

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #2

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Division of Health

Health and Human Resources TITLE NUMBER: 64

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §§16-35-4 & 16-1-7

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

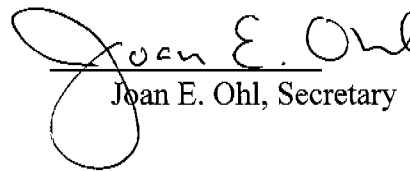
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 45

TITLE OF RULE BEING PROPOSED: Lead Abatement Licensing

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 16, 1998 AT 4:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Regulatory Development
Department of Health & Human Resources
Capitol Complex - Building 3, Room 265
Charleston, WV 25305
ATTN: Marsha Dadisman, Acting Director

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Joan E. Ohl, Secretary

\$5.40

BRIEF SUMMARY OF THE RULE

LEAD ABATEMENT LICENSING PROPOSED RULE

SUMMARY: This proposed new legislative rule, Lead Abatement Licensing, proposes the establishment of standards and procedures for the certification and licensing of lead abatement professionals and for the regulation of lead abatement projects. Certification and licensing of lead abatement professionals was mandated by federal legislation and regulation, 40 CFR 745, Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities: Final Rule. The rule contains the following sections: general; application and enforcement; definitions; initial and renewal license; licensed lead abatement contractor duties; lead inspector duties; lead abatement designer duties; lead risk assessor duties; prohibited lead abatement project methods; recommended lead abatement project methods; lead abatement project clearance levels and minimum sampling; exemptions from notification and licensing; accreditation of lead abatement training courses; applicable federal standards; penalties; administrative due process; and severability.

West Virginia Code Chapter 16, Article 35, requires lead abatement professionals conducting lead abatement in child-occupied buildings and target housing to be properly trained by an accredited training provider, certified by a state accredited examiner and licensed by the Division of Health. The licensing categories consist of lead abatement contractor, worker, supervisor, inspector, risk assessor and project designer.

Lead abatement projects are restricted to target housings (pre-1978) or residences that have known lead hazards as well as facilities regularly occupied by children under six (6) years of age. Notification of abatement projects and elevated blood lead levels are required. Home owners conducting lead abatement on their own premises are exempt from notification and licensing requirements.

The Division of Health will administer and enforce the rules which include: issuing licenses; assessing fees and fines; approving training providers; approving third party examiners; and ordering reduction or abatement of lead hazards.

For further information contact: Randy C. Curtis, P.E., Director of Radiation, Toxics and Indoor Air Division, 815 Quarrier Street, Suite 418, Charleston, West Virginia 25301, telephone (304) 558-2981; fax (304) 558-1289 or the Office of Regulatory Development, Department of Health and Human Resources, State Capitol Complex, Building 3, Room 265, Charleston, West Virginia, 25305, telephone number (304) 558-3223.

**STATEMENT OF CIRCUMSTANCES WHICH
REQUIRE THE PROPOSED RULE**

LEAD ABATEMENT LICENSING PROPOSED RULE

The 1998 Legislature passed House Bill 4034 which allows the state to certify and license lead abatement professionals and to regulate lead abatement projects. This passage was in response to a federal mandate, 40 CFR, Part 745, which required the certification of all lead abatement professionals no later than August 31, 1998.

Lead-based paint poisoning is today's foremost preventable disease among young children. It is estimated that one (1) out of every eleven (11) children nationwide have elevated blood lead levels which can lead to disorders of the nervous system, impaired growth, learning disabilities, hyperactivity and renal system problems. The Division of Health received approximately seventy (70) referrals of childhood blood lead poisoning cases in the past year. The proposed rule will enable the Division to assure that all persons disturbing lead-based paint are properly trained with regard to acceptable abatement methods.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Lead Abatement Licensure

Type of Rule: X Legislative Interpretive Procedural

Agency: Division of Health
Department of Health and Human Resources

Address: Building 3, Capitol Complex
Charleston, W. Va. 25305

EFFECT OF THE PROPOSED RULE	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
1. ESTIMATED TOTAL COST	\$	\$	\$	\$ 64,800	\$ 64,800
PERSONAL SERVICES				37,500	37,500
CURRENT EXPENSE				22,700	*27,300
REPAIRS AND ALTERATIONS					
EQUIPMENT				4,600	
OTHER					
REVENUES	\$	\$	\$	\$ 64,800	\$ 64,800

2. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

Estimated Total Costs	
Personal Services	
1FTE- Registered Sanitarian	\$23,500
1FTE- Office Assistant II	<u>\$14,000</u>
	\$37,500
Current Expense	
Fringe Benefits (21.69%- \$4,783 per employee - 2 FTE)	\$17,700
Office supplies	\$ 1,200
Postage	\$ 600
Telephone	\$ 800
Rent	<u>\$ 2,400</u>
	\$22,700
Equipment (Office Furniture, (2) computers)	\$ 4,600
*Equipment cost reallocated to current expense to allow for lead analyzer source replacements.	
Total Expense	\$64,800

Estimated Total Revenue

Licensing	Workers-	350@\$ 50	\$17,500
	Supervisors-	80@\$100	8,000
	Inspectors-	136@\$100	13,600
	Risk Assessors-	25@\$100	2,500
	Project Designers-	10@\$100	1,000
	Contractors-	16@\$300	<u>4,800</u>
			\$47,400
Project Notification		290@\$ 60	<u>\$17,400</u>
Licensing+Project Notification	Total Revenue		\$64,800

3. Objectives of this rule:

To establish the licensure of lead abatement professionals conducting lead abatement in child-occupied buildings and target housing in order to reduce lead-based paint and dust hazards to children.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact of State Government.

None - The lead licensing program will be supported by revenues generated by the program.

B. Economic Impact on Political Subdivision; Specific Industries; Specific Groups of Citizens.


Minimal impact is expected to be experienced by owners of target housing (pre-1978) and facilities regularly occupied by children under six years of age. Industry is not affected.

C. Economic Impact on Citizens/Public at Large.

Minimal or no impact expected to be experienced by public. Some job opportunities will be provided and public health should be improved.

Date:

Signature of Agency Head or Authorized Representative



Joan E. Ohl, Secretary
Department of Health and Human Resources

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: June 15, 1998

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Division of Health

FROM: (Agency name, Address & Phone No.) Department of Health and Human Resources

State Capitol Complex, Building 3, Room 265, Charleston, WV 25305

Telephone: (304) 558-3223

LEGISLATIVE RULE TITLE: Lead Abatement Licensing

1. Authorizing statute(s) citation: WV Code Section §§ 16-35-4 & 16-1-7

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 15, 1998

b. What other notice, including advertising, did you give of the hearing?

The West Virginia Division of Health will have published legal advertisements in several state newspapers which will announce the public comment period for the proposed rule.

c. Date of Public Hearing(s) or Public Comment Period ended:

July 16, 1998

- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached N/A No comments received N/A

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing (be exact):

N/A

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all written correspondence regarding this rule (please type):

Marsha Dadisman, Acting Director

Regulatory Development/Department of Health and Human Resources

Room 265, Capitol Complex

Charleston, West Virginia 25305

(304) 558-3223 FAX: (304) 558-1130 MDadisman@WVDHHR.ORG

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule (please type):

Randy C. Curtis, P.E., Director

Radiation, Toxics & Indoor Air Division

Office of Environmental Health, Bureau for Public Health

815 Quarrier St. Suite 418

Charleston, WV 25301-3013 Phone:558-3210

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

- b. Date of hearing or comment period:

N/A

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?

N/A

- d. Attach findings and determinations and reasons:

Attached N/A

Title 64
West Virginia Legislative Rules
Division of Health
Department of Health and Human Resources

Series 45
Lead Abatement Licensing Rule

For Public Comment

Title 64
West Virginia Legislative Rules
Division of Health
Department of Health and Human Resources

Series 45
Lead Abatement Licensing Rule

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**Title 64
West Virginia Legislative Rules
Division of Health
Department of Health and Human Resources**

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**Series 45
Lead Abatement Licensing Rule**

§64-45-1. General.

1.1. Scope-This legislative rule establishes procedures and standards for the licensure and training of persons who engage in activities related to lead abatement and for the operation of lead abatement projects.

1.2. Authority - WV Code §§16-35-4 and 16-1-7.

1.3. Filing Date -

1.4. Effective Date -

§64-45-2. Application and Enforcement.

2.1. Applications. - This rule applies to persons who conduct lead abatement projects in target housing or child-occupied facilities, and requires licensure of lead contractors, inspectors, risk assessors, workers, supervisors, and designers.

2.2. Enforcement. - This rule shall be enforced by the director of the West Virginia division of health.

§64-45-3. Definitions.

3.1. Abatement. - Any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

3.1.a. The removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil;

3.1.b. All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures;

3.1.c. Projects for which there is a written contract to permanently eliminate lead-based paint hazards from a dwelling unit or child-occupied building;

3.1.d. Projects involving the permanent elimination of lead-based paint or lead contaminated soil;

3.1.e. Projects involving the permanent elimination of lead-based paint hazards or lead contaminated soil that are conducted by persons who advertise or hold themselves out to conduct lead related activities; and

3.1.f. Projects involving the permanent elimination of lead-based paint hazards that are conducted in response to federal, state or local abatement orders.

3.2. Child-occupied building. - Any structure built before one thousand nine hundred seventy-eight (1978), public or private building, or portions thereof, or a room in a residential dwelling or unit, any of which are visited three hours a day twice a week or more often by a child age six or under, including, but not limited to, day care centers, kindergarten classrooms, schools, camps and recreational facilities.

3.3. Director. - The director of the West Virginia division of health or his or her representative.

3.4. Discipline. - Any one of the following: lead abatement contractor, lead abatement supervisor, lead inspector, lead risk assessor, lead abatement worker, or lead abatement project designer.

3.5. Elevated blood level. - A concentration of lead in the blood stream as defined by the United States center for disease control.

3.6. EPA. - The United States environmental protection agency.

3.7. HEPA. - High efficiency particulate air.

3.8. Industrial facility. - Any factory, mill, plant, refinery, warehouse, building or complex of buildings or other industrial structure, including the land on which it is located.

3.9. Inspection. - A surface by surface investigation to determine the presence of lead-based paint or lead hazards and the provision of a report explaining the results of the investigation.

3.10. Interim controls. - 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.

3.11. Lead. - Elemental lead and all inorganic and organic lead compounds.

3.12. Lead abatement contractor. - A person engaged by oral or written contract to perform a lead abatement project.

3.13. Lead abatement designer. - An individual who designs lead abatement projects.

3.14. Lead abatement project. - An activity in target housing or child occupied buildings involving the permanent removal or encapsulation of lead based-paint, lead-containing dust, lead containing soil or other lead containing materials and decontamination of an area, but does not include interim controls which do not permanently eliminate lead hazards.

3.15. Lead abatement worker. - An individual who is employed by a lead abatement contractor for a lead abatement project.

3.16. Lead-based paint. - Paint or other surfacing coatings that contain lead at or in excess of five thousand (5000) parts per million, or one half of one percent (0.5%) by weight.

3.17. Lead-contaminated dust. - Surface dust containing lead at or in excess of one hundred (100) micrograms per square foot for floors, at or in excess of five hundred (500) micrograms per square foot for interior window sills, at or in excess of eight hundred (800) micrograms per square foot for window troughs and exterior concrete or other rough surfaces.

3.18. Lead-contaminated soil. - Soil containing lead at or in excess of two thousand (2000) parts per million, or four hundred (400) parts per million for bare, high-contact play areas.

3.19. Lead-contaminated waste. - Any discarded materials with lead toxicity equal to or in excess of five (5) parts per million as determined by the total characteristic leachate procedure (TCLP).

3.20. Lead hazard. - Any condition that may result in exposure to lead, including but not limited to lead-contaminated dust, lead-contaminated soil, or lead-based paint present on accessible surfaces, friction surfaces, impact surfaces or other lead sources that could result in adverse effect on human health.

3.21. Lead inspector. - An individual who conducts inspections to determine and report the existence, nature, severity and location of lead-based paint or lead hazards.

3.22. Lead risk assessment. - An investigation of the potential risk to human health or the environment posed by lead abatement projects or lead hazards, including but not limited to considerations of toxicity, concentration, form, mobility and potential of exposure.

3.23. Lead risk assessor. - An individual who is responsible for or conducts lead risk assessments and establishes priorities for lead abatement projects.

3.24. Lead supervisor. - A person employed by a lead abatement contractor to supervise workers on a lead abatement project.

3.25. License. - A document authorizing an individual to perform specific lead abatement activities.

3.26. OSHA. - The United States occupational safety and health administration.

3.27. Owner-occupied housing. - A detached single unit residence owned by the individual living within the unit.

3.28. Person. - An individual, partnership, firm, society, association, trust, corporation, other business entity or any agency, unit, or instrumentality of federal, state or local government.

3.29. Public building. - Any building that is generally open to the public, including but not limited to museums, airport terminals, hospitals, stores, restaurants, convention centers and other office buildings, corporate facilities and government buildings that do not expressly prohibit access to the public.

3.30. Target housing. - Residential structures built prior to one thousand nine hundred seventy-eight (1978) that could contain lead-based paint or residential structures that are confirmed by inspection to contain lead-based paint.

§64-45-4. Initial and Renewal License.

4.1. Initial License.

4.1.a. Applicants for licensure as a lead inspector, risk assessor, worker, supervisor, designer or contractor shall submit to the director a current application which shall include:

4.1.a.1. Proof of passage of an applicable state accredited lead training course. A copy of the certificate indicating the date on which training was completed, the location at which training was conducted, the signature of the instructor, and examination score is required;

4.1.a.2. Proof of passage of an examination from a State accredited discipline examiner for the license discipline. A copy of the examination certificate indicating the applicant's name, the date on which the examination took place, the location of the examination, the license discipline and the score of the examination is required;

4.1.a.3. The applicant's date of birth, social security number, current address, driver's license number and telephone phone number. Applicants shall be at least eighteen (18) years of age;

4.1.a.4. The signature of applicant;

4.1.a.5. A history of all environmental enforcement actions taken against the applicant by any federal or state agency or court;

4.1.a.6. Attachment of all applicable license fees. A schedule of fees is shown in Table A at the end of this rule;

4.1.a.7. Evidence that an applicant for a lead supervisor license has one year experience as a lead abatement worker, or at least two years of experience in a related field, such as lead, asbestos, or environmental remediation work, or the building trades;

4.1.a.8. Evidence that an applicant for a lead risk assessors license possesses a valid lead inspector's license and a bachelor degree and one year of experience in a related field, such as lead, asbestos, environmental remediation work or construction; or an associate degree and two-year experience in a related field such as lead, asbestos, environmental remediation work or construction; or certification as an industrial hygienist, professional engineer, registered architect, registered sanitarian, or certification in a related engineering/health/environmental field, such as safety professional, environmental scientist; or a high-school diploma or equivalent, and at least three years of experience in a related field, such as lead, asbestos, environmental remediation work or construction;

4.1.a.9. Evidence that an applicant for a project designer license has successfully completed an approved training course for lead project designers and supervisors, possesses a bachelor's degree in engineering, architecture, or a related profession, and one year experience in building construction and design or a related field; or four years experience in building construction and design or a related field; and

4.1.a.10. Evidence that an applicant for a contractor license has a licensed supervisor on staff.

4.1.b. Applicants and their employers or agents shall demonstrate to the

satisfaction of the director that the applicant is familiar with and capable of complying fully with all applicable requirements, procedures and standards of the EPA, OSHA and of the State agencies of health, natural resources, commerce, labor, air pollution control and environmental protection covering any part of a lead abatement project. Passing an applicable state accredited training course and passage of an examination from a discipline examiner shall be accepted as meeting this requirement.

4.1.c. The director may deny a license and retain the license fee if the applicant fails to satisfy application requirements. A written notice of denial and an opportunity for reapplication shall be afforded to all applicants. Incomplete applications shall be returned to the applicant for completion and the fee refunded.

4.1.d. Licenses issued under these rules shall expire one year from the last day of the month in which they were issued.

4.2. Renewal application.

4.2.a. Prior to the expiration date shown on the license, each licensee who desires to retain a valid license shall submit a renewal application, appropriate refresher course certification, and all applicable fees. Licensees should apply for renewal no less than (10) ten days prior to the expiration of the license to avoid a temporary lapse of license. A schedule of license fees is shown in Table A at the end of this rule.

4.2.c. Applicants shall submit proof of passage of an applicable State accredited refresher course every third year from the date of the original training and certification.

§64-45-5. Licensed Lead Abatement Contractor Duties.

5.1. A licensed lead abatement contractor shall:

5.1.a. Ensure that each contractors' employees or agents who will come into contact with lead or who will be responsible for a lead abatement project is properly licensed;

5.1.b. Ensure that each lead abatement project is supervised by an on-site licensed lead supervisor;

5.1.c. Notify the division and all other entities as may be required by state or federal law at least ten (10) days prior to the commencement of each lead abatement project. Notification to the division shall be by certified mail or by hand-delivery to the division;

5.1.d. Ensure that a lead abatement project is designed by a licensed lead

abatement designer;

5.1.e. Ensure that each lead abatement project meets the minimum clearance standards as defined in this rule;

5.1.f. Ensure proper disposal of lead contaminated waste in accordance with applicable federal, state, and local laws, rules and regulations;

5.1.g. Keep a record of each lead abatement project. The records shall include:

5.1.g.1. The name, address and lead abatement license number of the individual who supervised the lead abatement project and of each employee or agent who worked on the project;

5.1.g.2. The location and a description of the lead abatement project and the amount of lead material that was removed;

5.1.g.3. The starting and completion dates of each lead abatement project and a summary of the procedures that were used to comply with all federal and state standards;

5.1.g.4. The name and address of each disposal site where waste containing lead was deposited and the disposal site receipts. Contractors shall use disposal sites which are in conformance with applicable federal, state and local laws and regulations; and

5.1.g.5. The clearance sample results or air monitoring results required by this rule for each lead abatement project. The records shall include:

5.1.g.5.A. The name and signature of the lead inspector who collected the clearance samples;

5.1.g.5.B. Where the samples were collected;

5.1.g.5.C. The date of collection;

5.1.g.5.D. The name and address of all laboratories analyzing the samples;

5.1.g.5.E. The date of analysis;

5.1.g.5.F. The results of analysis;

- 5.1.g.5.G. The method of analysis;
- 5.1.g.5.H. The name and signature of the person performing the analysis; and
- 5.1.g.5.I. Certification that the laboratory is EPA certified to analyze lead samples.

5.2. The records required by Section 5 of this rule shall be available to the state agencies of health, natural resources, environmental protection, labor and air pollution control upon request during normal business hours. Records for current projects shall be immediately available. For completed projects, the director may afford the contractor a reasonable time to comply with the requests, depending upon the length of time since the project's completion and whether or not the advance notice might adversely affect an investigation being conducted by any of the agencies. Records required by Section 5 of this rule shall be kept for at least three (3) years

§64-45-6. Lead Inspector Duties.

6.1. A licensed lead inspector shall:

6.1.a. Thoroughly inspect interior and exterior surfaces suspected of containing lead that may be affected by renovation or demolition, and sample the materials for lead content or confirm lead content with an X-ray fluorescence device (XRF).

6.1.b. Generate a written report that at a minimum:

6.1.b.1. Identifies by narrative any sampling location where the presence of lead containing material has been confirmed;

6.1.b.2. Details the location and amount of all materials that contain lead;

6.1.b.3. Lists analysis, XRF results, or both for all samples; and

6.1.b.4. Includes drawings and narrative descriptions of locations of samples and/or XRF readings.

6.1.c. Adequately sample each area or room of an abatement project for clearance to verify that dust, soil and waste material lead levels are below the contamination standards as defined in Section 3.16., 3.17. and 3.18. of this rule.

§64-45-7. Lead Abatement Designer Duties.

7.1. A licensed lead abatement designer shall generate a written report that provides:

7.1.a. A chronological time frame for each facet of the abatement activity;

7.1.b. The name and address of the building or structure where the lead abatement project is to occur;

7.1.c. The name, address, phone number, and lead abatement training certificates and licenses for the project designer;

7.1.d. A schematic floor plan showing the lead abatement project area, including a description of the characteristics of the material;

7.1.e. A statement identifying the abatement activity as repair, removal, encapsulation, or enclosure;

7.1.f. A schematic floor plan of the project area which shows the physical dimensions, entrance, exit, windows, decontamination unit, load-out area, emergency exits, placement of the HEPA exhaust air filtration units, if applicable, and any measuring devices, warning signs, and barrier tape;

7.1.g. Sampling protocol for project clearance for reoccupancy, including the number of samples, collection points and the analytical method to be employed;

7.1.h. A schematic of the heating, ventilation and air-conditioning system shut-offs, electrical power, water source, fire exits, fire extinguisher, fire alarm, telephone, tool and equipment room, supply box, project field office, bathrooms and decontamination area;

7.1.i. A description of the work procedures to be used; and

7.1.j. A description of the materials and tools to be used in the abatement project.

§64-45-8. Lead Risk Assessor Duties.

8.1. A licensed lead abatement risk assessor shall generate a written report that provides:

8.1.a. Background information regarding the age, condition and physical characteristics of the unit and residential use patterns;

8.1.c. A schematic site plan showing each room within the unit, its use and the location and condition of lead-based paint;

8.1.d. A copy of any previous test results or inspections regarding lead-based paint or other assessments for lead hazards;

8.1.e. An assessment of the potential routes of lead exposure for occupants or lead abatement professionals, which is based upon adequate dust, water, soil and paint chip sampling;

8.1.f. A detailed description of recommended control strategies for reducing lead-based paint hazards and justification for the strategy selected, the locations where the recommended actions should take place, and a suggested prioritization for taking each action based on the degree of the hazard.

8.2. The risk assessment shall be maintained by the risk assessor or firm for a period of three years.

§64-45-9. Prohibited Lead Abatement Project Methods.

9.1. The use of open flame burning, torching, fossil fuel-powered heat plates, welding, cutting torches, and heat guns operating at temperatures greater than one thousand one hundred (1,100) degrees F are prohibited as means of lead based paint removal.

9.2. Uncontained machine sanding or grinding is prohibited.

9.3. Uncontained hydro-blasting and high-pressure water washing are prohibited.

9.4. Uncontained abrasive blasting or sandblasting is prohibited.

9.5. Chemical paint removers that contain methylene chloride are prohibited.

9.6. Dry scraping lead-based paint is prohibited, except for areas around electrical outlets.

§64-45-10. Recommended Lead Abatement Project Methods.

The following lead abatement project methods are recommended:

10.1. Electric-powered flameless heat guns operating below one thousand one hundred (1,100) degrees F, provided that proper respiratory protection is used;

10.2. Mechanical HEPA sanding, HEPA vacuum blasting and HEPA vacuuming needle guns;

10.3. Wet scraping, provided that no electrical hazards are present while doing so;

10.4. The removal of building components to be stripped of lead-based paint off site, provided that dust generation during the removal and transportation of the building components is kept to a minimum;

10.5. Chemical removal methods which do not contain methylene chloride, provided that product material safety data sheet recommendations for safety, and OSHA regulations are implemented;

10.6. The enclosure of building components that contain lead-based paint, provided that the enclosure material becomes a permanent part of the building structure and is properly sealed to ensure that lead dust is permanently contained;

10.7. Encapsulation of lead-based paint, provided that the encapsulating material becomes a permanent part of the building component and will be guaranteed by the lead abatement company and manufacturer from defect for a minimum of twenty (20) years; and

10.8. Total removal of lead-contaminated soil or the covering of lead-contaminated areas with a suitable material that will limit exposure; suitable material includes but is not limited to stone, pavement, gravel or vegetative cover.

§64-45-11. Lead Abatement Project Clearance Levels and Minimum Sampling.

11.1 A licensed lead inspector shall conduct a visual inspection at the conclusion of a lead abatement project and collect required samples.

11.2. A lead abatement project shall be ready for occupation when the following clearance levels are obtained:

11.2.a. Below one hundred (100) micrograms of lead per square foot for interior floors or other horizontal surfaces;

11.2.b. Below five hundred (500) micrograms of lead per square foot for interior window sills;

11.2.c. Below eight hundred (800) micrograms of lead per square foot for window troughs and exterior concrete or other rough surfaces;

11.2.d. Below four hundred (400) parts per million for bare soil areas that are child play areas;

11.2.e. Below two thousand (2000) parts per million for residential bare soil areas; and

11.2.f. A total characteristic leachate procedure (TCLP) below five (5) parts per million lead toxicity for discarded building materials.

11.3. The minimum number of samples to be obtained from a lead abatement project area are defined in Table D of this rule.

11.4. In addition to the required number of samples as defined in Table D, the lead inspector shall take one soil sample for each four hundred (400) square feet of bare soil area of a lead abatement project and one (1) composite sample from homogeneous building materials that is representative of the waste stream.

§64-45-12. Exemption from Notification and Licensing.

12.1. Homeowners performing lead abatement or interim controls on their single unit owner-occupied housing are exempt from the requirements of this rule.

12.2. Abatement does not include renovation, remodeling, landscaping or other activities, when the purpose of such activities is not intended 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. Abatement also 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.

12.3. The provisions of this rule do not apply to lead hazard reduction activities or to persons performing such activities when such activities are performed wholly within or on an industrial facility and are performed by persons who are subject to the training requirements of OSHA: *Provided*, That the provisions of this rule do apply to any child occupied building or area such as a child day care center located at an industrial facility.

§64-45-13. Notification of Elevated Blood Lead Levels. - Any person, contractor or laboratory shall notify the director or designated agency of any medically confirmed elevated blood-lead levels within thirty-six (36) hours of discovery.

§64-45-14. Notification of Lead Abatement Projects. - Each owner or other person

responsible for the operation of a building, facility, residence or structure where a lead abatement project is to occur shall notify the division ten (10) days prior to commencement of the project and pay the notification fee shown in Table B at the end of this rule.

§64-45-15. Accreditation of Lead Abatement Training Courses.

15.1. Applicants for accreditation as lead abatement training providers shall submit the following:

15.1.a. The name, address and telephone number of the lead training provider;

15.1.b. A full description of the course curriculum;

15.1.c. A list of instructors, their resumes and qualifications;

15.1.d. A copy of the course examination;

15.1.e. The annual lead training course accreditation fee as shown in Table C at the end of this rule.

15.1.f. Any additional information required by WV code §16-35-10.

§64-45-16. Applicable Federal Standards. - All individuals licensed under this rule shall comply with the following applicable federal standards, which are hereby incorporated in this rule by reference:

16.1. EPA: Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Final Rule. 40 CFR Part 745 (May 4, 1993);

16.2. OSHA: Lead Exposure in Construction; Interim Final Rule. 29 CFR 1926.62 (August 29, 1996); and

16.3. HUD: Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995).

§64-45-17. Penalties.

17.1 The director shall, depending upon the severity of the violation and upon the degree of health hazard created, suspend or revoke the license of a contractor, inspector, designer, risk assessor, supervisor, or worker if the licensee:

17.1.a. Fraudulently or deceptively obtains or attempts to obtain a license;

17.1.b. Fails at any time to meet the qualifications for license or to comply with the requirements of WV code §16-35-1 *et seq.* or this rule;

17.1.c. Knowingly falsifies or attempts to falsify documents related to a lead abatement project or license;

17.1.d. Fails to meet the applicable federal or state standard for lead abatement;

17.1.e. Fails to remit an assessed fine.

17.2. The director may impose a civil penalty of not less than two hundred fifty dollars (\$250) and not more than five thousand dollars (\$5,000) for each separate violation of the rule payable within thirty (30) days of receipt of the penalty notification; failure to pay an assessed penalty within that time period will constitute a separate violation.

17.3. The director shall investigate all alleged violations of this rule or of WV code § 16-35-1 *et seq.* reported to the division. Upon the finding of a violation in connection with a lead abatement project the director shall, depending upon the severity of the violation and upon the degree of health hazard created, initiate an appropriate enforcement action which may include the issuance of a cease and desist order directing that all work on the project be halted immediately. Posting of the cease and desist order on the project site constitutes notice of its contents to the property owner and all individuals working on the lead abatement project. Where practicable, however, the director shall deliver a copy of the order by certified mail, return receipt requested, to the property owner and to the contractor.

17.4. In any case where a person fails to halt work following the issuance of a cease and desist order by the director, the violation is presumed to be willful and the person or individual shall be assessed, a civil penalty by the director of not less than ten thousand dollars (\$10,000) nor more than twenty-five thousand dollars (\$25,000) nor more than fifty thousand dollars (\$50,000) for each subsequent violation payable within thirty (30) days of receipt of the penalty notification; failure to a pay assessed penalty within that time period will constitute a separate violation.

§64-45-18. Administrative Due Process. - Those individuals adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the rules and procedures for contested case hearings and declaratory rulings, 64 CSR 1.

§64-45-19. Severability. - Those provisions of this rule are declared to be severable. If any

provision of this rule is held invalid, the remaining provisions shall remain in effect.

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Table 65-45 A

Type of License	Fee
Worker	\$ 50.00
Supervisor	\$ 100.00
Inspector	\$ 100.00
Risk Assessor	\$ 100.00
Project Designer	\$ 100.00
Contractor	\$ 300.00

Table 65-45 B

All Projects	\$ 60.00
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Table 65-45 C

Initial Accreditation	\$1,000.00 per Discipline	(max. \$3,000.00)
Annual Reaccreditation	\$ 500.00 per Discipline	(max. \$1,500.00)

Table 64-45 D

Minimum Number and Location of Single-Surface Dust Samples

Clearance Category	Category Description	Number and location of Single-Surface Wipe Samples in Each Area ¹	Number and Location of Composite wipe samples
1	Interior treatments No containment within dwelling	Two dust samples from at least four rooms in dwelling (treated or untreated): ★One interior window sill or window trough, Alternating between rooms. ★One floor. AND ★For common areas, one for every 2,000 ft ² of a common area room floor (if present)	Three composite samples for every batch of four rooms (whether treated or untreated): ★ One floor composite. ★ One interior window sill composite ★ One window trough composite. AND ★ For common areas, one floor subsample for every 2,000 ft ² (if present); up to 8,000 ft ² can be sampled for every composite.
2	Interior treatments With containment (Plastic sheeting as airlock on doors between treated and untreated areas)	Same as Category 1 but only in every <i>treated</i> room (up to four rooms) AND One floor sample outside the containment area but within 10 feet of the airlock to determine the effectiveness of the containment system. This extra single-surface sample is recommended in 20 percent of the treated dwellings in multifamily housing and all single-family homes. ★ For common areas, one floor sample for every 2,000 ft ² and one floor sample outside containment.	Same as Category 1 but only in every <i>treated</i> room AND One floor sample outside the containment area but within 10 feet of the airlock to determine the effectiveness of the containment system. This extra single-surface sample is recommended in 20 percent of the treated dwellings in multifamily housing and all single-family homes. ★ For common areas, one floor subsample for every 2,000 ft ² (up to 8,000 ft ² for each composite) and one floor sample outside containment.
3	Exterior treatments	Two dust samples as follows: ★At least one dust sample on a horizontal surface in part of the outdoor living area (e.g., a porch floor or entryway). ★One window trough sample on each floor where exterior work was performed. An additional trough sample should be collected from a few lower floors to determine if troughs below the area were contaminated by the work above.	Two dust samples as follows: ★One composite on a horizontal surface in part of the outdoor living area (e.g., a porch floor or entryway). ★One window trough composite for every four floors where exterior work was performed, including lower floors where exterior work was not done, if present.
4	Routine maintenance work	At least 1 floor dust sample for every 20 high-hazard jobs near the work area.	Same as single-surface sampling.
5	Soil treatment	One dust sample from the entryway.	One dust sample from the entryway.

¹A room includes a hallway or a stairway. If no window is present, collect just one floor sample. When a closet is treated, the room to which it is attached should be tested. A closet is not considered to be a separate room. If all rooms received similar treatments and cleaning, only four rooms need to be sampled for clearance purposes. More rooms may need to be sampled in larger dwellings. The room to be sampled should be selected based on where most of the dust-generating work was done or in the judgement of the clearance examiner.