified as positive for each component type from the "Single-Family Housing LBP Testing Data Sheet" (Completed Form 7.1) was calculated and entered in the third column. The inspector then did the same for the testing combinations classified as negative. Based upon the XRF results as modified by the laboratory confirmation of the two inconclusive samples, Completed Form 7.1A shows 11 positive and 4 negative results for wood window sills. The remaining component types were entered in a similar fashion.

B. Example of Multifamily Housing Inspection

This section presents a simple example of a multifamily housing development inspection. An actual inspection would have many more testing combinations than are provided here.

The inspector's first step was a visual examination of the development to be tested. During this pretesting review, buildings with a common construction and painting history were identified and the date of construction -- 1948 -- was determined. The construction and painting history of all the units was found to be similar, so that units in the development could be grouped together for sampling purposes. The inspector determined that the development had 55 units, and by consulting Table 7.3, determined that 35 units should be inspected.

The inspector used the "Selection of Housing Units" form (Completed Form 7.4) to randomly select units to inspect. The total number of units, 55, was entered into the first column of the form. The random numbers generated from a calculator were entered into the second column. The first random number, 0.583, was multiplied by 55 (the total number of units), and the product, 32.065, was entered in the third column. The product was rounded up from 32.065 to 33, and 33 was written in the fourth column, indicating that the 33rd unit would be tested. Other units were selected using the same procedure. When a previously selected unit was chosen again, the inspector crossed out the repeated unit number and wrote "DUP" (for duplicate) in the last column. The inspector continued generating random numbers until 35 distinct units had been selected for inspection. (In this case, it would have been faster to randomly determine the 20 units that would *not* be inspected (55 - 35 = 20) and then to select the remaining 35 units for inspection).

After identifying units to be inspected, the inspector conducted an inventory of all painted surfaces within the selected units. The inspector completed the "Multifamily Housing LBP Testing Data Sheet" for every testing combination found in each room equivalent within each unit. Completed Form 7.5 is an example of the completed inventory for the bedroom of the first unit to be inspected. The inventory showed that the bedroom was composed of four substrates and eight testing combinations of the following components: (1) one ceiling beam, (2) two doors, (3) four walls, (4) one window casing, (5) two door casings, (6) three shelves, (7) two support columns, and (8) one radiator. Where more than one of a particular component was present, except walls, one was randomly selected for XRF testing. Component location descriptions were recorded in the "Test Location" column. Drywall and brick substrates were not present in the bedroom.

Testing combinations not common to all units were added to the inventory list. The inspector also noted which types of common areas and exterior areas were associated with the selected units, identified each of these common and exterior areas as a room equivalent, and inventoried the corresponding testing combinations.

The inspector inventoried the remaining 34 units selected and their associated types of common areas and exterior areas before beginning XRF testing in the development. Alternatively, the inspector could have inventoried each room equivalent as XRF testing proceeded.

After completing the inventory, the inspector performed the XRF manufacturer's recommended warm up and quality control procedures successfully. Then the inspector took three calibration check readings on a 1.02 mg/cm² NIST SRM film. The calibration check was accomplished by attaching the film to a wooden board and placing the board on a flat wooden table. Readings were then taken with the probe at least 12 inches (0.3 meters) from any other potential source of lead. The following readings were obtained: 1.12, 1.00, and 1.08 mg/cm². These calibration check results were recorded on the "Calibration Check Test Results" form (Completed Form 7.2). The difference between the first calibration check average and 1.02 mg/cm² (NIST SRM) was not greater than the 0.3 mg/cm² calibration check tolerance limit obtained from the *XRF Performance Characteristic Sheet*, indicating that the XRF instrument was in calibration and that XRF testing could begin. (See the single-family housing example, in Section A, above, of this Addendum, for a description of what to do when the calibration check tolerance is exceeded).

The inspector began XRF testing in the bedroom by taking one reading on each testing combination listed on the inventory data sheet. XRF testing continued until all concrete, wood, and plaster component types were inspected in the bedroom. The XRF readings were recorded on the "Multifamily Housing LBP Testing Data Sheet" form (Completed Form 7.5). According to the *XRF Performance Characteristic Sheet*, the XRF instrument in use did not require correction for substrate bias for any of the substrates encountered in the development, so the XRF classification column was completed at that time. The inspector used single-family housing rules for classifying the XRF readings as positive, negative, or inconclusive. The inspector also used the inconclusive ranges obtained from the *XRF Performance Characteristic Sheet* (0.41 mg/cm² to 1.39 mg/cm²). The midpoint of the inconclusive range was then calculated to be 0.90 mg/cm² ([0.41 mg/cm² + 1.39 mg/cm²]/2 = 0.90 mg/cm²). The results of the classifications were recorded in the Classification column of the "Multifamily Housing LBP Testing Data Sheet" form. Classifications for all testing combinations within the unit were computed in the same manner as for the bedroom.

Once inspections were completed in all of the 35 selected units of the development, the inspector completed the "Multifamily Housing: Component Type Report" form (Completed Form 7.6). A description of each component type was recorded in the first column, the total number of each tested component type was entered in the second column, and the number of testing combinations classified as positive for each component type from the "Multifamily Housing LBP Testing Data Sheet" (Completed Form 7.5) was calculated and entered in the third column. The inspector then did the same for the testing combinations classified as negative, that is, XRF readings up to and including 0.40 mg/cm², and for inconclusive classifications with XRF readings less than the midpoint of the inconclusive range, that is, XRF readings from 0.41 mg/cm² to 0.89 mg/cm², and for inconclusive classifications with XRF readings equal to or greater than the midpoint of the inconclusive range, that is 0.90 mg/cm² to 1.39 mg/cm². Using these readings and the total number of the component type sampled, the inspector computed and recorded the percentages of positive, negative, and inconclusive classifications for each component type.

After entering the number of testing combinations for each component type in the "Multifamily Housing Component Type Report" form, the inspector noticed that only 34 wood door casings had been inspected. Because it is necessary to test at least 40 testing combinations of each component type, the inspector arranged with the client to test six more previously untested door casings. Additional units were randomly selected from the list of unsampled units. An initial calibration check test was successfully completed and the six door casings were tested for lead-based paint. Another calibration check test indicated that the XRF instrument remained within acceptable limits. The inspector then updated the "Multifamily Housing: Component Type Report" form by crossing out with one line the row of the form that showed the original, insufficient number of component types for testing; the inspector then wrote the information on the full 40 wood door casings in a new row.

The inspector used the "Multifamily Decision Flowchart" (Figure 7.1) to evaluate the component type results. Because 100 percent of the plaster walls and metals baseboards tested negative for lead, the inspector concluded that no lead-based paint had been detected on any walls or baseboards in the development, including those in uninspected units, and entered "NEG" in the Overall Classification column. The inspector also observed that shelves, hall cabinets, and window casings had no positive results. For all of the other component types, 15% or more of the readings for each type were positive; after choosing *not* to perform additional XRF readings or laboratory analysis on those components, that is, to rely on the XRF readings, the inspector entered "POS" in the Overall Classification column for them. For the shelves, all the XRF results were negative or inconclusive and less than 0.90 mg/cm² ("low inconclusive") so the inspector, in accordance with the flowchart, entered "NEG" in the Overall Classification column. The hall cabinets and window casings were classified as inconclusive with some readings greater than or equal to 0.90 mg/cm² ("high inconclusive"). The inspector determined that over 15 percent of the readings taken on these component types were high inconclusives. The inspector chose to take additional samples for laboratory analysis, to see if any or all of the samples would be determined to be negative by laboratory analysis.

The inspector collected paint-chip samples from the inconclusive component types, but only from testing combinations where XRF readings were equal to or greater than 0.90 mg/cm², the midpoint of the inconclusive range. Paint-chip samples were taken from 32 sampling locations: 12 hall cabinets, 7 window casings and 13 metal radiators. The paint-chip samples were collected from a 4-square-inch (25-square-centimeter) surface area on each component. Each paint-chip sample was placed in a hard-shelled plastic container, sealed, given a uniquely-numbered label, and sent to the laboratory for analysis.

The laboratory returned the results to the inspector, who entered the laboratory results and classifications on the appropriate "Multifamily Housing LBP Testing Data Sheet" (Form 7.5). Laboratory results of all 5 paint-chip samples taken from the window casings were classified as negative. The laboratory results of 5 samples from the hall cabinets were classified as positive, and 7 as negative. The metal radiator results were classified as 9 positives and 4 negatives.

The "Multifamily Decision Flowchart" was applied to the results shown in the "Multifamily Housing: Component Type Report" to determine the appropriate classification for each component type. The inspector classified all shelves and

window casings as negative, based either on the XRF substrate-corrected readings or on laboratory confirmation analysis, respectively. Therefore, no further lead-based paint testing was required for the shelves and window casings. About 9.1 percent (none positive by XRF analysis and 5 positive by lab analysis of the 55 that were inspected) of all hall cabinets in the housing development had lead-based paint.

Final decisions made by the development client regarding the hall cabinets were based on various factors, including:

- The substantially lower cost of inspecting all hall cabinets in the development versus replacing all of those cabinets;
- Future plans, including renovating the buildings within three years; and
- The HUD/EPA disclosure rule requirements regarding the sale or rental of housing with lead-based paint.

In this case, the client arranged for testing hall cabinets in all of the unsampled units to determine which were positive, and which were negative. To verify the accuracy of the inspection services, the client asked the inspector to retest 10 testing combinations. The retest was performed according to instructions obtained from the *XRF Performance Characteristic Sheet*. The client appointed an employee to randomly select 10 testing combinations from the inventory list of 2 randomly selected units. The employee observed the inspector retesting the 10 selected testing combinations, using the same XRF instrument and procedures used for the initial inspection. A single XRF reading was taken from each of the 10 testing combinations. The average of the 10 repeat XRF results was calculated to be 0.674 mg/cm², and the average of the 10 previous XRF results was computed to be 0.872 mg/cm². The absolute difference between the two averages was computed to be 0.198 mg/cm² (0.872 mg/cm² minus 0.674 mg/cm²). The Retest Tolerance Limit, using the formula described in the *XRF Performance Characteristic Sheet* , was computed to be 0.231. Because 0.198 mg/cm² is less than 0.231 mg/cm², the inspector concluded that the inspection had been performed competently. The final summary report also included the address of the inspected units, the date(s) of inspection, the starting and ending times for each inspected unit, and other information described in Section V.I of Chapter 7.

At the end of the work shift, the inspector took a final set of three calibration check readings using the same procedure as for the initial calibration check. The following readings were obtained: 0.86, 1.07 and 0.94 mg/cm². The average of these readings is 0.97 mg/cm². The difference between 0.97 mg/cm² and the NIST SRM's 1.02 mg/cm² is -0.08 mg/cm², which is not greater in magnitude than the 0.30 mg/cm² calibration check tolerance for the instrument used. The inspector recorded that the XRF instrument was in calibration, and that the measurements taken between the first and second calibrations could be used.

Endnotes

1. Most XRF instruments detect K-shell fluorescence (X-ray energy), some L-shell fluorescence, and some K and L fluorescence. In general, L X rays released from greater depths of paint are less likely to reach the surface than are K X rays, which makes detection of lead in deeper paint layers by L X rays alone more difficult. However, L X rays are less likely to be influenced by substrate effects.

2. Westat, Inc. An Analysis and Discussion of the Single Family Inspection Protocol Under the 1995 HUD Guidelines: Draft Report. 1996.

3. Dixon, S., National Center for Lead-Safe Housing, Sample Size as a Function of Multifamily Development Size. 1997.

4. The statistical rationale and calculations used to develop sample sizes in multifamily housing is based on a data set which contains approximately 164,000 XRF readings from 23,000 room equivalents in 3,900 units located in 65 housing developments. Statistical and theoretical analyses completed for HUD are available through the Lead Clearinghouse and on HUD's World Wide Web Home Page.

CHAPTER 8: RESIDENT PROTECTION AND WORKSITE PREPARATION

Resident Protection and Worksite Preparation: How To Do It

1. If possible, perform the work in a vacant unit. If residents must remain inside the dwelling during work, erect appropriate barrier systems as described in the tables in this chapter.
2. Permit residents to reenter the work area only after work is complete and visual inspection has been completed and dust samples collected. If the work is not completed at the end of the day, keep the barriers in place overnight and instruct residents not to enter the work area.
3. Determine if the dwelling will require precleaning before worksite containment. If the paint is severely deteriorated and there are paint chips present, the paint chips should be removed by HEPA vacuuming before plastic is laid down.
4. Determine requirements for relocation, isolation of work areas, and other worksite preparation measures based on the type and extent of the work and the amount of dust that will be generated.
5. Select an Interior Worksite Preparation Level, an Exterior Worksite Preparation Level, and/or a Window Worksite Preparation Level (depending on the work required) from the tables in this chapter.
6. Conduct daily cleanup.
7. Perform a visual examination daily.
8. Conduct dust sampling as specified in this chapter.
9. Never permit residents to enter a work area where lead hazard control work is under way. Entry should be denied until cleaning and clearance have been completed.

CHAPTER 8: RESIDENT PROTECTION AND WORKSITE PREPARATION

I. Introduction

Lead hazard control methods generate varying amounts of leaded dust, paint chips, and other lead-contaminated materials. This chapter describes ways to protect residents and the environment from exposure to, or contamination from, these materials. Some processes require complete isolation of the work area and/or full evacuation of the residents and their belongings, while other methods require little or no containment. Containment refers to various methods of preventing leaded dust from migrating beyond the work area. It includes everything from the simple use of disposable plastic drop cloths to the sealing of openings with plastic sheeting. The required degree of containment depends upon a number of considerations (e.g., type of hazard control, resident relocation possibilities, size of work area, etc.). Generally speaking, significant lead hazard control work should be performed in vacant units, with only small-scale activity conducted in occupied units. Worksite preparation is needed for both interim control and abatement work.

This chapter describes the general principles behind resident protection and proper worksite preparation. Three tables are included: one for interior work, one for exterior work, and one for windows. Guidance is also offered for certified abatement supervisors, risk assessors, and project planners on the development of a written occupant protection plan, which may be required by some agencies.

II. Resident Entry Into Work Area Prohibited

Regardless of the extent of the work, *residents must never be permitted to enter the work area while work is under way, even if the work only disturbs a small area. Resident reentry into the work area is permitted only after the area has been cleaned and has passed clearance.* All of the work-site preparation strategies discussed in this chapter are based on this fundamental requirement. While residents may not be present inside the work area, it is possible for them to remain inside other parts of the dwelling during some types of work, or to leave for the day and return to the dwelling at night after cleaning and visual evaluation, and collection of dust samples. In cases of hardship where the resident *must* occupy the area prior to receiving laboratory results of clearance dust samples, occupancy should not occur until visual inspection has been completed and dust samples collected.

III. Site Assessment and Precleaning

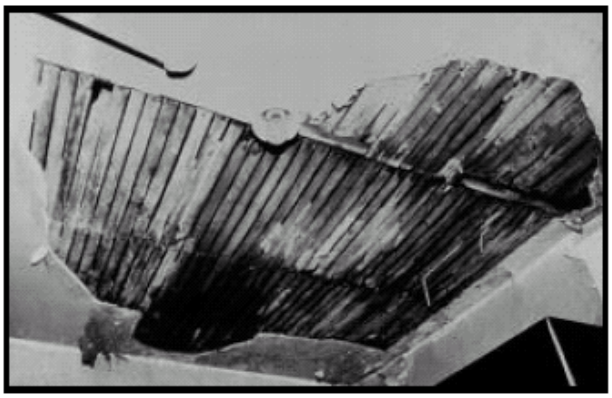
The certified lead hazard control supervisor should ensure that the dwelling is structurally sound. If structural deficiencies exist, they must be corrected before the site can be prepared for lead hazard control (see Figure 8.1). Environmental and worker protection must be provided if the structural repairs will involve disturbance of surfaces coated with lead-based paint.

If the paint is severely deteriorated and there are numerous paint chips on the floors, the paint chips should be removed by high-efficiency particulate air (HEPA) vacuuming before any plastic is laid down (see Figure 8.2). Vacuuming will prevent the paint chips from being ground into dust by the workers' feet. Wet washing usually is not required for precleaning.

IV. Debris Control

The only way that lead hazard control work can proceed safely in *occupied dwellings* is to ensure that cleaning is completed before residents reenter the unit. Cleaning is especially important when residents are present in the dwelling while

Figure 8.1 Repair Structural Deficiencies at the Beginning of Lead Hazard Control.



work is in progress, or when residents return in the evening after work has been completed for the day. Neither debris nor plastic sheeting may be left outside the dwelling overnight or in any area where passersby or children could come into contact with these materials. All debris must be handled in accordance with the standards outlined in Chapter10. When residents cannot be relocated and work must proceed room by room, clearance standards may be more difficult to meet, since dust from moved furniture may cause recontamination.

V. Worksite Preparation Levels

A. Worksite Preparation Level Selection

When planning a lead hazard control job, the worksite preparation levels listed in Tables8.1, 8.2, and 8.3 should be considered. Since each worksite is unique, it is necessary to pick the level that is the most cost-effective for each specific situation. This judgment should be made by a certified risk assessor, a certified abatement supervisor, or a trained lead-based paint planner/designer. The tables provide guidance on choosing the appropriate preparation level for each job.

The necessary worksite preparation level will depend on:

- The size of the surface(s) needing work.
- The type of hazard control methods to be used.
- The extent of existing contamination.
- The building layout.
- The vacancy status of the dwelling.
- The types of worker protection needed.
- The need for other construction or abatement work (e.g., renovation or asbestos abatement).

A certified individual should weigh all of these issues in determining which level of preparation is appropriate for a given situation. For example, the enclosure of walls will probably require a lower worksite preparation level than the wet scraping of a large area, since enclosure will generate less dust. Similarly, deteriorated component replacement (demolition work) will probably require a higher containment level than the wet scraping of a small area.

These *Guidelines* are performance-oriented and are not specifications. It is possible to select elements from different worksite preparation levels to devise a unique worksite preparation plan for an individual dwelling. Whatever combination of containment measures is selected, the levels of leaded dust outside the containment area must not rise above clearance levels. Containment measures should be designed to prevent the release of leaded dust, which can be spread by workers' shoes or by airborne dust. A previously conducted risk assessment will indicate if hazardous leaded dust levels exist outside the containment area. If such a problem was identified and if leaded dust levels rise in the course of the work, it is reasonable to conclude that the dust was released from the containment area and that the containment system is ineffective. Dust sampling is usually conducted no further than 10 feet away from the containment area. If deviations from the worksite preparation plans described below are contemplated, then the performance of the containment system should be determined by a certified risk assessment professional. This flexibility permits owners to select the most cost-effective strategy, while also protecting the public health and the environment.

B. Hazard Control Work in Occupied Dwellings

If bathrooms are not accessible, residents should always be relocated during the day (Table 8.1, Level2 at a minimum) unless alternative arrangements can be made (e.g., use of a neighbor's bathroom). In addition, if construction will result in other hazards (such as exposed electric wires), then residents should also be relocated.

Figure 8.2 Area Should Be Precleaned and Structural Deficiencies in Flooring Repaired Before Lead Hazard Control Begins.

Figure 8.3a Prepare the Worksite With Plastic Sheeting (interior).

Figure 8.3b Prepare the Worksite With Plastic Sheeting (exterior).

Figure 8.3c Prepare the Worksite (exterior).

If a worksite preparation level is selected that permits residents either to remain inside the dwelling while work is being conducted or return to the dwelling in the evening after work has been completed, then a dust sample should be collected from the living area at greatest risk of contamination (usually the living area adjacent to the work area) at the end of each work day. It is essential that the sample be collected *before* the work area is cleaned to determine if the containment system protected the occupants that day. If the leaded dust level is above clearance standards, residents must be relocated immediately and must not be allowed to reenter the dwelling until cleanup and documented compliance with clearance standards is achieved.

If the same work crew and supervisor can document compliance with these criteria for three or more consecutive dwelling units using the same hazard control techniques, then dust sampling frequency can be reduced to 1 in every 20 dwellings for that crew.

C. Worksite Preparation Level Definitions

Tables 8.1 and 8.2 define interior and exterior worksite preparation levels. There are four levels for the preparation of dwelling interiors and three levels for the preparation of dwelling exteriors. The lowest levels are primarily designed for interim control activities, while the highest levels are designed for the dustiest abatement methods. Table 8.3 describes worksite preparation as it applies specifically to windows (this technique could be performed from either the interior or exterior of the dwelling). The plastic sheeting in the tables refers to polyethylene plastic sheeting that is at least 6 mils thick (or equivalent). These recommendations represent the best guidance that can be offered at this time. Worksite preparation levels should be designed on a site-by-site basis.

VI. Relocation Dwellings

Relocation dwellings should be acceptable to residents so that they will not attempt to return to their own dwellings during lead hazard control work. Dwellings serving as temporary relocation units must be lead safe. In addition, these units should be adequately equipped with furniture, cooking facilities, refrigerators, televisions, and toys (unless these items will be moved with the resident). Relocation is usually a substantial undertaking, involving not only the movement of people and their possessions, but also the coordination of mail, phone, school, and community changes. Whenever

possible, children should continue to attend the same school during the relocation period, even though this may involve finding special transportation. Due to their complex nature, relocation considerations may dictate the scheduling of the project.

VII. Negative Pressure Zones ("Negative Air" Machines)

In asbestos abatement work and lead-based paint removal work on structural steel, it is common to create work sites that are under negative pressure in comparison to the outside of the containment structure. A negative pressure zone is usually created by blowing air out of the work area through a HEPA filter, while air intake is restricted to a lower flow rate than exhaust. This process causes air to leak *into* the containment area instead of *out* of the containment area, and reduces dust fall and worker exposure by removing contaminants from the airstream through constant filtration.

Due to the different aerodynamics of leaded dust particles and asbestos fibers, negative pressure zones do not appear to be necessary for most forms of residential lead hazard control work. No effect on airborne lead levels, either inside or outside the containment area, has been associated with the use of an air filtration device commonly known as a "negative air" machine (NIOSH, 1993a). In addition, no effect on cleanup efficiency was noted. Most lead-based paint abatement projects in the public housing program have not found it necessary to use negative air machines. Therefore, the added expense of requiring negative pressure zones for general residential lead-based paint hazard control work does not appear to be justified. However, there are two specific situations where the use of a negative pressure zone would be appropriate in a residential setting.

The first case involves floor sanding. Even if the paint has already been removed, leaded dust generation is likely to be quite high due to residual dust in the flooring. Enclosing old flooring with new flooring is the recommended course of action. However, if old flooring must be restored, then negative pressure zones should be established. At least 10 air changes per hour should be provided and all exhaust air must be passed through a HEPA filter.

Figure 8.4 Apply a Second Layer of Plastic.

Secondly, the practice of abrasive blasting is likely to produce extremely high levels of airborne leaded dust (NIOSH, 1992a) and should not be permitted in housing since other methods are readily available. One report indicated that the exterior sandblasting of a school resulted in 27,100 μg/g of lead in the soil at a nearby residence, and nearly 100,000 μg/g in the soil at the school (Peace, 1983). If for

Figure 8.5 Cover the Air Vents With Plastic After Turning Off the HVAC System.

Figure 8.6 Install a Simple Airlock Over a Doorway to Minimize Lead Dust Migration.

some reason abrasive blasting without local exhaust ventilation is performed on the interior of a dwelling, a full containment structure with HEPA filtration and adequate airflow should be required. Such a containment system would also be necessary if the exterior of a dwelling was blasted, usually resulting in "tenting" an entire building (i.e., erecting a temporary tent-like structure around a building or one face of a building).

For nearly all types of lead hazard control work, windows should be kept closed to prevent dust and chips from leaving the unit. If volatile chemicals will be used, adequate ventilation must be provided, either by opening windows during the use of the chemicals or by supplying air through a HEPA air handling machine.

Table 8.1 Interior Worksite Preparation Levels (Not Including Windows)

Description	Level 1	Level 2	Level 3	Level 4
Typical Applications (Hazard Controls)	Dust removal and any abatement or interim control method disturbing no more than 2 square feet of painted surface per room.	Any interim control or abatement method disturbing between 2 and 10 square feet of painted surface per room.	Same as Level 2.	Any interim control or abatement method disturbing more than 10 square feet per room.
Time Limit Per Dwelling	One work day.	One work day.	Five work days.	None.
Resident Location	Inside dwelling, but outside work area. Resident must have lead-safe passage to bathroom, at least one living area, and entry/egress pathways. Alternatively, resident can leave the dwelling during the work day.	Same as Level 1.	Outside the dwelling; but can return in evening after day's work and cleanup are completed. Resident must have safe passage to bathroom, at least one living area, and entry/egress pathways upon return. Alternatively, resident can leave until all work is completed.	Outside the dwelling for duration of project; cannot return until clearance has been achieved.
Containment and Barrier System	Single layer of plastic sheeting on floor extending 5 feet beyond the perimeter of the treated area in all directions. No plastic sheeting on doorways is required, but a low physical barrier (furniture, wood planking) to prevent inadvertent access by resident is recommended. Children should not have access to plastic sheeting (suffocation hazard).	Two layers of plastic on entire floor. Plastic sheet with primitive airlock flap on all doorways. Doors secured from inside the work area need not be sealed. Children should not have access to plastic sheeting (suffocation hazard).	Two layers of plastic on entire floor. Plastic sheet with primitive airlock flap on all doorways to work areas. Doors secured from inside the work area need not be sealed. Overnight barrier should be locked or firmly secured. Children should not have access to plastic sheeting (suffocation hazard).	Two layers of plastic on entire floor. If entire unit is being treated, cleaned, and cleared, individual room doorways need not be sealed. If only a few rooms are being treated, seal all doorways with primitive airlock flap to avoid cleaning entire dwelling. Doors secured from inside the work area need not be sealed.
Warning Signs	Required at entry to room but not on building (unless exterior work is also under way).	Same as Level 1.	Posted at main and secondary entryways, since resident will not be present to answer the door.	Posted at building exterior near main and secondary entryways.

(This table continues on the next page.)

Table 8.1 Interior Worksite Preparation Levels (Not Including Windows) (continued)

Description	Level 1	Level 2	Level 3	Level 4
Ventilation System	Dwelling ventilation system turned off, but vents need not be sealed with plastic if they are more than 5 feet away from the surface being treated. Negative pressure zones (with "negative air" machines) are not required, unless large supplies of fresh air must be admitted into the work area to control exposures to other hazardous substances (for example, solvent vapors).	Turned off and all vents in room sealed with plastic. Negative pressure zones (with "negative air" machines) are not required, unless large supplies of fresh air must be admitted into the work area to control exposure to other hazardous substances (for example, solvent vapors).	Same as Level 2.	Same as Level 2.
Furniture	Left in place uncovered if furniture is more than 5 feet from working surface. If within 5 feet, furniture should be sealed with a single layer of plastic or moved for paint treatment. No covering is required for dust removal.	Removed from work area. Large items that cannot be moved can be sealed with a single layer of plastic sheeting and left in work area.	Same as Level 2.	Same as Level 2.
Cleanup (See Chapter 14 for further discussion of cleanup methods)	HEPA vacuum, wet wash, and HEPA vacuum all surfaces and floors extending 5 feet in all directions from the treated surface. For dust removal work alone, a HEPA vacuum and wet wash cycle is adequate (i.e., no second pass with a HEPA vacuum is needed). Also wet wash and HEPA vacuum floor in adjacent area(s) used as pathway to work area. Do not store debris inside dwelling overnight; transfer to a locked secure area at the end of each day.	HEPA vacuum, wet wash, and HEPA vacuum *all* surfaces in room. Also wet wash and HEPA vacuum floor in adjacent area(s) used as pathway to work area. Do not store de bris inside dwelling overnight; use a secure locked area.	Remove top layer of plastic from floor and discard. Keep bottom layer of plastic on floor for use on the next day. HEPA vacuum, wet wash, and HEPA vacuum *all* surfaces in room. Also wet wash and HEPA vacuum floor in adjacent area(s) used as pathway to work area. Do not store debris inside dwelling overnight; use a secure locked area.	Full HEPA vacuum, wet wash, and HEPA vacuum cycle, as detailed in Chapter 14.
Dust Sampling	Clearance only.	Clearance only.	One sample collected outside work area every few jobs plus clearance.	Clearance only.

Note: Primitive air locks are constructed using two sheets of plastic. The first one is taped on the top, the floor, and two sides of doorway. Next, cut a slit about 6 feet high down the middle of the plastic; do not cut the slit all the way down to the floor. Tape the second sheet of plastic across the top of the door only, so that it acts as a flap. The flap should open *into* the work area. See Figure 8.6.

Table 8.2 Exterior Worksite Preparation Levels (Not Including Windows)

Description	Level 1	Level 2	Level 3
Typical Applications	Any interim control or abatement method disturbing less than 10 square feet of exterior painted surface per dwelling. Also includes soil control work.	Any interim control or abatement method disturbing 10 to 50 square feet of exterior painted surface per dwelling. Also includes soil control work.	Any interim control or abatement method disturbing more than 50 square feet of exterior painted surface per dwelling. Also includes soil control work.
Time Limit Per Dwelling	One day.	None.	None.
Resident Location	Inside dwelling but outside work area for duration of project until cleanup has been completed. Alternatively, resident can leave until all work has been completed Resident must have lead-safe access to entry/egress pathways.	Relocated from dwelling during workday, but may return after daily cleanup has been completed.	Relocated from dwelling for duration of project until final clearance is achieved.
Containment and Barrier System	One layer of plastic on ground extending 10 feet beyond the perimeter of working surfaces. Do not anchor ladder feet on top of plastic (puncture the plastic to anchor ladders securely to ground). For all other exterior plastic surfaces, protect plastic with boards to prevent puncture from falling debris, nails, etc., if necessary. Raise edges of plastic to create a basin to prevent contaminated runoff in the event of unexpected precipitation. Secure plastic to side of building with tape or other anchoring system (no gaps between plastic and building). Weight all plastic sheets down with two-by-fours or similar objects. Keep all windows within 20 feet of working surfaces closed, including windows of adjacent structures.	Same as Level 1.	Same as Level 1.
Playground Equipment, Toys, Sandbox	Remove all movable items to a 20-foot distance from working surfaces. Items that cannot be readily moved to a 20-foot distance can be sealed with taped plastic sheeting.	Same as Level 1.	Same as Level 1.

(This table continues on the next page.)

Table 8.2 Exterior Worksite Preparation Levels (Not Including Windows) (continued)

Description	Level 1	Level 2	Level 3
Security	Erect temporary fencing or barrier tape at a 20-foot perimeter around working surfaces (or less if distance to next building or sidewalk is less than 20 feet). If an entryway is within 10 feet of working surfaces, require use of alternative entryway. If practical install vertical containment to prevent exposure. Use a locked dumpster, covered truck, or locked room to store debris before disposal.	Same as Level 1.	Same as Level 1.
Signs	Post warning signs on the building and at a 20-foot perimeter around building (or less if distance to next building or sidewalk is less than 20 feet).	Same as Level 1.	Same as Level 1.
Weather	Do not conduct work if wind speeds are greater than 20 miles per hour. Work must stop and cleanup must occur before rain begins.	Same as Level 1.	Same as Level 1.
Cleanup (See Chapter 14)	Do not leave debris or plastic out overnight if work is not completed. Keep all debris in secured area until final disposal.	Same as Level 1.	Same as Level 1.
Porches	One lead-safe entryway must be made available to residents at all times. Do not treat front and rear porches at the same time if there is not a third doorway.	Front and rear porches can be treated at the same time, unless unprotected workers must use the entryway.	Same as Level 2.

Table 8.3 Window Treatment or Replacement Worksite Preparation

Appropriate Applications	Any Window Treatment or Replacement
Resident Location	Remain inside dwelling but outside work area until project has been completed. Alternatively, can leave until all work has been completed. Resident must have access to lead-safe entry/egress pathway.
Time Limit Per Dwelling	None.
Containment and Barrier System	One layer of plastic sheeting on ground or floor extending 5 feet beyond perimeter of window being treated/replaced. Two layers of plastic taped to interior wall if working on window from outside; if working from the inside, tape two layers of plastic to exterior wall. If working from inside, implement a minimum Interior Worksite Preparation Level 2. Children cannot be present in an interior room where plastic sheeting is located due to suffocation hazard. Do not anchor ladder feet on top of plastic (puncture the plastic to anchor ladders securely to ground). For all other exterior plastic surfaces, protect plastic with boards to prevent puncture from falling debris, nails, etc. (if necessary). Secure plastic to side of building with tape or other anchoring system (no gaps between plastic and building). Weigh all plastic sheets down with two-by-fours or similar objects. All windows in dwelling should be kept closed. All windows in adjacent dwellings that are closer than 20 feet to the work area should be kept closed.
Signs	Post warning signs on the building and at a 20-foot perimeter around building (or less if distance to next building or sidewalk is less than 20 feet). If window is to be removed from inside, no exterior sign is necessary.
Security	Erect temporary fencing or barrier tape at a 20-foot perimeter around building (or less if distance to next building or sidewalk is less than 20 feet). Use a locked dumpster, covered truck, or locked room to store debris before disposal.
Weather	Do not conduct work if wind speeds are greater than 20 miles per hour. Work must stop and cleanup must occur before rain begins, or work should proceed from the inside only.
Playground Equipment, Toys, Sandbox	Removed from work area and adjacent areas. Remove all items to a 20-foot distance from dwelling. Large, unmovable items can be sealed with taped plastic sheeting.
Cleaning	If working from inside, HEPA vacuum, wet wash, and HEPA vacuum all interior surfaces within 10 feet of work area in all directions. If working from the exterior, no cleaning of the interior is needed, unless the containment is breached. Similarly, no cleaning is needed on the exterior if all work is done on the interior and the containment is not breached. If containment is breached, then cleaning on both sides of the window should be performed. No debris or plastic should be left out overnight if work is not completed. All debris must be kept in a secure area until final disposal.

APPENDIX H

U.S. EPA Lead Renovation, Repair, and Painting Rule 40 CFR Part 745

This rule, issued in 2008, phases in requirements regarding lead renovation, repair, and painting. Beginning in April 2010, contractors and renovators who work in pre-1978 housing and child-occupied facilities must be certified and must follow specific work practices to prevent lead contamination. The rule also sets forth requirements for training, certifying, and accrediting providers of renovation, including renovators, renovation workers, and dust sampling technicians. The rules for lead safe work practices include a ban of open flame burning or torching, and restrictions on other widely used methods, including heat guns and other power tools to remove paint.

As of July 2008, renovators and contractors performing renovation, repair, and painting projects that disturb lead-based paint are required to distribute a lead hazard information pamphlet, *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools*, to the owners and administrators of child-occupied facilities before beginning renovations in these facilities. Renovators must also make renovation information available to the parents or guardians of children under age six that attend these facilities.

The rule affects paid renovators who work in pre-1978 housing and child-occupied facilities. This includes renovation contractors, maintenance workers in multi-family housing, painters, and other specialty trades. Child-occupied facilities are residential, public, or commercial buildings built before 1978 where children under age six are present on a regular basis. Child care facilities and kindergarten and pre-kindergarten classrooms are examples of child-occupied facilities.

Code of Federal Regulations Currentness
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter R. Toxic Substances Control Act
➡ Part 745. Lead-Based Paint Poisioning Prevention in Certain Residential Structures (Refs & Annos)
Subparts A to C. [Reserved]

Subpart D. Lead-Based Paint Hazards (Refs & Annos)

§ 745.61 Scope and applicability.

(a) This subpart identifies lead-based paint hazards.

(b) The standards for lead-based paint hazards apply to target housing and child-occupied facilities.

(c) Nothing in this subpart requires the owner of property(ies) subject to these standards to evaluate the property(ies) for the presence of lead-based paint hazards or take any action to control these conditions if one or more of them is identified.

§ 745.63 Definitions.

The following definitions apply to part 745.

Arithmetic mean means the algebraic sum of data values divided by the number of data values (e.g., the sum of the concentration of lead in several soil samples divided by the number of samples).

Chewable surface means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an "accessible surface" as defined in 42 U.S.C. 4851b(2)). Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.

Common area group means a group of common areas that are similar in design, construction, and function. Common area groups include, but are not limited to hallways, stairwells, and laundry rooms.

Concentration means the relative content of a specific substance contained within a larger mass, such as the amount of lead (in micrograms per gram or parts per million by weight) in a sample of dust or soil.

Deteriorated paint means any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

Dripline means the area within 3 feet surrounding the perimeter of a building.

Friction surface means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

Impact surface means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of door frames.

Interior window sill means the portion of the horizontal window ledge that protrudes into the interior of the room.

Lead-based paint hazard means hazardous lead-based paint, dust-lead hazard or soil-lead hazard as identified in § 745.65.

Loading means the quantity of a specific substance present per unit of surface area, such as the amount of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters.

Mid-yard means an area of a residential yard approximately midway between the dripline of a residential building and the nearest property boundary or between the driplines of a residential building and another building on the same property.

Play area means an area of frequent soil contact by children of less than 6 years of age as indicated by, but not limited to, such factors including the following: the presence of play equipment (e.g., sandboxes, swing sets, and sliding boards), toys, or other children's possessions, observations of play patterns, or information provided by parents, residents, care givers, or property owners.

Residential building means a building containing one or more residential dwellings.

Room means a separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least 6 inches from an intersecting wall. Half walls or bookcases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened in porch that is used as a living area is a room.

Soil sample means a sample collected in a representative location using ASTM E1727, "Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques," or equivalent method.

Weighted arithmetic mean means the arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the surface area it represents. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples of the same area as each other and of each single surface sample in the composite. The weighted arithmetic mean is obtained by summing, for all samples, the product of the sample's result multiplied by the number of subsamples in the sample, and dividing the sum by the total number of subsamples contained in all samples. For example, the weighted arithmetic mean of a single surface sample containing 60 <<mu>>g/ft^2, a composite sample (three subsamples) containing 100 <<mu>>g/ft^2, and a composite sample (4 subsamples) containing 110 <<mu>>g/ft^2 is 100 <<mu>>g/ft^2. This result is based on the equation [60+(3*100)+(4*110)]/(1+3+4).

Window trough means, for a typical double-hung window, the portion of the exterior window sill between the interior window sill (or stool) and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. The window trough is sometimes referred to as the window "well."

Wipe sample means a sample collected by wiping a representative surface of known area, as determined by ASTM E1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques, or equivalent method, with an acceptable wipe material as defined in ASTM E 1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust."

§ 745.65 Lead-based paint hazards.

(a) Paint-lead hazard. A paint-lead hazard is any of the following:

(1) Any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest

horizontal surface underneath the friction surface (e.g., the window sill, or floor) are equal to or greater than the dust-lead hazard levels identified in paragraph (b) of this section.

(2) Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame.

(3) Any chewable lead-based painted surface on which there is evidence of teeth marks.

(4) Any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(b) Dust-lead hazard. A dust-lead hazard is surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding 40 <<mu>>g/ft^2 on floors or 250 <<mu>>g/ft^2 on interior window sills based on wipe samples.

(c) Soil-lead hazard. A soil-lead hazard is bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding 400 parts per million (<<mu>>g/g) in a play area or average of 1,200 parts per million of bare soil in the rest of the yard based on soil samples.

(d) Work practice requirements. Applicable certification, occupant protection, and clearance requirements and work practice standards are found in regulations issued by EPA at 40 CFR part 745, subpart L and in regulations issued by the Department of Housing and Urban Development (HUD) at 24 CFR part 35, subpart R. The work practice standards in those regulations do not apply when treating paint-lead hazards of less than:

(1) Two square feet of deteriorated lead-based paint per room or equivalent,

(2) Twenty square feet of deteriorated paint on the exterior building, or

(3) Ten percent of the total surface area of deteriorated paint on an interior or exterior type of component with a small surface area.

Subpart F. Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property

§ 745.100 Purpose.

This subpart implements the provisions of 42 U.S.C. 4852d, which impose certain requirements on the sale or lease of target housing. Under this subpart, a seller or lessor of target housing shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards; provide available records and reports; provide the purchaser or lessee with a lead hazard information pamphlet; give purchasers a 10-day opportunity to conduct a risk assessment or inspection; and attach specific disclosure and warning language to the sales or leasing contract before the purchaser or lessee is obligated under a contract to purchase or lease target housing.

§ 745.101 Scope and applicability.

This subpart applies to all transactions to sell or lease target housing, including subleases, with the exception of the following:

(a) Sales of target housing at foreclosure.

(b) Leases of target housing that have been found to be lead-based paint free by an inspector certified under the Federal certification program or under a federally accredited State or tribal certification program. Until a Federal certification program or federally accredited State certification program is in place within the State, inspectors shall be considered qualified to conduct an inspection for this purpose if they have received certification under any existing State or tribal inspector certification program. The lessor has the option of using the results of additional test(s) by a certified inspector to confirm or refute a prior finding.

(c) Short-term leases of 100 days or less, where no lease renewal or extension can occur.

(d) Renewals of existing leases in target housing in which the lessor has previously disclosed all information required under § 745.107 and where no new information described in § 745.107 has come into the possession of the lessor. For the purposes of this paragraph, renewal shall include both renegotiation of existing lease terms and/or ratification of a new lease.

§ 745.102 Effective dates.

The requirements in this subpart take effect in the following manner:

(a) For owners of more than four residential dwellings, the requirements shall take effect on September 6, 1996.

(b) For owners of one to four residential dwellings, the requirements shall take effect on December 6, 1996.

§ 745.103 Definitions.

The following definitions apply to this subpart.

The Act means the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852d.

Agent means any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing. This term does not apply to purchasers or any purchaser's representative who receives all compensation from the purchaser.

Available means in the possession of or reasonably obtainable by the seller or lessor at the time of the disclosure.

Common area means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

Contract for the purchase and sale of residential real property means any contract or agreement in which one party agrees to purchase an interest in real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

EPA means the Environmental Protection Agency.

Evaluation means a risk assessment and/or inspection.

Foreclosure means any of the various methods, statutory or otherwise, known in different jurisdictions, of enforcing payment of a debt, by the taking and selling of real property.

Housing for the elderly means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

HUD means the U.S. Department of Housing and Urban Development.

Inspection means:

(1) A surface-by-surface investigation to determine the presence of lead-based paint as provided in section 302(c) of the Lead-Based Paint Poisoning and Prevention Act [42 U.S.C. 4822], and

(2) The provision of a report explaining the results of the investigation.

Lead-based paint means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

Lead-based paint free housing means target housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.
Lessee means any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Lessor means any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Owner means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

Purchaser means an entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Reduction means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

Residential dwelling means:

(1) A single-family dwelling, including attached structures such as porches and stoops; or

(2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

Risk assessment means an on-site investigation to determine and report the existence, nature, severity, and location of lead-

based paint hazards in residential dwellings, including:

(1) Information gathering regarding the age and history of the housing and occupancy by children under age 6;

(2) Visual inspection;

(3) Limited wipe sampling or other environmental sampling techniques;

(4) Other activity as may be appropriate; and

(5) Provision of a report explaining the results of the investigation.

Secretary means the Secretary of Housing and Urban Development.

Seller means any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. The term "seller" also includes:

(1) An entity that transfers shares in a cooperatively owned project, in return for consideration; and

(2) An entity that transfers its interest in a leasehold, in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement, in return for consideration.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

TSCA means the Toxic Substances Control Act, 15 U.S.C. 2601.

0-bedroom dwelling means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

§ 745.107 Disclosure requirements for sellers and lessors.

(a) The following activities shall be completed before the purchaser or lessee is obligated under any contract to purchase or lease target housing that is not otherwise an exempt transaction pursuant to § 745.101. Nothing in this section implies a positive obligation on the seller or lessor to conduct any evaluation or reduction activities.

(1) The seller or lessor shall provide the purchaser or lessee with an EPA-approved lead hazard information pamphlet. Such pamphlets include the EPA document entitled Protect Your Family From Lead in Your Home (EPA 747-K-94-001) or an equivalent pamphlet that has been approved for use in that State by EPA.

(2) The seller or lessor shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. The seller or lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) The seller or lessor shall disclose to each agent the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased and the existence of any available records or reports pertaining to lead-based paint and/or lead-based paint hazards. The seller or lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(4) The seller or lessor shall provide the purchaser or lessee with any records or reports available to the seller or lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. This requirement includes records or reports regarding common areas. This requirement also includes records or reports regarding other residential dwellings in multifamily target housing, provided that such information is part of an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the target housing as a whole.

(b) If any of the disclosure activities identified in paragraph (a) of this section occurs after the purchaser or lessee has provided an offer to purchase or lease the housing, the seller or lessor shall complete the required disclosure activities prior to accepting the purchaser's or lessee's offer and allow the purchaser or lessee an opportunity to review the information and possibly amend the offer.

§ 745.110 Opportunity to conduct an evaluation.

(a) Before a purchaser is obligated under any contract to purchase target housing, the seller shall permit the purchaser a 10-day period (unless the parties mutually agree, in writing, upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

(b) Not withstanding paragraph (a) of this section, a purchaser may waive the opportunity to conduct the risk assessment or inspection by so indicating in writing.

§ 745.113 Certification and acknowledgment of disclosure.

(a) Seller requirements. Each contract to sell target housing shall include an attachment containing the following elements, in the language of the contract (e.g., English, Spanish):

(1) A Lead Warning Statement consisting of the following language:

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

(2) A statement by the seller disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being sold or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The seller shall also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) A list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in

the housing that have been provided to the purchaser. If no such records or reports are available, the seller shall so indicate.

(4) A statement by the purchaser affirming receipt of the information set out in paragraphs (a)(2) and (a)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2696.

(5) A statement by the purchaser that he/she has either:

(i) Received the opportunity to conduct the risk assessment or inspection required by § 745.110(a); or

(ii) Waived the opportunity.

(6) When one or more agents are involved in the transaction to sell target housing on behalf of the seller, a statement that:

(i) The agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d; and

(ii) The agent is aware of his/her duty to ensure compliance with the requirements of this subpart.

(7) The signatures of the sellers, agents, and purchasers certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signature.

(b) Lessor requirements. Each contract to lease target housing shall include, as an attachment or within the contract, the following elements, in the language of the contract (e.g., English, Spanish):

(1) A Lead Warning Statement with the following language:

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

(2) A statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) A list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate.

(4) A statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2696.

(5) When one or more agents are involved in the transaction to lease target housing on behalf of the lessor, a statement that:

(i) The agent has informed the lessor of the lessor s obligations under 42 U.S.C. 4852d; and

(ii) The agent is aware of his/her duty to ensure compliance with the requirements of this subpart.

(6) The signatures of the lessors, agents, and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

(c) Retention of Certification and Acknowledgment Information.

(1) The seller, and any agent, shall retain a copy of the completed attachment required under paragraph (a) of this section for no less than 3 years from the completion date of the sale. The lessor, and any agent, shall retain a copy of the completed attachment or lease contract containing the information required under paragraph (b) of this section for no less than 3 years from the commencement of the leasing period.

(2) This recordkeeping requirement is not intended to place any limitations on civil suits under the Act, or to otherwise affect a lessee's or purchaser's rights under the civil penalty provisions of 42 U.S.C. 4852d(b)(3).

(d) The seller, lessor, or agent shall not be responsible for the failure of a purchaser's or lessee's legal representative (where such representative receives all compensation from the purchaser or lessee) to transmit disclosure materials to the purchaser or lessee, provided that all required parties have completed and signed the necessary certification and acknowledgment language required under paragraphs (a) and (b) of this section.

§ 745.115 Agent responsibilities.

(a) Each agent shall ensure compliance with all requirements of this subpart. To ensure compliance, the agent shall:

(1) Inform the seller or lessor of his/her obligations under §§ 745.107, 745.110, and 745.113.

(2) Ensure that the seller or lessor has performed all activities required under §§ 745.107, 745.110, and 745.113, or personally ensure compliance with the requirements of §§ 745.107, 745.110, and 745.113.

(b) If the agent has complied with paragraph (a)(1) of this section, the agent shall not be liable for the failure to disclose to a purchaser or lessee the presence of lead-based paint and/or lead-based paint hazards known by a seller or lessor but not disclosed to the agent.

§ 745.118 Enforcement.

(a) Any person who knowingly fails to comply with any provision of this subpart shall be subject to civil monetary penalties in accordance with the provisions of 42 U.S.C. 3545 and 24 CFR part 30.

(b) The Secretary is authorized to take such action as may be necessary to enjoin any violation of this subpart in the appropriate Federal district court.

(c) Any person who knowingly violates the provisions of this subpart shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual.

(d) In any civil action brought for damages pursuant to 42 U.S.C. 4852d(b)(3), the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.

(e) Failure or refusal to comply with § 745.107 (disclosure requirements for sellers and lessors), § 745.110 (opportunity to conduct an evaluation), § 745.113 (certification and acknowledgment of disclosure), or § 745.115 (agent responsibilities) is a violation of 42 U.S.C. 4852d(b)(5) and of TSCA section 409 (15 U.S.C. 2689).

(f) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation. For purposes of enforcing this subpart, the penalty for each violation applicable under 15 U.S.C. 2615 shall be not more than $11,000 for all violations occurring after July 28, 1997; all violations occurring on or prior to that date are subject to a penalty not more than $10,000.

§ 745.119 Impact on State and local requirements.

Nothing in this subpart shall relieve a seller, lessor, or agent from any responsibility for compliance with State or local laws, ordinances, codes, or regulations governing notice or disclosure of known lead-based paint or lead-based paint hazards. Neither HUD nor EPA assumes any responsibility for ensuring compliance with such State or local requirements.

Subparts G to K. [Reserved]

Subparts M to P. [Reserved]

Subpart E. Residential Property Renovation (Refs & Annos)

§ 745.80 Purpose.

This subpart contains regulations developed under sections 402 and 406 of the Toxic Substances Control Act (15 U.S.C. 2682 and 2686) and applies to all renovations performed for compensation in target housing and child-occupied facilities. The purpose of this subpart is to ensure the following:

(a) Owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before these renovations begin; and

(b) Individuals performing renovations regulated in accordance with § 745.82 are properly trained; renovators and firms performing these renovations are certified; and the work practices in § 745.85 are followed during these renovations.

§ 745.81 Effective dates.

(a) Training, certification and accreditation requirements and work practice standards. The training, certification and accreditation requirements and work practice standards in this subpart are applicable in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part. The training, certification and accreditation requirements and work practice standards in this subpart will become effective as follows:

(1) Training programs. Effective June 23, 2008, no training program may provide, offer, or claim to provide training or refresher training for EPA certification as a renovator or a dust sampling technician without accreditation from EPA under § 745.225. Training programs may apply for accreditation under § 745.225 beginning April 22, 2009.

(2) Firms.

(i) Firms may apply for certification under § 745.89 beginning October 22, 2009.

(ii) On or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under § 745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a) or (c).

(3) Individuals. On or after April 22, 2010, all renovations must be directed by renovators certified in accordance with § 745.90(a) and performed by certified renovators or individuals trained in accordance with § 745.90(b)(2) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a) or (c).

(4) Work practices. On or after April 22, 2010, all renovations must be performed in accordance with the work practice standards in § 745.85 and the associated recordkeeping requirements in § 745.86(b)(6) and (b)(7) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a) or (c).

(5) The suspension and revocation provisions in § 745.91 are effective April 22, 2010.

(b) Renovation-specific pamphlet. Before December 22, 2008, renovators or firms performing renovations in States and Indian Tribal areas without an authorized program may provide owners and occupants with either of the following EPA pamphlets: Protect Your Family From Lead in Your Home or Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools. After that date, Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools must be used exclusively.

(c) Pre-Renovation Education Rule. With the exception of the requirement to use the pamphlet entitled Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools, the provisions of the Pre-Renovation Education Rule in this subpart have been in effect since June 1999.

§ 745.82 Applicability.

(a) This subpart applies to all renovations performed for compensation in target housing and child-occupied facilities, except for the following:

(1) Renovations in target housing or child-occupied facilities in which a written determination has been made by an inspector or risk assessor (certified pursuant to either Federal regulations at § 745.226 or a State or Tribal certification program authorized pursuant to § 745.324) that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter (mg/cm^2) or 0.5% by weight, where the firm performing the renovation has obtained a copy of the determination.

(2) Renovations in target housing or child-occupied facilities in which a certified renovator, using an EPA recognized test kit as defined in § 745.83 and following the kit manufacturer's instructions, has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm^2 or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(b) The information distribution requirements in § 745.84 do not apply to emergency renovations, which are renovation activities that were not planned but result from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage. Interim controls performed in response to an elevated blood lead level in a resident child are also emergency renovations. Emergency renovations other than interim controls are also exempt from the warning sign, containment, waste handling, training, and certification requirements in §§ 745.85, 745.89, and 745.90 to the extent necessary to respond to the

emergency. Emergency renovations are not exempt from the cleaning requirements of § 745.85(a)(5), which must be performed by certified renovators or individuals trained in accordance with § 745.90(b)(2), the cleaning verification requirements of § 745.85(b), which must be performed by certified renovators, and the recordkeeping requirements of § 745.86(b)(6) and (b)(7).

(c) The training requirements in § 745.90 and the work practice standards for renovation activities in § 745.85 apply to all renovations covered by this subpart, except for renovations in target housing for which the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age 6 resides there, no pregnant woman resides there, the housing is not a child-occupied facility, and the owner acknowledges that the renovation firm will not be required to use the work practices contained in EPA's renovation, repair, and painting rule. For the purposes of this section, a child resides in the primary residence of his or her custodial parents, legal guardians, and foster parents. A child also resides in the primary residence of an informal caretaker if the child lives and sleeps most of the time at the caretaker's residence.

§ 745.83 Definitions.

For purposes of this part, the definitions in § 745.103 as well as the following definitions apply:

Administrator means the Administrator of the Environmental Protection Agency.

Child-occupied facility means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

Cleaning verification card means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether post-renovation cleaning has been properly completed.

Component or building component means specific design or structural elements or fixtures of a building or residential dwelling that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: Ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as: Painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, windowsills or stools and troughs, casings, sashes and wells, and air conditioners.

Dry disposable cleaning cloth means a commercially available dry, electrostatically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

Firm means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other

business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

HEPA vacuum means a vacuum cleaner which has been designed with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particles of 0.3 microns with 99.97% efficiency. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it.

Interim controls means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

Minor repair and maintenance activities are activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by § 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

Pamphlet means the EPA pamphlet titled Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools developed under section 406(a) of TSCA for use in complying with section 406(b) of TSCA, or any State or Tribal pamphlet approved by EPA pursuant to 40 CFR 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information). Before December 22, 2008, the term "pamphlet" also means any pamphlet developed by EPA under section 406(a) of TSCA or any State or Tribal pamphlet approved by EPA pursuant to § 745.326.

Person means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

Recognized test kit means a commercially available kit recognized by EPA under § 745.88 as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0 milligrams per square centimeter, or more than 0.5% lead by weight, in a paint chip, paint powder, or painted surface.

Renovation means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 CFR 745.223). The term renovation includes (but is not limited to): The removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping), and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this subpart. The term renovation does not include minor repair and maintenance activities.

Renovator means an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized State or Tribal program.

Training hour means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.

Wet disposable cleaning cloth means a commercially available, pre-moistened white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

Wet mopping system means a device with the following characteristics: A long handle, a mop head designed to be used with disposable absorbent cleaning pads, a reservoir for cleaning solution, and a built-in mechanism for distributing or spraying the cleaning solution onto a floor, or a method of equivalent efficacy.

Work area means the area that the certified renovator establishes to contain the dust and debris generated by a renovation.

§ 745.84 Information distribution requirements.

(a) Renovations in dwelling units. No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must:

(1) Provide the owner of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) In addition to the requirements in paragraph (a)(1) of this section, if the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet; or certify in writing that a pamphlet has been delivered to the dwelling and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of a representative of the firm performing the renovation, and the date of signature.

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(b) Renovations in common areas. No more than 60 days before beginning renovation activities in common areas of multi-unit target housing, the firm performing the renovation must:

(1) Provide the owner with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) Comply with one of the following.

(i) Notify in writing, or ensure written notification of, each affected unit and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected

unit. The notice shall describe the general nature and locations of the planned renovation activities; the expected starting and ending dates; and a statement of how the occupant can obtain the pamphlet, at no charge, from the firm performing the renovation, or

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the occupants of all of the affected units. The signs must be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to occupants.

(3) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet.

(4) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, and the firm provided written initial notification to each affected unit, the firm performing the renovation must provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the firm performing the renovation initiates work beyond that which was described in the original notice.

(c) Renovations in child-occupied facilities. No more than 60 days before beginning renovation activities in any child-occupied facility, the firm performing the renovation must:

(1)(i) Provide the owner of the building with the pamphlet, and comply with one of the following:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(B) Obtain a certificate of mailing at least 7 days prior to the renovation.

(ii) If the child-occupied facility is not the owner of the building, provide an adult representative of the child-occupied facility with the pamphlet, and comply with one of the following:

(A) Obtain, from the adult representative, a written acknowledgment that the adult representative has received the pamphlet; or certify in writing that a pamphlet has been delivered to the facility and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult representative. Such certification must include the address of the child-occupied facility undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., representative refuses to sign), the signature of a representative of the firm performing the renovation, and the date of signature.

(B) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) Provide the parents and guardians of children using the child-occupied facility with the pamphlet and information describing the general nature and locations of the renovation and the anticipated completion date by complying with one of the following:

(i) Mail or hand-deliver the pamphlet and the renovation information to each parent or guardian of a child using the child-occupied facility.

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the

renovation and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians.

(3) The renovation firm must prepare, sign, and date a statement describing the steps performed to notify all parents and guardians of the intended renovation activities and to provide the pamphlet.

(d) Written acknowledgment. The written acknowledgments required by paragraphs (a)(1)(i), (a)(2)(i), (b)(1)(i), (c)(1)(i)(A), and (c)(1)(ii)(A) of this section must:

(1) Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature.

(2) Be either a separate sheet or part of any written contract or service agreement for the renovation.

(3) Be written in the same language as the text of the contract or agreement for the renovation or, in the case of non-owner occupied target housing, in the same language as the lease or rental agreement or the pamphlet.

§ 745.85 Work practice standards.

(a) Standards for renovation activities. Renovations must be performed by certified firms using certified renovators as directed in § 745.89. The responsibilities of certified firms are set forth in § 745.89(d) and the responsibilities of certified renovators are set forth in § 745.90(b).

(1) Occupant protection. Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed. If warning signs have been posted in accordance with 24 CFR 35.1345(b)(2) or 29 CFR 1926.62(m), additional signs are not required by this section.

(2) Containing the work area. Before beginning the renovation, the firm must isolate the work area so that no dust or debris leaves the work area while the renovation is being performed. In addition, the firm must maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that no dust or debris leaves the work area while the renovation is being performed. The firm must also ensure that containment is installed in such a manner that it does not interfere with occupant and worker egress in an emergency.

(i) Interior renovations. The firm must:

(A) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.

(B) Close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.

(C) Close windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable

material. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

(D) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

(E) Use precautions to ensure that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris before leaving the work area.

(ii) Exterior renovations. The firm must:

(A) Close all doors and windows within 20 feet of the renovation. On multi-story buildings, close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation.

(B) Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

(C) Cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering.

(D) In certain situations, the renovation firm must take extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate other buildings or other areas of the property or migrate to adjacent properties.

(3) Prohibited and restricted practices. The work practices listed below shall be prohibited or restricted during a renovation as follows:

(i) Open-flame burning or torching of lead-based paint is prohibited.

(ii) The use of machines that remove lead-based paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, is prohibited unless such machines are used with HEPA exhaust control.

(iii) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100 ° Fahrenheit.

(4) Waste from renovations--

(i) Waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered.

(ii) At the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

(iii) When the firm transports waste from renovation activities, the firm must contain the waste to prevent release of dust

and debris.

(5) Cleaning the work area. After the renovation has been completed, the firm must clean the work area until no dust, debris or residue remains.

(i) Interior and exterior renovations. The firm must:

(A) Collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag.

(B) Remove the protective sheeting. Mist the sheeting before folding it, fold the dirty side inward, and either tape shut to seal or seal in heavy-duty bags. Sheeting used to isolate contaminated rooms from non-contaminated rooms must remain in place until after the cleaning and removal of other sheeting. Dispose of the sheeting as waste.

(ii) Additional cleaning for interior renovations. The firm must clean all objects and surfaces in the work area and within 2 feet of the work area in the following manner, cleaning from higher to lower:

(A) Walls. Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA vacuum or wiping with a damp cloth.

(B) Remaining surfaces. Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs.

(C) Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth. Mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the 2-bucket mopping method, or using a wet mopping system.

(b) Standards for post-renovation cleaning verification--

(1) Interiors.

(i) A certified renovator must perform a visual inspection to determine whether dust, debris or residue is still present. If dust, debris or residue is present, these conditions must be removed by re-cleaning and another visual inspection must be performed.

(ii) After a successful visual inspection, a certified renovator must:

(A) Verify that each windowsill in the work area has been adequately cleaned, using the following procedure.

(1) Wipe the windowsill with a wet disposable cleaning cloth that is damp to the touch. If the cloth matches or is lighter than the cleaning verification card, the windowsill has been adequately cleaned.

(2) If the cloth does not match and is darker than the cleaning verification card, re-clean the windowsill as directed in paragraphs (a)(5)(ii)(B) and (a)(5)(ii)(C) of this section, then either use a new cloth or fold the used cloth in such a way that an unused surface is exposed, and wipe the surface again. If the cloth matches or is lighter than the cleaning verification card, that windowsill has been adequately cleaned.

(3) If the cloth does not match and is darker than the cleaning verification card, wait for 1 hour or until the surface has dried completely, whichever is longer.

(4) After waiting for the windowsill to dry, wipe the windowsill with a dry disposable cleaning cloth. After this wipe, the windowsill has been adequately cleaned.

(B) Wipe uncarpeted floors and countertops within the work area with a wet disposable cleaning cloth. Floors must be wiped using an application device with a long handle and a head to which the cloth is attached. The cloth must remain damp at all times while it is being used to wipe the surface for post-renovation cleaning verification. If the surface within the work area is greater than 40 square feet, the surface within the work area must be divided into roughly equal sections that are each less than 40 square feet. Wipe each such section separately with a new wet disposable cleaning cloth. If the cloth used to wipe each section of the surface within the work area matches the cleaning verification card, the surface has been adequately cleaned.

(1) If the cloth used to wipe a particular surface section does not match the cleaning verification card, re-clean that section of the surface as directed in paragraphs (a)(5)(ii)(B) and (a)(5)(ii)(C) of this section, then use a new wet disposable cleaning cloth to wipe that section again. If the cloth matches the cleaning verification card, that section of the surface has been adequately cleaned.

(2) If the cloth used to wipe a particular surface section does not match the cleaning verification card after the surface has been re-cleaned, wait for 1 hour or until the entire surface within the work area has dried completely, whichever is longer.

(3) After waiting for the entire surface within the work area to dry, wipe each section of the surface that has not yet achieved post-renovation cleaning verification with a dry disposable cleaning cloth. After this wipe, that section of the surface has been adequately cleaned.

(iii) When the work area passes the post-renovation cleaning verification, remove the warning signs.

(2) Exteriors. A certified renovator must perform a visual inspection to determine whether dust, debris or residue is still present on surfaces in and below the work area, including windowsills and the ground. If dust, debris or residue is present, these conditions must be eliminated and another visual inspection must be performed. When the area passes the visual inspection, remove the warning signs.

(c) Optional dust clearance testing. Cleaning verification need not be performed if the contract between the renovation firm and the person contracting for the renovation or another Federal, State, Territorial, Tribal, or local law or regulation requires:

(1) The renovation firm to perform dust clearance sampling at the conclusion of a renovation covered by this subpart.

(2) The dust clearance samples are required to be collected by a certified inspector, risk assessor or dust sampling technician.

(3) The renovation firm is required to re-clean the work area until the dust clearance sample results are below the clearance standards in § 745.227(e)(8) or any applicable State, Territorial, Tribal, or local standard.

(d) Activities conducted after post-renovation cleaning verification. Activities that do not disturb paint, such as applying paint to walls that have already been prepared, are not regulated by this subpart if they are conducted after post-renovation cleaning verification has been performed.

§ 745.86 Recordkeeping and reporting requirements.

(a) Firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this subpart for a period of 3 years following completion of the renovation. This 3-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation, including any applicable State or Tribal laws or regulations.

(b) Records that must be retained pursuant to paragraph (a) of this section shall include (where applicable):

(1) Reports certifying that a determination had been made by an inspector (certified pursuant to either Federal regulations at § 745.226 or an EPA-authorized State or Tribal certification program) that lead-based paint is not present on the components affected by the renovation, as described in § 745.82(b)(1).

(2) Signed and dated acknowledgments of receipt as described in §745.84(a)(1)(i), (a)(2)(i), (b)(1)(i), (c)(1)(i)(A), and (c)(1)(ii)(A).

(3) Certifications of attempted delivery as described in § 745.84(a)(2)(i) and (c)(1)(ii)(A).

(4) Certificates of mailing as described in § 745.84(a)(1)(ii), (a)(2)(ii), (b)(1)(ii), (c)(1)(i)(B), and (c)(1)(ii)(B).

(5) Records of notification activities performed regarding common area renovations, as described in § 745.84(b)(3) and (b)(4), and renovations in child-occupied facilities, as described in § 745.84(c)(2).

(6) Any signed and dated statements received from owner-occupants documenting that the requirements of § 745.85 do not apply. These statements must include a declaration that the renovation will occur in the owner's residence, a declaration that no children under age 6 reside there, a declaration that no pregnant woman resides there, a declaration that the housing is not a child-occupied facility, the address of the unit undergoing renovation, the owner's name, an acknowledgment by the owner that the work practices to be used during the renovation will not necessarily include all of the lead-safe work practices contained in EPA's renovation, repair, and painting rule, the signature of the owner, and the date of signature. These statements must be written in the same language as the text of the renovation contract, if any.

(7) Documentation of compliance with the requirements of § 745.85, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in § 745.85(a), and that the certified renovator performed the post-renovation cleaning verification described in § 745.85(b). If the renovation firm was unable to comply with all of the requirements of this rule due to an emergency as defined in § 745.82, the firm must document the nature of the emergency and the provisions of the rule that were not followed. This documentation must include a copy of the certified renovator's training certificate, and a certification by the certified renovator assigned to the project that:

(i) Training was provided to workers (topics must be identified for each worker).

(ii) Warning signs were posted at the entrances to the work area.

(iii) If test kits were used, that the specified brand of kits was used at the specified locations and that the results were as specified.

(iv) The work area was contained by:

(A) Removing or covering all objects in the work area (interiors).

(B) Closing and covering all HVAC ducts in the work area (interiors).

(C) Closing all windows in the work area (interiors) or closing all windows in and within 20 feet of the work area (exteriors).

(D) Closing and sealing all doors in the work area (interiors) or closing and sealing all doors in and within 20 feet of the work area (exteriors).

(E) Covering doors in the work area that were being used to allow passage but prevent spread of dust.

(F) Covering the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater (interiors) or covering the ground with plastic sheeting or other disposable impermeable material anchored to the building extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering, weighted down by heavy objects (exteriors).

(G) Installing (if necessary) vertical containment to prevent migration of dust and debris to adjacent property (exteriors).

(v) Waste was contained on-site and while being transported off-site.

(vi) The work area was properly cleaned after the renovation by:

(A) Picking up all chips and debris, misting protective sheeting, folding it dirty side inward, and taping it for removal.

(B) Cleaning the work area surfaces and objects using a HEPA vacuum and/or wet cloths or mops (interiors).

(vii) The certified renovator performed the post-renovation cleaning verification (the results of which must be briefly described, including the number of wet and dry cloths used).

(c) When test kits are used, the renovation firm must, within 30 days of the completion of the renovation, provide identifying information as to the manufacturer and model of the test kits used, a description of the components that were tested including their locations, and the test kit results to the person who contracted for the renovation.

(d) If dust clearance sampling is performed in lieu of cleaning verification as permitted by § 745.85(c), the renovation firm must provide, within 30 days of the completion of the renovation, a copy of the dust sampling report to the person who contracted for the renovation.

§ 745.87 Enforcement and inspections.

(a) Failure or refusal to comply with any provision of this subpart is a violation of TSCA section 409 (15 U.S.C. 2689).

(b) Failure or refusal to establish and maintain records or to make available or permit access to or copying of records, as required by this subpart, is a violation of TSCA sections 15 and 409 (15 U.S.C. 2614 and 2689).

(c) Failure or refusal to permit entry or inspection as required by 40 CFR 745.87 and TSCA section 11 (15 U.S.C. 2610) is a violation of sections 15 and 409 (15 U.S.C. 2614 and 2689).

(d) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation.

(e) Lead-based paint is assumed to be present at renovations covered by this subpart. EPA may conduct inspections and issue subpoenas pursuant to the provisions of TSCA section 11 (15 U.S.C. 2610) to ensure compliance with this subpart.

§ 745.88 Recognized test kits.

(a) Effective June 23, 2008, EPA recognizes the test kits that have been determined by National Institute of Standards and Technology research to meet the negative response criteria described in paragraph (c)(1) of this section. This recognition will last until EPA publicizes its recognition of the first test kit that meets both the negative response and positive response criteria in paragraph (c) of this section.

(b) No other test kits will be recognized until they are tested through EPA's Environmental Technology Verification Program or other equivalent EPA approved testing program.

(1) Effective September 1, 2008, to initiate the testing process, a test kit manufacturer must submit a sufficient number of kits, along with the instructions for using the kits, to EPA. The test kit manufacturer should first visit the following website for information on where to apply: http:// www.epa.gov/etv/howtoapply.html.

(2) After the kit has been tested through the Environmental Technology Verification Program or other equivalent approved EPA testing program, EPA will review the report to determine whether the required criteria have been met.

(3) Before September 1, 2010, test kits must meet only the negative response criteria in paragraph (c)(1) of this section. The recognition of kits that meet only this criteria will last until EPA publicizes its recognition of the first test kits that meets both of the criteria in paragraph (c) of this section.

(4) After September 1, 2010, test kits must meet both of the criteria in paragraph (c) of this section.

(5) If the report demonstrates that the kit meets the required criteria, EPA will issue a notice of recognition to the kit manufacturer, provide them with the report, and post the information on EPA's website.

(6) If the report demonstrates that the kit does not meet the required criteria, EPA will notify the kit manufacturer and provide them with the report.

(c) Response criteria--

(1) Negative response criteria. For paint containing lead at or above the regulated level, 1.0 mg/cm ^{2} or 0.5% by weight, a demonstrated probability (with 95% confidence) of a negative response less than or equal to 5% of the time.

(2) Positive response criteria. For paint containing lead below the regulated level, 1.0 mg/cm^2 or 0.5% by weight, a demonstrated probability (with 95% confidence) of a positive response less than or equal to 10% of the time.

§ 745.89 Firm certification.

(a) Initial certification.

(1) Firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust

sampling. To apply, a firm must submit to EPA a completed "Application for Firms," signed by an authorized agent of the firm, and pay at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.

(2) After EPA receives a firm's application, EPA will take one of the following actions within 90 days of the date the application is received:

(i) EPA will approve a firm's application if EPA determines that it is complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. An application is complete if it contains all of the information requested on the form and includes at least the correct amount of fees. When EPA approves a firm's application, EPA will issue the firm a certificate with an expiration date not more than 5 years from the date the application is approved. EPA certification allows the firm to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(ii) EPA will request a firm to supplement its application if EPA determines that the application is incomplete. If EPA requests a firm to supplement its application, the firm must submit the requested information or pay the additional fees within 30 days of the date of the request.

(iii) EPA will not approve a firm's application if the firm does not supplement its application in accordance with paragraph (a)(2)(ii) of this section or if EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. EPA will send the firm a letter giving the reason for not approving the application. EPA will not refund the application fees. A firm may reapply for certification at any time by filing a new, complete application that includes the correct amount of fees.

(b) Re-certification. To maintain its certification, a firm must be re-certified by EPA every 5 years.

(1) Timely and complete application. To be re-certified, a firm must submit a complete application for re-certification. A complete application for re-certification includes a completed "Application for Firms" which contains all of the information requested by the form and is signed by an authorized agent of the firm, noting on the form that it is submitted as a re-certification. A complete application must also include at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.

(i) An application for re-certification is timely if it is postmarked 90 days or more before the date the firm's current certification expires. If the firm's application is complete and timely, the firm's current certification will remain in effect until its expiration date or until EPA has made a final decision to approve or disapprove the re-certification application, whichever is later.

(ii) If the firm submits a complete re-certification application less than 90 days before its current certification expires, and EPA does not approve the application before the expiration date, the firm's current certification will expire and the firm will not be able to conduct renovations until EPA approves its re-certification application.

(iii) If the firm fails to obtain recertification before the firm's current certification expires, the firm must not perform renovations or dust sampling until it is certified anew pursuant to paragraph (a) of this section.

(2) EPA action on an application. After EPA receives a firm's application for re-certification, EPA will review the application and take one of the following actions within 90 days of receipt:

(i) EPA will approve a firm's application if EPA determines that it is timely and complete and that the environmental

compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. When EPA approves a firm's application for re-certification, EPA will issue the firm a new certificate with an expiration date 5 years from the date that the firm's current certification expires. EPA certification allows the firm to perform renovations or dust sampling covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(ii) EPA will request a firm to supplement its application if EPA determines that the application is incomplete.

(iii) EPA will not approve a firm's application if it is not received or is not complete as of the date that the firm's current certification expires, or if EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. EPA will send the firm a letter giving the reason for not approving the application. EPA will not refund the application fees. A firm may reapply for certification at any time by filing a new application and paying the correct amount of fees.

(c) Amendment of certification. A firm must amend its certification within 90 days of the date a change occurs to information included in the firm's most recent application. If the firm fails to amend its certification within 90 days of the date the change occurs, the firm may not perform renovations or dust sampling until its certification is amended.

(1) To amend a certification, a firm must submit a completed "Application for Firms," signed by an authorized agent of the firm, noting on the form that it is submitted as an amendment and indicating the information that has changed. The firm must also pay at least the correct amount of fees.

(2) If additional information is needed to process the amendment, or the firm did not pay the correct amount of fees, EPA will request the firm to submit the necessary information or fees. The firm's certification is not amended until the firm complies with the request.

(3) Amending a certification does not affect the certification expiration date.

(d) Firm responsibilities. Firms performing renovations must ensure that:

(1) All individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with § 745.90.

(2) A certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in § 745.90.

(3) All renovations performed by the firm are performed in accordance with the work practice standards in § 745.85.

(4) The pre-renovation education requirements of § 745.84 have been performed.

(5) The recordkeeping requirements of § 745.86 are met.

§ 745.90 Renovator certification and dust sampling technician certification.

(a) Renovator certification and dust sampling technician certification.

(1) To become a certified renovator or certified dust sampling technician, an individual must successfully complete the appropriate course accredited by EPA under § 745.225 or by a State or Tribal program that is authorized under subpart Q of this part. The course completion certificate serves as proof of certification. EPA renovator certification allows the

certified individual to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part. EPA dust sampling technician certification allows the certified individual to perform dust clearance sampling under § 745.85(c) in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(2) Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who have successfully completed an EPA, HUD, or EPA/HUD model renovation training course may take an accredited refresher renovator training course in lieu of the initial renovator training course to become a certified renovator.

(3) Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician.

(4) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by EPA under § 745.225 or by a State or Tribal program that is authorized under subpart Q of this part within 5 years of the date the individual completed the initial course described in paragraph (a)(1) of this section. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again.

(b) Renovator responsibilities. Certified renovators are responsible for ensuring compliance with § 745.85 at all renovations to which they are assigned. A certified renovator:

(1) Must perform all of the tasks described in § 745.85(b) and must either perform or direct workers who perform all of the tasks described in § 745.85(a).

(2) Must provide training to workers on the work practices they will be using in performing their assigned tasks.

(3) Must be physically present at the work site when the signs required by § 745.85(a)(1) are posted, while the work area containment required by § 745.85(a)(2) is being established, and while the work area cleaning required by § 745.85(a)(5) is performed.

(4) Must regularly direct work being performed by other individuals to ensure that the work practices are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area.

(5) Must be available, either on-site or by telephone, at all times that renovations are being conducted.

(6) When requested by the party contracting for renovation services, must use an acceptable test kit to determine whether components to be affected by the renovation contain lead-based paint.

(7) Must have with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate.

(8) Must prepare the records required by § 745.86(b)(7).

(c) Dust sampling technician responsibilities. When performing optional dust clearance sampling under § 745.85(c), a certified dust sampling technician:

(1) Must collect dust samples in accordance with § 745.227(e)(8), must send the collected samples to a laboratory

recognized by EPA under TSCA section 405(b), and must compare the results to the clearance levels in accordance with § 745.227(e)(8).

(2) Must have with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate.

§ 745.91 Suspending, revoking, or modifying an individual's or firm's certification.

(a)(1) Grounds for suspending, revoking, or modifying an individual's certification. EPA may suspend, revoke, or modify an individual's certification if the individual fails to comply with Federal lead-based paint statutes or regulations. EPA may also suspend, revoke, or modify a certified renovator's certification if the renovator fails to ensure that all assigned renovations comply with § 745.85. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(2) Grounds for suspending, revoking, or modifying a firm's certification. EPA may suspend, revoke, or modify a firm's certification if the firm:

(i) Submits false or misleading information to EPA in its application for certification or re-certification.

(ii) Fails to maintain or falsifies records required in § 745.86.

(iii) Fails to comply, or an individual performing a renovation on behalf of the firm fails to comply, with Federal lead-based paint statutes or regulations. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(b) Process for suspending, revoking, or modifying certification.

(1) Prior to taking action to suspend, revoke, or modify an individual's or firm's certification, EPA will notify the affected entity in writing of the following:

(i) The legal and factual basis for the proposed suspension, revocation, or modification.

(ii) The anticipated commencement date and duration of the suspension, revocation, or modification.

(iii) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification, or to receive certification in the future.

(iv) The opportunity and method for requesting a hearing prior to final suspension, revocation, or modification.

(2) If an individual or firm requests a hearing, EPA will:

(i) Provide the affected entity an opportunity to offer written statements in response to EPA's assertions of the legal and factual basis for its proposed action.

(ii) Appoint an impartial official of EPA as Presiding Officer to conduct the hearing.

(3) The Presiding Officer will:

(i) Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing.

(ii) Consider all relevant evidence, explanation, comment, and argument submitted.

(iii) Notify the affected entity in writing within 90 days of completion of the hearing of his or her decision and order. Such an order is a final agency action which may be subject to judicial review. The order must contain the commencement date and duration of the suspension, revocation, or modification.

(4) If EPA determines that the public health, interest, or welfare warrants immediate action to suspend the certification of any individual or firm prior to the opportunity for a hearing, it will:

(i) Notify the affected entity in accordance with paragraph (b)(1)(i) through (b)(1)(iii) of this section, explaining why it is necessary to suspend the entity's certification before an opportunity for a hearing.

(ii) Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.

(5) Any notice, decision, or order issued by EPA under this section, any transcript or other verbatim record of oral testimony, and any documents filed by a certified individual or firm in a hearing under this section will be available to the public, except as otherwise provided by section 14 of TSCA or by part 2 of this title. Any such hearing at which oral testimony is presented will be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under section 14 of TSCA or part 2 of this title.

(6) EPA will maintain a publicly available list of entities whose certification has been suspended, revoked, modified, or reinstated.

(7) Unless the decision and order issued under paragraph (b)(3)(iii) of this section specify otherwise:

(i) An individual whose certification has been suspended must take a refresher training course (renovator or dust sampling technician) in order to make his or her certification current.

(ii) An individual whose certification has been revoked must take an initial renovator or dust sampling technician course in order to become certified again.

(iii) A firm whose certification has been revoked must reapply for certification after the revocation ends in order to become certified again. If the firm's certification has been suspended and the suspension ends less than 5 years after the firm was initially certified or re-certified, the firm does not need to do anything to re-activate its certification.

Subpart L. Lead-Based Paint Activities (Refs & Annos)

§ 745.220 Scope and applicability.

(a) This subpart contains procedures and requirements for the accreditation of training programs for lead-based paint activities and renovations, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities. This subpart also requires that, except as discussed below, all lead-based paint activities, as defined in this subpart, be performed by certified individuals and firms.

(b) This subpart applies to all individuals and firms who are engaged in lead-based paint activities as defined in § 745.223, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level. This subpart applies only in those States or Indian Country that do not have an authorized State or Tribal program pursuant to § 745.324 of subpart Q.

(c) Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any property or facility, or engaged in any activity resulting, or which may result, in a lead-based paint hazard, and each officer, agent, or employee thereof shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural, including the requirements of this subpart regarding lead-based paint, lead-based paint activities, and lead-based paint hazards.

(d) While this subpart establishes specific requirements for performing lead-based paint activities should they be undertaken, nothing in this subpart requires that the owner or occupant undertake any particular lead-based paint activity.

§ 745.223 Definitions.

The definitions in subpart A apply to this subpart. In addition, the following definitions apply.

Abatement means any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

(1) The removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil, when lead-based paint hazards are present in such paint, dust or soil; and

(2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

(3) Specifically, abatement includes, but is not limited to:

(i) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that:

(A) Shall result in the permanent elimination of lead-based paint hazards; or

(B) Are designed to permanently eliminate lead-based paint hazards and are described in paragraphs (1) and (2) of this definition.

(ii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals certified in accordance with § 745.226, unless such projects are covered by paragraph (4) of this definition;

(iii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by paragraph (4) of this definition; or

(iv) Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in response to State or

local abatement orders.

(4) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

Accredited training program means a training program that has been accredited by EPA pursuant to § 745.225 to provide training for individuals engaged in lead-based paint activities.

Adequate quality control means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.

Business day means Monday through Friday with the exception of Federal holidays.

Certified firm means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which EPA has issued a certificate of approval pursuant to § 745.226(f).

Certified inspector means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to § 745.226 to conduct inspections. A certified inspector also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

Certified abatement worker means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to § 745.226 to perform abatements.

Certified project designer means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to § 745.226 to prepare abatement project designs, occupant protection plans, and abatement reports.

Certified risk assessor means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to § 745.226 to conduct risk assessments. A risk assessor also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

Certified supervisor means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to § 745.226 to supervise and conduct abatements, and to prepare occupant protection plans and abatement reports.

Child-occupied facility means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, 6 years of age or under, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visit lasts at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms.

Clearance levels are values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity.

Common area means a portion of a building that is generally accessible to all occupants. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary

fences.

Component or building component means specific design or structural elements or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as: painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells, and air conditioners.

Containment means a process to protect workers and the environment by controlling exposures to the lead-contaminated dust and debris created during an abatement.

Course agenda means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

Course test means an evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

Course test blue print means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

Deteriorated paint means paint that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of a building component.

Discipline means one of the specific types or categories of lead-based paint activities identified in this subpart for which individuals may receive training from accredited programs and become certified by EPA. For example, "abatement worker" is a discipline.

Distinct painting history means the application history, as indicated by its visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

Documented methodologies are methods or protocols used to sample for the presence of lead in paint, dust, and soil.

Elevated blood lead level (EBL) means an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20 <<mu>>g/dl (micrograms of lead per deciliter of whole blood) for a single venous test or of 15-19 <<mu>>g/dl in two consecutive tests taken 3 to 4 months apart.

Encapsulant means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating (with or without reinforcement materials) or an adhesively bonded covering material.

Encapsulation means the application of an encapsulant.

Enclosure means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

Guest instructor means an individual designated by the training program manager or principal instructor to provide

instruction specific to the lecture, hands-on activities, or work practice components of a course.

Hands-on skills assessment means an evaluation which tests the trainees' ability to satisfactorily perform the work practices and procedures identified in § 745.225(d), as well as any other skill taught in a training course.

Hazardous waste means any waste as defined in 40 CFR 261.3.

Inspection means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

Interim certification means the status of an individual who has successfully completed the appropriate training course in a discipline from an accredited training program, as defined by this section, but has not yet received formal certification in that discipline from EPA pursuant to § 745.226. Interim certifications expire 6 months after the completion of the training course, and is equivalent to a certificate for the 6-month period.

Interim controls means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

Lead-based paint means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

Lead-based paint activities means, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement, as defined in this subpart.

Lead-based paint activities courses means initial and refresher training courses (worker, supervisor, inspector, risk assessor, project designer) provided by accredited training programs.

Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the Administrator pursuant to TSCA section 403.

Lead-hazard screen is a limited risk assessment activity that involves limited paint and dust sampling as described in § 745.227(c).

Living area means any area of a residential dwelling used by one or more children age 6 and under, including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children's bedrooms.

Local government means a county, city, town, borough, parish, district, association, or other public body (including an agency comprised of two or more of the foregoing entities) created under State law.

Multi-family dwelling means a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

Nonprofit means an entity which has demonstrated to any branch of the Federal Government or to a State, municipal, tribal or territorial government, that no part of its net earnings inure to the benefit of any private shareholder or individual.

Paint in poor condition means more than 10 square feet of deteriorated paint on exterior components with large surface areas;

or more than 2 square feet of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors, doors); or more than 10 percent of the total surface area of the component is deteriorated on interior or exterior components with small surface areas (window sills, baseboards, soffits, trim).

Permanently covered soil means soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

Person means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal government.

Principal instructor means the individual who has the primary responsibility for organizing and teaching a particular course.

Recognized laboratory means an environmental laboratory recognized by EPA pursuant to TSCA section 405(b) as being capable of performing an analysis for lead compounds in paint, soil, and dust.

Reduction means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

Residential dwelling means (1) a detached single family dwelling unit, including attached structures such as porches and stoops; or (2) a single family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

Risk assessment means (1) an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and (2) the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

Start date means the first day of any lead-based paint activities training course or lead-based paint abatement activity.

Start date provided to EPA means the start date included in the original notification or the most recent start date provided to EPA in an updated notification.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children age 6 years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.

Training curriculum means an established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

Training hour means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and/or hands-on experience.

Training manager means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

Training provider means any organization or entity accredited under § 745.225 to offer lead-based paint activities courses.

Visual inspection for clearance testing means the visual examination of a residential dwelling or a child-occupied facility following an abatement to determine whether or not the abatement has been successfully completed.

Visual inspection for risk assessment means the visual examination of a residential dwelling or a child-occupied facility to determine the existence of deteriorated lead-based paint or other potential sources of lead-based paint hazards.

§ 745.225 Accreditation of training programs: target housing and child-occupied facilities.

(a) Scope.

(1) A training program may seek accreditation to offer courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. A training program may also seek accreditation to offer refresher courses for each of the above listed disciplines.

(2) Training programs may first apply to EPA for accreditation of their lead-based paint activities courses or refresher courses pursuant to this section on or after August 31, 1998. Training programs may first apply to EPA for accreditation of their renovator or dust sampling technician courses or refresher courses pursuant to this section on or after April 22, 2009.

(3) A training program must not provide, offer, or claim to provide EPA-accredited lead-based paint activities courses without applying for and receiving accreditation from EPA as required under paragraph (b) of this section on or after March 1, 1999. A training program must not provide, offer, or claim to provide EPA-accredited renovator or dust sampling technician courses without applying for and receiving accreditation from EPA as required under paragraph (b) of this section on or after June 23, 2008.

(b) Application process. The following are procedures a training program must follow to receive EPA accreditation to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses:

(1) A training program seeking accreditation shall submit a written application to EPA containing the following information:

(i) The training program's name, address, and telephone number.

(ii) A list of courses for which it is applying for accreditation. For the purposes of this section, courses taught in different languages are considered different courses, and each must independently meet the accreditation requirements.

(iii) A statement signed by the training program manager certifying that the training program meets the requirements established in paragraph (c) of this section. If a training program uses EPA-recommended model training materials, or training materials approved by a State or Indian Tribe that has been authorized by EPA under subpart Q of this part, the training program manager shall include a statement certifying that, as well.

(iv) If a training program does not use EPA-recommended model training materials or training materials approved by an authorized State or Indian Tribe, its application for accreditation shall also include:

(A) A copy of the student and instructor manuals, or other materials to be used for each course.

(B) A copy of the course agenda for each course.

(C) When applying for accreditation of a course in a language other than English, a signed statement from a qualified, independent translator that they had compared the course to the English language version and found the translation to be accurate.

(v) All training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training.

(B) A copy of the course test blueprint for each course.

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course.

(D) A copy of the quality control plan as described in paragraph (c)(9) of this section.

(2) If a training program meets the requirements in paragraph (c) of this section, then EPA shall approve the application for accreditation no more than 180 days after receiving a complete application from the training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, EPA may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. EPA may also request additional materials retained by the training program under paragraph (i) of this section. If a training program's application is disapproved, the program may reapply for accreditation at any time.

(3) A training program may apply for accreditation to offer courses or refresher courses in as many disciplines as it chooses. A training program may seek accreditation for additional courses at any time as long as the program can demonstrate that it meets the requirements of this section.

(4) A training program applying for accreditation must submit the appropriate fees in accordance with § 745.238.

(c) Requirements for the accreditation of training programs. For a training program to obtain accreditation from EPA to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses, the program must meet the following requirements:

(1) The training program shall employ a training manager who has:

(i) At least 2 years of experience, education, or training in teaching workers or adults; or

(ii) A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management or a related field; or

(iii) Two years of experience in managing a training program specializing in environmental hazards; and

(iv) Demonstrated experience, education, or training in the construction industry including: lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(2) The training manager shall designate a qualified principal instructor for each course who has:

(i) Demonstrated experience, education, or training in teaching workers or adults; and

(ii) Successfully completed at least 16 hours of any EPA-accredited or EPA-authorized State or Tribal-accredited lead-specific training; and

(iii) Demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(3) The principal instructor shall be responsible for the organization of the course and oversight of the teaching of all course material. The training manager may designate guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

(4) The following documents shall be recognized by EPA as evidence that training managers and principal instructors have the education, work experience, training requirements or demonstrated experience, specifically listed in paragraphs (c)(1) and (c)(2) of this section. This documentation need not be submitted with the accreditation application, but, if not submitted, shall be retained by the training program as required by the recordkeeping requirements contained in paragraph (i) of this section. Those documents include the following:

(i) Official academic transcripts or diploma as evidence of meeting the education requirements.

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

(iii) Certificates from train-the-trainer courses and lead-specific training courses, as evidence of meeting the training requirements.

(5) The training program shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.

(6) To become accredited in the following disciplines, the training program shall provide training courses that meet the following training hour requirements:

(i) The inspector course shall last a minimum of 24 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the inspector course are contained in paragraph (d)(1) of this section.

(ii) The risk assessor course shall last a minimum of 16 training hours, with a minimum of 4 hours devoted to hands-on training activities. The minimum curriculum requirements for the risk assessor course are contained in paragraph (d)(2) of this section.

(iii) The supervisor course shall last a minimum of 32 training hours, with a minimum of 8 hours devoted to hands-on activities. The minimum curriculum requirements for the supervisor course are contained in paragraph (d)(3) of this section.

(iv) The project designer course shall last a minimum of 8 training hours. The minimum curriculum requirements for the project designer course are contained in paragraph (d)(4) of this section.

(v) The abatement worker course shall last a minimum of 16 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the abatement worker course are contained in paragraph (d)(5) of this section.

(vi) The renovator course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the renovator course are contained in paragraph (d)(6) of this section. Hands-on training activities must cover renovation methods that minimize the creation of dust and lead-based paint hazards, interior and exterior containment and cleanup methods, and post-renovation cleaning verification.

(vii) The dust sampling technician course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the dust sampling technician course are contained in paragraph (d)(7) of this section. Hands-on training activities must cover dust sampling methodologies.

(7) For each course offered, the training program shall conduct either a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline. Each individual must successfully complete the hands-on skills assessment and receive a passing score on the course test to pass any course, or successfully complete a proficiency test.

(i) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or proficiency test to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in paragraph (d) of this section.

(ii) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics.

(iii) The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application.

(8) The training program shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:

(i) The name, a unique identification number, and address of the individual.

(ii) The name of the particular course that the individual completed.

(iii) Dates of course completion/test passage.

(iv) For initial inspector, risk assessor, project designer, supervisor, or abatement worker course completion certificates, the expiration date of interim certification, which is 6 months from the date of course completion.

(v) The name, address, and telephone number of the training program.

(vi) The language in which the course was taught.

(vii) For renovator and dust sampling technician course completion certificates, a photograph of the individual.

(9) The training manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(i) Procedures for periodic revision of training materials and the course test to reflect innovations in the field.

(ii) Procedures for the training manager's annual review of principal instructor competency.

(10) Courses offered by the training program must teach the work practice standards contained in § 745.85 or § 745.227, as applicable, in such a manner that trainees are provided with the knowledge needed to perform the renovations or lead-based paint activities they will be responsible for conducting.

(11) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in this section.

(12) The training manager shall allow EPA to audit the training program to verify the contents of the application for accreditation as described in paragraph (b) of this section.

(13) The training manager must provide notification of renovator, dust sampling technician, or lead-based paint activities courses offered.

(i) The training manager must provide EPA with notification of all renovator, dust sampling technician, or lead-based paint activities courses offered. The original notification must be received by EPA at least 7 business days prior to the start date of any renovator, dust sampling technician, or lead-based paint activities course.

(ii) The training manager must provide EPA updated notification when renovator, dust sampling technician, or lead-based paint activities courses will begin on a date other than the start date specified in the original notification, as follows:

(A) For renovator, dust sampling technician, or lead-based paint activities courses beginning prior to the start date provided to EPA, an updated notification must be received by EPA at least 7 business days before the new start date.

(B) For renovator, dust sampling technician, or lead-based paint activities courses beginning after the start date provided to EPA, an updated notification must be received by EPA at least 2 business days before the start date provided to EPA.

(iii) The training manager must update EPA of any change in location of renovator, dust sampling technician, or lead-based paint activities courses at least 7 business days prior to the start date provided to EPA.

(iv) The training manager must update EPA regarding any course cancellations, or any other change to the original notification. Updated notifications must be received by EPA at least 2 business days prior to the start date provided to EPA.

(v) Each notification, including updates, must include the following:

(A) Notification type (original, update, cancellation).

(B) Training program name, EPA accreditation number, address, and telephone number.

(C) Course discipline, type (initial/ refresher), and the language in which instruction will be given.

(D) Date(s) and time(s) of training.

(E) Training location(s) telephone number, and address.

(F) Principal instructor's name.

(G) Training manager's name and signature.

(vi) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Agency's Central Data Exchange (CDX). Written notification of renovator, dust sampling technician, or renovator, dust sampling technician, or lead-based paint activities course schedules can be accomplished by using either the sample form titled "Lead-Based Paint Activities Training Course Schedule" or a similar form containing the information required in paragraph (c)(13)(v) of this section. All written notifications must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that EPA receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1-800-424-LEAD(5323), or on the Internet at http://www.epa.gov/lead.

(vii) Renovator, dust sampling technician, or lead-based paint activities courses must not begin on a date, or at a location other than that specified in the original notification unless an updated notification identifying a new start date or location is submitted, in which case the course must begin on the new start date and/or location specified in the updated notification.

(viii) No training program shall provide renovator, dust sampling technician, or lead-based paint activities courses without first notifying EPA of such activities in accordance with the requirements of this paragraph.

(14) The training manager must provide notification following completion of lead-based paint activities courses.

(i) The training manager must provide EPA notification after the completion of any lead-based paint activities course. This notice must be received by EPA no later than 10 business days following course completion.

(ii) The notification must include the following:

(A) Training program name, EPA accreditation number, address, and telephone number.

(B) Course discipline and type (initial/refresher).

(C) Date(s) of training.

(D) The following information for each student who took the course:

(1) Name.

(2) Address.

(3) Date of birth.

(4) Course completion certificate number.

(5) Course test score.

(6) A digital photograph of the student.

(E) Training manager's name and signature.

(iii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Agency's Central Data Exchange (CDX). Written notification following lead-based paint activities training courses can be accomplished by using either the sample form titled "Lead-Based Paint Activities Training Course Follow-up" or a similar form containing the information required in paragraph (c)(14)(ii) of this section. All written notifications must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that EPA receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1-800-424-LEAD(5323), or on the Internet at http:// www.epa.gov/lead.

(d) Minimum training curriculum requirements. To become accredited to offer lead-based paint courses instruction in the specific disciplines listed below, training programs must ensure that their courses of study include, at a minimum, the following course topics. Requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course.

(1) Inspector.

(i) Role and responsibilities of an inspector.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and lead-based paint activities.

(iv) Lead-based paint inspection methods, including selection of rooms and components for sampling or testing.*

(v) Paint, dust, and soil sampling methodologies.*

(vi) Clearance standards and testing, including random sampling.*

(vii) Preparation of the final inspection report.*

(viii) Recordkeeping.

(2) Risk assessor.

(i) Role and responsibilities of a risk assessor.

(ii) Collection of background information to perform a risk assessment.

(iii) Sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food.

(iv) Visual inspection for the purposes of identifying potential sources of lead-based paint hazards.*

(v) Lead hazard screen protocol.

(vi) Sampling for other sources of lead exposure.*

(vii) Interpretation of lead-based paint and other lead sampling results, including all applicable State or Federal guidance or regulations pertaining to lead-based paint hazards.*

(viii) Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.

(ix) Preparation of a final risk assessment report.

(3) Supervisor.

(i) Role and responsibilities of a supervisor.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State, and local regulations and guidance that pertain to lead-based paint abatement.

(iv) Liability and insurance issues relating to lead-based paint abatement.

(v) Risk assessment and inspection report interpretation.*

(vi) Development and implementation of an occupant protection plan and abatement report.

(vii) Lead-based paint hazard recognition and control.*

(viii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.*

(ix) Interior dust abatement/cleanup or lead-based paint hazard control and reduction methods.*

(x) Soil and exterior dust abatement or lead-based paint hazard control and reduction methods.*

(xi) Clearance standards and testing.

(xii) Cleanup and waste disposal.

(xiii) Recordkeeping.

(4) Project designer.

(i) Role and responsibilities of a project designer.

(ii) Development and implementation of an occupant protection plan for large scale abatement projects.

(iii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large-scale abatement projects.

(iv) Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects.

(v) Clearance standards and testing for large scale abatement projects.

(vi) Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large scale abatement projects.

(5) Abatement worker.

(i) Role and responsibilities of an abatement worker.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State and local regulations and guidance that pertain to lead-based paint abatement.

(iv) Lead-based paint hazard recognition and control.*

(v) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.*

(vi) Interior dust abatement methods/cleanup or lead-based paint hazard reduction.*

(vii) Soil and exterior dust abatement methods or lead-based paint hazard reduction.*

(6) Renovator.

(i) Role and responsibility of a renovator.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on EPA, HUD, OSHA, and other Federal, State, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(iv) Procedures for using acceptable test kits to determine whether paint is lead-based paint.

(v) Renovation methods to minimize the creation of dust and lead-based paint hazards.

(vi) Interior and exterior containment and cleanup methods.

(vii) Methods to ensure that the renovation has been properly completed, including cleaning verification, and clearance testing.

(viii) Waste handling and disposal.

(ix) Providing on-the-job training to other workers.

(x) Record preparation.

(7) Dust sampling technician.

(i) Role and responsibility of a dust sampling technician.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(iv) Dust sampling methodologies.

(v) Clearance standards and testing.

(vi) Report preparation.

(e) Requirements for the accreditation of refresher training programs. A training program may seek accreditation to offer refresher training courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. To obtain EPA accreditation to offer refresher training, a training program must meet the following minimum requirements:

(1) Each refresher course shall review the curriculum topics of the full-length courses listed under paragraph (d) of this section, as appropriate. In addition, to become accredited to offer refresher training courses, training programs shall ensure that their courses of study include, at a minimum, the following:

(i) An overview of current safety practices relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline.

(ii) Current laws and regulations relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline.

(iii) Current technologies relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline.

(2) Refresher courses for inspector, risk assessor, supervisor, and abatement worker must last a minimum of 8 training hours. Refresher courses for project designer, renovator, and dust sampling technician must last a minimum of 4 training hours.

(3) For each course offered, the training program shall conduct a hands-on assessment (if applicable), and at the completion of the course, a course test.

(4) A training program may apply for accreditation of a refresher course concurrently with its application for accreditation of the corresponding training course as described in paragraph (b) of this section. If so, EPA shall use the approval procedure described in paragraph (b) of this section. In addition, the minimum requirements contained in

paragraphs (c) (except for the requirements in paragraph (c)(6)), and (e)(1), (e)(2) and (e)(3) of this section shall also apply.

(5) A training program seeking accreditation to offer refresher training courses only shall submit a written application to EPA containing the following information:

(i) The refresher training program's name, address, and telephone number.

(ii) A list of courses for which it is applying for accreditation.

(iii) A statement signed by the training program manager certifying that the refresher training program meets the minimum requirements established in paragraph (c) of this section, except for the requirements in paragraph (c)(6) of this section. If a training program uses EPA-developed model training materials, or training materials approved by a State or Indian Tribe that has been authorized by EPA under § 745.324 to develop its refresher training course materials, the training manager shall include a statement certifying that, as well.

(iv) If the refresher training course materials are not based on EPA-developed model training materials or training materials approved by an authorized State or Indian Tribe, the training program's application for accreditation shall include:

(A) A copy of the student and instructor manuals to be used for each course.

(B) A copy of the course agenda for each course.

(v) All refresher training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training.

(B) A copy of the course test blueprint for each course.

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course (if applicable).

(D) A copy of the quality control plan as described in paragraph (c)(9) of this section.

(vi) The requirements in paragraphs (c)(1) through (c)(5), and (c)(7) through (c)(14) of this section apply to refresher training providers.

(vii) If a refresher training program meets the requirements listed in this paragraph, then EPA shall approve the application for accreditation no more than 180 days after receiving a complete application from the refresher training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, EPA may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. EPA may also request additional materials retained by the refresher training program under paragraph (i) of this section. If a refresher training program's application is disapproved, the program may reapply for accreditation at any time.

(f) Re-accreditation of training programs.

(1) Unless re-accredited, a training program's accreditation (including refresher training accreditation) shall expire 4

years after the date of issuance. If a training program meets the requirements of this section, the training program shall be re-accredited.

(2) A training program seeking re-accreditation shall submit an application to EPA no later than 180 days before its accreditation expires. If a training program does not submit its application for re-accreditation by that date, EPA cannot guarantee that the program will be re-accredited before the end of the accreditation period.

(3) The training program's application for re-accreditation shall contain:

(i) The training program's name, address, and telephone number.

(ii) A list of courses for which it is applying for re-accreditation.

(iii) A description of any changes to the training facility, equipment or course materials since its last application was approved that adversely affects the students ability to learn.

(iv) A statement signed by the program manager stating:

(A) That the training program complies at all times with all requirements in paragraphs (c) and (e) of this section, as applicable; and

(B) The recordkeeping and reporting requirements of paragraph (i) of this section shall be followed.

(v) A payment of appropriate fees in accordance with § 745.238.

(4) Upon request, the training program shall allow EPA to audit the training program to verify the contents of the application for re-accreditation as described in paragraph (f)(3) of this section.

(g) Suspension, revocation, and modification of accredited training programs.

(1) EPA may, after notice and an opportunity for hearing, suspend, revoke, or modify training program accreditation (including refresher training accreditation) if a training program, training manager, or other person with supervisory authority over the training program has:

(i) Misrepresented the contents of a training course to EPA and/or the student population.

(ii) Failed to submit required information or notifications in a timely manner.

(iii) Failed to maintain required records.

(iv) Falsified accreditation records, instructor qualifications, or other accreditation-related information or documentation.

(v) Failed to comply with the training standards and requirements in this section.

(vi) Failed to comply with Federal, State, or local lead-based paint statutes or regulations.

(vii) Made false or misleading statements to EPA in its application for accreditation or re-accreditation which EPA relied upon in approving the application.

(2) In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(h) Procedures for suspension, revocation or modification of training program accreditation.

(1) Prior to taking action to suspend, revoke, or modify the accreditation of a training program, EPA shall notify the affected entity in writing of the following:

(i) The legal and factual basis for the suspension, revocation, or modification.

(ii) The anticipated commencement date and duration of the suspension, revocation, or modification.

(iii) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification, or to receive accreditation in the future.

(iv) The opportunity and method for requesting a hearing prior to final EPA action to suspend, revoke or modify accreditation.

(v) Any additional information, as appropriate, which EPA may provide.

(2) If a hearing is requested by the accredited training program, EPA shall:

(i) Provide the affected entity an opportunity to offer written statements in response to EPA's assertions of the legal and factual basis for its proposed action, and any other explanations, comments, and arguments it deems relevant to the proposed action.

(ii) Provide the affected entity such other procedural opportunities as EPA may deem appropriate to ensure a fair and impartial hearing.

(iii) Appoint an official of EPA as Presiding Officer to conduct the hearing. No person shall serve as Presiding Officer if he or she has had any prior connection with the specific matter.

(3) The Presiding Officer appointed pursuant to paragraph (h)(2) of this section shall:

(i) Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing.

(ii) Consider all relevant evidence, explanation, comment, and argument submitted.

(iii) Notify the affected entity in writing within 90 days of completion of the hearing of his or her decision and order. Such an order is a final agency action which may be subject to judicial review.

(4) If EPA determines that the public health, interest, or welfare warrants immediate action to suspend the accreditation of any training program prior to the opportunity for a hearing, it shall:

(i) Notify the affected entity of its intent to immediately suspend training program accreditation for the reasons listed in paragraph (g)(1) of this section. If a suspension, revocation, or modification notice has not previously been issued

pursuant to paragraph (g)(1) of this section, it shall be issued at the same time the emergency suspension notice is issued.

(ii) Notify the affected entity in writing of the grounds for the immediate suspension and why it is necessary to suspend the entity's accreditation before an opportunity for a suspension, revocation or modification hearing.

(iii) Notify the affected entity of the anticipated commencement date and duration of the immediate suspension.

(iv) Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.

(5) Any notice, decision, or order issued by EPA under this section, any transcripts or other verbatim record of oral testimony, and any documents filed by an accredited training program in a hearing under this section shall be available to the public, except as otherwise provided by section 14 of TSCA or by part 2 of this title. Any such hearing at which oral testimony is presented shall be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under section 14 of TSCA or part 2 of this title.

(6) The public shall be notified of the suspension, revocation, modification or reinstatement of a training program's accreditation through appropriate mechanisms.

(7) EPA shall maintain a list of parties whose accreditation has been suspended, revoked, modified or reinstated.

(i) Training program recordkeeping requirements.

(1) Accredited training programs shall maintain, and make available to EPA, upon request, the following records:

(i) All documents specified in paragraph (c)(4) of this section that demonstrate the qualifications listed in paragraphs (c)(1) and (c)(2) of this section of the training manager and principal instructors.

(ii) Current curriculum/course materials and documents reflecting any changes made to these materials.

(iii) The course test blueprint.

(iv) Information regarding how the hands-on assessment is conducted including, but not limited to:

(A) Who conducts the assessment.

(B) How the skills are graded.

(C) What facilities are used.

(D) The pass/fail rate.

(v) The quality control plan as described in paragraph (c)(9) of this section.

(vi) Results of the students' hands-on skills assessments and course tests, and a record of each student's course completion certificate.

(vii) Any other material not listed above in paragraphs (i)(1)(i) through (i)(1)(vi) of this section that was submitted to EPA as part of the program's application for accreditation.

(2) The training program shall retain these records at the address specified on the training program accreditation application (or as modified in accordance with paragraph (i)(3) of this section for a minimum of 3 years and 6 months.

(3) The training program shall notify EPA in writing within 30 days of changing the address specified on its training program accreditation application or transferring the records from that address.

§ 745.226 Certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities.

(a) Certification of individuals.

(1) Individuals seeking certification by EPA to engage in lead-based paint activities must either:

(i) Submit to EPA an application demonstrating that they meet the requirements established in paragraphs (b) or (c) of this section for the particular discipline for which certification is sought; or

(ii) Submit to EPA an application with a copy of a valid lead-based paint activities certification (or equivalent) from a State or Tribal program that has been authorized by EPA pursuant to subpart Q of this part.

(2) Individuals may first apply to EPA for certification to engage in lead-based paint activities pursuant to this section on or after March 1, 1999.

(3) Following the submission of an application demonstrating that all the requirements of this section have been met, EPA shall certify an applicant as an inspector, risk assessor, supervisor, project designer, or abatement worker, as appropriate.

(4) Upon receiving EPA certification, individuals conducting lead-based paint activities shall comply with the work practice standards for performing the appropriate lead-based paint activities as established in § 745.227.

(5) It shall be a violation of TSCA for an individual to conduct any of the lead-based paint activities described in § 745.227 after March 1, 2000, if that individual has not been certified by EPA pursuant to this section to do so.

(6) Individuals applying for certification must submit the appropriate fees in accordance with § 745.238.

(b) Inspector, risk assessor or supervisor.

(1) To become certified by EPA as an inspector, risk assessor, or supervisor, pursuant to paragraph (a)(1)(i) of this section, an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.

(ii) Pass the certification exam in the appropriate discipline offered by EPA; and,

(iii) Meet or exceed the following experience and/or education requirements:

(A) Inspectors.

(1) No additional experience and/or education requirements.

(2) [Reserved]

(B) Risk assessors.

(1) Successful completion of an accredited training course for inspectors; and

(2) Bachelor's degree and 1 year of experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction), or an Associates degree and 2 years experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction); or

(3) Certification as an industrial hygienist, professional engineer, registered architect and/or certification in a related engineering/health/environmental field (e.g., safety professional, environmental scientist); or

(4) A high school diploma (or equivalent), and at least 3 years of experience in a related field (e.g., lead, asbestos, environmental remediation work or construction).

(C) Supervisor:

(1) One year of experience as a certified lead-based paint abatement worker; or

(2) At least 2 years of experience in a related field (e.g., lead, asbestos, or environmental remediation work) or in the building trades.

(2) The following documents shall be recognized by EPA as evidence of meeting the requirements listed in (b)(2)(iii) of this paragraph:

(i) Official academic transcripts or diploma, as evidence of meeting the education requirements.

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

(iii) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(3) In order to take the certification examination for a particular discipline an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.

(ii) Meet or exceed the education and/or experience requirements in paragraph (b)(1)(iii) of this section.

(4) The course completion certificate shall serve as interim certification for an individual until the next available opportunity to take the certification exam. Such interim certification shall expire 6 months after issuance.

(5) After passing the appropriate certification exam and submitting an application demonstrating that he/she meets the appropriate training, education, and/or experience prerequisites described in paragraph (b)(1) of this section, an individual shall be issued a certificate by EPA. To maintain certification, an individual must be re-certified as described in paragraph (e) of this section.

(6) An individual may take the certification exam no more than three times within 6 months of receiving a course completion certificate.

(7) If an individual does not pass the certification exam and receive a certificate within 6 months of receiving his/her course completion certificate, the individual must retake the appropriate course from an accredited training program before reapplying for certification from EPA.

(c) Abatement worker and project designer.

(1) To become certified by EPA as an abatement worker or project designer, pursuant to paragraph (a)(1)(i) of this section, an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.

(ii) Meet or exceed the following additional experience and/or education requirements:

(A) Abatement workers.

(1) No additional experience and/or education requirements.

(2) [Reserved]

(B) Project designers.

(1) Successful completion of an accredited training course for supervisors.

(2) Bachelor's degree in engineering, architecture, or a related profession, and 1 year of experience in building construction and design or a related field; or

(3) Four years of experience in building construction and design or a related field.

(2) The following documents shall be recognized by EPA as evidence of meeting the requirements listed in this paragraph:

(i) Official academic transcripts or diploma, as evidence of meeting the education requirements.

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

(iii) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(3) The course completion certificate shall serve as an interim certification until certification from EPA is received, but shall be valid for no more than 6 months from the date of completion.

(4) After successfully completing the appropriate training courses and meeting any other qualifications described in paragraph (c)(1) of this section, an individual shall be issued a certificate from EPA. To maintain certification, an individual must be re-certified as described in paragraph (e) of this section.

(d) Certification based on prior training.

(1) Any individual who received training in a lead-based paint activity between October 1, 1990, and March 1, 1999 shall be eligible for certification by EPA under the alternative procedures contained in this paragraph. Individuals who have received lead-based paint activities training at an EPA-authorized State or Tribal accredited training program shall also be eligible for certification by EPA under the following alternative procedures:

(i) Applicants for certification as an inspector, risk assessor, or supervisor shall:

(A) Demonstrate that the applicant has successfully completed training or on-the-job training in the conduct of a lead-based paint activity.

(B) Demonstrate that the applicant meets or exceeds the education and/or experience requirements in paragraph (b)(1)(iii) of this section.

(C) Successfully complete an accredited refresher training course for the appropriate discipline.

(D) Pass a certification exam administered by EPA for the appropriate discipline.

(ii) Applicants for certification as an abatement worker or project designer shall:

(A) Demonstrate that the applicant has successfully completed training or on-the-job training in the conduct of a lead-based paint activity.

(B) Demonstrate that the applicant meets the education and/or experience requirements in paragraphs (c)(1) of this section; and

(C) Successfully complete an accredited refresher training course for the appropriate discipline.

(2) Individuals shall have until March 1, 2000, to apply to EPA for certification under the above procedures. After that date, all individuals wishing to obtain certification must do so through the procedures described in paragraph (a), and paragraph (b) or (c) of this section, according to the discipline for which certification is being sought.

(e) Re-certification.

(1) To maintain certification in a particular discipline, a certified individual shall apply to and be re-certified by EPA in that discipline by EPA either:

(i) Every 3 years if the individual completed a training course with a course test and hands-on assessment; or

(ii) every 5 years if the individual completed a training course with a proficiency test.

(2) An individual shall be re-certified if the individual successfully completes the appropriate accredited refresher training course and submits a valid copy of the appropriate refresher course completion certificate.

(3) Individuals applying for re-certification must submit the appropriate fees in accordance with § 745.238.

(f) Certification of firms.

(1) All firms which perform or offer to perform any of the lead-based paint activities described in § 745.227 after March 1, 2000, shall be certified by EPA.

(2) A firm seeking certification shall submit to EPA a letter attesting that the firm shall only employ appropriately certified employees to conduct lead-based paint activities, and that the firm and its employees shall follow the work practice standards in § 745.227 for conducting lead-based paint activities.

(3) From the date of receiving the firm's letter requesting certification, EPA shall have 90 days to approve or disapprove the firm's request for certification. Within that time, EPA shall respond with either a certificate of approval or a letter describing the reasons for a disapproval.

(4) The firm shall maintain all records pursuant to the requirements in § 745.227.

(5) Firms may first apply to EPA for certification to engage in lead-based paint activities pursuant to this section on or after March 1, 1999.

(6) Firms applying for certification must submit the appropriate fees in accordance with § 745.238.

(7) To maintain certification a firm shall submit appropriate fees in accordance with § 745.238 every 3 years.

(g) Suspension, revocation, and modification of certifications of individuals engaged in lead-based paint activities.

(1) EPA may, after notice and opportunity for hearing, suspend, revoke, or modify an individual's certification if an individual has:

(i) Obtained training documentation through fraudulent means.

(ii) Gained admission to and completed an accredited training program through misrepresentation of admission requirements.

(iii) Obtained certification through misrepresentation of certification requirements or related documents dealing with education, training, professional registration, or experience.

(iv) Performed work requiring certification at a job site without having proof of certification.

(v) Permitted the duplication or use of the individual's own certificate by another.

(vi) Performed work for which certification is required, but for which appropriate certification has not been received.

(vii) Failed to comply with the appropriate work practice standards for lead-based paint activities at § 745.227.

(viii) Failed to comply with Federal, State, or local lead-based paint statutes or regulations.

(2) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

(h) Suspension, revocation, and modification of certifications of firms engaged in lead-based paint activities.

(1) EPA may, after notice and opportunity for hearing, suspend, revoke, or modify a firm's certification if a firm has:

(i) Performed work requiring certification at a job site with individuals who are not certified.

(ii) Failed to comply with the work practice standards established in § 745.227.

(iii) Misrepresented facts in its letter of application for certification to EPA.

(iv) Failed to maintain required records.

(v) Failed to comply with Federal, State, or local lead-based paint statutes or regulations.

(2) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

(i) Procedures for suspension, revocation, or modification of the certification of individuals or firms.

(1) If EPA decides to suspend, revoke, or modify the certification of any individual or firm, it shall notify the affected entity in writing of the following:

(i) The legal and factual basis for the suspension, revocation, or modification.

(ii) The commencement date and duration of the suspension, revocation, or modification.

(iii) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification or to receive certification in the future.

(iv) The opportunity and method for requesting a hearing prior to final EPA action to suspend, revoke, or modify certification.

(v) Any additional information, as appropriate, which EPA may provide.

(2) If a hearing is requested by the certified individual or firm, EPA shall:

(i) Provide the affected entity an opportunity to offer written statements in response to EPA's assertion of the legal and factual basis and any other explanations, comments, and arguments it deems relevant to the proposed action.

(ii) Provide the affected entity such other procedural opportunities as EPA may deem appropriate to ensure a fair and impartial hearing.

(iii) Appoint an official of EPA as Presiding Officer to conduct the hearing. No person shall serve as Presiding Officer if he or she has had any prior connection with the specific matter.

(3) The Presiding Officer shall:

(i) Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing;

(ii) Consider all relevant evidence, explanation, comment, and argument submitted; and

(iii) Notify the affected entity in writing within 90 days of completion of the hearing of his or her decision and order. Such an order is a final EPA action subject to judicial review.

(4) If EPA determines that the public health, interest, or welfare warrants immediate action to suspend the certification of any individual or firm prior to the opportunity for a hearing, it shall:

(i) Notify the affected entity of its intent to immediately suspend certification for the reasons listed in paragraph (h)(1) of this section. If a suspension, revocation, or modification notice has not previously been issued, it shall be issued at the same time the immediate suspension notice is issued.

(ii) Notify the affected entity in writing of the grounds upon which the immediate suspension is based and why it is necessary to suspend the entity's accreditation before an opportunity for a hearing to suspend, revoke, or modify the individual's or firm's certification.

(iii) Notify the affected entity of the commencement date and duration of the immediate suspension.

(iv) Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.

(5) Any notice, decision, or order issued by EPA under this section, transcript or other verbatim record of oral testimony, and any documents filed by a certified individual or firm in a hearing under this section shall be available to the public, except as otherwise provided by section 14 of TSCA or by part 2 of this title. Any such hearing at which oral testimony is presented shall be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under section 14 of TSCA or part 2 of this title.

§ 745.227 Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities.

(a) Effective date, applicability, and terms.

(1) Beginning on March 1, 2000, all lead-based paint activities shall be performed pursuant to the work practice standards contained in this section.

(2) When performing any lead-based paint activity described by the certified individual as an inspection, lead-hazard screen, risk assessment or abatement, a certified individual must perform that activity in compliance with the appropriate requirements below.

(3) Documented methodologies that are appropriate for this section are found in the following: The U.S. Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing; the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil; the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 7474-R-95-001); Regulations, guidance, methods or protocols issued by States and Indian Tribes that have been authorized by EPA; and other equivalent methods and guidelines.

(4) Clearance levels are appropriate for the purposes of this section may be found in the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead Contaminated Soil or other equivalent guidelines.

(b) Inspection.

(1) An inspection shall be conducted only by a person certified by EPA as an inspector or risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(2) When conducting an inspection, the following locations shall be selected according to documented methodologies and tested for the presence of lead-based paint:

(i) In a residential dwelling and child-occupied facility, each component with a distinct painting history and each exterior component with a distinct painting history shall be tested for lead-based paint, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint; and

(ii) In a multi-family dwelling or child-occupied facility, each component with a distinct painting history in every common area, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint.

(3) Paint shall be sampled in the following manner:

(i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

(ii) All collected paint chip samples shall be analyzed according to paragraph (f) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(4) The certified inspector or risk assessor shall prepare an inspection report which shall include the following information:

(i) Date of each inspection.

(ii) Address of building.

(iii) Date of construction.

(iv) Apartment numbers (if applicable).

(v) Name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility.

(vi) Name, signature, and certification number of each certified inspector and/or risk assessor conducting testing.

(vii) Name, address, and telephone number of the certified firm employing each inspector and/or risk assessor, if applicable.

(viii) Each testing method and device and/or sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any x-ray fluorescence (XRF) device.

(ix) Specific locations of each painted component tested for the presence of lead-based paint.

(x) The results of the inspection expressed in terms appropriate to the sampling method used.

(c) Lead hazard screen.

(1) A lead hazard screen shall be conducted only by a person certified by EPA as a risk assessor.

(2) If conducted, a lead hazard screen shall be conducted as follows:

(i) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected.

(ii) A visual inspection of the residential dwelling or child-occupied facility shall be conducted to:

(A) Determine if any deteriorated paint is present, and

(B) Locate at least two dust sampling locations.

(iii) If deteriorated paint is present, each surface with deteriorated paint, which is determined, using documented methodologies, to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead.

(iv) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways or stairwells where one or more children, age 6 and under, are most likely to come in contact with dust.

(v) In multi-family dwellings and child-occupied facilities, in addition to the floor and window samples required in paragraph (c)(1)(iii) of this section, the risk assessor shall also collect composite dust samples from common areas where one or more children, age 6 and under, are most likely to come into contact with dust.

(3) Dust samples shall be collected and analyzed in the following manner:

(i) All dust samples shall be taken using documented methodologies that incorporate adequate quality control procedures.

(ii) All collected dust samples shall be analyzed according to paragraph (f) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(4) Paint shall be sampled in the following manner:

(i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

(ii) All collected paint chip samples shall be analyzed according to paragraph (f) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(5) The risk assessor shall prepare a lead hazard screen report, which shall include the following information:

(i) The information required in a risk assessment report as specified in paragraph (d) of this section, including paragraphs (d)(11)(i) through (d)(11)(xiv), and excluding paragraphs (d)(11)(xv) through (d)(11)(xviii) of this section. Additionally, any background information collected pursuant to paragraph (c)(2)(i) of this section shall be included in the risk assessment report; and

(ii) Recommendations, if warranted, for a follow-up risk assessment, and as appropriate, any further actions.

(d) Risk assessment.

(1) A risk assessment shall be conducted only by a person certified by EPA as a risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(2) A visual inspection for risk assessment of the residential dwelling or child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential lead-based paint hazards.

(3) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected.

(4) The following surfaces which are determined, using documented methodologies, to have a distinct painting history, shall be tested for the presence of lead:

(i) Each friction surface or impact surface with visibly deteriorated paint; and

(ii) All other surfaces with visibly deteriorated paint.

(5) In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sill(s) and floor shall be collected and analyzed for lead concentration in all living areas where one or more children, age 6 and under, are most likely to come into contact with dust.

(6) For multi-family dwellings and child-occupied facilities, the samples required in paragraph (d)(4) of this section shall be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in the following locations:

(i) Common areas adjacent to the sampled residential dwelling or child-occupied facility; and

(ii) Other common areas in the building where the risk assessor determines that one or more children, age 6 and under, are likely to come into contact with dust.

(7) For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in each room, hallway or stairwell utilized by one or more children, age 6 and under, and in other common areas in the child-occupied facility where one or more children, age 6 and under, are likely to come into contact with dust.

(8) Soil samples shall be collected and analyzed for lead concentrations in the following locations:

(i) Exterior play areas where bare soil is present; and

(ii) The rest of the yard (i.e., non-play areas) where bare soil is present.

(iii) Dripline/foundation areas where bare soil is present.

(9) Any paint, dust, or soil sampling or testing shall be conducted using documented methodologies that incorporate adequate quality control procedures.

(10) Any collected paint chip, dust, or soil samples shall be analyzed according to paragraph (f) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(11) The certified risk assessor shall prepare a risk assessment report which shall include the following information:

(i) Date of assessment.

(ii) Address of each building.

(iii) Date of construction of buildings.

(iv) Apartment number (if applicable).

(v) Name, address, and telephone number of each owner of each building.

(vi) Name, signature, and certification of the certified risk assessor conducting the assessment.

(vii) Name, address, and telephone number of the certified firm employing each certified risk assessor if applicable.

(viii) Name, address, and telephone number of each recognized laboratory conducting analysis of collected samples.

(ix) Results of the visual inspection.

(x) Testing method and sampling procedure for paint analysis employed.

(xi) Specific locations of each painted component tested for the presence of lead.

(xii) All data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device.

(xiii) All results of laboratory analysis on collected paint, soil, and dust samples.

(xiv) Any other sampling results.

(xv) Any background information collected pursuant to paragraph (d)(3) of this section.

(xvi) To the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint-related hazards.

(xvii) A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards.

(xviii) A description of interim controls and/or abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(e) Abatement.

(1) An abatement shall be conducted only by an individual certified by EPA, and if conducted, shall be conducted according to the procedures in this paragraph.

(2) A certified supervisor is required for each abatement project and shall be onsite during all work site preparation and during the post-abatement cleanup of work areas. At all other times when abatement activities are being conducted, the certified supervisor shall be onsite or available by telephone, pager or answering service, and able to be present at the work site in no more than 2 hours.

(3) The certified supervisor and the certified firm employing that supervisor shall ensure that all abatement activities are conducted according to the requirements of this section and all other Federal, State and local requirements.

(4) A certified firm must notify EPA of lead-based paint abatement activities as follows:

(i) Except as provided in paragraph (e)(4)(ii) of this section, EPA must be notified prior to conducting lead-based paint abatement activities. The original notification must be received by EPA at least 5 business days before the start date of any lead-based paint abatement activities.

(ii) Notification for lead-based paint abatement activities required in response to an elevated blood lead level (EBL) determination, or Federal, State, Tribal, or local emergency abatement order should be received by EPA as early as possible before, but must be received no later than the start date of the lead-based paint abatement activities. Should the start date and/or location provided to EPA change, an updated notification must be received by EPA on or before the start date provided to EPA. Documentation showing evidence of an EBL determination or a copy of the Federal/State/Tribal/local emergency abatement order must be included in the written notification to take advantage of this abbreviated notification period.

(iii) Except as provided in paragraph (e)(4)(ii) of this section, updated notification must be provided to EPA for lead-based paint abatement activities that will begin on a date other than the start date specified in the original notification, as follows:

(A) For lead-based paint abatement activities beginning prior to the start date provided to EPA an updated notification must be received by EPA at least 5 business days before the new start date included in the notification.

(B) For lead-based paint abatement activities beginning after the start date provided to EPA an updated notification must be received by EPA on or before the start date provided to EPA.

(iv) Except as provided in paragraph (e)(4)(ii) of this section, updated notification must be provided to EPA for any change in location of lead-based paint abatement activities at least 5 business days prior to the start date provided to EPA.

(v) Updated notification must be provided to EPA when lead-based paint abatement activities are canceled, or when there are other significant changes including, but not limited to, when the square footage or acreage to be abated changes by more than 20%. This updated notification must be received by EPA on or before the start date provided to EPA, or if work has already begun, within 24 hours of the change.

(vi) The following must be included in each notification:

(A) Notification type (original, updated, cancellation).

(B) Date when lead-based paint abatement activities will start.

(C) Date when lead-based paint abatement activities will end (approximation using best professional judgement).

(D) Firm's name, EPA certification number, address, telephone number.

(E) Type of building (e.g., single family dwelling, multi-family dwelling, child-occupied facilities) on/in which abatement work will be performed.

(F) Property name (if applicable).

(G) Property address including apartment or unit number(s) (if applicable) for abatement work.

(H) Documentation showing evidence of an EBL determination or a copy of the Federal/State/Tribal/local emergency abatement order, if using the abbreviated time period as described in paragraph (e)(4)(ii) of this section.

(I) Name and EPA certification number of the project supervisor.

(J) Approximate square footage/acreage to be abated.

(K) Brief description of abatement activities to be performed.

(L) Name, title, and signature of the representative of the certified firm who prepared the notification.

(vii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Agency's Central Data Exchange (CDX). Written notification can be accomplished using either the sample form titled "Notification of Lead-Based Paint Abatement Activities" or similar form containing the information required in paragraph (e)(4)(vi) of this section. All written notifications must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that EPA receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1-800-424-LEAD(5323), or on the Internet at http://www.epa.gov/lead.

(viii) Lead-based paint abatement activities shall not begin on a date, or at a location other than that specified in either an original or updated notification, in the event of changes to the original notification.

(ix) No firm or individual shall engage in lead-based paint abatement activities, as defined in § 745.223, prior to notifying EPA of such activities according to the requirements of this paragraph.

(5) A written occupant protection plan shall be developed for all abatement projects and shall be prepared according to the following procedures:

(i) The occupant protection plan shall be unique to each residential dwelling or child-occupied facility and be developed prior to the abatement. The occupant protection plan shall describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards.

(ii) A certified supervisor or project designer shall prepare the occupant protection plan.

(6) The work practices listed below shall be restricted during an abatement as follows:

(i) Open-flame burning or torching of lead-based paint is prohibited;

(ii) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with High Efficiency Particulate Air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency;

(iii) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than 2 square feet in any one room, hallway or stairwell or totaling no more than 20 square feet on exterior surfaces; and

(iv) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100 degrees Fahrenheit.

(7) If conducted, soil abatement shall be conducted in one of the following ways:

(i) If the soil is removed:

(A) The soil shall be replaced by soil with a lead concentration as close to local background as practicable, but no greater than 400 ppm.

(B) The soil that is removed shall not be used as top soil at another residential property or child-occupied facility.

(ii) If soil is not removed, the soil shall be permanently covered, as defined in § 745.223.

(8) The following post-abatement clearance procedures shall be performed only by a certified inspector or risk assessor:

(i) Following an abatement, a visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures.

(ii) Following the visual inspection and any post-abatement cleanup required by paragraph (e)(8)(i) of this section,

clearance sampling for lead in dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques.

(iii) Dust samples for clearance purposes shall be taken using documented methodologies that incorporate adequate quality control procedures.

(iv) Dust samples for clearance purposes shall be taken a minimum of 1 hour after completion of final post-abatement cleanup activities.

(v) The following post-abatement clearance activities shall be conducted as appropriate based upon the extent or manner of abatement activities conducted in or to the residential dwelling or child-occupied facility:

(A) After conducting an abatement with containment between abated and unabated areas, one dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floors of each of no less than four rooms, hallways or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are less than four rooms, hallways or stairwells within the containment area, then all rooms, hallways or stairwells shall be sampled.

(B) After conducting an abatement with no containment, two dust samples shall be taken from each of no less than four rooms, hallways or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one interior window sill and window trough (if present) and one dust sample shall be taken from the floor of each room, hallway or stairwell selected. If there are less than four rooms, hallways or stairwells within the residential dwelling or child-occupied facility then all rooms, hallways or stairwells shall be sampled.

(C) Following an exterior paint abatement, a visible inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surface shall be found to be cleaned of visible dust and debris. In addition, a visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior surface abated. If paint chips are present, they must be removed from the site and properly disposed of, according to all applicable Federal, State and local requirements.

(vi) The rooms, hallways or stairwells selected for sampling shall be selected according to documented methodologies.

(vii) The certified inspector or risk assessor shall compare the residual lead level (as determined by the laboratory analysis) from each single surface dust sample with clearance levels in paragraph (e)(8)(viii) of this section for lead in dust on floors, interior window sills, and window troughs or from each composite dust sample with the applicable clearance levels for lead in dust on floors, interior window sills, and window troughs divided by half the number of subsamples in the composite sample. If the residual lead level in a single surface dust sample equals or exceeds the applicable clearance level or if the residual lead level in a composite dust sample equals or exceeds the applicable clearance level divided by half the number of subsamples in the composite sample, the components represented by the failed sample shall be recleaned and retested.

(viii) The clearance levels for lead in dust are 40 <<mu>>g/ft^2 for floors, 250 <<mu>> g/ft^2 for interior window sills, and 400 <<mu>>g/ft^2 for window troughs.

(9) In a multi-family dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:

(i) The certified individuals who abate or clean the residential dwellings do not know which residential dwelling will be selected for the random sample.

(ii) A sufficient number of residential dwellings are selected for dust sampling to provide a 95 percent level of confidence that no more than 5 percent or 50 of the residential dwellings (whichever is smaller) in the randomly sampled population exceed the appropriate clearance levels.

(iii) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to the procedures found in paragraph (e)(8) of this section.

(10) An abatement report shall be prepared by a certified supervisor or project designer. The abatement report shall include the following information:

(i) Start and completion dates of abatement.

(ii) The name and address of each certified firm conducting the abatement and the name of each supervisor assigned to the abatement project.

(iii) The occupant protection plan prepared pursuant to paragraph (e)(5) of this section.

(iv) The name, address, and signature of each certified risk assessor or inspector conducting clearance sampling and the date of clearance testing.

(v) The results of clearance testing and all soil analyses (if applicable) and the name of each recognized laboratory that conducted the analyses.

(vi) A detailed written description of the abatement, including abatement methods used, locations of rooms and/or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures.

(f) Collection and laboratory analysis of samples. Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in this section shall be:

(1) Collected by persons certified by EPA as an inspector or risk assessor; and

(2) Analyzed by a laboratory recognized by EPA pursuant to section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip, dust, and soil samples.

(g) Composite dust sampling. Composite dust sampling may only be conducted in the situations specified in paragraphs (c) through (e) of this section. If such sampling is conducted, the following conditions shall apply:

(1) Composite dust samples shall consist of at least two subsamples;

(2) Every component that is being tested shall be included in the sampling; and

(3) Composite dust samples shall not consist of subsamples from more than one type of component.

(h) Determinations.

(1) Lead-based paint is present:

(i) On any surface that is tested and found to contain lead equal to or in excess of 1.0 milligrams per square centimeter or equal to or in excess of 0.5% by weight; and

(ii) On any surface like a surface tested in the same room equivalent that has a similar painting history and that is found to be lead-based paint.

(2) A paint-lead hazard is present:

(i) On any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill or floor) are equal to or greater than the dust hazard levels identified in § 745.227(b);

(ii) On any chewable lead-based paint surface on which there is evidence of teeth marks;

(iii) Where there is any damaged or otherwise deteriorated lead-based paint on an impact surface that is cause by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame; and

(iv) If there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(3) A dust-lead hazard is present in a residential dwelling or child occupied facility:

(i) In a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills are equal to or greater than 40 <<mu>> g/ft^2 for floors and 250 <<mu>>g/ft^2 for interior window sills, respectively;

(ii) On floors or interior window sills in an unsampled residential dwelling in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property; and

(iii) On floors or interior window sills in an unsampled common area in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled common area in the same common area group on the property.

(4) A soil-lead hazard is present:

(i) In a play area when the soil-lead concentration from a composite play area sample of bare soil is equal to or greater than 400 parts per million; or

(ii) In the rest of the yard when the arithmetic mean lead concentration from a composite sample (or arithmetic mean of composite samples) of bare soil from the rest of the yard (i.e., non-play areas) for each residential building on a property is equal to or greater than 1,200 parts per million.

(i) Recordkeeping. All reports or plans required in this section shall be maintained by the certified firm or individual who prepared the report for no fewer than 3 years. The certified firm or individual also shall provide copies of these reports to the building owner who contracted for its services.

§ 745.228 Accreditation of training programs: public and commercial buildings, bridges and superstructures [Reserved].

§ 745.229 Certification of individuals and firms engaged in lead-based paint activities: public and commercial buildings, bridges and superstructures [Reserved].

§ 745.230 Work practice standards for conducting lead-based paint activities: public and commercial buildings, bridges and superstructures [Reserved].

§ 745.233 Lead-based paint activities requirements.

Lead-based paint activities, as defined in this part, shall only be conducted according to the procedures and work practice standards contained in § 745.227 of this subpart. No individual or firm may offer to perform or perform any lead-based paint activity as defined in this part, unless certified to perform that activity according to the procedures in § 745.226.

§ 745.235 Enforcement.

(a) Failure or refusal to comply with any requirement of §§ 745.225, 745.226, 745.227, or 745.233 is a prohibited act under sections 15 and 409 of TSCA (15 U.S.C. 2614, 2689).

(b) Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports as required by §§ 745.225, 745.226, or 745.227 is a prohibited act under sections 15 and 409 of TSCA (15 U.S.C. 2614, 2689).

(c) Failure or refusal to permit entry or inspection as required by § 745.237 and section 11 of TSCA (15 U.S.C. 2610) is a prohibited act under sections 15 and 409 of TSCA (15 U.S.C. 2614, 2689).

(d) In addition to the above, any individual or firm that performs any of the following acts shall be deemed to have committed a prohibited act under sections 15 and 409 of TSCA (15 U.S.C. 2614, 2689). These include the following:

(i) Obtaining certification through fraudulent representation;

(ii) Failing to obtain certification from EPA and performing work requiring certification at a job site; or

(iii) Fraudulently obtaining certification and engaging in any lead-based paint activities requiring certification.

(e) Violators are subject to civil and criminal sanctions pursuant to section 16 of TSCA (15 U.S.C. 2615) for each violation.

§ 745.237 Inspections.

EPA may conduct reasonable inspections pursuant to the provisions of section 11 of TSCA (15 U.S.C. 2610) to ensure compliance with this subpart.

§ 745.238 Fees for accreditation and certification of lead-based paint activities.

(a) Purpose. To establish and impose fees for certified individuals and firms engaged in lead-based paint activities and persons operating accredited training programs under section 402(a) of the Toxic Substances Control Act (TSCA).

(b) Persons who must pay fees. Fees in accordance with paragraph (c) of this section must be paid by:

(1) Training programs.

(i) All non-exempt training programs applying to EPA for the accreditation and re-accreditation of training programs in one or more of the following disciplines: inspector, risk assessor, supervisor, project designer, abatement worker.

(ii) Exemptions. No fee shall be imposed on any training program operated by a State, federally recognized Indian Tribe, local government, or nonprofit organization. This exemption does not apply to the certification of firms or individuals.

(2) Firms and individuals. All firms and individuals seeking certification and re-certification from EPA to engage in lead-based paint activities in one or more of the following disciplines: inspector, risk assessor, supervisor, project designer, abatement worker.

(c) Fee amounts--

(1) Certification and accreditation fees. Initial and renewal certification and accreditation fees are specified in the following table:

Certification and Accreditation Fee Levels

Training Program	Accreditation [FN1]	Re-accreditation [FN1] [every 4 years, see 40 CFR 745.225(f)(1) for details]
Initial Course		
Inspector	$2,500	$1,600
Risk assessor	$1,760	$1,150
Supervisor	$3,250	$2,050
Worker	$1,760	$1,150
Project designer	$1,010	$710
Refresher Course		
Inspector	$1,010	$710
Risk assessor	$1,010	$710
Supervisor	$1,010	$710
Worker	$1,010	$710
Project designer	$640	$490

Lead-based Paint Activities-Individual	Certification [FN1]	Re-certification [FN1] [every 3 or 5 years, see 40 CFR 745.226(e)(1) for details]
Inspector	$400	$350
Risk assessor	$520	$420
Supervisor	$470	$390
Worker	$280	$240
Project designer	$470	$390

Lead-based Paint Activities-Firm	Certification [FN1]	Certification [FN1] Renewal [every 3 years, see 40 CFR 745.226(f)(7) for details]
Firm	$540	$430

[FN1] Fees will be adjusted periodically based on adjustments accounting for changes in participation and operating costs.

(2) Certification examination fee. Individuals required to take a certification exam in accordance with § 745.226 will be assessed a fee of $70 for each exam attempt.

(3) Multi-jurisdiction registration fee. An individual, firm, or training program certified or accredited by EPA may wish to provide training or perform lead-based paint activities in additional EPA-administered jurisdictions. A fee of $35 per discipline will be assessed for each additional EPA-administered jurisdiction in which an individual, firm, or training program applies for certification/re-certification or accreditation/re-accreditation. For purposes of this multi-jurisdiction registration fee, an EPA-administered jurisdiction is either an individual state without an authorized program or all Indian Tribes without authorized programs that are within a given EPA Region.

(4) Lost identification card or certificate. A $15 fee shall be charged for replacement of an identification card or certificate. (See replacement procedure in paragraph (e) of this section.)

(d) Application/payment procedure--

(1) Certification and re-certification in one or more EPA-administered jurisdiction--

(i) Individuals. Submit a completed application (titled "Application for Individuals to Conduct Lead-based Paint Activities"), the materials described at § 745.226, and the application fee(s) described in paragraph (c) of this section.

(ii) Firms. Submit a completed application (titled "Application for Firms to Conduct Lead-based Paint Activities"), the materials described at § 745.226, and the application fee(s) described in paragraph (c) of this section.

(2) Accreditation and re-accreditation in one or more EPA-administered jurisdiction. Submit a completed application (titled "Accreditation Application for Training Programs"), the materials described at § 745.225, and the application fee described in paragraph (c) of this section.

(3) Application forms. Application forms and instructions can be obtained from the National Lead Information Center at: 1-800-424-LEAD.

(e) Identification card replacement and certificate replacement.

(1) Parties seeking identification card or certificate replacement shall complete the applicable portions of the appropriate application in accordance with the instructions provided. The appropriate applications are:

(i) Individuals. "Application for Individuals to Conduct Lead-based Paint Activities."

(ii) Firms. "Application for Firms to Conduct Lead-based Paint Activities."

(iii) Training programs. "Accreditation Application for Training Programs."

(2) Submit application and payment in the amount specified in paragraph (c)(4) of this section in accordance with the instructions provided with the application package.

(f) Adjustment of fees.

(1) EPA will collect fees reflecting the costs associated with the administration and enforcement of subpart L of this part with the exception of costs associated with the accreditation of training programs operated by a State, federally recognized Indian Tribe, local government, and nonprofit organization. In order to do this, EPA will periodically adjust the fees to reflect changed economic conditions.

(2) The fees will be evaluated based on the cost to administer and enforce the program, and the number of applicants. New fee schedules will be published in the Federal Register.

(g) Failure to remit a fee.

(1) EPA will not provide certification, re-certification, accreditation, or re-accreditation for any individual, firm, or training program which does not remit fees described in paragraph (c) of this section in accordance with the procedures specified in paragraph (d) of this section.

(2) EPA will not replace identification cards or certificates for any individual, firm, or training program which does not remit fees described in paragraph (c) of this section in accordance with the procedures specified in paragraph (e) of this section.

§ 745.239 Effective dates.

This subpart L shall apply in any State or Indian Country that does not have an authorized program under subpart Q, effective August 31, 1998. In such States or Indian Country:

(a) Training programs shall not provide, offer or claim to provide training or refresher training for certification without accreditation from EPA pursuant to § 745.225 on or after March 1, 1999.

(b) No individual or firm shall perform, offer, or claim to perform lead-based paint activities, as defined in this subpart, without certification from EPA to conduct such activities pursuant to § 745.226 on or after March 1, 2000.

(c) All lead-based paint activities shall be performed pursuant to the work practice standards contained in § 745.227 on or after March 1, 2000.

Subpart Q. State and Indian Tribal Programs (Refs & Annos)

§ 745.320 Scope and purpose.

(a) This subpart establishes the requirements that State or Tribal programs must meet for authorization by the Administrator to administer and enforce the standards, regulations, or other requirements established under TSCA section 402 and/or section 406 and establishes the procedures EPA will follow in approving, revising, and withdrawing approval of State or Tribal programs.

(b) For State or Tribal lead-based paint training and certification programs, a State or Indian Tribe may seek authorization to administer and enforce §§ 745.225, 745.226, and 745.227. The provisions of §§ 745.220, 745.223, 745.233, 745.235, 745.237, and 745.239 shall be applicable for the purposes of such program authorization.

(c) A State or Indian Tribe may seek authorization to administer and enforce all of the provisions of subpart E of this part, just the pre-renovation education provisions of subpart E of this part, or just the training, certification, accreditation, and work practice provisions of subpart E of this part. The provisions of §§ 745.324 and 745.326 apply for the purposes of such program authorizations.

(d) A State or Indian Tribe applying for program authorization may seek either interim approval or final approval of the compliance and enforcement portion of the State or Tribal lead-based paint program pursuant to the procedures at § 745.327(a).

(e) State or Tribal submissions for program authorization shall comply with the procedures set out in this subpart.

(f) Any State or Tribal program approved by the Administrator under this subpart shall at all times comply with the requirements of this subpart.

(g) In many cases States will lack authority to regulate activities in Indian Country. This lack of authority does not impair a State's ability to obtain full program authorization in accordance with this subpart. EPA will administer the program in Indian Country if neither the State nor Indian Tribe has been granted program authorization by EPA.

§ 745.323 Definitions.

The definitions in subpart A apply to this subpart. In addition, the definitions in § 745.223 and the following definitions apply:

Indian Country means (1) all land within the limits of any American Indian reservation under the jurisdiction of the U.S. government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation; (2) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or outside the limits of a State; and (3) all Indian allotments, the Indian titles which have not been extinguished, including rights-of-way running through the same.

Indian Tribe means any Indian Tribe, band, nation, or community recognized by the Secretary of the Interior and exercising substantial governmental duties and powers.

§ 745.324 Authorization of State or Tribal programs.

(a) Application content and procedures.

(1) Any State or Indian Tribe that seeks authorization from EPA to administer and enforce the provisions of subpart E or subpart L of this part must submit an application to the Administrator in accordance with this paragraph.

(2) Before developing an application for authorization, a State or Indian Tribe shall disseminate a public notice of intent to seek such authorization and provide an opportunity for a public hearing.

(3) A State or Tribal application shall include:

(i) A transmittal letter from the State Governor or Tribal Chairperson (or equivalent official) requesting program approval.

(ii) A summary of the State or Tribal program. This summary will be used to provide notice to residents of the

State or Tribe.

(iii) A description of the State or Tribal program in accordance with paragraph (b) of this section.

(iv) An Attorney General's or Tribal Counsel's (or equivalent) statement in accordance with paragraph (c) of this section.

(v) Copies of all applicable State or Tribal statutes, regulations, standards, and other materials that provide the State or Indian Tribe with the authority to administer and enforce a lead-based paint program.

(4) After submitting an application, the Agency will publish a Federal Register notice that contains an announcement of the receipt of the State or Tribal application, the summary of the program as provided by the State or Tribe, and a request for public comments to be mailed to the appropriate EPA Regional Office. This comment period shall last for no less than 45 days. EPA will consider these comments during its review of the State or Tribal application.

(5) Within 60 days of submission of a State or Tribal application, EPA will, if requested, conduct a public hearing in each State or Indian Country seeking program authorization and will consider all comments submitted at that hearing during the review of the State or Tribal application.

(b) Program description. A State or Indian Tribe seeking to administer and enforce a program under this subpart must submit a description of the program. The description of the State or Tribal program must include:

(1)(i) The name of the State or Tribal agency that is or will be responsible for administering and enforcing the program, the name of the official in that agency designated as the point of contact with EPA, and addresses and phone numbers where this official can be contacted.

(ii) Where more than one agency is or will be responsible for administering and enforcing the program, the State or Indian Tribe must designate a primary agency to oversee and coordinate administration and enforcement of the program and serve as the primary contact with EPA.

(iii) In the event that more than one agency is or will be responsible for administering and enforcing the program, the application must also include a description of the functions to be performed by each agency. The description shall explain and how the program will be coordinated by the primary agency to ensure consistency and effective administration of the program within the State or Indian Tribe.

(2) To demonstrate that the State or Tribal program is at least as protective as the Federal program, fulfilling the criteria in paragraph (e)(2)(i) of this section, the State or Tribal application must include:

(i) A description of the program that demonstrates that the program contains all of the elements specified in § 745.325, § 745.326, or both; and

(ii) An analysis of the State or Tribal program that compares the program to the Federal program in subpart E or subpart L of this part, or both. This analysis must demonstrate how the program is, in the State's or Indian Tribe's assessment, at least as protective as the elements in the Federal program at subpart E or subpart L of this part, or both. EPA will use this analysis to evaluate the protectiveness of the State or Tribal program in making its determination pursuant to paragraph (e)(2)(i) of this section.

(3) To demonstrate that the State or Tribal program provides adequate enforcement, fulfilling the criteria in paragraph (e)(2)(ii) of this section, the State or Tribal application must include a description of the State or Tribal lead-based paint compliance and enforcement program that demonstrates that the program contains all of the elements specified at § 745.327. This description shall include copies of all policies, certifications, plans, reports, and other materials that demonstrate that the State or Tribal program contains all of the elements

specified at § 745.327.

(4)(i) The program description for an Indian Tribe shall also include a map, legal description, or other information sufficient to identify the geographical extent of the territory over which the Indian Tribe exercises jurisdiction.

(ii) The program description for an Indian Tribe shall also include a demonstration that the Indian Tribe:

(A) Is recognized by the Secretary of the Interior.

(B) has an existing government exercising substantial governmental duties and powers.

(C) has adequate civil regulatory jurisdiction (as shown in the Tribal legal certification in paragraph (c)(2) of this section) over the subject matter and entities regulated.

(D) is reasonably expected to be capable of administering the Federal program for which it is seeking authorization.

(iii) If the Administrator has previously determined that an Indian Tribe has met the prerequisites in paragraphs (b)(4)(ii)(A) and (B) of this section for another EPA program, the Indian Tribe need provide only that information unique to the lead-based paint program required by paragraphs (b)(4)(ii)(C) and (D) of this section.

(c) Attorney General's statement.

(1) A State or Indian Tribe must submit a written statement signed by the Attorney General or Tribal Counsel (or equivalent) certifying that the laws and regulations of the State or Indian Tribe provide adequate legal authority to administer and enforce the State or Tribal program. This statement shall include citations to the specific statutes and regulations providing that legal authority.

(2) The Tribal legal certification (the equivalent to the Attorney General's statement) may also be submitted and signed by an independent attorney retained by the Indian Tribe for representation in matters before EPA or the courts pertaining to the Indian Tribe's program. The certification shall include an assertion that the attorney has the authority to represent the Indian Tribe with respect to the Indian Tribe's authorization application.

(3) If a State application seeks approval of its program to operate in Indian Country, the required legal certification shall include an analysis of the applicant's authority to implement its provisions in Indian Country. The applicant shall include a map delineating the area over which it seeks to operate the program.

(d) Program certification.

(1) At the time of submitting an application, a State may also certify to the Administrator that the State program meets the requirements contained in paragraphs (e)(2)(i) and (e)(2)(ii) of this section.

(2) If this certification is contained in a State's application, the program shall be deemed to be authorized by EPA until such time as the Administrator disapproves the program application or withdraws the program authorization. A program shall not be deemed authorized pursuant to this subpart to the extent that jurisdiction is asserted over Indian Country, including non-member fee lands within an Indian reservation.

(3) If the application does not contain such certification, the State program will be authorized only after the Administrator authorizes the program in accordance with paragraph (e) of this section.

(4) This certification shall take the form of a letter from the Governor or the Attorney General to the Administrator. The certification shall reference the program analysis in paragraph (b)(3) of this section as the

basis for concluding that the State program is at least as protective as the Federal program, and provides adequate enforcement.

(e) EPA approval.

(1) EPA will fully review and consider all portions of a State or Tribal application.

(2) Within 180 days of receipt of a complete State or Tribal application, the Administrator shall either authorize the program or disapprove the application. The Administrator shall authorize the program, after notice and the opportunity for public comment and a public hearing, only if the Administrator finds that:

(i) The State or Tribal program is at least as protective of human health and the environment as the corresponding Federal program under subpart E or subpart L of this part, or both; and

(ii) The State or Tribal program provides adequate enforcement.

(3) EPA shall notify in writing the State or Indian Tribe of the Administrator's decision to authorize the State or Tribal program or disapprove the State's or Indian Tribe's application.

(4) If the State or Indian Tribe applies for authorization of State or Tribal programs under both subpart E and subpart L, EPA may, as appropriate, authorize one program and disapprove the other.

(f) EPA administration and enforcement.

(1) If a State or Indian Tribe does not have an authorized program to administer and enforce subpart L of this part in effect by August 31, 1998, the Administrator shall, by such date, establish and enforce the provisions of subpart L of this part as the Federal program for that State or Indian Country.

(2) If a State or Indian Tribe does not have an authorized program to administer and enforce the pre-renovation education requirements of subpart E of this part by August 31, 1998, the Administrator will, by such date, enforce those provisions of subpart E of this part as the Federal program for that State or Indian Country. If a State or Indian Tribe does not have an authorized program to administer and enforce the training, certification and accreditation requirements and work practice standards of subpart E of this part by April 22, 2009, the Administrator will, by such date, enforce those provisions of subpart E of this part as the Federal program for that State or Indian Country.

(3) Upon authorization of a State or Tribal program, pursuant to paragraph (d) or (e) of this section, it shall be an unlawful act under sections 15 and 409 of TSCA for any person to fail or refuse to comply with any requirements of such program.

(g) Oversight. EPA shall periodically evaluate the adequacy of a State's or Indian Tribe's implementation and enforcement of its authorized programs.

(h) Reports. Beginning 12 months after the date of program authorization, the primary agency for each State or Indian Tribe that has an authorized program shall submit a written report to the EPA Regional Administrator for the Region in which the State or Indian Tribe is located. This report shall be submitted at least once every 12 months for the first 3 years after program authorization. If these reports demonstrate successful program implementation, the Agency will automatically extend the reporting interval to every 2 years. If the subsequent reports demonstrate problems with implementation, EPA will require a return to annual reporting until the reports demonstrate successful program implementation, at which time the Agency will extend the reporting interval to every 2 years.

The report shall include the following information:

(1) Any significant changes in the content or administration of the State or Tribal program implemented since the previous reporting period; and

(2) All information regarding the lead-based paint enforcement and compliance activities listed at § 745.327(d) "Summary on Progress and Performance."

(i) Withdrawal of authorization.

(1) If EPA concludes that a State or Indian Tribe is not administering and enforcing an authorized program in compliance with the standards, regulations, and other requirements of sections 401 through 412 of TSCA and this subpart, the Administrator shall notify the primary agency for the State or Indian Tribe in writing and indicate EPA's intent to withdraw authorization of the program.

(2) The Notice of Intent to Withdraw shall:

(i) Identify the program aspects that EPA believes are inadequate and provide a factual basis for such findings.

(ii) Include copies of relevant documents.

(iii) Provide an opportunity for the State or Indian Tribe to respond either in writing or at a meeting with appropriate EPA officials.

(3) EPA may request that an informal conference be held between representatives of the State or Indian Tribe and EPA officials.

(4) Prior to issuance of a withdrawal, a State or Indian Tribe may request that EPA hold a public hearing. At this hearing, EPA, the State or Indian Tribe, and the public may present facts bearing on whether the State's or Indian Tribe's authorization should be withdrawn.

(5) If EPA finds that deficiencies warranting withdrawal did not exist or were corrected by the State or Indian Tribe, EPA may rescind its Notice of Intent to Withdraw authorization.

(6) Where EPA finds that deficiencies in the State or Tribal program exist that warrant withdrawal, an agreement to correct the deficiencies shall be jointly prepared by the State or Indian Tribe and EPA. The agreement shall describe the deficiencies found in the program, specify the steps the State or Indian Tribe has taken or will take to remedy the deficiencies, and establish a schedule, no longer than 180 days, for each remedial action to be initiated.

(7) If the State or Indian Tribe does not respond within 60 days of issuance of the Notice of Intent to Withdraw or an agreement is not reached within 180 days after EPA determines that a State or Indian Tribe is not in compliance with the Federal program, the Agency shall issue an order withdrawing the State's or Indian Tribe's authorization.

(8) By the date of such order, the Administrator will establish and enforce the provisions of subpart E or subpart L of this part, or both, as the Federal program for that State or Indian Country.

§ 745.325 Lead-based paint activities: State and Tribal program requirements.

(a) Program elements. To receive authorization from EPA, a State or Tribal program must contain at least the following program elements for lead-based paint activities:

(1) Procedures and requirements for the accreditation of lead-based paint activities training programs.

(2) Procedures and requirements for the certification of individuals engaged in lead-based paint activities.

(3) Work practice standards for the conduct of lead-based paint activities.

(4) Requirements that all lead-based paint activities be conducted by appropriately certified contractors.

(5) Development of the appropriate infrastructure or government capacity to effectively carry out a State or Tribal program.

(b) Accreditation of training programs. The State or Indian Tribe must have either:

(1) Procedures and requirements for the accreditation of training programs that establish:

(i) Requirements for the accreditation of training programs, including but not limited to:

(A) Training curriculum requirements.

(B) Training hour requirements.

(C) Hands-on training requirements.

(D) Trainee competency and proficiency requirements.

(E) Requirements for training program quality control.

(ii) Procedures for the re-accreditation of training programs.

(iii) Procedures for the oversight of training programs.

(iv) Procedures for the suspension, revocation, or modification of training program accreditations; or

(2) Procedures or regulations, for the purposes of certification, for the acceptance of training offered by an accredited training provider in a State or Tribe authorized by EPA.

(c) Certification of individuals. The State or Indian Tribe must have requirements for the certification of individuals that:

(1) Ensure that certified individuals:

(i) Are trained by an accredited training program; and

(ii) Possess appropriate education or experience qualifications for certification.

(2) Establish procedures for re-certification.

(3) Require the conduct of lead-based paint activities in accordance with work practice standards established by the State or Indian Tribe.

(4) Establish procedures for the suspension, revocation, or modification of certifications.

(5) Establish requirements and procedures for the administration of a third-party certification exam.

(d) Work practice standards for the conduct of lead-based paint activities. The State or Indian Tribe must have requirements or standards that ensure that lead-based paint activities are conducted reliably, effectively, and safely. At a minimum the State's or Indian Tribe's work practice standards for conducting inspections, risk assessments, and abatements must contain the requirements specified in paragraphs (d)(1), (d)(2), and (d)(3) of this section.

(1) The work practice standards for the inspection for the presence of lead-based paint must require that:

(i) Inspections are conducted only by individuals certified by the appropriate State or Tribal authority to conduct inspections.

(ii) Inspections are conducted in a way that identifies the presence of lead-based paint on painted surfaces within the interior or on the exterior of a residential dwelling or child-occupied facility.

(iii) Inspections are conducted in a way that uses documented methodologies that incorporate adequate quality control procedures.

(iv) A report is developed that clearly documents the results of the inspection.

(v) Records are retained by the certified inspector or the firm.

(2) The work practice standards for risk assessment must require that:

(i) Risk assessments are conducted only by individuals certified by the appropriate State or Tribal authority to conduct risk assessments.

(ii) Risk assessments are conducted in a way that identifies and reports the presence of lead-based paint hazards.

(iii) Risk assessments consist of, at least:

(A) An assessment, including a visual inspection, of the physical characteristics of the residential dwelling or child-occupied facility;

(B) Environmental sampling for lead in paint, dust, and soil;

(C) Environmental sampling requirements for lead in paint, dust, and soil that allow for comparison to the standards for lead-based paint hazards established or revised by the State or Indian Tribe pursuant to paragraph (e) of this section; and

(D) A determination of the presence of lead-based paint hazards made by comparing the results of visual inspection and environmental sampling to the standards for lead-based paint hazards established or revised by the State or Indian Tribe pursuant to paragraph (e) of this section.

(iv) The program elements required in paragraph (d)(2)(iii)(C) and (d)(2)(iii)(D) of this section shall be adopted in accordance with the schedule for the demonstration required in paragraph (e) of this section.

(v) The risk assessor develops a report that clearly presents the results of the assessment and recommendations for the control or elimination of all identified hazards.

(vi) The certified risk assessor or the firm retains the appropriate records.

(3) The work practice standards for abatement must require that:

(i) Abatements are conducted only by individuals certified by the appropriate State or Tribal authority to conduct or supervise abatements.

(ii) Abatements permanently eliminate lead-based paint hazards and are conducted in a way that does not increase the hazards of lead-based paint to the occupants of the dwelling or child-occupied facility.

(iii) Abatements include post-abatement lead in dust clearance sampling and conformance with clearance levels established or adopted by the State or Indian Tribe.

(iv) The abatement contractor develops a report that describes areas of the residential dwelling or child-occupied facility abated and the techniques employed.

(v) The certified abatement contractor or the firm retains appropriate records.

(e) The State or Indian Tribe must demonstrate that it has standards for identifying lead-based paint hazards and clearance standards for dust, that are at least as protective as the standards in § 745.227 as amended on February 5, 2001. A State or Indian Tribe with such a section 402 program approved before February 5, 2003 shall make this demonstration no later than the first report submitted pursuant to § 745.324(h) on or after February 5, 2003. A State or Indian Tribe with such a program submitted but not approved before February 5, 2003 may make this demonstration by amending its application or in its first report submitted pursuant to § 745.324(h). A State or Indian Tribe submitting its program on or after February 5, 2003 shall make this demonstration in its application.

§ 745.326 Renovation: State and Tribal program requirements.

(a) Program elements. To receive authorization from EPA, a State or Tribal program must contain the following program elements:

(1) For pre-renovation education programs, procedures and requirements for the distribution of lead hazard information to owners and occupants of target housing and child-occupied facilities before renovations for compensation.

(2) For renovation training, certification, accreditation, and work practice standards programs:

(i) Procedures and requirements for the accreditation of renovation and dust sampling technician training programs.

(ii) Procedures and requirements for the certification of renovators and dust sampling technicians.

(iii) Procedures and requirements for the certification of individuals and/or firms.

(iv) Requirements that all renovations be conducted by appropriately certified individuals and/or firms.

(v) Work practice standards for the conduct of renovations.

(3) For all renovation programs, development of the appropriate infrastructure or government capacity to effectively carry out a State or Tribal program.

(b) Pre-renovation education. To be considered at least as protective as the Federal program, the State or Tribal program must:

(1) Establish clear standards for identifying renovation activities that trigger the information distribution requirements.

(2) Establish procedures for distributing the lead hazard information to owners and occupants of housing and child-occupied facilities prior to renovation activities.

(3) Require that the information to be distributed include either the pamphlet titled Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools, developed by EPA under section 406(a) of TSCA, or an alternate pamphlet or package of lead hazard information that has been submitted by the State or Tribe, reviewed by EPA, and approved by EPA for that State or Tribe. Such information must contain renovation-specific information similar to that in Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools, must meet the content requirements prescribed by section 406(a) of TSCA, and must be in a format that is readable to the diverse audience of housing and child-occupied facility owners and occupants in that State or Tribe.

(i) A State or Tribe with a pre-renovation education program approved before June 23, 2008, must demonstrate that it meets the requirements of this section no later than the first report that it submits pursuant to § 745.324(h) on or after April 22, 2009.

(ii) A State or Tribe with an application for approval of a pre-renovation education program submitted but not approved before June 23, 2008, must demonstrate that it meets the requirements of this section either by amending its application or in the first report that it submits pursuant to § 745.324(h) of this part on or after April 22, 2009.

(iii) A State or Indian Tribe submitting its application for approval of a pre-renovation education program on or after June 23, 2008, must demonstrate in its application that it meets the requirements of this section.

(c) Accreditation of training programs. To be considered at least as protective as the Federal program, the State or Tribal program must meet the requirements of either paragraph (c)(1) or (c)(2) of this section:

(1) The State or Tribal program must establish accreditation procedures and requirements, including:

(i) Procedures and requirements for the accreditation of training programs, including, but not limited to:

(A) Training curriculum requirements.

(B) Training hour requirements.

(C) Hands-on training requirements.

(D) Trainee competency and proficiency requirements.

(E) Requirements for training program quality control.

(ii) Procedures and requirements for the re-accreditation of training programs.

(iii) Procedures for the oversight of training programs.

(iv) Procedures and standards for the suspension, revocation, or modification of training program accreditations; or

(2) The State or Tribal program must establish procedures and requirements for the acceptance of renovation

training offered by training providers accredited by EPA or a State or Tribal program authorized by EPA under this subpart.

(d) Certification of renovators. To be considered at least as protective as the Federal program, the State or Tribal program must:

(1) Establish procedures and requirements for individual certification that ensure that certified renovators are trained by an accredited training program.

(2) Establish procedures and requirements for re-certification.

(3) Establish procedures for the suspension, revocation, or modification of certifications.

(e) Work practice standards for renovations. To be considered at least as protective as the Federal program, the State or Tribal program must establish standards that ensure that renovations are conducted reliably, effectively, and safely. At a minimum, the State or Tribal program must contain the following requirements:

(1) Renovations must be conducted only by certified contractors.

(2) Renovations are conducted using lead-safe work practices that are at least as protective to occupants as the requirements in § 745.85.

(3) Certified contractors must retain appropriate records.

§ 745.327 State or Indian Tribal lead-based paint compliance and enforcement programs.

(a) Approval of compliance and enforcement programs. A State or Indian Tribe seeking authorization of a lead-based paint program can apply for and receive either interim or final approval of the compliance and enforcement program portion of its lead-based paint program. Indian Tribes are not required to exercise criminal enforcement jurisdiction as a condition for program authorization.

(1) Interim approval. Interim approval of the compliance and enforcement program portion of the State or Tribal lead-based paint program may be granted by EPA only once, and subject to a specific expiration date.

(i) To be considered adequate for purposes of obtaining interim approval for the compliance and enforcement program portion of a State or Tribal lead-based paint program, a State or Indian Tribe must, in its application described at § 745.324(a):

(A) Demonstrate it has the legal authority and ability to immediately implement the elements in paragraph (b) of this section. This demonstration shall include a statement that the State or Indian Tribe, during the interim approval period, shall carry out a level of compliance monitoring and enforcement necessary to ensure that the State or Indian Tribe addresses any significant risks posed by noncompliance with lead-based paint activity requirements.

(B) Present a plan with time frames identified for implementing in the field each element in paragraph (c) of this section. All elements of paragraph (c) of this section must be fully implemented no later than 3 years from the date of EPA's interim approval of the compliance and enforcement program portion of a State or Tribal lead-based paint program. A statement of resources must be included in the State or Tribal plan which identifies what resources the State or Indian Tribe intends to devote to the administration of its lead-based paint compliance and enforcement program.

(C) Agree to submit to EPA the Summary on Progress and Performance of lead-based paint compliance and enforcement activities as described at paragraph (d) of this section.

(ii) Any interim approval granted by EPA for the compliance and enforcement program portion of a State or Tribal lead-based paint program will expire no later than 3 years from the date of EPA's interim approval. One hundred and eighty days prior to this expiration date, a State or Indian Tribe shall apply to EPA for final approval of the compliance and enforcement program portion of a State or Tribal lead-based paint program. Final approval shall be given to any State or Indian Tribe which has in place all of the elements of paragraphs (b), (c), and (d) of this section. If a State or Indian Tribe does not receive final approval for the compliance and enforcement program portion of a State or Tribal lead-based paint program by the date 3 years after the date of EPA's interim approval, the Administrator shall, by such date, initiate the process to withdraw the State or Indian Tribe's authorization pursuant to § 745.324(i).

(2) Final approval. Final approval of the compliance and enforcement program portion of a State or Tribal lead-based paint program can be granted by EPA either through the application process described at § 745.324(a), or, for States or Indian Tribes which previously received interim approval as described in paragraph (a)(1) of this section, through a separate application addressing only the compliance and enforcement program portion of a State or Tribal lead-based paint program.

(i) For the compliance and enforcement program to be considered adequate for final approval through the application described at § 745.324(a), a State or Indian Tribe must, in its application:

(A) Demonstrate it has the legal authority and ability to immediately implement the elements in paragraphs (b) and (c) of this section.

(B) Submit a statement of resources which identifies what resources the State or Indian Tribe intends to devote to the administration of its lead-based paint compliance and enforcement program.

(C) Agree to submit to EPA the Summary on Progress and Performance of lead-based paint compliance and enforcement activities as described at paragraph (d) of this section.

(ii) For States or Indian Tribes which previously received interim approval as described in paragraph (a)(1) of this section, in order for the State or Tribal compliance and enforcement program to be considered adequate for final approval through a separate application addressing only the compliance and enforcement program portion of a State or Tribal lead-based paint program, a State or Indian Tribe must, in its application:

(A) Demonstrate that it has the legal authority and ability to immediately implement the elements in paragraphs (b) and (c) of this section.

(B) Submit a statement which identifies the resources the State or Indian Tribe intends to devote to the administration of its lead-based paint compliance and enforcement program.

(C) Agree to submit to EPA the Summary on Progress and Performance of lead-based paint compliance and enforcement activities as described at paragraph (d) of this section.

(D) To the extent not previously submitted through the application described at § 745.324(a), submit copies of all applicable State or Tribal statutes, regulations, standards, and other material that provide the State or Indian Tribe with authority to administer and enforce the lead-based paint compliance and enforcement program, and copies of the policies, certifications, plans, reports, and any other documents that demonstrate that the program meets the requirements established in paragraphs (b) and (c) of this section.

(b) Standards, regulations, and authority. The standards, regulations, and authority described in paragraphs (b)(1) through (b)(4) of this section are part of the required elements for the compliance and enforcement portion of a State or Tribal lead-based paint program.

(1) Lead-based paint activities and requirements. State or Tribal lead-based paint compliance and enforcement programs will be considered adequate if the State or Indian Tribe demonstrates, in its application at § 745.324(a), that it has established a lead-based paint program containing the following requirements:

(i) Accreditation of training programs as described at § 745.325(b).

(ii) Certification of individuals engaged in lead-based paint activities as described at § 745.325(c).

(iii) Standards for the conduct of lead-based paint activities as described at § 745.325(d); and, as appropriate,

(iv) Requirements that regulate the conduct of renovation activities as described at § 745.326.

(2) Authority to enter. State or Tribal officials must be able to enter, through consent, warrant, or other authority, premises or facilities where lead-based paint activities violations may occur for purposes of conducting inspections.

(i) State or Tribal officials must be able to enter premises or facilities where those engaged in training for lead-based paint activities conduct business.

(ii) For the purposes of enforcing a renovation program, State or Tribal officials must be able to enter a firm's place of business or work site.

(iii) State or Tribal officials must have authority to take samples and review records as part of the lead-based paint activities inspection process.

(3) Flexible remedies. A State or Tribal lead-based paint compliance and enforcement program must provide for a diverse and flexible array of enforcement remedies. At a minimum, the remedies that must be reflected in an enforcement response policy must include the following:

(i) Warning letters, Notices of Noncompliance, Notices of Violation, or the equivalent;

(ii) Administrative or civil actions, including penalty authority (e.g., accreditation or certification suspension, revocation, or modification); and

(iii) Authority to apply criminal sanctions or other criminal authority using existing State or Tribal laws, as applicable.

(4) Adequate resources. An application must include a statement that identifies the resources that will be devoted by the State or Indian Tribe to the administration of the State or Tribal lead-based paint compliance and enforcement program. This statement must address fiscal and personnel resources that will be devoted to the program.

(c) Performance elements. The performance elements described in paragraphs (c)(1) through (c)(7) of this section are part of the required elements for the compliance and enforcement program portion of a State or Tribal lead-based paint program.

(1) Training. A State or Tribal lead-based paint compliance and enforcement program must implement a process for training enforcement and inspection personnel and ensure that enforcement personnel and inspectors are well trained. Enforcement personnel must understand case development procedures and the maintenance of proper case files. Inspectors must successfully demonstrate knowledge of the requirements of the particular discipline (e.g., abatement supervisor, and/or abatement worker, and/or lead-based paint inspector, and/or risk assessor, and/or project designer) for which they have compliance monitoring and enforcement responsibilities. Inspectors must also be trained in violation discovery, methods of obtaining consent, evidence gathering,

preservation of evidence and chain-of-custody, and sampling procedures. A State or Tribal lead-based paint compliance and enforcement program must also implement a process for the continuing education of enforcement and inspection personnel.

(2) Compliance assistance. A State or Tribal lead-based paint compliance and enforcement program must provide compliance assistance to the public and the regulated community to facilitate awareness and understanding of and compliance with State or Tribal requirements governing the conduct of lead-based paint activities. The type and nature of this assistance can be defined by the State or Indian Tribe to achieve this goal.

(3) Sampling techniques. A State or Tribal lead-based paint compliance and enforcement program must have the technological capability to ensure compliance with the lead-based paint program requirements. A State or Tribal application for approval of a lead-based paint program must show that the State or Indian Tribe is technologically capable of conducting a lead-based paint compliance and enforcement program. The State or Tribal program must have access to the facilities and equipment necessary to perform sampling and laboratory analysis as needed. This laboratory facility must be a recognized laboratory as defined at § 745.223, or the State or Tribal program must implement a quality assurance program that ensures appropriate quality of laboratory personnel and protects the integrity of analytical data.

(4) Tracking tips and complaints. A State or Tribal lead-based paint compliance and enforcement program must demonstrate the ability to process and react to tips and complaints or other information indicating a violation.

(5) Targeting inspections. A State or Tribal lead-based paint compliance and enforcement program must demonstrate the ability to target inspections to ensure compliance with the lead-based paint program requirements. Such targeting must include a method for obtaining and using notifications of commencement of abatement activities.

(6) Follow up to inspection reports. A State or Tribal lead-based paint compliance and enforcement program must demonstrate the ability to reasonably, and in a timely manner, process and follow-up on inspection reports and other information generated through enforcement-related activities associated with a lead-based paint program. The State or Tribal program must be in a position to ensure correction of violations and, as appropriate, effectively develop and issue enforcement remedies/responses to follow up on the identification of violations.

(7) Compliance monitoring and enforcement. A State or Tribal lead-based paint compliance and enforcement program must demonstrate, in its application for approval, that it is in a position to implement a compliance monitoring and enforcement program. Such a compliance monitoring and enforcement program must ensure correction of violations, and encompass either planned and/or responsive lead-based paint compliance inspections and development/issuance of State or Tribal enforcement responses which are appropriate to the violations.

(d) Summary on Progress and Performance. The Summary on Progress and Performance described below is part of the required elements for the compliance and enforcement program portion of a State or Tribal lead-based paint program. A State or Tribal lead-based paint compliance and enforcement program must submit to the appropriate EPA Regional Administrator a report which summarizes the results of implementing the State or Tribal lead-based paint compliance and enforcement program, including a summary of the scope of the regulated community within the State or Indian Tribe (which would include the number of individuals and firms certified in lead-based paint activities and the number of training programs accredited), the inspections conducted, enforcement actions taken, compliance assistance provided, and the level of resources committed by the State or Indian Tribe to these activities. The report shall be submitted according to the requirements at § 745.324(h).

(e) Memorandum of Agreement. An Indian Tribe that obtains program approval must establish a Memorandum of Agreement with the Regional Administrator. The Memorandum of Agreement shall be executed by the Indian Tribe's counterpart to the State Director (e.g., the Director of Tribal Environmental Office, Program or Agency). The Memorandum of Agreement must include provisions for the timely and appropriate referral to the Regional

Administrator for those criminal enforcement matters where that Indian Tribe does not have the authority (e.g., those addressing criminal violations by non-Indians or violations meriting penalties over $5,000). The Agreement must also identify any enforcement agreements that may exist between the Indian Tribe and any State.

(f) Electronic reporting under State or Indian Tribe programs. States and tribes that choose to receive electronic documents under the authorized state or Indian tribe lead-based paint program, must ensure that the requirements of 40 CFR part 3--(Electronic reporting) are satisfied in their lead-based paint program.

§ 745.330 [Reserved]

§ 745.339 Effective date.

States and Indian Tribes may seek authorization to administer and enforce subpart L of this part pursuant to this subpart at any time. States and Indian Tribes may seek authorization to administer and enforce the pre-renovation education provisions of subpart E of this part pursuant to this subpart at any time. States and Indian Tribes may seek authorization to administer and enforce all of subpart E of this part pursuant to this subpart effective June 23, 2008.

Current through June 26, 2008; 73 FR 36284
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APPENDIX I

Abbasi v. Paraskevoulakos
718 N.E.2d 181

virtue in making the law consistently wrong. That litigants in the lower federal courts must suffer the Seventh Circuit's rulings is no reason to inflict those rulings on litigants who have the good sense or good fortune to have their cases heard in the courts of Illinois.

The circuit court properly denied the railroad's motion for summary judgment. Its order, and the judgment of the appellate court upholding that order, should be affirmed.

187 Ill.2d 386
240 Ill.Dec. 700

Sana Jamil ABBASI, a Minor, by and Through Her Father and Next Friend, Jamil ABBASI, Appellee,

v.

Panagiotis PARASKEVOULAKOS et al., Appellants.

No. 85835.

Supreme Court of Illinois.

July 1, 1999.

Rehearing Denied Oct. 4, 1999.

Minor tenant who had allegedly suffered injuries through ingestion of lead paint brought action by and through her mother against landlord of apartment where she had lived. The Circuit Court, Cook County, Joseph N. Casciato, J., granted landlord's motion to dismiss counts alleging private causes of action based on violations of Lead Poisoning Prevention Act, and city code. Plaintiff appealed, and the Appellate Court, 296 Ill.App.3d 278, 230 Ill.Dec. 786, 694 N.E.2d 1064, reversed and remanded. After allowing petition for leave to appeal, the Supreme Court, Freeman, C.J., held that: (1) no implied private right of action exists under Lead Poisoning Prevention Act, and (2) plaintiff similarly did not have right of action based on landlord's alleged violations of city code.

Appellate Court reversed, Circuit Court affirmed, and remanded.

Harrison, J., dissented with opinion.

1. Pretrial Procedure ⇐679

In determining whether to allow a motion to dismiss, court must take as true all well-pled allegations of fact contained in the complaint, and construe all reasonable inferences therefrom in favor of the plaintiff.

2. Pretrial Procedure ⇐622, 679

Motion to dismiss attacks the legal sufficiency of a complaint, and presents question of whether the allegations of the complaint, when viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. S.H.A. 735 ILCS 5/2–615.

3. Pretrial Procedure ⇐624

Cause of action will not be dismissed on the pleadings unless it clearly appears that no set of facts can be proved which will entitle the plaintiff to recover. S.H.A. 735 ILCS 5/2–615.

4. Appeal and Error ⇐893(1)

Appellate review of trial court's ruling on motion to dismiss is de novo. S.H.A. 735 ILCS 5/2–615.

5. Action ⇐3

No implied private right of action exists under Lead Poisoning Prevention Act; common law negligence action, and remedies contained in Act, provides adequate remedy for violations. S.H.A. 410 ILCS 45/1 et seq.

6. Action ⇐3

Implication of a private right of action from statute is appropriate when (1) plaintiff is a member of the class for whose benefit statute was enacted, (2) it is consistent with the underlying purpose of stat-

ute, (3) plaintiff's injury is one statute was designed to prevent, and (4) it is necessary to provide an adequate remedy for violations of statute.

7. Negligence ⇐259

In a common law negligence action, a violation of a statute or ordinance designed to protect human life or property is prima facie evidence of negligence; however, the violation does not constitute negligence per se.

8. Negligence ⇐303(1)

"Strict liability" means liability that is imposed on an actor apart from a breach of a duty to exercise reasonable care, i.e., actionable negligence.

See publication Words and Phrases for other judicial constructions and definitions.

9. Negligence ⇐259, 301

Violation of a statute is not negligence per se, which refers to strict liability, but rather only prima facie evidence of negligence, unless the legislature clearly intends to impose strict liability.

10. Action ⇐3

Right of action will be implied under a statute only in cases where the statute would be ineffective, as a practical matter, unless a private right of action were implied.

11. Negligence ⇐1500

A common law negligence action serves to make an injured plaintiff whole when a defendant fails to comply with a statute.

12. Constitutional Law ⇐46(1)

Court will consider a constitutional question only where essential to the disposition of a case, i.e., where the case cannot be determined on other grounds.

13. Action ⇐3

No private right of action for alleged violations of city code by landlord existed on part of tenant who sought to recover for injuries sustained by her child due to exposure to lead paint.

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[887] William R. Quinlan, John F. Kennedy, James A. Niewiara, Jean M. Prendergast, Quinlan & Crisham, Ltd., Michael Resis, O'Hagan, Smith & Amundsen, Chicago, for Panagiotis Paraskevoulakos.

Anthony C. Valiulis, Wendy B. Kahn, Deborah S. Bussert, Much, Shelist, Freed, Denenberg, Ament & Rubenstein, P.C., Chicago, for Sana Jamil Abbasi.

Stephen J. Bochenek, Charles J. Northrup, Sorling, Northrup, Hanna, Cullen and Cochran, Ltd., [888] Springfield, for Amicus Curiae, Illinois Association of Realtors.

Frank Timons, Bruce R. Pfaff & Associates, Ltd. (Timothy W. Heath, Hegarty & Heath, of counsel), Chicago, for Amicus Curiae, Illinois Trial Lawyers Association.

Chief Justice FREEMAN delivered the opinion of the court:

Plaintiff, Sana Abbasi, through her father, Jamil Abbasi, brought an action in the circuit court of Cook County against defendants, Panagiotis Paraskevoulakos and Katina Paraskevoulakos. Plaintiff sought damages for injuries that she received from ingesting lead-based paint.

The circuit court struck those counts of the complaint that alleged private causes of action based on defendants' violations of the Lead Poisoning Prevention Act (Act) (410 ILCS 45/1 *et seq.* (West 1996)) and several chapters of the Chicago Municipal Code (City Code) (Chicago Municipal Code, chs. 5–4, 5–12, 7–4, 13–196 (1990)). The appellate court reversed the dismissal. 296 Ill.App.3d 278, 230 Ill.Dec. 786, 694 N.E.2d 1064.

We allowed defendants' petition for leave to appeal. 177 Ill.2d R. 315(a). We hold that neither the Act nor the City Code supports a private cause of action. We reverse the appellate court and re-

mand the cause to the circuit court for further proceedings.

BACKGROUND

[1] In determining whether to allow a motion to dismiss, a court must take as true all well-pled allegations of fact contained in the complaint and construe all reasonable inferences therefrom in favor of the plaintiff. *Vernon v. Schuster*, 179 Ill.2d 338, 341, 228 Ill.Dec. 195, 688 N.E.2d 1172 (1997).

Plaintiff's first-amended complaint alleged as follows. |889From May 1990 through January 1996, plaintiff was approximately two through six years old. During that time, plaintiff and her family were tenants in an apartment in Chicago; defendants owned and managed the building. Surfaces in the apartment were covered with deteriorated paint containing a dangerously high level of lead. Plaintiff ingested the lead-based paint in the form of dust, flakes, or chips, and was thereby injured.

Counts I through IV of the eight-count complaint were directed against Panagiotis, and counts V through VIII repeated those claims against Katina. Plaintiff pled three general theories of recovery: common law negligence evidenced by violations of the Act and of the City Code, a private cause of action under the Act, and a private cause of action under various chapters of the City Code.

Counts I and V stated a cause of action for negligence. Those counts alleged that defendants owed duties to plaintiff, which defendants breached. Defendants owed plaintiff a duty to maintain the building in a habitable and safe condition, and to exercise reasonable care in owning, managing, and maintaining it. Further, defendants owed plaintiff a duty based on defendants' actual or constructive knowledge that: (1) the building's surfaces were covered with lead-based paint; and (2) plaintiff may ingest the paint in the form of dust, flakes, or chips, thereby rendering the paint dangerous to children. See *Garcia v. Jiminez*, 184 Ill.App.3d 107, 109–12, 132 Ill.Dec. 550, 539 N.E.2d 1356 (1989).

Defendants knew or should have known about the presence of lead-based paint in the building because, *inter alia*, in 1992, with defendants' knowledge, the Chicago Department of Health inspected the building for lead-based paint, and notified defendants that the building contained such paint; the City of Chicago sued defendants for lead-based paint violations; and plaintiff's family complained to defendants about the condition of the |890building and, after plaintiff was diagnosed as being lead-poisoned, complained to defendants about the presence of lead paint.

Defendants breached these duties, *i.e.*, were negligent, by violating several provisions of the Act and of the City Code. As a proximate result of this breach, plaintiff was injured. Plaintiff sought, *inter alia*, damages and injunctive relief.

Counts III and VII alleged a private cause of action under the Act. Those counts contained the identical allegations as to duty, and allegations that defendants breached their duty to plaintiff. However, instead of characterizing defendants' violations of the Act as negligence, those counts simply stated that defendants violated the Act.

Counts II and VI alleged a private cause of action for nuisance under section 5–4–090 of the City Code (Chicago Municipal Code § 5–4–090 (1990)). Counts IV and VIII alleged a private cause of action under titles 5, 7, and 13 of the City Code. Similar to counts III and VII, these counts all state that defendants violated various sections of the City Code, without characterizing those violations as negligence.

Defendants answered the negligence counts and moved to dismiss the remaining counts that alleged private causes of action under the Act and the City Code. The circuit court granted defendants' motion to dismiss. The court found that the Act and the City Code did not give rise to private

causes of action, but that their violation could serve as evidence of negligence. The circuit court also found no just reason to delay an appeal of the decision. See 155 Ill.2d R. 304(a).

The appellate court reversed the dismissal. With one justice dissenting, the appellate court recognized a private cause of action for violation of the Act. 296 Ill. App.3d at 283–85, 230 Ill.Dec. 786, 694 N.E.2d 1064. The court unanimously recognized a [391]private cause of action for violation of the City Code. 296 Ill.App.3d at 281–83, 230 Ill.Dec. 786, 694 N.E.2d 1064.

Defendants appeal. We granted the Illinois Trial Lawyers Association leave to file an *amicus curiae* brief in support of plaintiff; we also granted the Illinois Association of Realtors leave to file an *amicus curiae* brief in support of defendants. 155 Ill.2d R. 345.

DISCUSSION

[2–4] This case is before us following the dismissal of plaintiff's claims pursuant to section 2–615 of the Code of Civil Procedure (735 ILCS 5/2–615 (West 1996)). A section 2–615 motion attacks the legal sufficiency of a complaint. The question presented by a section 2–615 motion to dismiss is whether the allegations of the complaint, when viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. A cause of action will not be dismissed on the pleadings unless it clearly appears that no set of facts can be proved which will entitle the plaintiff to recover. Review is *de novo*. *Vernon*, 179 Ill.2d at 344, 228 Ill.Dec. 195, 688 N.E.2d 1172.

I. Private Right of Action Under the Act

[5] Defendants contend that the appellate court erred in recognizing a private right of action for violation of the Act. The Act restricts the sale and use of lead-bearing products, specifically providing in pertinent part:

> "§ 3. Lead bearing substance use. No person shall use or apply lead bearing substances:
>
> (a) In or upon any exposed surface of a dwelling or dwelling unit;
>
> * * *
>
> (c) In or upon any fixtures or other objects used, installed, or located in or upon any exposed surface of a dwelling or residential building, or child care facility, or intended to be so used, installed, or located and that, in the ordinary course of use, are accessible to and chewable by children;
>
> [392]* * *
>
> (e) Within or upon a residential building or dwelling, child care facility, school, playground, park, or recreational area, or other areas regularly frequented by children." 410 ILCS 45/3 (West 1996).

The Act requires that health care providers or officers report verified cases of lead poisoning to the Illinois Department of Public Health (Department). 410 ILCS 45/7 (West 1996). The Act establishes the responsibilities of the Department in investigating buildings occupied by persons who screen positive for lead poisoning. 410 ILCS 45/8 through 8.2 (West 1996). If the inspection report identifies a lead hazard, the Act requires the building owner to remove, cover, or otherwise deny children access to the leaded surface. 410 ILCS 45/9 (West 1996). Further, the Act specifically requires that all mitigation of lead hazards "shall be accomplished in a manner which will not endanger the health or well-being of residential building or dwelling unit occupants, and will result in the safe removal from the premises, and the safe disposition, of flakes, chips, debris, dust, and other potentially harmful materials." 410 ILCS 45/11 (West 1996).

The Act provides that its violation, except for the reporting obligation of health care providers, is punishable as a Class A

misdemeanor. 410 ILCS 45/12 (West 1996). The Act also provides in pertinent part:

"§ 15. Other relief. Nothing in this Act shall be interpreted or applied in any manner to defeat or impair the right of any person * * * to maintain an action or suit for damages sustained or for equitable relief, or for violation of an ordinance by reason of or in connection with any violation of this Act. The failure to remove lead based substances within the time prescribed by this Act shall be prima facie evidence of negligence in any action brought to recover damages for injuries incurred after the expiration of that period. This Act shall not prohibit any city * * * or other political subdivision from enacting and enforcing ordinances establishing a system of lead poisoning control which provide the same or higher standards than those set forth in this Act." 410 ILCS 45/15 (West 1996).

[6] The controlling legal principles are quite established:

"Implication by a statute of a private right of action is appropriate when: '(1) plaintiff is a member of the class for whose benefit the Act was enacted; (2) it is consistent with the underlying purpose of the Act; (3) plaintiff's injury is one the Act was designed to prevent; and (4) it is necessary to provide an adequate remedy for violations of the Act.' *Corgan v. Muehling* (1991), 143 Ill.2d 296, 312–13, 158 Ill.Dec. 489, 574 N.E.2d 602." *Rodgers v. St. Mary's Hospital*, 149 Ill.2d 302, 308, 173 Ill.Dec. 642, 597 N.E.2d 616 (1992).

Accord *Sawyer Realty Group, Inc. v. Jarvis Corp.*, 89 Ill.2d 379, 391, 59 Ill.Dec. 905, 432 N.E.2d 849 (1982).

It is unnecessary to analyze in detail all four of these factors as they apply to the Act and to these parties. As this court observed in *Board of Education v. A, C & S, Inc.*, 131 Ill.2d 428, 471, 137 Ill.Dec. 635, 546 N.E.2d 580 (1989): "*Sawyer* was clear that we will 'imply a private remedy where there exists a *clear need* to effectuate the purpose of an act.' (Emphasis added.) (89 Ill.2d at 389, 59 Ill.Dec. 905, 432 N.E.2d 849.) In this case there does not exist a clear need." An application of the fourth factor to this case leads to the same conclusion.

We agree with the circuit court that a private right of action under the Act is not appropriate because it is not necessary to provide an adequate remedy for violation of the Act, *i.e.*, to uphold and implement the public policy behind the Act. *Cf. Corgan v. Muehling*, 143 Ill.2d 296, 314–15, 158 Ill.Dec. 489, 574 N.E.2d 602 (1991); *Sawyer Realty*, 89 Ill.2d at 391, 59 Ill.Dec. 905, 432 N.E.2d 849. A private cause of action under the Act would be identical to plaintiff's common law negligence action pending in the circuit court.

[7] Section 15 of the Act expressly provides that the Act does not affect the right of an injured person to seek the full range of available judicial relief. Further, the section also provides that the "failure to remove lead based substances within the time prescribed by this Act shall be prima facie evidence of negligence in any action brought to recover damages for injuries incurred after the expiration of that period." 410 ILCS 45/15 (West 1996). This section reflects settled law. In a common law negligence action, a violation of a statute or ordinance designed to protect human life or property is *prima facie* evidence of negligence; the violation does not constitute negligence *per se*. *Kalata v. Anheuser–Busch Cos.*, 144 Ill.2d 425, 434–35, 163 Ill.Dec. 502, 581 N.E.2d 656 (1991) (and cases cited therein).

Plaintiff (with her supporting *amicus*) contends that a private right of action under the Act is necessary to implement the public policy behind the Act. Plaintiff argues as follows. Section 3 of the Act constitutes an unequivocal, broad prohibition of the application or use of lead-based substances. The prohibition stands whether landlords "applied" lead paint to the

walls of a premises, or whether they "used" it by allowing it to remain exposed on premises walls, *i.e.*, employing it for the purpose of covering walls. This duty that section 3 imposes on landlords is self-actuating and does not require the Department's involvement. "How or why the lead-bearing substance got there or whether defendant knew about its existence or condition, or the presence or activity of the children is not involved."

Plaintiff characterizes the issue of defendants' notice of the lead hazard as a "critical" difference between her common law negligence action and her asserted private right of action under the Act. According to plaintiff: "Although prior notice of the lead hazard is a relevant concern under [plaintiff's] negligence claims, it is not an element of liability under the [Act]."

[8, 9] Despite plaintiff's arguments to the contrary, such an interpretation of the Act would render a private cause of action thereunder one for strict liability. Indeed, "strict liability" means "liability that is imposed on an actor apart from * * * a breach of a duty to exercise reasonable care, *i.e.*, actionable negligence." W. Keeton, Prosser & |396Keeton on Torts § 75, at 534 (5th ed.1984). However, as we stated, the violation of a statute is not negligence *per se*, which refers to strict liability (W. Keeton, Prosser & Keeton on Torts § 36, at 227 (5th ed.1984)), but rather only *prima facie* evidence of negligence (*Kalata*, 144 Ill.2d at 434–35, 163 Ill.Dec. 502, 581 N.E.2d 656), unless the legislature clearly intends to impose strict liability. See *Barthel v. Illinois Central Gulf R.R. Co.*, 74 Ill.2d 213, 221, 23 Ill.Dec. 529, 384 N.E.2d 323 (1978); *Bybee v. O'Hagen*, 243 Ill. App.3d 49, 54, 183 Ill.Dec. 842, 612 N.E.2d 99 (1993); W. Keeton, Prosser & Keeton on Torts § 36, at 227–28 (5th ed.1984).

In this case, the General Assembly declined to draft the Act to impose strict liability in tort. The plain language of the Act, read as a whole, does not evince such legislative intent. *Cf.* 815 ILCS 320/2(5) (West 1996) (Consignment of Art Act) ("The art dealer shall be strictly liable for the loss of or damage to the work of fine art while it is in the art dealer's possession"). Rather, the Act plainly states that a failure to remove a lead hazard within the specified time frame constitutes *prima facie* evidence of negligence. 410 ILCS 45/15 (West 1996). Thus, if we were to create a private cause of action under the Act, it would be a negligence action and not a strict liability action. See, *e.g.*, *Bybee*, 243 Ill.App.3d at 54–55, 183 Ill.Dec. 842, 612 N.E.2d 99. However, plaintiff already has a negligence action based on violation of the Act pending in the circuit court, which operates exactly as would a private cause of action.

[10, 11] This court has implied a right of action under a statute only in cases where the statute would be ineffective, as a practical matter, unless a private right of action were implied. In this case, however, a common law negligence action effectively implements the public policy behind the Act. The threat of liability is an efficient method of enforcing a statute. See *Rodgers*, 149 Ill.2d at 309, 173 Ill.Dec. 642, 597 N.E.2d 616. Further, a common law negligence action serves to make an injured plaintiff whole when a defendant fails to comply with a statute. See *Corgan*, 143 Ill.2d at 315, 158 Ill.Dec. 489, 574 N.E.2d 602. |396The remedy of a common law negligence action is in addition to the several remedies contained in the Act, which include the withholding of rent, relocation of the occupants of a dwelling unit containing a lead hazard, and criminal sanctions against the building owner. 410 ILCS 45/10 (West 1996).

In this case, both the common law and the Act itself provide incentives for plaintiffs to pursue remedies. We therefore conclude that the implication of a private right of action under the Act is not necessary to implement the public policy behind the Act, and that plaintiff has an adequate remedy without creation of a private cause of action under the Act. See *Rhodes v. Mill*

Race Inn, Inc., 126 Ill.App.3d 1024, 1027–28, 81 Ill.Dec. 793, 467 N.E.2d 915 (1984).

Since the fourth factor of the *Sawyer Realty* test is not present, we do not recognize a private cause of action under the Act. Therefore, we uphold the circuit court's dismissal of counts III and VII. Accordingly, we reverse the appellate court, which reversed the circuit court.

II. Private Right of Action Under the City Code

Defendants contend that the appellate court erred in recognizing a private right of action for various violations of the City Code. Defendants argue that, based on the home rule provisions of our state constitution, the City Code cannot support a private right of action.

[12] However, this court need not decide if the City Code *can*, based on the Illinois Constitution, support a private right of action if we conclude that the City Code *does not* support a private right of action. We take this path. "A court will consider a constitutional question only where essential to the disposition of a case, *i.e.*, where the case cannot be determined on other grounds." *Bonaguro v. County Officers Electoral Board*, 158 Ill.2d 391, 396, 199 Ill.Dec. 659, 634 N.E.2d 712 (1994).

[13] We agree with the circuit court that, as with the Act, a cause of action should not be implied under the City [187] Code because it is not necessary to provide an adequate remedy for violations of the Code. Plaintiff's common law negligence action pending in the circuit court constitutes an adequate remedy without need to create a private cause of action under the City Code. See, *e.g.*, *Thompson v. Tormike, Inc.*, 127 Ill.App.3d 674, 82 Ill.Dec. 919, 469 N.E.2d 453 (1984) (applying *Sawyer Realty* test, court held that private cause action under ordinance not necessary to achieve ordinance's purpose). Therefore, we uphold the circuit court's dismissal of counts II, IV, VI, and VIII. Accordingly, we reverse the appellate court, which reversed the dismissal.

CONCLUSION

For the foregoing reasons, the judgment of the appellate court is reversed, the judgment of the circuit court of Cook County is affirmed, and the cause is remanded to the circuit court for consideration of plaintiff's remaining claims.

Appellate court judgment reversed;

circuit court judgment affirmed;

cause remanded.

JUSTICE HARRISON, dissenting:

As the *amicus* brief filed by the Illinois Trial Lawyers Association discusses, lead poisoning is one of the leading environmental health hazards facing our children. The risk of exposure is great, the difficulty of diagnosis is high, and the threat of harm is extreme. In the worst cases, lead poisoning can result in death. Even at lower levels, it can retard development and impair cognition. Its effects may be irreversible.

The major cause of lead poisoning in children is lead paint. The poisoning occurs as the lead paint deteriorates or is removed. Although all children are at risk for lead toxicity, it affects poor and minority children disproportionately.

[186] The City of Chicago and the State of Illinois have been at the forefront of combating the risks posed by ingestion of lead paint. For 30 years, legal advances have been made. Statutes and ordinances have been enacted and then amended as the government searches for effective means to compel landowners to maintain their property free of lead hazards. The causes of action asserted by plaintiff in this case are fully consistent with those efforts and with the precedent of this court.

It is an understatement to say that I am disheartened by the way in which plaintiff's claims have been dismissed by my colleagues today. Despite the court's disturbingly consistent record, I live in per-

petual hope that some day, some child with a meritorious claim will be permitted by our court to have his or her pleas heard by a jury. I have begun to understand, however, that day may not come soon.

What is most discouraging to me is the court's growing disregard for even the most basic principles of judicial review. Adherence to the rules of court, to *stare decisis*, to established standards of review, to express statutory language and even to basic legal reasoning seems now to have become optional. I have complained of this trend before. Today's decision is but the most recent example.

In upholding the circuit court's dismissal of counts III and VII, the court writes that plaintiff should not be allowed to assert a private right of action under the Lead Poisoning Prevention Act (410 ILCS 45/1 *et seq.* (West 1996)) because she can bring a common law tort action against defendants based on violation of that statute. The problem with this analysis, as experienced practitioners will recognize immediately, is that it is premised on a basic theoretical error. It assumes that implying a private right of action under a statute and allowing a plaintiff to bring a common law tort action based on violation of that statute are distinct and mutually [299]exclusive concepts. In reality, they are the same. Conceptually and as a practical matter, there is no difference.

Our recent decisions in *Noyola v. Board of Education*, 179 Ill.2d 121, 129–31, 227 Ill.Dec. 744, 688 N.E.2d 81 (1997), and *Lewis E. v. Spagnolo*, 186 Ill.2d 198, 231–32, 238 Ill.Dec. 1, 710 N.E.2d 798 (1999), should have made this clear. Significantly, those decisions are nowhere to be found in the majority's disposition. They are absent because the majority decided this case backwards. Instead of following the law to the proper result, it reached the result it wanted, then cobbled together some legal principles to rationalize that outcome.

I make no pretense of being a great thinker or profound jurist, but I read the briefs and the law and I think I understand what the cases say. Illinois has long recognized the adjudicatory consequences of legislation. Our approach, which has its origins in English common law, differs from that followed by the federal courts. As in most states, we have come to view implied rights of action through the paradigm of common law tort actions. When we hold that a plaintiff has an implied right of action for violation of a statutory enactment, what we mean is that violation of that statute gives rise to an action based on the appropriate common law tort analog, such as negligence, battery, trespass, nuisance and intentional infliction of emotional distress. See, *e.g., Lewis E. v. Spagnolo*, 186 Ill.2d at 231, 238 Ill.Dec. 1, 710 N.E.2d 798 ("[A]n implied private right of action under a statute is a means by which a plaintiff may pursue a tort action. If a statute is construed as providing an implied private right of action, the plaintiff may pursue a tort action against a defendant whose violation of the statute proximately caused injury to the plaintiff").

As the case law has developed, the court has employed different formulations for describing the applicable principles. The connection between the concepts becomes apparent, however, when these formulations are compared.[300] We say that a plaintiff may recover in negligence based on a defendant's violation of a statute or ordinance (1) if the statute or ordinance was designed to protect human life or property, (2) if the plaintiff belongs to the class intended to be protected by the statute or ordinance, (3) if plaintiff's injury is of the type the statute or ordinance was designed to protect against, and (4) if defendant's violation proximately caused the injury. *Noyola v. Board of Education*, 179 Ill.2d 121, 130–31, 227 Ill.Dec. 744, 688 N.E.2d 81 (1997). Likewise, we hold that a private right of action will be implied under a statute (1) if the plaintiff is a member of the class for whose benefit the statute was enacted, (2) if implication of

the right of action is consistent with the underlying purpose of the statute, (3) if plaintiff's injury is one the statute was designed to prevent, and (4) if implication of an action is necessary to provide an adequate remedy for violations of the statute. *Rodgers v. St. Mary's Hospital*, 149 Ill.2d 302, 308, 173 Ill.Dec. 642, 597 N.E.2d 616 (1992).

The parallels between these formulations derive from their common origin and theoretical basis, which we traced in *Noyola v. Board of Education*, 179 Ill.2d 121, 129–31, 227 Ill.Dec. 744, 688 N.E.2d 81 (1997), and which is discussed more fully in H. Foy, *Some Reflections on Legislation, Adjudication and Implied Private Actions in the State and Federal Courts*, 71 Cornell L.Rev. 501 (1986), cited in *Noyola*. The common origin and theoretical basis of the formulations is also evident to anyone who traces back the implied right of action doctrine through cases such as *Corgan v. Muehling*, 143 Ill.2d 296, 158 Ill.Dec. 489, 574 N.E.2d 602 (1991), and *Sawyer Realty Group, Inc. v. Jarvis Corp.*, 89 Ill.2d 379, 59 Ill.Dec. 905, 432 N.E.2d 849 (1982). The path will lead directly to *Heimgaertner v. Benjamin Electric Manufacturing Co.*, 6 Ill.2d 152, 155, 128 N.E.2d 691 (1955), which upheld the right to sue for damages for a violation of the Election Code based on the principle that "[w]hen a statute is enacted for the protection of a particular class of individuals, a violation of its terms may result in civil as [401] well as criminal liability, even though the former remedy is not specifically mentioned therein."

To the extent that the courts' formulations differ, the difference is a matter of formality rather than substance. Items two and three of the "negligence" formulation correspond, respectively, with items one and three of the implied right of action formulation. Item one of the negligence formulation has its analog in item three of the implied right of action formulation. Although item four of the negligence formulation is not included in the listing of elements for implying a private right of action, there is no doubt that a plaintiff cannot prevail based on an implied right of action theory without a showing that the statutory violation proximately caused her injury. See *Lewis E. v. Spagnolo*, 186 Ill.2d at 231, 238 Ill.Dec. 1, 710 N.E.2d 798 (and cases cited therein). Similarly, although item four of the implied right of action formulation is not included in the listing of elements for bringing a negligence action based on a statutory violation, the notion that allowing recovery is necessary in order to provide an adequate remedy for violation of the statute is implicit whenever the court holds that a plaintiff may sue in tort based on the violation of a statute.

A useful way to think of the implied right of action formulation under Illinois law is as a generic version of the negligence formulation under which liability may be imposed based on violation of a statute using tort theories in addition to negligence, such as battery, trespass, nuisance and intentional infliction of emotional distress. In an implied right of action case, as under the negligence formulation, the statute does not fix all of the elements of the cause of action. Rather, it serves to define the duty or standard of care owed by the defendant. The remaining elements for recovery in tort must still be established.

Under these circumstances, it makes no sense to hold, as the majority does now and as the circuit court did [402] below, that we should not imply a private right of action under the Lead Poisoning Prevention Act because plaintiff may assert a common law negligence claim based on violation of that Act. If plaintiff has a viable negligence claim for violation of the Act, it is because we are willing to imply a private right of action under the statute. If we are willing to imply a private right of action under the statute, it means that plaintiff has a viable negligence claim for violation of the Act. *Bier v. Leanna Lakeside Property Ass'n*, 305 Ill.App.3d 45, 238

Ill.Dec. 386, 711 N.E.2d 773 (1999), a recent appellate court decision, illustrates this point.

In fairness, plaintiff herself is partly to blame for the confusion. Her complaint is drafted so that it contains both common law negligence counts alleging violation of the Act (counts I and V) and counts seeking damages based on defendants' breach of duty under the Act (counts III and VII). With respect to the Act and defendants' liability for its violation, however, there is no substantive difference between the allegations in the various counts. The same statutory violations alleged in counts III and VII are included among the violations cited as grounds for relief in counts I and V. Counts III and VII are simply a subset of the allegations in counts I and V, set apart and restated. Accordingly, an argument can be made that counts III and VII should be stricken on the grounds that they are redundant and constitute nothing more than surplusage. Those counts are not subject to challenge, however, on the grounds that they fail to state a cause of action.

The majority's handling of plaintiff's claims based on violation of Chicago's Municipal Code suffers from the same infirmity. There is no dispute that municipal ordinances can establish a duty of care, violation of which can give rise to liability in tort. See, *e.g., Noyola v. Board of Education*, 179 Ill.2d at 130, 227 Ill.Dec. 744, 688 N.E.2d 81; *Martin v. Ortho Pharmaceutical* Corp., 169 Ill.2d 234, 240, 214 Ill.Dec. 498, 661 N.E.2d 352 (1996); *Kalata v.* [409] *Anheuser–Busch Co.*, 144 Ill.2d 425, 434, 163 Ill.Dec. 502, 581 N.E.2d 656 (1991); *French v. City of Springfield*, 65 Ill.2d 74, 79, 2 Ill.Dec. 271, 357 N.E.2d 438 (1976). Because we allow plaintiffs to sue in tort based on violation of a municipal ordinance, it is erroneous to say that an ordinance cannot serve as the basis for an implied private right of action. As in the case of statutes, there is no practical difference under Illinois law between allowing tort recovery based on an ordinance violation and implying a private right of action under the ordinance. It amounts to precisely the same thing. As a result, if there is any flaw in plaintiff's attempt to assert an implied private right of action, it is that the claim merely duplicates the corresponding paragraphs in her common law negligence counts.

As basic as these mistakes are, they are not the only problems with my colleagues' analysis. The *Sawyer Realty* test, upon which the majority bases its decision, pertains only to implied rights of action. It has no bearing on the viability of express rights of action. As even a cursory examination of the pleadings reveals, however, plaintiff has asserted an express right of action under Chicago's Municipal Code in addition to an implied right of action. Specifically, plaintiff seeks recovery under section 5–12–110(e) of the Code, which expressly allows tenants to "recover damages by claim or defense" when the landlord is in material noncompliance with the rental agreement or section 5–12–070 of the Municipal Code, the ordinance provision that requires landlords to maintain premises in compliance with the applicable provisions of the Municipal Code, including the ordinances prohibiting the use of lead-bearing substances in dwelling units.

Because plaintiff has asserted an express right of action under the Municipal Code, as well as an implied one, the *Sawyer Realty* test would not be dispositive of the entire case even if the majority's application of that test [404] were correct. With respect to plaintiff's express right of action, an issue would still remain as to whether allowing recovery under the Code provisions invoked by plaintiff would violate the home rule provisions of the Illinois Constitution. If the court reached this issue on the merits, as it should, it would have to conclude that no constitutional violation exists.

Under the Illinois Constitution of 1970, home rule units can basically do anything the state can do. Ill. Const.1970, art. VII, § 6. Their powers and functions are to be

construed liberally (Ill. Const.1970, art. VII, § 6(m); *City of Chicago v. Roman*, 184 Ill.2d 504, 513, 235 Ill.Dec. 468, 705 N.E.2d 81 (1998)), and they have "the broadest powers possible" (*Scadron v. City of Des Plaines*, 153 Ill.2d 164, 174, 180 Ill.Dec. 77, 606 N.E.2d 1154 (1992)). Included among their powers is the power to enact ordinances designed to protect public health, safety, morals and welfare. Ill. Const.1970, art. VII, § 6(a).

This grant of power has been construed to encompass the power to regulate the relationship between landlords and tenants. In particular, home rule units have been held to have the power to enact ordinances which govern the termination of tenancies and provide for recovery of civil damages (*City of Evanston v. Create, Inc.*, 85 Ill.2d 101, 51 Ill.Dec. 688, 421 N.E.2d 196 (1981)), impose restrictions for the eviction of tenants (*City of Evanston v. O'Leary*, 244 Ill.App.3d 190, 184 Ill.Dec. 913, 614 N.E.2d 114 (1993)), and allow plaintiffs to recover damages from landlords who take retaliatory action against them (*Reed v. Burns*, 238 Ill.App.3d 148, 179 Ill.Dec. 320, 606 N.E.2d 152 (1992)). There is no legitimate basis for distinguishing those situations from the one before us here.

It is true that matters of statewide interest may be so compelling as to preclude home rule power, but the mere existence of state interest and activity in a particular field does not preclude home rule activity absent legislative action to limit or exclude home rule power or to declare it one of exclusive state control. We said so [192] specifically in *City of Evanston v. Create, Inc.*, 85 Ill.2d at 113, 51 Ill.Dec. 688, 421 N.E.2d 196, where we upheld the right of home rule units to enact landlord-tenant ordinances containing provisions authorizing recovery of damages. In the matter before us today, the legislature most definitely did not act to limit or exclude home rule power. To the contrary, when the legislature enacted the Lead Poisoning Prevention Act, it specifically provided that the legislation was not to be "interpreted or applied in any manner to defeat or impair the right of any person * * * to maintain an action or suit for damages sustained or for equitable relief, or for violation of an ordinance" in connection with any violation of the Act and that the Act "shall not prohibit any city * * * or other political subdivision from enacting and enforcing ordinances establishing a system of lead poisoning control which provide the same or higher standards than those set forth in this Act." 410 ILCS 45/15 (West 1996). In light of these provisions and our own precedent, it is clear that Chicago did not overstep its authority in enacting the ordinances at issue here.

For the foregoing reasons, I would affirm the judgment of the appellate court. I therefore dissent.

187 Ill.2d 341
240 Ill.Dec. 710

[841] **ARANGOLD CORPORATION, d/b/a Arangold Cigar Company, Appellee,**

v.

Kenneth E. ZEHNDER, Director of Revenue, et al., Appellants.

No. 85366.

Supreme Court of Illinois.

July 1, 1999.

Rehearing Denied Oct. 4, 1999.

Wholesale tax distributor brought action challenging validity of Tobacco Products Tax Act, which had been enacted as part of legislature's budget implementation act for fiscal year. After denying distributor's motion for summary judgment on basis that Act violated due process and