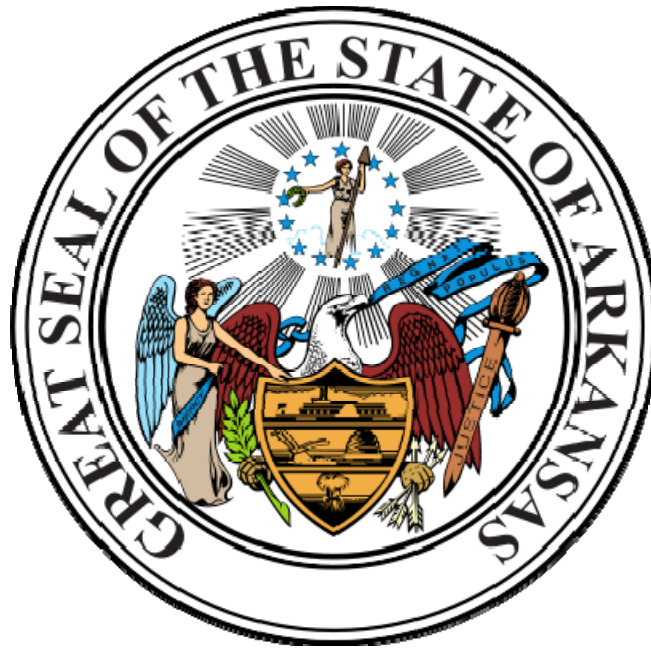


# **ARKANSAS STATE BOARD OF HEALTH**

## **RULES PERTAINING TO LEAD - BASED PAINT ACTIVITIES**



**Promulgated Under the Authority of  
Ark. Code Ann. §§ 20-27-2401 - 2409.**

**By the Arkansas State Board of Health  
Arkansas Department of Health**

**Little Rock, Arkansas**

**September 29, 2011**

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# **RULES PERTAINING TO LEAD - BASED PAINT ACTIVITIES**

## **SECTION I GENERAL PROVISIONS**

### **(a) Authority**

The following rules of the Arkansas Board of Health are adopted pursuant to the Lead - Based Paint Hazard Act of 2011 (Ark. Code Ann. §§ 20-27-2401 - 2409) hereinafter referred to as the Act. These rules shall be known as the Rules Pertaining to Lead - Based Paint Activities.

### **(b) Affected facilities, regulated activities and purpose**

- (1) This rule affects two types of facilities, target housing and child-occupied facilities.
- (2) This rule addresses lead - based paint activities which include the following:
  - (A) inspection -- as defined by this rule,
  - (B) lead-hazard screen;
  - (C) risk assessment -- as defined by this rule, and
  - (D) abatement -- as defined by this rule.
- (3) The purpose of this rule is to do the following:
  - (A) Establish procedures and requirements for the licensing of lead - based paint activities training programs,
  - (B) Establish procedures and requirements for the licensing of lead - based paint activities contractors and consultants,
  - (C) Establish procedures and requirements for the certification of individuals engaged in lead - based paint activities,
  - (D) Establish work practice standards for performing lead - based paint activities,
  - (E) Require that all lead - based paint activities performed in target housing or child-occupied facilities be performed by a licensed lead - based paint consultant or contractor and certified individuals.

### **(c) Applicability**

- (1) This rule applies to all lead - based paint activities, as defined by this rule, conducted in target housing or child-occupied facilities.
- (2) This rule applies to 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 rule regarding lead - based paint, lead - based paint activities,

and lead - based paint hazards.

(d) Homeowner exemption

(1) The provisions of this rule do not apply to persons who perform lead - based paint activities, as defined by this rule, within residential dwellings that they own, except in the following circumstances:

(A) The residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while the lead - based paint activities are being performed; or

(B) A child resides in the residential dwelling who has been identified as having an elevated blood lead level.

(e) Scope

Nothing in this rule requires that the owner or occupant undertake any particular lead - based paint activity. The provisions of this rule establish specific requirements for performing lead - based paint activities should the lead - based paint activities be undertaken. As mentioned above, homeowners are not required to undertake any particular lead - based paint activity and they are exempt from the requirements of this rule except as provided in Section I(d).

(f) Working days and hours

For purpose of submissions required by this rule, any submissions sent to the Department on a weekend or legal holiday shall be receipted as received on the first working day following the weekend or legal holiday. Also for purposes of this rule, a working day shall include the period of time between 8:00 a.m. and 4:30 p.m.

(g) Applicability of other environmental programs

Nothing in this rule precludes the application of other state or federal environmental ordinances, statutes, or rules (including the Clean Air Act, Resource Conservation, and Recovery Act (RCRA), and the Clean Water Act and any permits required under these acts).

(h) Certification and licensing requirement

(1) All lead - based paint activities, as defined by this rule, which are performed on target housing or child-occupied facilities must be performed by the following individuals certified in the particular disciplines set forth in this rule who are:

(A) Employed by a licensed contractor or licensed consultant for that particular lead - based paint activity; or

(B) Employed as an in-house employee for that particular lead - based paint activity.

## **SECTION II DEFINITIONS**

1. "40 CFR" means Title 40 of the Code of Federal Rules.

2. "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:
  - (A) Projects for which there is a written contract or other documentation, which provides that an individual or contractor or consultant will be conducting activities in or to a target house or child-occupied facility that:
    - (i) Shall result in the permanent elimination of lead - based paint hazards; or
    - (ii) Are designed to permanently eliminate lead - based paint hazards and are described in the above-referenced paragraphs (1) and (2) of this definition.
  - (B) Projects resulting in the permanent elimination of lead - based paint hazards, conducted by contractors or consultants licensed in accordance with the provisions of this rule and individuals certified pursuant to the provisions of this rule, unless such projects are addressed by paragraph (4) of this definition.
  - (C) Projects resulting in the permanent elimination of lead - based paint hazards, conducted by contractors or consultants or individuals who, through their company name or promotional literature, represent, advertise, bid, or hold themselves out to be in the business of performing lead - based paint activities as identified and defined by this rule, unless such projects are covered by paragraph (4) of this definition.
  - (D) Projects resulting in the permanent elimination of lead - based paint hazards, that are conducted in response to Federal, state or local abatement orders.
- (4) Abatement does not include renovations, 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.

3. “Act” means the Lead - Based Paint-Hazard Act of 2011 codified at Ark. Code Ann. § 20-27-2401, et seq.

4. “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.

5. “Administrative Procedure Act” means the Arkansas Administrative Procedure Act codified at Ark. Code Ann. § 25-15-201, et seq.
6. “Arithmetic mean” means the algebraic sum of data values divided by the number of data values (for example, the sum of the concentration of lead in several soil samples divided by the number of samples).
7. “Beginning date” means the calendar date when a lead - based paint abatement activity project begins (including all on-site worksite preparation).
8. “Board” means the Arkansas State Board of Health.
9. “Certificate” means a document issued by the Department to any individual who complies with all the certification requirements, including proof of passing a licensed lead - based paint activities training program, or a training program which has been accredited by EPA or a state or Indian Tribal program which has been approved by EPA pursuant to Title 40 (40) of the Code of Federal Rules (CFR) Section 745.324, in the appropriate discipline, payment of the appropriate fee, and proof of passage of the appropriate certification examination -- if required, as set out in this rule.
10. “Certified abatement worker” means an individual who has been trained by a licensed lead - based paint activities training program, as defined by this rule, or a training program which has been accredited by EPA or a state or Indian Tribal program which has been approved by EPA pursuant to 40 CFR Section 745.324 and the individual has been certified by the Department to perform lead - based paint abatements. A certified abatement worker must perform lead - based paint abatements for a licensed contractor or consultant, or as an in-house employee.
11. “Certified inspector” means an individual who has been trained by a licensed training program, as defined by this rule, or a training program which has been accredited by EPA or a state or Indian Tribal program which has been approved by EPA pursuant to 40 CFR Section 745.324 and the individual has been certified by the Department to conduct lead - based paint inspections. A certified inspector also samples for the presence of lead in dust and soil for the purposes of lead - based paint abatement clearance testing. A certified inspector must perform lead - based paint inspections for a licensed contractor or consultant, or as an in-house employee.
12. “Certified project designer” means an individual who has been trained by a licensed training program, as defined by this rule, or a training program which has been accredited by EPA or a state or Indian Tribal program which has been approved by EPA pursuant to 40 CFR Section 745.324 and the individual has been certified by the Department to prepare lead - based paint abatement project designs, occupant protection plans, and abatement reports. A certified project designer must perform lead - based paint project designs, occupant protection plans, and abatement reports for a licensed contractor or consultant, or as an in-house employee.
13. “Certified risk assessor” means an individual who has been trained by a licensed training program as defined by this rule, or a training program which has been accredited by EPA or a state or Indian Tribal program which has been approved by EPA pursuant to 40 CFR Section 745.324, and the individual has been certified by the Department to conduct lead - based paint risk assessments and also sample for the presence of lead in dust and soil for the purpose of abatement clearance testing. A certified risk assessor must perform lead - based paint risk



assessments and sampling for lead in dust and soil for the purposes of abatement clearance testing for a licensed contractor or consultant, or as an in-house employee.

14. “Certified supervisor” means an individual who has been trained by a licensed training program as defined by this rule, or a training program which has been accredited by EPA or a state or Indian Tribal program which has been approved by EPA pursuant to 40 CFR Section 745.324 and the individual has been certified by the Department to conduct and supervise abatements, and to prepare occupant protection plans and abatement reports. A certified supervisor must conduct and supervise lead - based paint abatements, and must prepare occupant protection plans and abatement reports for a licensed contractor or consultant, or as an in-house employee.

15. “Certification exam” means an examination in which an individual demonstrates proficiency as an inspector, risk assessor, or supervisor. The examination is administered upon proof of passage of the appropriate course, including course exam, and any other requirements. Passage of this examination is required for all new applicants in these disciplines and new applicants will not be approved until proof of passage of this examination.

16. “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 Title 42 (42) United States Code (U.S.C.) Section 4851b(2). Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.

17. “Child-occupied facility” means a building or portion of a building constructed prior to 1978, visited regularly by the same child, age six years or younger on at least two different days within any week (Sunday through Saturday period), provided that each day’s visit lasts at least three hours and the combined weekly visit lasts at least six 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.

18. “Clearance levels” means values that indicate the maximum amount of lead permitted in dust on a surface following completion of a lead - based paint abatement activity.

19. “Common area” means a portion of a building generally accessible to all occupants including but not limited to hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages and boundary fences.

20. “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.

21. “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 moldings, 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, countertops, and air conditioners; and exterior components such as: painted roofing, chimneys,

flashing, gutters and down spouts, ceilings, soffits, fascias, rake boards, corner boards, 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, casing, sashes and wells, and air conditioners.

22. “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.

23. “Containment” means a process to protect the environment by controlling exposures to the lead-contaminated dust and debris created during an abatement.

24. “Course agenda” means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

25. “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. The course test is administered by the lead - based paint activities training provider upon successful completion of the training course. A passing score shall be considered 70 percent.

26. “Course test blueprint” means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

27. “Department” means the Arkansas Department of Health or its successors.

28. “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.

29. “Director” means the Director of the Arkansas Department of Health or its successor.

30. “Dripline” means the area within three feet surrounding the perimeter of a building.

31. “Discipline” means one of the specific types or categories of lead - based paint activities identified in this rule for which individuals may receive training from a licensed training program, an EPA approved lead - based paint activities training program, or a training program which has been approved by a state or Indian Tribal program approved by EPA, and seek certification from the Department. For example, “abatement worker” is a discipline.

32. “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.

33. “Documented methodologies” means methods or protocols used to sample for the presence of lead in paint, dust, and soil. Documented methodologies that are appropriate for this rule 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, Lead-contaminated Soil. 40 F.R. 47248 September, 1995; the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling, EPA Report Number 747-R-95-001 (March, 1995) and rules, guidance, methods or protocols issued by a state or Indian Tribe that are authorized by EPA which are submitted to the Director for written approval as provided in this rule.

34. “Dust-lead hazard” means a surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding  $40 \mu\text{g}/\text{ft}^2$  (micrograms per square foot) on floors or  $250 \mu\text{g}/\text{ft}^2$  on interior window sills based on wipe samples.
35. “Elevated Blood Lead Level” (EBL) means an excessive absorption of lead that is a confirmed concentration of lead in whole blood of  $20 \mu\text{g}/\text{dl}$  (micrograms of lead per deciliter of whole blood) for a single venous test or of  $15\text{-}19 \mu\text{g}/\text{dl}$  in two consecutive tests taken three to four months apart.
36. “Emergency” means an event which may present a danger to human health and the environment if the event does not receive immediate attention.
37. “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.
38. “Encapsulation” means the application of an encapsulant.
39. “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.
40. “Ending date” means the calendar date specified in the Notice of Intent as the date upon which lead - based paint abatement activities are completed.
41. “EPA” means the Federal Environmental Protection Agency.
42. “Facility” means a child-occupied building or target housing, as defined by this rule.
43. “Firm” means any company, partnership, corporation, sole proprietorship, association, or other business entity, including lead - based paint contractors and consultants.
44. “F.R.” means Federal Register.
45. “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.
46. “Guest instructors” 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.
47. “Hands-on skills assessment” means an evaluation which tests a trainee’s ability to satisfactorily perform the work practices and procedures identified in this rule, as well as any other skill taught in a lead - based paint training course.
48. “Hazardous waste” means any waste as defined as hazardous waste in 40 CFR Section 261.3.
49. “HUD” means the Federal Department of Housing and Urban Development.
50. “HUD Guidelines” means the Housing and Urban Development’s Guidelines for Evaluation and Control of Lead - based Paint Hazards in Housing.
51. “Impact surface” means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of door frames.

52. “In-house” means a permanent employee. (A permanent employee is not an independent contractor employed for purposes of lead - based paint abatement activities.)
53. “Inspection” means a surface-by-surface investigation to determine the presence of lead - based paint and the provision of a written report explaining the results of the investigation. Inspections may only be performed by an individual certified as an inspector or risk assessor.
54. “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.
55. “Interior window sill” means the portion of the horizontal window ledge that protrudes into the interior of the room.
56. “Lead - based paint” or “LBP” means paint or other surface coatings that contain lead equal to or in excess of  $1.0 \text{ mg/cm}^2$  (milligrams per square centimeter) or more than 0.5 percent by weight.
57. “Lead - based paint activities” means, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement, as defined by this rule.
58. “Lead - based paint hazard” means hazardous lead - based paint, dust-lead hazard or soil-lead hazard as identified in this chapter.
59. “Lead-contaminated dust” means surface dust in target houses or child-occupied facilities that contains an area or mass concentration of lead at or in excess of levels identified by the EPA pursuant to the Federal Toxic Substances Control Act (TSCA) Section 403.
60. “Lead-contaminated soil” means bare soil on target house real property and on the property of a child-occupied facility that contains lead at or in excess of levels identified by the EPA pursuant to TSCA Section 403.
61. “Lead-hazard screen” means a limited risk assessment activity that involves limited paint and dust sampling as described in this rule. A lead-hazard screen may only be performed by an individual certified as a risk assessor.
62. “License” means a document issued by the Department to a lead - based paint consultant, contractor, or training provider who has been approved by the Department as meeting all of the licensing requirements of this rule.
63. “Licensed consultant” means a firm, partnership, corporation, sole proprietorship, association, or other business entity that performs lead - based paint activities and has been issued a license by the Department.
64. “Licensed contractor” means a firm, partnership, corporation, sole proprietorship, association, or other business entity that performs lead - based paint activities and has been issued a license by the Department.
65. “Licensed training provider” means a firm, partnership, corporation, sole proprietorship, association, or other business entity that performs lead - based paint training for lead - based paint activities and has been licensed by the Department.

66. “Living area” means any area of a residential dwelling used by one or more children age six or younger, including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children’s bedrooms.
67. “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.
68. “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.
69. “Multi-family dwelling” means a structure that contains more than one separate 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.
70. “Notice of Deficiency” or “NOD” means a written document which identifies deficiencies in a Notice of Intent.
71. “Notice of Intent” or “NOI” means a written notice document which provides detailed information, as prescribed by this rule, and filed with the Department, as prescribed by this rule, notifying the Department of lead - based paint abatement activities.
72. “Notification period” means a set period of time between the submittal of a Notice of Intent and the beginning of lead - based paint abatement activities (including all on-site worksite preparation).
73. “Occupant protection plan” means a written document which must be prepared by a certified supervisor or certified project designer prior to any lead - based paint abatement activity which shall describe the measures and management procedures, as set forth in this rule, that will be taken during the abatement to protect the building occupants from exposure to any lead - based paint hazards.
74. “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 (for example, 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).
75. “Paint-lead hazard” means any of the following:
  76. 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 (for example, the window sill, or floor) are equal to or greater than the dust-lead hazard levels defined in this chapter.
  77. 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).
  78. Any chewable lead - based painted surface on which there is evidence of teeth marks.
  79. 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.

80. “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.

81. “Person” means any individual, firm, partnership, association, corporation, natural or judicial person, or any Indian Tribe, state or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal government.

82. “Play area” means an area of frequent soil contact by children younger than six years of age as indicated by, but not limited to, such factors including the following: the presence of play equipment (for example, 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.

83. “Principal instructor” means the individual who has the primary responsibility for organizing and teaching a particular course.

84. “RCRA” means the Resource Conservation and Recovery Act.

85. “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.

86. “Reduction” means measures designed to reduce or eliminate human exposure to lead - based paint hazards through methods including interim controls and abatement.

87. “Residential building” means a building containing one or more residential dwellings.

88. “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.

89. “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 written report by the certified risk assessor and the licensed contractor or consultant conducting the risk assessment, explaining the results of the investigation and options for reducing lead - based paint hazards. Risk assessments may only be performed by individuals certified as risk assessors.

90. “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 six 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.

91. “Soil-lead hazard” means 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 or

(µg/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.

92. “Soil sample” means a sample collected in a representative location using American Society for Testing and Materials (ASTM) test method E1727, “Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques,” or equivalent method.

93. “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 six years or younger resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero - bedroom dwelling.

94. “TSCA” means the Federal Toxic Substances Control Act, 15 U.S.C. Sections 2601 to 2692.

95. “Training curriculum” means an established set of course topics for instruction in a licensed training program for a particular discipline designed to provide specialized knowledge and skills.

96. “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.

97. “Training manager” means the individual responsible for administering a licensed training program and monitoring the performance of principal instructors and guest instructors.

98. “Visual inspection for clearance testing” means the visual examination of a target house or a child-occupied facility following an abatement to determine if the abatement has been successfully completed.

99. “Visual inspection for risk assessment” means the visual examination of a target house or a child-occupied facility to determine the existence of deteriorated lead - based paint or other potential sources of lead - based paint hazards.

100. “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 µg/ft<sup>2</sup>, a composite sample (three subsamples) containing 100 µg/ft<sup>2</sup>, and a composite sample (4 subsamples) containing 110 µg/ft<sup>2</sup> is 100 µg/ft<sup>2</sup>. This result is based on the equation  $[60+(3*100)+(4*110)]/(1+3+4)$ .

101. “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.”

102. “Wipe sample” means a sample collected by wiping a representative surface of known area, as determined by ASTM test method 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 test method E1792, “Standard Specification for Wipe Sampling Materials for Lead in Surface Dust.”

103. “µg/dl” means micrograms per deciliter.

104. “µg/ft<sup>2</sup>” means micrograms per square foot.

105. “µg/g” means micrograms per gram which is equivalent to parts per million.

### **SECTION III LICENSING PROCEDURES FOR LEAD - BASED PAINT ACTIVITIES TRAINING PROVIDERS**

#### **(a) Licensing**

Lead - based paint training programs must be licensed by the Department to offer or claim to offer lead - based paint activities courses or refresher courses in the state of Arkansas in any of the following disciplines: inspector, risk assessor, supervisor, project designer, and abatement worker.

#### **(b) Application process**

(1) The application process for lead - based paint activities training provider license includes the following:

(A) A written application submitted to the Department must contain the following information:

(i) The training program’s name, address, and telephone number;

(ii) A list of courses for which it is applying for licensing, including any refresher courses for which the training program is seeking licensing;

(iii) A statement signed by the training program manager certifying that:

(a) the training program meets the requirements established in Section III(b)(3),

(b) the training program is using EPA - recommended model training materials, or

(c) the training program is using training materials approved by a state or Indian Tribal program approved by EPA.

(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 shall also include:

(a) A copy of the student and instructor manuals, or other materials to be used for each course; and



- (b) A copy of the course agenda for each course.
  - (v) All training programs shall include in their application for licensing 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 provided in § III(b)(3)(J).
  - (vi) All appropriate fees; and
  - (vii) A completed disclosure statement form provided by the Department.
- (2) If a training program meets the requirements in § III(b) then the Department shall approve the application for licensing no more than 180 days after receiving a complete application, including any applicable fees, from the training program. In the case of approval, a license shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. The applicant may appeal this decision as provided in the Administrative Procedure Act. Prior to disapproval, the Department may, at its discretion, work with the applicant to address inadequacies in the application for licensing. The Department may also request additional materials retained by the training program under the provisions of § III(b). If a training program's application is disapproved, the program may reapply for licensing at any time.
- (3) For a training program to obtain licensing from the Department to offer lead – based
- (4) paint activities courses, the program shall meet the following requirements:
- (A) The training program shall employ a training manager who has:
    - (i) At least two 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.

- (B) 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 Indian Tribal-accredited lead specific training; or a lead - based paint activities training course licensed by the Department; and
  - (iii) Demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.
- (C) 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.
- (D) The Department shall recognize the following documents as evidence the training managers and principal instructors have the education, work experience, training requirements or demonstrated experience specifically listed in § III(b)(3)(A) and (B) above:
  - (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; and
  - (iii) Certificates from train-the-trainer courses and lead-specific training courses, as evidence of meeting the training requirements.
- (E) The documentation required in § III(b)(3)(D) above need not be submitted with the licensing application, but if not submitted, shall be retained by the training program as required by the record keeping requirements contained in this chapter.
- (F) 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.
- (G) To become licensed 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 eight hours devoted to hands - on training activities. The minimum curriculum requirements are provided in § III(c)(1).
  - (ii) The risk assessor course shall last a minimum of 16 training hours, with a minimum of four hours devoted to hands - on training activities. The minimum curriculum requirements are provided in § III(c)(2).
  - (iii) The supervisor course shall last a minimum of 32 training hours, with a minimum of eight hours devoted to hands - on activities. The minimum curriculum requirements are provided in § III(c)(3).
  - (iv) The project designer course shall last a minimum of eight training hours. The minimum curriculum requirements are provided in § III(c)(4).
  - (v) The abatement worker course shall last a minimum of 16 training hours, with a minimum of eight hours devoted to hands - on training hours. The minimum curriculum requirements are provided in § III(c)(5).
- (H) For each course offered, the training program shall conduct a course test at the completion of the course and, if applicable, a hands - on skills assessment for that discipline. Each individual must successfully complete the hands - on skills assessment and receive a passing score of 70 percent of 100 questions on the course test to pass any course.
- (i) The training manager is responsible for maintaining the validity and integrity of the hands - on skills assessment to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in § III(c).
  - (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 licensing application.
- (I) 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) The name, address, and telephone number of the training program.
- (J) 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; and
  - (ii) Procedures for the training manager's annual review of principal instructor competency.
- (K) The training program shall offer courses which teach the work practice standards for conducting lead - based paint activities contained in 40 CFR Section 745.227, and other standards developed by EPA pursuant to Title IV of the TSCA. These standards shall be taught in the appropriate courses to provide trainees with the knowledge needed to perform the lead - based paint activities they are responsible for conducting.
- (L) The training manager shall be responsible for ensuring that the training program complies at all times with all applicable requirements of Title IV of TSCA and this rule.
- (M) The training manager shall allow EPA and/or Department staff to audit the training program to verify the contents of the application for licensing as set forth in § III(b).

(c) Minimum training requirements

To become licensed, training programs must ensure that their courses of study for the various lead - based paint activities disciplines cover the following subject areas. Listed requirements ending in an asterisk (\*) indicate areas that require hands - on activities as an integral component of the course.

- (1) TARGET HOUSING AND CHILD-OCCUPIED FACILITIES -- LEAD - BASED PAINT ACTIVITIES INSPECTOR
  - (A) Role and responsibilities of an inspector;
  - (B) Background information on lead and its adverse health effects;
  - (C) Background information on Federal, state, and local rules and guidance that pertains 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) TARGET HOUSING AND CHILD-OCCUPIED FACILITIES -- LEAD -

## BASED PAINT ACTIVITIES RISK ASSESSORS

- (A) Role and responsibilities of a risk assessor;
- (B) Collection of background information to perform risk assessment;
- (C) Sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food;
- (D) Visual inspection for the purposes of identifying potential sources of lead - based paint hazards;\*
- (E) Lead hazard screen protocol;
- (F) Sampling for other sources of lead exposure;\*
- (G) Interpretation of lead - based paint and other lead sampling results, including all applicable state or Federal guidance or rules pertaining to lead - based paint hazards;\*
- (H) Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead - based paint hazards; and
- (I) Preparation of a final risk assessment report.

## (3) TARGET HOUSING AND CHILD-OCCUPIED FACILITIES -- LEAD - BASED PAINT ACTIVITIES SUPERVISOR

- (A) Role and responsibilities of a supervisor;
- (B) Background information on lead and its adverse health effects;
- (C) Background information on Federal, state and local rules and guidance that pertain to lead - based paint abatement;
- (D) Liability and insurance issues relating to lead - based paint abatement;
- (E) 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 or lead - based paint hazard control and reduction methods;\*
- (J) Soil and exterior dust abatement or lead - based paint hazard control and reduction methods;\*
- (K) Clearance standards and testing;
- (L) Cleanup and waste disposal; and
- (M) Recordkeeping.

- (4) TARGET HOUSING AND CHILD-OCCUPIED FACILITIES -- LEAD - BASED PAINT ACTIVITIES PROJECT DESIGNER
  - (A) The role and responsibilities of a project designer;
  - (B) Development and implementation of an occupant protection plan for large-scale abatement projects;
  - (C) Lead - based paint abatement and lead - based paint hazard reduction methods, including restricted practices for large-scale abatement projects;
  - (D) Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects;
  - (E) Clearance standards and testing for large-scale abatement projects; and
  - (F) Integration of lead - based paint abatement methods with modernization and rehabilitation projects for large-scale abatement projects.
- (5) TARGET HOUSING AND CHILD-OCCUPIED FACILITIES -- LEAD - BASED PAINT ACTIVITIES ABATEMENT WORKER
  - (A) Role and responsibilities of an abatement worker;
  - (B) Background information on lead and its adverse health effects;
  - (C) Background information on Federal, state and local rules and guidance that pertain to lead - based paint abatement;
  - (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 or lead-hazard reduction;\* and
  - (G) Soil and exterior dust abatement methods or lead - based paint hazard reduction.\*

- (d) Minimum requirements for licensing lead - based paint activities refresher training programs

A training program may seek to offer lead - based paint activities refresher courses in any of the following disciplines: inspector, risk assessor, supervisor, project designer, and abatement worker. A training program may apply for licensing to offer courses or refresher courses in as many disciplines as it chooses. A training program may seek licensing for additional courses at any time as long as the program can demonstrate that it meets the requirements of this chapter.

- (1) To obtain licensing to offer refresher training, a training program must demonstrate that the following course contents are reviewed in the refresher training course:
  - (A) Review the curriculum topics of the full-length courses listed under § III(c) as appropriate; and
  - (B) Ensure that the courses of study include, at a minimum, the following:

- (i) An overview of current safety practices relating to lead - based paint activities in general, as well as specific information pertaining to the appropriate discipline;
  - (ii) Current laws and rules relating to lead - based paint activities in general, as well as, specific information pertaining to the appropriate discipline; and
  - (iii) Current technologies related to lead - based paint activities in general, as well as specific information pertaining to the appropriate discipline.
- (C) Each refresher course, except for the project designer course, shall last a minimum of eight training hours. The project designer refresher course shall last a minimum of four training hours.
- (D) For each refresher course offered, the training program shall conduct a hands-on assessment (if applicable), and at the completion of the course, a course test of 50 questions. (A passing score of 70 percent is required.)
- (2) A training program may apply for licensing of a refresher course concurrently with its application for licensing of the corresponding training course as described in § III(b). If so, the applicant shall provide the applicable information for the corresponding course, as required in § III(d), and the applicable refresher course information.
- (3) A refresher training program seeking licensing to offer refresher training courses only shall submit a written application to the Department containing the applicable information required in the application process as set forth in § III(b) and § III(d) and shall offer a refresher course test of 50 questions with a required passing score of 70 percent and any required hands-on skills assessment.
- (4) The same review process provided for training courses shall apply to application of refresher training courses.
- (e) Reaccreditation of training programs
  - (1) Unless relicensed, a training program's license (including refresher license) shall expire four years after the date of issuance and/or upon failure to submit the applicable annual fees. If a training program meets the requirements of § III(e), the training program shall be relicensed.
  - (2) A training program seeking relicensing shall submit an application to the Department no later than 180 days before its license expires. If a training program does not submit its application for relicensing by that date, the Department cannot guarantee that the program will be relicensed before the end of the license period.
  - (3) The training program's application for relicensing shall contain:
    - (A) The training program's name, address, and telephone number;
    - (B) A list of courses for which it is applying for relicensing;
    - (C) 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;

- (D) A statement signed by the program manager stating:
    - (i) That the training program complies at all times with all requirements in § III(b), § III(c), and § III(d), as applicable; and
    - (ii) The record keeping and reporting requirements of § III(g) shall be followed;
  - (E) A completed disclosure statement, and
  - (F) Applicable fee.
- (4) Upon request, the training program shall allow EPA and/or the Department staff to audit the training program to verify the contents of the application for relicensing as described in § III(e).
- (f) Suspension, revocation, and/or modification of training programs
- (1) The Department may, after notice and opportunity for hearing, suspend, revoke, or modify the license of a training program (including a refresher training license) if a training program, training manager, or other person with supervisory authority over the program has:
    - (A) Misrepresented the contents of a training course to EPA, the Department, and/or the student population;
    - (B) Failed to submit required information or notifications in a timely manner;
    - (C) Failed to maintain required records;
    - (D) Falsified licensing records, instructor qualifications, or other licensing - related information or documentation;
    - (E) Failed to comply with the training standards and requirements in this chapter;
    - (F) Failed to comply with Federal, state, or local environmental lead - based paint statutes or rules; and
    - (G) Made false or misleading statements to the Department in its application for licensing or relicensing which the Department relied upon in approving the application.
  - (2) Any training program, training manager, or other person with supervisory authority over the training program may request a hearing on any decision of the Director to revoke, modify, or suspend a program license.
  - (3) The Department shall maintain a list of parties whose licensing and certification has been suspended, revoked, modified, or reinstated.
- (g) Training program record keeping requirements
- (1) Licensed training programs shall maintain and make available to the EPA and/or the Department, if requested, the following records:



- (A) Official academic transcripts or diplomas which are evidence of the training manager and/or principal instructor meeting the education requirements set forth in § III(b);
  - (B) Resumes, letters of reference, or affidavits documenting work experience, as evidence of the training manager and/or principal instructor meeting the work experience requirements set forth in § III(b);
  - (C) Certificates from train-the-trainer courses and lead-specific training courses, as evidence of the training manager and/or principal instructor meeting the training requirements set forth in § III(b);
  - (D) Current curriculum/course materials and documents reflecting any changes made to current curriculum/course materials;
  - (E) The course test blueprint;
  - (F) Information regarding how the hands-on assessment is conducted including, but not limited to:
    - (i) Who conducts the assessment;
    - (ii) How the skills are graded;
    - (iii) What facilities are used;
    - (iv) The pass/fail rate.
  - (G) The quality control plan as set forth in § III(b)(3)(J) which provides the training manager shall maintain the following documents:
    - (i) Procedures for periodic revision of training materials and course test to reflect innovations in the field; and
    - (ii) Procedures for the training manager's annual review of principal instructor competency.
  - (H) Results of the students' hands-on skills assessment and course tests, and a record of each student's course completion certificate, and any other document which is not specifically listed above, but which was submitted to the Department as part of the program's application for licensing.
- (2) The training program shall retain these records for three years and six months at the address specified on the training program licensing application or the most current address for the training program.
  - (3) The training program shall notify the Department in writing within 30 days of changing the address specified on its training program licensing application or transferring the records from that address.
- (h) Notification by training providers
    - (1) The training manager must provide the Department with written notification of all lead - based paint activities courses offered. The notification shall be on such forms and contain such information as the Department may reasonably require and must be received by the Department at least seven business days prior

to the start date of any lead - based paint activities courses. Notification may be delivered by U.S. Postal Service, commercial mail delivery, fax or hand delivery.

- (2) If the lead - based paint activities course is canceled or postponed, the training manager must notify the Department of the change. This notification must be received at least two business days prior to the originally scheduled start date.
- (3) If the lead - based paint activities course is moved, or the start date is to be prior to the originally scheduled start date, the training manager must notify the Department of the change. This notification must be received at least seven business days prior to the start date.
- (4) The training manager must provide the Department with notification after the completion of any lead - based paint activities course. This notice must be received by the Department no later than 10 business days following course completion.
  - (A) The notification must include the following:
    - (i) Training program name, address, and telephone number.
    - (ii) Course discipline and type (initial/refresher).
    - (iii) Date(s) of training.
    - (iv) The following information for each student who took the course:
      - (a) Name.
      - (b) Address.
      - (c) Date of birth.
      - (d) Course completion certificate number.
      - (e) Pass or fail status.
    - (v) Training manager's name and signature.
  - (B) The notification shall be on such forms and contain such information as the Department may reasonably require. Notification may be delivered by U.S. Postal Service, commercial mail delivery, fax or hand delivery.

#### **SECTION IV CERTIFICATION OF INDIVIDUALS ENGAGED IN LEAD - BASED PAINT ABATEMENT ACTIVITIES PERFORMED ON TARGET HOUSING AND CHILD-OCCUPIED FACILITIES**

##### **(a) Requirement for certification**

Individuals must first apply to the Department for certification to engage in lead - based paint activities pursuant to this chapter. Following the submission of a complete application, including any applicable fees, demonstrating that all the requirements of this chapter have been met, the Department shall certify an applicant as an inspector, risk assessor, supervisor, project designer, or abatement worker, as appropriate.

- (1) The Department shall allow certification of individuals under two different provisions. The Department shall allow for certification of individuals meeting

the requirements of this chapter for original certification; or for individuals meeting the requirements in this chapter for reciprocity.

- (A) Individuals seeking original certification by the Department to engage in lead - based paint activities must submit to the Department:
  - (i) A complete application, including any applicable fees;
  - (ii) A completed disclosure statement for individuals;
  - (iii) An original training certificate in the appropriate discipline issued by a licensed training provider, a training provider approved by EPA, or a training provider approved by a state or Indian Tribal program that has been approved by EPA;
  - (iv) An affidavit that they currently meet the education and/or experience requirements set forth in this chapter, if applicable; and
  - (v) If applicable -- a certificate demonstrating that they have passed a certification exam in the appropriate discipline;
- (B) Individuals seeking certification based upon reciprocity must submit to the Department:
  - (i) A completed application, including any applicable fees;
  - (ii) An original, valid lead - based paint activities certification (or equivalent) from a state or tribal program that has been authorized by EPA pursuant to 40 CFR Part 745 in the appropriate discipline;
  - (iii) An original of the training course certificate in the appropriate discipline;
  - (iv) A signed affidavit by the applicant that he or she meets all the requirements established in this rule for the particular discipline for which application is being made;
  - (v) If applicable -- a certificate demonstrating that they have passed a certification exam in the appropriate discipline; and
  - (vi) A completed disclosure statement for individuals.
- (2) Upon receiving Department 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 the requirements of this rule.
- (3) It shall be considered a violation of TSCA, as well as, the Act, this rule, and any other applicable state law or rule, for an individual to conduct any of the lead - based paint activities described in this rule unless that individual has received the appropriate certification and training pursuant to the requirements specified in this rule.

(b) Original certification -- inspector, supervisor, risk assessor

To become certified by the Department as an inspector, risk assessor, or supervisor, pursuant to

§IV(b), an individual must complete an application demonstrating the following in addition to paying any required fees:

- (1) Inspector: Meet or exceed the following experience and/or education requirements:
  - (A) Successfully complete a licensed inspector course, or a course approved by EPA, or a state or Indian Tribe EPA approved program in the appropriate discipline and receive a course completion certificate from a licensed training program or from a state or tribal program that has been authorized by EPA and present the original training certificate;
  - (B) Pass the inspector certification exam offered by EPA, the Department, or any other state or Indian Tribe program authorized by EPA to administer the exam. The results must be accompanied by a certification from that state or tribal authority; and
  - (C) Payment of required fees.
- (2) Risk assessor
  - (A) Successful completion of licensed inspector and risk assessor training courses, or training courses approved by EPA, or a state or Indian Tribe program approved by EPA at the time the courses were taken; and
  - (B) Pass the risk assessor certification exam offered by EPA, the Department, or any other state or Indian Tribe program authorized by EPA to administer the exam. The results must be accompanied by a certification from that state or tribal authority; and
  - (C) Payment of required fees.
  - (D) A Bachelor's degree and one year of experience in a related field (for example, lead, asbestos, environmental remediation work, or construction), or an Associate's degree and two years of experience in a related field (for example, lead, asbestos, environmental remediation work, or construction); or
  - (E) Certification as an industrial hygienist, professional engineer, registered architect and/or certification in a related engineering/health/environmental field (for example, safety professional, environmental scientist); or
  - (F) A high school diploma (or equivalent), and at least three years of experience in a related field (for example, lead, asbestos, environmental remediation work or construction).
- (3) Supervisor
  - (A) Successful completion of a licensed supervisor training course, or from an EPA-approved training course, or from a state or Indian Tribe program that was authorized by EPA at the time the course was taken for supervisors;
  - (B) Pass the supervisor certification exam offered by EPA, the Department, or

any other state or Indian Tribe program authorized by EPA to administer the exam. The results must be accompanied by a certification from that state or tribal authority;

- (C) Payment of required fees;
- (D) One year of job experience as a certified lead - based paint abatement worker; or
- (E) At least two years of experience in a related field (for example, lead, asbestos, or environmental remediation work) or in the building trades.

(c) Certification exam

All applicants for certification as an inspector, risk assessor, or supervisor must pass a certification examination one time for each of these disciplines, unless they received initial training before January 1, 1999, and attended annual refresher courses each year following their initial training.

- (1) In order to take the certification examination for a particular discipline all applicants must provide proof that they have:
  - (A) Successfully completed a lead - based paint activities training course in the appropriate discipline and received a course completion certificate from a licensed lead - based paint activities training program, an EPA-approved training course, or a training course approved by a state or Indian Tribal program approved by EPA; and
  - (B) Meet or exceed the education and/or experience requirements in this chapter for the particular discipline.
- (2) An individual may take the certification exam no more than three times within six months of receiving a course completion certificate.
- (3) If an individual does not pass the certification exam and receive a certificate within six months of receiving his/her course completion certificate, the individual must retake the appropriate course from a licensed lead - based paint activities training program, a training program approved by EPA, or a training program approved by a state or Indian Tribal approved program before reapplying for certification from the Department.
- (4) The Department will administer a certification examination for purposes of certification as an inspector, risk assessor, or supervisor of lead - based paint activities performed on target housing or child-occupied facilities.

(d) Original certification – abatement worker and project designer

- (1) To become certified by the Department as an abatement worker, the applicant must demonstrate successful completion of a licensed worker training course, or a training course approved by EPA or a state or Indian Tribal program approved by EPA at the time the course was taken and receive a course completion certificate;
- (2) To become certified by the Department as a project designer, the applicant must demonstrate:

- (A) Successful completion of licensed supervisor and project designer training courses, or training courses approved by EPA or a state or Indian Tribal program approved by EPA at the time the courses were taken and receive a course completion certificate;
- (B) Bachelor's degree in engineering, architecture, or a related profession, and one year of experience in building construction and design or a related field; or
- (C) Four years of experience in building construction and design or a related field.

(e) Reciprocity

Individuals seeking certification from the Department based upon accreditation by EPA, or an EPA-approved state or Indian Tribal program may submit the following original documents for review by the Department:

- (1) The original, valid lead - based paint activities certification (or equivalent) from EPA, or an EPA - approved state or Indian Tribal program in the prescribed discipline;
- (2) The original training course certificate in the prescribed discipline issued by a training provider who at the time the training certificate in question was issued was an EPA, or an EPA - approved state or Indian Tribal program authorized training provider;
- (3) The original certification of a passing score on the applicable certification exam for the particular discipline, if any;
- (4) A signed affidavit by the applicant that he or she meets all the requirements established in this rule for the particular discipline for which application is being made; and
- (5) A completed application accompanied with the appropriate fee.

(f) Documents

The following documents shall be recognized by the Department as evidence of meeting the requirements listed in this chapter:

- (1) Official academic transcripts or diploma, as evidence of meeting the education requirements.
- (2) Resumes, letters of reference, or affidavits documenting work experience, as evidence of meeting the work experience requirements.
- (3) Original course completion certificates from lead - specific or other related training courses, issued by accredited or licensed lead - based paint activities training programs, as evidence of meeting the training requirements.

(g) Expiration

After successfully completing the appropriate training courses and meeting any other qualifications described in this chapter, an individual shall be issued a certificate from the

Department. To maintain certification, an individual must be recertified annually as described in this chapter. All certificates shall expire upon the last day of the twelfth month after the training was received. No person shall conduct lead - based paint activities in Arkansas after the expiration of the certificate.

(h) Recertification

- (1) To maintain certification in a particular discipline, a certified individual shall apply to the Department in that discipline for recertification prior to the last day of the twelfth month after training was received.
- (2) The individual shall submit the following:
  - (A) A completed application, including appropriate fees, and a disclosure statement for individuals; and
  - (B) The original lead - based paint training refresher course certificate from a licensed training provider, an EPA approved training provider, or a training provider approved by a state or Indian Tribal program approved by EPA.
- (3) Any certificate holder may successfully complete the appropriate refresher course within 12 months of the expiration of the certificate without being required to comply with the initial training requirements.

(i) Suspension, revocation, and modification of certification of individuals engaged in lead - based paint activities

The Department may, after notice and opportunity for hearing, suspend, revoke, deny, or modify an individual's certification if an individual has:

- (1) Obtained training documentation through fraudulent means;
- (2) Gained admission to and completed a licensed training program through misrepresentation of admission requirements;
- (3) Obtained certification through misrepresentation of certification requirements or related documents dealing with education, training, professional registration, or experience;
- (4) Performed work requiring certification at a job site without having proof of certification;
- (5) Permitted the duplication or use of the individual's own certificate by another;
- (6) Performed work for which certification is required, but for which appropriate certification has not been received;
- (7) Failed to comply with the appropriate work practice standards for lead - based paint activities set forth in this rule; and
- (8) Failed to comply with federal or state environmental lead - based paint statutes or rules.

(j) Appeal

Any individual may request a hearing on any decision of the Director to revoke, modify, or suspend a certification or a license pursuant to the requirements of Administrative Procedure Act.

## **SECTION V LICENSING OF CONTRACTORS AND CONSULTANTS**

### **(a) Licensing**

- (1) All contractors or consultants which perform or offer to perform any of the lead - based paint activities described in this rule shall be licensed by the Department.
- (2) A contractor or consultant seeking licensing shall submit to the Department a letter attesting that the contractor or consultant shall only employ appropriately certified employees to conduct lead - based paint activities; that the contractor or consultant and its employees shall follow the work practice standards in this rule for conducting lead - based paint activities; and the contractor or consultant will maintain a supervisor present during all lead - based paint activities.
- (3) From the date of receiving a complete application, proof of liability insurance coverage, which covers lead - based paint activities, the contractor or consultant's letter, any applicable fees, and the disclosure statement for firms, the Department shall have 90 days to approve or disapprove the contractor or consultant's request for certification. Within that time, the Department shall respond with either a license or a letter describing the reasons for a disapproval. In the case of disapproval, the applicant may appeal this decision. The Department may, at its discretion, work with the contractor or consultant to address inadequacies in the application for licensing. The Department may also request additional materials retained by the training program. If a contractor or consultant's application is disapproved, the contractor or consultant may reapply at any time with the submission of applicable fees.
- (4) The contractor or consultant shall maintain all records as follows:
  - (A) All reports and plans required by this rule shall be maintained by the licensed contractor or consultant who prepared the report for no fewer than three years; and
  - (B) The licensed contractor or consultant shall provide copies of these reports to the building owner who contracts for its services;

### **(b) Suspension, revocation, and modification of licensing of firms engaged in lead - based paint activities**

The Department may, after notice and opportunity for hearing, suspend, revoke, deny, or modify a firm's certification if a firm has:

- (1) Performed work requiring certification at a job site with individuals who are not certified;
- (2) Failed to comply with the work practice standards established in this rule;
- (3) Misrepresented facts in its letter of application for certification to the Department;
- (4) Failed to maintain required records; and



- (5) Failed to comply with federal or state lead - based paint environmental statutes or rules.
- (c) Appeal
  - (1) Any contractor or consultant may request a hearing on any decision of the Director to revoke, modify, or suspend a certification or a license.

## **SECTION VI FEES**

- (a) In order to support the costs of operating the lead program in the state of Arkansas, the Department will assess the annual fees as described in this chapter:
- (b) Any contractor desiring a license to conduct lead abatement activities will be assessed an annual fee of \$1,200.00 (State, federal, and local governments and subdivisions shall be exempt from this fee.);
- (c) Any consultant desiring a license to participate in lead abatement projects will be assessed an annual fee of \$1,200.00 (State, federal, and local governments and subdivisions shall be exempt from this fee.);
- (d) Any training provider desiring a license to conduct lead training courses will be assessed an annual fee of \$900.00;
- (e) Any person desiring certification as an inspector, risk assessor, supervisor, or project designer for a contractor, consultant, or as an in-house employee will be assessed an annual fee of \$150.00;
- (f) Any person desiring certification as a worker will be assessed an annual fee of \$35.00;
- (g) Any NOI filed with the Department will be accompanied by a submittal fee of \$100.00, including notification of emergencies;
- (h) Any revision of an original NOI required pursuant to § VII(e) shall be accompanied by a submittal fee of \$50.00 except revisions which notify the Department staff of changes in the ending date of the project;
- (i) Any individual or firm who misplaces a certification card or license, or loses a card or license shall be assessed a fee of \$15.00 to replace the original certification card or license.
- (j) Any individual seeking application to sit for the certification examination in the disciplines of risk assessor, supervisor, or inspector shall be assessed a fee of \$50.00 for each sitting of the examination.

## **SECTION VII NOTIFICATION FOR LEAD - BASED PAINT ABATEMENTS PERFORMED ON TARGET HOUSING OR CHILD-OCCUPIED FACILITIES**

- (a) Notification
  - (1) For all projects involving lead - based paint abatement activities on target housing or child-occupied facilities, the building owner and/or the licensed lead - based paint contractor or consultant shall submit written notification on the notification form provided by the Department for each target house intended to be occupied as a single-family dwelling and each child-occupied facility and all applicable fees.

- (2) The notice shall be delivered to the Department at least 10 working days prior to commencement of the abatement activities, which includes site preparation;
  - (A) By hand-delivery, or
  - (B) By certified mail, return receipt requested, post-marked at least 10 working days before the beginning of the lead - based paint abatement and addressed to the Department;

(b) Notification form

All written notifications shall be submitted on a form provided by the Department and shall include the following:

- (1) Name, street address, contact person, and telephone number for the building owner;
- (2) Name, street address, contact person, telephone number, and license number of the licensed lead - based paint contractor or consultant performing the lead - based paint abatement;
- (3) Scheduled starting and completion dates of the lead - based paint abatement activities;
- (4) Scheduled work hours;
- (5) Location and street address of the target house(s) or child-occupied facility(ies) upon which the abatement will be performed, including any apartment number if applicable;
- (6) Name, business address, business telephone number, certificate number, and discipline of the person preparing the occupant protection plan and the license number of the firm employing this person for this lead - based paint activity;
- (7) Work practices to be employed during the abatement;
- (8) Whether an inspection, risk assessment, or lead-hazard screen has been performed on the structure upon which the abatement will be performed;
- (9) If an inspection, risk assessment, or lead-hazard screen has been performed, the date performed, the certificate number, discipline, and name of the individual who performed the lead - based paint activity, and the license number and name of the firm for whom the individual performed the lead - based paint activity;
- (10) Name, business address, and business telephone number of the laboratory performing any analysis associated with the abatement.
- (11) The name, certificate number, and complete telephone number of the supervisor who will be on site and telephone number of the firm employing the supervisor for the particular abatement.

(c) Waiver of notification

The Department may waive the 10-day notification period if an emergency, as defined by this rule, exists, and the building owner and/or the lead - based paint contractor or lead - based paint consultant complies with the following:

- (1) The building owner and/or the lead - based paint consultant or lead - based paint contractor must notify the Department by telephone to request an emergency waiver, stating the nature of the emergency, as soon as the emergency is detected. If such emergency occurs at night, on holidays, or on weekends, the necessary corrective measures may be taken at that time and the telephone call shall be made on the first workday following the detection of the emergency.
- (2) The building owner and/or the lead - based paint contractor or lead - based paint consultant shall submit a written report to the Department within 24 hours of detecting the emergency, accompanied with the prescribed fee, and the following information:
  - (A) Street address and apartment number, if any, of the target house(s) or child-occupied facility(ies);
  - (B) The name, address, and telephone number of the owner of the target house(s) or child-occupied facility(ies);
  - (C) The date and time the emergency was detected and the name of the person detecting the emergency;
  - (D) Detailed description and explanation of the facts constituting an emergency;
  - (E) Name, address, telephone number, and license number of the licensed lead - based paint contractor or lead - based paint consultant performing the lead - based paint abatement;
  - (F) The name, business address, business telephone number, certificate number, the discipline of the person performing the occupant protection plan, and the date upon which the occupant protection plan was completed;
  - (G) The name, business address, telephone number, and license number of the firm for whom the occupant protection plan was performed;
  - (H) The name, address, and telephone number of the laboratory performing the analysis associated with the abatement;
  - (I) If any inspection, risk assessment, or lead-hazard screen was performed, the name, telephone, address, certificate number and discipline of the person performing the lead - based paint activity;
  - (J) The name of the firm, address, telephone number, and license number of the firm for whom the inspection, risk assessment, or lead-hazard screen was performed;
  - (K) Any documents, including forms, complaints, notices, or orders issued by any state, local, or Federal agency concerning the emergency condition, and
  - (L) The name, certificate number, and telephone number of the supervisor and the name, license number, and telephone number of the firm employing

the supervisor for the particular abatement.

- (3) Upon review of the information, the Department may determine the incident was not an emergency and subject to the 10-day notification period.
- (d) Notice of deficiency
- (1) The Department shall review all notifications for accuracy and completeness and may return a deficient notification to the building owner and/or the lead - based paint contractor or consultant submitting the notification along with a Notice of Deficiency. The NOI shall be corrected and resubmitted by the building owner and/or contractor or consultant and shall be subject to a new notification period.
  - (2) The following may result in an enforcement action;
    - (A) Failure to provide notification of the work practice;
    - (B) Failure to provide beginning dates for the project;
    - (C) Failure to provide the applicable certification numbers and license numbers; and
    - (D) Failure to provide notification of scheduled work hours.
  - (3) The Department may issue a Notice of Deficiency for notification of emergencies which the Department upon review of information provided by the owner and/or lead - based paint contractor or lead - based paint consultant finds was not an emergency as defined by the rule.
- (e) Revision of notification
- (1) A building owner and/or consultant or contractor who has already submitted a notification shall notify the Department in writing no later than three working days prior to the effective date of the Notice of Intent of any of the following changes accompanied by the prescribed revision fee:
    - (A) Scheduled work hours;
    - (B) Licensed firm and the name and certificate number of the supervisor present during the abatement activities;
    - (C) Work practices; and
    - (D) Start date.
  - (2) A building owner and/or consultant or contractor who has already submitted a notification shall notify the Department in writing no later than three working days prior to the effective date of the Notice of Intent of any changes not listed in § VII(e)(1). Since an additional fee is not required to accompany these revisions, these revised notifications may be sent by facsimile or by mail.

**SECTION VIII WORK PRACTICE STANDARDS FOR LEAD - BASED PAINT ACTIVITIES CONDUCTED IN TARGET HOUSING OR CHILD - OCCUPIED FACILITIES**

- (a) Work practice standards

All lead - based paint activities performed on target housing or child-occupied facilities must comply with the following work practice standards.

- (1) For purposes of this rule, lead - based paint activities include:
    - (A) Inspection;
    - (B) Lead-hazard screen;
    - (C) Risk assessment;
    - (D) Abatement, including preparation of the occupant protection plan;
  - (2) All lead - based paint activities shall be performed pursuant to the work practice standards contained in this chapter.
  - (3) 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.
  - (4) Documented methodologies that are appropriate for this chapter are found in the following:
    - (A) The U.S. Department of Housing and Urban Development, (HUD) Guidelines for the Evaluation and Control of Lead - based Paint Hazards in Housing;
    - (B) The EPA Guidance on Residential Lead - based Paint, Lead-contaminated Dust, Lead-contaminated Soil. 40 F.R. 47248 September, 1995; the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling, EPA Report Number 747-R-95-001 (March, 1995); and
    - (C) Rules, guidances, methods or protocols issued by a state or Indian Tribes that are authorized by EPA which are submitted to the Director for written approval as provided in this rule.
  - (5) Clearance levels appropriate for the purposes of this chapter 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 of target housing and child-occupied facilities for the presence of lead - based paint
- (1) Inspection may only be performed by an individual meeting the following criteria:
    - (A) Certified by the Department as an inspector or risk assessor; and
    - (B) Performing the inspection for a licensed lead - based paint consultant or lead - based paint contractor or as an in-house employee.
  - (2) If a lead - based paint inspection is conducted on a target house or child-occupied facility, the inspection must be conducted according to the following procedures:
    - (A) When conducting an inspection, the following locations shall be selected according to documented methodologies, as defined in this rule, and tested

for the presence of lead - based paint:

- (i) In a target house 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.
- (B) 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 the requirements of § VIII(f), to determine if they contain detectable levels of lead that can be quantified numerically.
- (C) The certified inspector or risk assessor shall prepare a written inspection report which shall include the following information:
- (i) Date of each inspection;
  - (ii) Street address of building;
  - (iii) Date of construction and date of any replacements the inspector determines to have been made to the structure;
  - (iv) Apartment numbers (if applicable);
  - (v) Name, address, and telephone number of the owner or owners of each target house 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 licensed firm employing the inspector and/or risk assessor for the particular inspection;
  - (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 and the name and certification number of the individual operating the XRF, and the name and license number of the contractor or consultant employing the individual;

- (ix) Specific locations of each painted component tested for the presence of lead - based paint, including a diagram;
  - (x) The results of the inspection expressed in terms appropriate to the sampling method used.
- (c) Performance of a lead - hazard screen for the presence of lead - based paint on target housing or child-occupied facilities
  - (1) Lead - hazard screen may only be performed on target housing or child - occupied facilities by an individual who is:
    - (A) Certified by the Department as a risk assessor; and
    - (B) Employed by a licensed lead - based paint contractor or consultant or as an in-house employee.
  - (2) If conducted, a lead-hazard screen shall be conducted as follows:
    - (A) Background information regarding the physical characteristics of the target housing or child - occupied facility and occupant use patterns that may cause lead - based paint exposure to one or more children age six years or younger shall be collected.
    - (B) A visual inspection of the target housing or child - occupied facility shall be conducted to:
      - (i) Determine if any deteriorated paint is present, and
      - (ii) Locate at least two dust sampling locations.
    - (C) 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.
    - (D) In target housing, 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 six years and younger, are most likely to come in contact with dust.
    - (E) In multifamily dwellings and child - occupied facilities, in addition to the floor and window samples required in § VIII(c)(2)(D) above, the risk assessor shall also collect composite dust samples from common areas where one or more children, age six and younger, are most likely to come into contact with dust.
  - (3) Dust samples shall be collected and analyzed in the following manner:
    - (A) All dust samples shall be taken using documented methodologies that incorporate adequate quality control procedures.
    - (B) All collected dust samples shall be analyzed according to § VIII(f), to determine if they contain detectable levels of lead that can be quantified numerically.

- (4) Paint shall be sampled in the following manner:
  - (A) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or
  - (B) All collected paint chip samples shall be analyzed according to § VIII(f), to determine if they contain detectable levels of lead that can be quantified numerically.
- (5) If conducted, the lead-hazard screen report shall be conducted by a certified risk assessor which shall include the following information:
  - (A) Date of the lead-hazard screen;
  - (B) Address of each building;
  - (C) Date of construction of buildings;
  - (D) Apartment number (if applicable);
  - (E) Name, address, and telephone number of each owner of each building;
  - (F) Name, signature, telephone number, and certification number of the certified risk assessor conducting the lead-hazard screen;
  - (G) Name, address, telephone number, and license number of the licensed firm employing each certified risk assessor;
  - (H) Name, address, and telephone number of each recognized laboratory, as provided in § VIII(f), conducting analysis of collected samples;
  - (I) Results of the visual inspection;
  - (J) Testing method and sampling procedure for paint analysis employed;
  - (K) Specific locations of each painted component tested for the presence of lead, including a diagram;
  - (L) All data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device and the name and certification number of the individual operating the XRF machine, and the name and license number of the contractor or consultant employing the individual;
  - (M) All results of laboratory analysis on collected paint, soil, and dust samples;
  - (N) Any other sampling results;
  - (O) Background information regarding the physical characteristics of the target house or child - occupied facility and occupant use patterns that may cause lead - based paint exposure to one or more children age six years or younger which has been collected; and
  - (P) Recommendations, if warranted, for a follow-up risk assessment and, as appropriate, any further actions.



- (d) Performance of a risk assessment for the presence of lead - based paint and lead - based paint hazards on target housing or child-occupied facilities
  - (1) Risk assessments may only be performed on target housing or child-occupied facilities by an individual who is:
    - (A) Certified by the Department as a risk assessor; and
    - (B) Employed by a licensed lead - based paint abatement contractor or a lead - based paint consultant or as an in-house employee.
  - (2) If conducted, a risk assessment shall be conducted only by a person certified by the Department as a risk assessor according to the procedures in this paragraph.
    - (A) A visual inspection for risk assessment of the target house 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.
    - (B) 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 six years and younger shall be collected.
    - (C) 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.
    - (D) In target housing, dust samples (either composite or single - surface samples) from the interior window sill(s) and floor shall be collected in all living areas where one or more children, age six years or younger, are most likely to come into contact with dust.
    - (E) For multi-family dwellings and child - occupied facilities, the samples required in § VIII(d)(2)(C) shall be taken. In addition, interior window sill and floor dust samples (either composite or single - surface samples) shall be collected in the following locations:
      - (F) Common areas adjacent to the sampled target housing or child - occupied facility; and
      - (G) Other common areas in the building where the risk assessor determines that one or more children, age six years and younger, are likely to come into contact with dust.
    - (H) For child - occupied facilities, interior window sill and floor dust samples (either composite or single - surface samples) shall be collected in each room, hallway or stairwell utilized by one or more children, age six years and younger, and in other common areas in the child - occupied facility

where the risk assessor determines one or more children, age six years and younger, are likely to come into contact with dust.

- (I) Soil samples shall be collected and analyzed for lead concentrations in the following locations:
- (J) Exterior play areas where bare soil is present;
- (K) The rest of the yard (that is, non-play areas) where bare soil is present; and
- (L) Dripline/foundation areas where bare soil is present.
- (M) Any paint, dust, or soil sampling or testing shall be conducted using documented methodologies that incorporate adequate quality control procedures.
- (N) Any collected paint chip, dust, or soil samples shall be analyzed according to § VIII(f), to determine if they contain detectable levels of lead that can be quantified numerically.
- (O) The certified risk assessor shall prepare a written 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, address, telephone number, signature, and certification of the certified risk assessor conducting the assessment;
  - (vii) Name, address, and telephone number, and license number of the licensed contractor or consultant employing each certified risk assessor;
  - (viii) Name, address, and telephone number of each recognized laboratory, as provided in § VIII(f), 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, including a diagram;
  - (xii) All data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device, the name and certificate number of the individual operating the XRF machine, and the name and license number of the contractor or

consultant employing the operator;

- (xiii) All results of laboratory analysis on collected paint, soil, and dust samples;
- (xiv) Any other sampling results;
- (xv) Any background information regarding the physical characteristics of the target house or child - occupied facility and occupant use patterns that may cause lead - based paint exposure to one or more children, age six years or younger, which shall have been collected;
- (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, including a diagram;
- (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

If conducted, abatements may only be performed on target housing or child-occupied facilities by an individual who is:

- (1) Certified by the Department as a supervisor or a worker; and
- (2) Employed by a licensed lead - based paint abatement contractor or a lead - based paint consultant or as an in-house employee.
- (3) A certified supervisor is required for each abatement project and shall be on site during all work site preparation, abatement, and during the post - abatement cleanup of work areas. On site means at the physical location where the site preparation, abatement, and post-abatement activities are conducted at the time the lead - based paint activities are conducted.
- (4) The certified supervisor and the contractor or consultant or if the supervisor is an in-house employee, the building owner employing that supervisor shall ensure that all abatement activities are conducted according to the requirements of this rule and all other Federal and state environmental statutes and rules.
- (5) Notification of the commencement of lead - based paint abatement activities in target housing or child - occupied facility or as a result of a Federal, state, or local order shall be given to the Department prior to the commencement of abatement

activities as required in § VII(a) through § VII(e).

- (6) A written occupant protection plan shall be developed for all abatement projects and shall be prepared according to the following procedures:
  - (A) The occupant protection plan shall be unique to each target house 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.
  - (B) A certified supervisor or certified project designer shall prepare the occupant protection plan.
  - (C) Occupant protection plans may only be performed on target housing or child-occupied facilities by an individual who is:
    - (i) Certified by the Department as a supervisor or project designer; and
    - (ii) Employed by a licensed lead - based paint abatement contractor or a lead - based paint consultant or as an in-house employee.
- (7) The work practices listed below shall be restricted during an abatement as follows:
  - (A) Open - flame burning or torching of lead - based paint is prohibited;
  - (B) 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;
  - (C) Dry scraping of lead - based paint is permitted only in the following circumstances:
    - (i) In conjunction with heat guns;
    - (ii) Around electrical outlets; or
    - (iii) When treating defective paint spots totaling no more than two square feet in any one room, hallway or stairwell or totaling no more than 20 square feet on exterior surfaces.
  - (D) Operating a heat gun on lead - based paint is permitted only at temperatures below 1,100 degrees Fahrenheit.
- (8) If conducted, soil abatement shall be conducted in one of the following ways:
  - (A) If soil is removed:
    - (i) The soil shall be replaced by soil with a lead concentration as close to local background as practicable, but no greater than 400 parts per million.
    - (ii) The soil that is removed shall not be used as top soil at another

residential property or child-occupied facility.

- (B) If soil is not removed, the lead - contaminated soil shall be permanently covered, as defined in this rule.
  - (C) If hydro blasting or high-pressure water is used for abatement, the building owner or the licensed lead - based paint contractor or consultant conducting the abatement must collect and containerize the water, send a copy of a waste shipment report to the Lead - Based Paint Program of the Department, and transport it to a permitted wastewater treatment facility for disposal. The permitted wastewater treatment facility must then provide a copy of a waste shipment manifest to the Lead - based Paint Section of the Department within thirty days of the disposal. The building owner or the licensed lead - based paint contractor or consultant may submit an alternative method for collecting and containerizing the lead contaminated water to a permitted wastewater treatment facility to the Director for his or her written approval. The Director shall issue a decision within 90 days of submission. The decision of the Director is appealable.
- (9) The following post - abatement clearance procedures shall be performed only by a certified inspector or risk assessor:
- (A) 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.
  - (B) Following the visual inspection and any post - abatement cleanup required in § VIII(e)(9)(A) above, clearance sampling for lead - contaminated dust shall be conducted. Clearance sampling may be conducted by employing single - surface sampling or composite sampling techniques.
  - (C) Dust samples for clearance purposes shall be taken using documented methodologies that incorporate adequate quality control procedures.
  - (D) Dust samples for clearance purposes shall be taken a minimum of one hour after completion of final post - abatement cleanup activities.
  - (E) 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 target house or child - occupied facility:
    - (i) 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 floor of no fewer 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 fewer than four rooms, hallways or

stairwells within the containment area, then all rooms, hallways or stairwells shall be sampled.

- (ii) After conducting an abatement with no containment, two dust samples shall be taken from no fewer than 4 rooms, hallways or stairwells in the target housing 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 fewer than four rooms, hallways or stairwells within the target house or child - occupied facility then all rooms, hallways or stairwells shall be sampled.
  - (iii) 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 environmental requirements.
- (F) The rooms, hallways or stairwells selected for sampling shall be selected according to documented methodologies.
  - (G) 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 § VIII(e)(9)(H) for lead in dust on floors and 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.
  - (H) The clearance levels for lead in dust are  $40 \mu\text{g}/\text{ft}^2$  for floors,  $250 \mu\text{g}/\text{ft}^2$  for interior window sills, and  $400 \mu\text{g}/\text{ft}^2$  for window troughs.
- (10) In a multifamily dwelling with similarly constructed and maintained target houses, random sampling for the purposes of clearance may be conducted provided:
- (A) The certified individuals who abate or clean the target houses do not know which target houses will be selected for the random sample.
  - (B) A sufficient number of target houses is selected for dust sampling to

provide a 95 percent level of confidence that no more than 5 percent or 50 of the target houses (whichever is smaller) in the randomly sampled population exceed the appropriate clearance levels.

- (C) The randomly selected target houses shall be sampled and evaluated for clearance according to the procedures found in § VIII(e)(9)(E) above.
- (11) A written abatement report shall be prepared by a certified supervisor or project designer. The abatement report shall include the following information:
- (A) Start and completion dates of abatement;
  - (B) The name, address, telephone number, and license number of each licensed firm conducting the abatement and the name, address, and certificate number of each supervisor assigned to the abatement project;
  - (C) The occupant protection plan prepared pursuant to § VIII(e);
  - (D) The name, address, and signature of each certified risk assessor or inspector conducting clearance sampling and the date of clearance testing;
  - (E) The results of clearance testing and all soil analyses (if applicable) and the name of each recognized laboratory, as required in § VIII(f), that conducted the analyses;
  - (F) A detailed written description and diagram 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 encapsulant or enclosures.
- (12) The work practice standards in this chapter do not apply when treating paint-lead hazards of less than:
- (A) Two square feet of deteriorated lead - based paint per room or equivalent,
  - (B) Twenty square feet of deteriorated paint on the exterior building, or
  - (C) Ten percent of the total surface area of deteriorated paint on an interior or exterior type of component with a small surface area.
- (f) Collection and laboratory analysis of samples
- (1) Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in this chapter shall be:
    - (A) Collected by persons certified by the Department as an inspector or risk assessor; and
    - (B) 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 lead-hazard

screens, risk assessments, and abatements as set forth in § VIII(c), § VIII(d), and § VIII(e). 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:
    - (A) 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 percent by weight; and
    - (B) 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:
    - (A) On any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (for example, the window sill or floor) are equal to or greater than the dust hazard levels identified in § VIII(h)(3)(A).
    - (B) On any chewable lead - based paint surface on which there is evidence of teeth marks;
    - (C) 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
    - (D) If there is any other deteriorated lead - based paint in any target house or child-occupied facility or on the exterior of any target house or child-occupied facility.
  - (3) A dust-lead hazard is present in a target house or child occupied facility:
    - (A) In a target house 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  $40 \mu\text{g}/\text{ft}^2$  for floors and  $250 \mu\text{g}/\text{ft}^2$  for interior window sills, respectively;
    - (B) 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
    - (C) 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:
  - (A) 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
  - (B) 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 (that is, non-play areas) for each target house on a property is equal to or greater than 1,200 parts per million.

(i) Recordkeeping

All reports or plans required in this Chapter shall be maintained by the licensed firm or certified individual who prepared the report for no fewer than three years. The licensed firm or certified individual also shall provide copies of these reports to the building owner who contracted for its services.

## **SECTION IX ENFORCEMENT**

(a) Violations

- (1) The following, in addition to any violations set forth in any chapter contained within this rule, shall be considered violations incurred by an individual conducting or offering to conduct lead - based paint activities as defined by this rule on target housing or child-occupied facilities:
  - (A) Failure or refusal to permit access, entry, or inspection by Department staff in the performance of their duties;
  - (B) Failure or refusal to permit inspection or copying of any document or record required to be kept under the provisions of this rule by Department staff in the performance of their duties;
  - (C) Failure to establish or maintain copies required by this rule for three years;
  - (D) Failure to obtain training from a licensed training provider, an EPA-approved training program, or state or Indian Tribal training program approved by EPA and apply and receive certification from the Department prior to conducting or offering to conduct lead - based paint activities for which the appropriate certification has not been received;
    - (i) Failure to obtain training from a licensed training provider, an EPA-approved training program, or a training program approved by state or Indian Tribal program which has been approved by EPA as an inspector or risk assessor and apply and receive certification from the Department in the appropriate discipline as an inspector or risk assessor prior to conducting or offering to conduct lead - based paint inspections and post-abatement clearance procedures;
    - (ii) Failure to obtain training from a licensed training provider, an EPA-approved training provider, or a training provider approved

by state or Indian Tribal program which has been approved by EPA as risk assessor and apply and receive certification from the Department in the appropriate discipline as a risk assessor prior to conducting or offering to conduct lead - based paint lead-hazard screens, inspections, or risk assessments;

- (iii) Failure to obtain training from a licensed training provider, an EPA-approved training provider, or a training program approved by state or Indian Tribal program approved by EPA as a supervisor or project designer and apply and receive certification from the Department in the appropriate discipline as a supervisor or project designer prior to conducting or offering to conduct lead - based paint occupant protection plans;
- (iv) Failure to obtain training from a licensed training provider, an EPA-approved training program, or a training program approved by a state or Indian Tribal program which has been approved by EPA as a supervisor or worker and apply and receive certification from the Department in the appropriate discipline as a supervisor or worker prior to conducting or offering to conduct a lead - based paint abatement;
- (v) Failure to obtain training from a licensed training program, an EPA-approved training program, or a training program approved by a state or Indian Tribal program as a supervisor and apply and receive certification from the Department as a supervisor prior to supervising and conducting or offering to conduct a lead - based paint abatement;
- (vi) Fraudulently obtaining training through misrepresentation of admission requirements;
- (vii) Fraudulently obtaining certification through fraud or misrepresentation of certification requirements, including education, training, professional registration, or experience;
- (viii) Negligently allowing the duplication or use of the certified individual's certification by another individual;
- (ix) Failure to present certification documents at a lead - based paint activities work site to Department staff in the performance of their duties;
- (x) Failure to comply with the work practice standards set forth in this rule;
  - (a) Performing a lead - based paint abatement with open-flame burning or torching of lead - based paint;
  - (b) Performing a lead - based paint abatement by machine sanding or grinding or abrasive blasting or sandblasting of lead - based paint unless this process is used with a 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;

- (c) Performing a lead - based paint abatement by dry scraping of lead - based paint is only allowed in the following limited circumstances:
  - (1) In conjunction with a heat gun;
  - (2) Around electrical outlets;
  - (3) When treating defective paint spots totaling no more than 20 square feet on exterior surfaces;
  - (4) Performing a lead - based paint abatement by operating a heat gun on lead - based paint at temperatures below 1,100 degrees Fahrenheit;
- (xi) Failure to work for a licensed lead - based paint consultant, lead - based paint contractor, or as an in-house employee as defined by this rule;
- (xii) Failure to submit an accurate and complete Notice of Intent which omits any or all of the following:
  - (a) Failure to provide notification of the documented methodology used for the abatement project;
  - (b) Failure to provide the beginning date for the project, including site preparation;
  - (c) Failure to provide the applicable certification and license numbers;
  - (d) Failure to provide notification of scheduled work hours;
  - (e) Knowingly submitting a Notification as an Emergency Notification when the factual situation does not comply with the provisions of the rule concerning an emergency;
- (2) The following shall be considered violations for a training manager or other person with supervisor authority over a lead - based paint activities training program to perform the following:
  - (A) Failure to obtain a license from the Department prior to providing, offering to provide, or claiming to provide a lead - based paint activities training course;
  - (B) Misrepresenting the contents of a lead - based paint activities training course to the Department and/or the student population;
  - (C) Failure to submit information required pursuant to this rule in a timely manner;
  - (D) Failure to establish or maintain records required to be kept pursuant to this

- rule;
- (E) Falsification of certification records, instructor qualifications, or other certification related information or documentation;
  - (F) Failure to comply with the training standards and requirements in this rule;
  - (G) Failure to comply with Federal or state lead - based paint statutes or rules;
  - (H) Making false or misleading statements to the Department in application or reapplication documents upon which the Department relied in approving the application or reapplication;
- (3) The following shall be considered violations for any firm performing lead - based paint activities as defined by this rule on child-occupied facilities or target housing:
- (A) Failure to obtain licensing from the Department prior to conducting or offering to conduct lead - based paint activities;
  - (B) Failure to employ individuals who are both trained in EPA-approved training programs or state or Indian Tribal programs approved by EPA and certified by the Department to perform lead - based paint activities on target housing or child-occupied facilities including the following:
    - (i) Failure to employ individuals who have both obtained training from an EPA-approved, or state or Indian Tribal EPA-approved training provider as an inspector or risk assessor and apply and receive certification from the Department in the appropriate discipline as an inspector or risk assessor prior to conducting or offering to conduct lead - based paint inspections and post-abatement clearance procedures;
    - (ii) Failure to employ individuals who have both obtained training from an EPA-approved, or state or Indian Tribal EPA-approved training provider as risk assessor and apply and receive certification from the Department in the appropriate discipline as a risk assessor prior to conducting or offering to conduct lead - based paint lead-hazard screens, inspections, or risk assessments;
    - (iii) Failure to employ individuals who have both obtained training from an EPA-approved, or state or Indian Tribal EPA-approved training provider as a supervisor or project designer and apply and receive certification from the Department in the appropriate discipline as a supervisor or project designer prior to conducting or offering to conduct lead - based paint occupant protection plans;
    - (iv) Failure to employ individuals who have both obtained training from an EPA-approved, or state or Indian Tribal EPA-approved training provider as a supervisor or worker and apply and receive certification from the Department in the appropriate discipline as a

supervisor or worker prior to conducting or offering to conduct a lead - based paint abatement;

- (v) Failure to employ individuals who have both obtained training from an EPA-approved, or state or Indian Tribal EPA-approved training provider as a supervisor and apply and receive certification from the Department prior to supervising and conducting or offering to conduct or supervise a lead - based paint abatement;

(C) Failure to comply with work practice standards set forth in § VIII(a) through § VIII(i) including the following:

- (i) Performing a lead - based paint abatement with open-flame burning or torching of lead - based paint;
- (ii) Performing a lead - based paint abatement by machine sanding or grinding or abrasive blasting or sandblasting of lead - based paint unless this process is used with a 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) Performing a lead - based paint abatement by dry scraping of lead - based paint is only allowed in the following limited circumstances:
  - (a) In conjunction with a heat gun;
  - (b) Around electrical outlets;
  - (c) When treating defective paint spots totaling no more than 20 square feet on exterior surfaces;
- (iv) Performing a lead - based paint abatement by operating a heat gun on lead - based paint at temperatures below 1,100 degrees Fahrenheit;

(D) Failure to comply with Federal or state lead - based paint statutes and rules;

(E) Submission of false or misleading facts in any documentation provided to the Department upon which the Department relies upon in rendering any decision, including certification, licensing, or enforcement documents;

(F) Failure to maintain a supervisor who is both trained in an EPA - approved lead - based paint activities training course, or a state or Indian Tribal EPA - approved training course and certified by the Department on site at the worksite during the lead - based paint abatement project; site preparation, abatement, and post-abatement cleanup work.

(G) Failure to establish and maintain all records required to be kept by this rule for three years;

(b) Appeal

Any individual or firm subject to denial, revocation, modification, suspension, or other enforcement action by the Director shall be afforded an opportunity for notice and hearing.

(c) Penalty assessment

- (1) The Department is authorized to institute a civil action in any court of competent jurisdiction to accomplish any or all of the following:
  - (A) Restrain any violation of, or compel compliance with, the provisions of the Lead - Based Paint-Hazard Act of 2011 and any rules, orders, issued pursuant thereto;
  - (B) Affirmatively order that remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of the Lead - Based Paint-Hazard Act of 2011;
  - (C) Recover all costs, expenses, and damages to the Department and any other agency or subdivision of the State in enforcing or effectuating the provisions of this Act, including, but not limited to, natural resource damages;
- (2) Any person who violates any provision of this Rule may be assessed an administrative civil penalty not to exceed one thousand dollars (\$1,000) per violation.
  - (A) Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment;
  - (B) No civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing;
  - (C) All hearings and appeals arising under § IX(c)(2) shall be conducted in accordance with the procedures prescribed by Administrative Procedure Act;

**SECTION X EFFECTIVE DATES**

(a) Training programs

- (1) No training programs conducting lead - based paint training in Arkansas shall provide, claim to, bid, or advertise to provide, training for certification for lead - based paint activities to be conducted on target housing or child-occupied facilities without first obtaining licensing from the Department.
- (2) All licensed training programs shall teach lead - based paint activities training courses in compliance with the provisions of this rule.

(b) Individuals

No individual shall through name or promotional literature represent, advertise, bid, or hold themselves out to be in the business of performing lead - based paint activities, or conduct a project resulting in the permanent elimination of lead - based paint, or conduct a project in response to a state, local, or federal lead - based paint order on target housing or child-occupied facilities without first obtaining certification from the Department.

(c) Contractors or consultants

No contractor or consultant shall through company name or promotional literature represent, advertise, bid, or hold themselves out to be in the business of performing lead - based paint activities, or conduct a project resulting in the permanent elimination of lead - based paint, or conduct a project in response to a state, local, or federal lead - based paint order on target housing or child-occupied facilities without first obtaining licensing from the Department.

(d) Work practice standards

- (1) No individual and/or contractor, consultant, or building owner of target housing or child-occupied facilities shall perform lead - based paint activities, or conduct a project resulting in the permanent elimination of lead - based paint, or conduct a project in response to a state, local, or federal lead - based paint order on target housing or child-occupied facilities without complying with the work practice standards set forth in this rule as.
- (2) No homeowner shall perform lead - based paint activities, or conduct a project resulting in the permanent elimination of lead - based paint, or conduct a project in response to a state, local, or federal lead - based paint order on target housing or residential dwelling that is occupied by a person or persons other than the owner or the owner's immediate family while the lead - based paint activities are being performed, or a child-occupied facility, or in which a child has been identified with elevated blood lead.

SEVERABILITY

If any provision of these Rules and Regulations, or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of these Rules and Regulations which can give effect without the invalid provisions or applications, and to this end the provisions hereto are declared to be severable.

REPEAL

All Rules and Regulations and any parts of Rules and Regulations in conflict herewith are hereby repealed.

CERTIFICATION

This will certify that the foregoing Rules and Regulations Pertaining to Lead-Based Paint Activities in Arkansas were adopted by the Arkansas State Board of Health at a special meeting of the Board held in Little Rock, Arkansas on the 29<sup>th</sup> day of September, 2011.



Paul Halverson, DrPH, FACHE  
Secretary  
Arkansas State Board of Health