

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

Form #4

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WEST VIRGINIA

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Division of Health, Dept. of Health & Human Resources TITLE NUMBER: 64

CITE AUTHORITY W. Va. Code §§ 16-35-4 and 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 NEW RULE BEING PROPOSED: 45

TITLE OF RULE BEING PROPOSED: Lead Abatement Licensing

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Joan E. Ohl, Secretary

\$5.40

**TITLE 64
WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 45
LEAD ABATEMENT LICENSING**

**MODIFIED PROPOSED RULE
AFTER REVIEW BY THE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

TITLE 64
WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 45
LEAD ABATEMENT LICENSING

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TITLE 64
WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

FILED
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LEGISLATURE
STATE

SERIES 45
LEAD ABATEMENT LICENSING

§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. This rule should be read in conjunction with the definitions and provisions of W. Va. Code §16-35-1 et seq. (Lead Abatement).

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. EPA. - The United States environmental protection agency.

3.3. HEPA. - High efficiency particulate air.

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

3.5. 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.

3.6. 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.

3.7. 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.

3.8. 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).

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

3.10. 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.

3.11. XRF analyzer. - An instrument that determines lead concentration in milligrams per square centimeter (mg/cm²) using the principle of x-ray fluorescence (XRF).

§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 an 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 the 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 set forth in Table A 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 one of the following:

4.1.a.8.A. A bachelor degree and one year of experience in a

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related field, such as lead, asbestos, environmental remediation work or construction;

4.1.a.8.B. An associate degree and two-year experience in a related field such as lead, asbestos, environmental remediation work or construction;

4.1.a.8.C. A 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

4.1.a.8.D. 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:

4.a.9.A. 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

4.a.9.B. 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 the division of health, division of natural resources, bureau of commerce, division of labor, air quality board and division of environmental protection covering any part of a lead abatement project. An applicant who has passed an applicable state accredited training course and passed of an examination from a discipline examiner meets this requirement.

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

4.1.d. Licenses issued under this rule 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 set forth in Table A of this rule.

4.2.b. 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 set forth in section 11 of 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;

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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 section 11 of 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 this section shall be available to the state agencies of the division of health, division of natural resources, division of environmental protection, division of labor and air quality board 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 this section 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 XRF analyzer.

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 subsections 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;

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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. The sampling protocol for project clearance for re-occupancy, 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 risk assessment report that provides:

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

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

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

8.1.d. 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; and

8.1.e. 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 his or her firm for a period of three years.

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

9.1. The following lead abatement project methods are prohibited:

9.1.a. 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 as a means of lead based paint removal;

9.1.b. Uncontained machine sanding or grinding;

9.1.c. Uncontained hydro-blasting and high-pressure water washing;

9.1.d. Uncontained abrasive blasting or sandblasting;

9.1.e. Chemical paint removers that contain methylene chloride; and

9.1.f. Dry scraping lead-based paint, except for areas around electrical outlets.

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

10.1. The following lead abatement project methods are recommended:

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

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

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

10.1.d. 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;

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

10.1.f. 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;

10.1.g. 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

10.1.h. Total removal of lead-contaminated soil or the covering of lead-contaminated areas with a suitable material that will limit exposure. For purposes of this subdivision, 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 samples as set forth in Table D of this rule.

11.2. A lead abatement project shall be ready for occupation when the following clearance levels of lead 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 numbers 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 of this rule, a

licensed lead inspector will obtain one (1) 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.

Exemption from notification and licensure is as provided in W. Va. Code §16-35-7.

§64-45-13. Notification of Elevated Blood Lead Levels.

Any person, contractor or laboratory shall notify the director 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 set forth in Table B 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 set forth in Table C of this rule.

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

15.2. Training providers accredited by the division of health shall adhere to subsection 16.4 of this rule regarding curriculum, length of training, record keeping and training manager and instructor qualifications.

§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 (August 29, 1996);

16.2. OSHA: Lead Exposure in Construction; Interim Final Rule. 29 CFR 1926.62 (May 4, 1993); and

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

16.4. EPA: Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Final Rule. 40 CFR Part 745.225(c), (d).

16.5. EPA: Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities: Final Rule. 40 CFR Part 745.227.

§64-45-17. Penalties.

17.1. The director may, 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 civil penalty or fine.

17.2. 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

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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. Fines and penalties are as provided in W. Va. Code § 16-35-13.

§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 Division of Health's rule, Rules and Procedures for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.

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TABLE 65-45 A

LICENSE FEES

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

NOTIFICATION FEE

All Projects	\$ 60.00
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TABLE 65-45 C

ACCREDITATION FEES FOR LEAD TRAINING PROVIDERS

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, just one floor sample must be collected. 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.



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Nov 16 12 19 PM '98

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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November 12, 1998

Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
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Joseph A. Altizer, Associate Counsel
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Teri Anderson, Administrative Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Marsha Dadisman
Health & Human Resources
Capitol Complex
Building 3, Room 265

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Lead Abatement Licensing, 64CSR45**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed _____
 - (b) as modified by the agency _____
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Health, Department of Health and Human Resources

Subject: Lead Abatement Licensing, 64CSR45

PERTINENT DATES

Filed for public comment: June 15, 1998
Public comment period ended: July 16, 1998
Filed following public comment period: July 30, 1998
Filed LRMRC: July 30, 1998
Filed as emergency: June 15, 1998

Fiscal Impact: \$64,800 in cost to be offset by anticipated revenue

OFFICE OF THE CLERK
SECRETARY OF STATE

JUN 30 9 58 AM '98

FILED

ABSTRACT

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 states that the proposed rule applies to persons conducting lead abatement projects in target housing or child-occupied facilities and requires licensure of lead contractors, inspectors, risk assessors, workers, supervisors and designers.

Section 3 defines terms, most of which are already defined in the statute.

Section 4 sets forth information which must be included in a license application for lead inspectors, risk assessors, workers, supervisors, designers and contractors. It requires applicants for a renewal license to submit proof of passage of an applicable State accredited refresher course every third year from the date of the original certification and training.

Section 5 sets forth the duties of a licensed lead abatement contractor, which include ensuring that all employees or agents are licensed and maintaining required records.

Section 6 contains the duties of a lead inspector, which include the inspection of interior and exterior surfaces, preparation of a written report and the taking of adequate samples.

Section 7 requires a lead abatement designer to generate a written report containing certain specified information.

Section 8 requires a lead abatement assessor to generate a written report containing certain specified information and to maintain the risk assessment for 3 years.

Section 9 sets forth sets forth methods which are prohibited in lead abatement projects.

Section 10 sets forth methods which are recommended in lead abatement projects.

Section 11 requires a licensed lead inspector to conduct a visual inspection at the conclusion of a lead abatement project and to collect the required samples. It sets forth clearance levels of lead which must be met before a project is ready for occupation.

Section 12 contains the provisions of the statute regarding exemptions from notification and licensure.

Section 13 requires any person, contractor or laboratory to notify the Director or designated agency of any medically confirmed elevated blood-lead levels within 36 hours of discovery.

Section 14 requires the owner or operator of a building where a lead abatement project is to occur to notify the Division 10 days prior to commencement of the project and to pay the notification fee.

Section 15 sets forth information which must be submitted by applicants for accreditation as lead abatement training providers.

Section 16 incorporates federal standards by reference and requires licensed individuals to comply with those standards.

Section 17 sets forth penalties for a violation of the statute or the proposed rule.

Section 18 states that the Division's rule regarding contested case hearings applies to persons adversely affected by enforcement of the proposed rule.

Section 19 is an unnecessary severability section.

Table A contains licensure fees.

Table B sets forth a notification fee of \$60 for all projects.

Table C sets forth the fees for accreditation as lead abatement training course provider.

Table D sets forth the minimum number and location of single-surface dust samples.

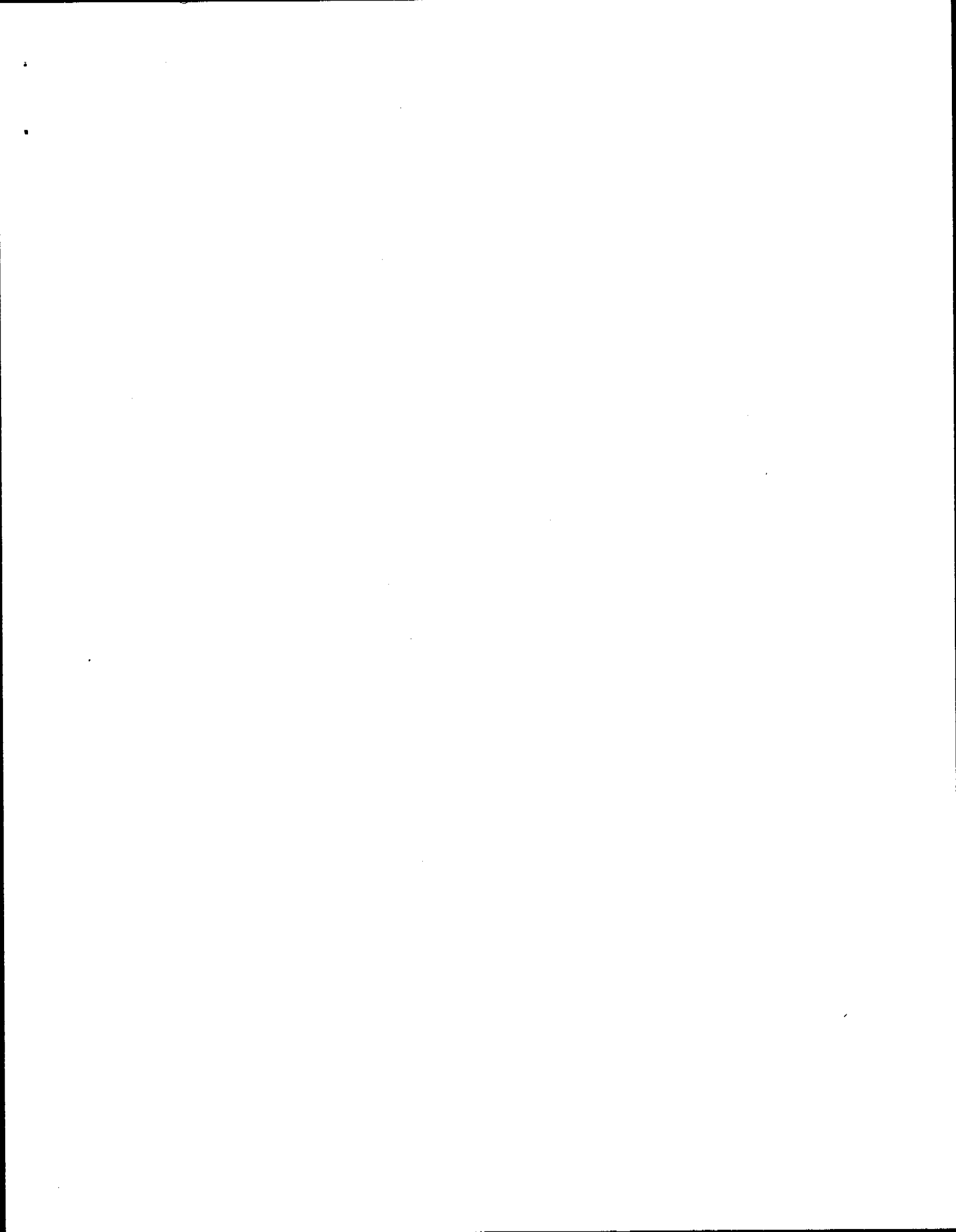
AUTHORITY

Statutory authority: W.Va. Code, §16-35-4, which provides, in part, as follows:

The director shall administer and enforce this article, and has the following powers and duties:

(1) To propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, necessary to carry out the requirements of this article, including, but not limited to, abatement personnel training guidelines, procedures for the issuance and renewal of lead discipline licenses, establishment of all fees necessary to pay for the implementation and enforcement of this program, and the regulation of lead abatement projects...

...(3) To promulgate any emergency rules necessary to gain federal approval of the state lead abatement program in accordance with section three, article fifteen, chapter twenty-nine-a of this code...



ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.