

DEPARTMENT OF HEALTH

Adoption of Chapter 11-41
Hawaii Administrative Rules

[**SEP 19 2005**]

SUMMARY

Chapter 11-41, Hawaii Administrative Rules,
entitled "Lead-Based Paint Activities," is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 41

LEAD-BASED PAINT ACTIVITIES

- § 11-41-1 Scope, applicability and general requirements
- § 11-41-2 Definitions
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§11-41-1 Scope, applicability and general requirements. (a) This chapter contains procedures and requirements for the accreditation of lead-based paint activities training programs, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities. This chapter also requires that, except as discussed below, all lead-based paint activities, as defined in this chapter, be performed by certified individuals and firms.

(b) This chapter applies to all individuals and firms who are engaged in lead-based paint activities as defined in section 11-41-2, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

(c) While this chapter establishes specific requirements for performing lead-based paint activities should they be undertaken, nothing in this chapter requires that the owner or occupant undertake any particular lead-based paint activity.

(d) All persons engaging in lead-based paint activities shall make available to the department records pursuant to these rules. Copies of such records shall be submitted to the department upon request.

(e) The department may impose upon any person such requirements, as it deems appropriate or necessary to minimize danger to public health and safety or property. [Eff **OCT 03 2005**] (Auth: HRS §§342P-3, 342P-4, 342P-6, 342P-41, 342P-42) (Imp: HRS §§342P-3, 342P-4, 342P-6, 342P-41, 342P-42)

§11-41-2 Definitions. As used in this chapter:

"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 firm will be conducting activities in or to a residential dwelling 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 paragraphs (1) and (2);
 - (B) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals certified in accordance with this chapter, unless such projects are covered by paragraph (4);
 - (C) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature, represent,

advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this chapter, unless such projects are covered by paragraph (4);
or

- (D) Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in response to state or local abatement orders.
- (4) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

"Accredited training program" means a training program that has been accredited by the department pursuant to section 11-41-4 to provide training for individuals engaged in lead-based paint activities.

"Adequate quality control" means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.

"Arithmetic mean" means the algebraic sum of data values divided by the number of data values (e.g., the sum of the concentration of lead in several soil samples divided by the number of samples).

"Business day" means Monday through Friday with the exception of federal and state holidays.

"Certified firm" means a company, partnership, corporation, sole proprietorship, association, or other

business entity that performs lead-based paint activities to which the department has issued a certificate of approval pursuant to section 11-41-5.

"Certified inspector" means an individual who has been trained by an accredited training program, as defined by this section, and certified by the department pursuant section 11-41-5 to conduct inspections. A certified inspector also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

"Certified abatement worker" means an individual who has been trained by an accredited training program, as defined by this section, and certified by the department pursuant to section 11-41-5 to perform abatements.

"Certified project designer" means an individual who has been trained by an accredited training program, as defined by this section, and certified by the department pursuant to section 11-41-5 to prepare abatement project designs, occupant protection plans, and abatement reports.

"Certified risk assessor" means an individual who has been trained by an accredited training program, as defined by this section, and certified by the department pursuant to section 11-41-5 to conduct risk assessments. A risk assessor also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

"Certified supervisor" means an individual who has been trained by an accredited training program, as defined by this section, and certified by the department pursuant to section 11-41-5 to supervise and conduct abatements, and to prepare occupant protection plans and abatement reports.

"CFR" means United States Code of Federal Regulations.

"Chewable surface" means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.

"Child-occupied facility" means a building, or portion of a building, constructed before 1978, visited regularly by the same child, six years of age or under, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visit lasts at least six hours, and the combined annual visits last at least sixty hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools, and kindergarten classrooms.

"Clearance levels" are values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity. The clearance levels for lead in dust are less than: forty micrograms per square foot for floors, two hundred fifty micrograms per square foot for interior window sills, and four hundred micrograms per square foot for window troughs.

"Common area" means a portion of a building that is generally accessible to all occupants. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

"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.

"Component or building component" means specific design or structural elements or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built-in cabinets, columns, beams, bathroom vanities, counter

tops, and air conditioners; and exterior components such as: painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells, and air conditioners.

"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.

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

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

"Course test" means an evaluation of the overall effectiveness of the training, which shall test the trainees' knowledge and retention of the topics covered during the course.

"Course test blue print" means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

"Department" means the department of health, State of Hawaii.

"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.

"Director" means the director of health, State of Hawaii, or the director's duly authorized agent.

"Discipline" means one of the specific types or categories of lead-based paint activities identified in this chapter for which individuals may receive training

from accredited programs and become certified by the department. For example, "abatement worker" is a discipline.

"Distinct painting history" means the application history, as indicated by its visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

"Documented methodologies" are methods or protocols used to sample for the presence of lead in paint, dust, and soil.

"Dripline" means the area within three feet surrounding the perimeter of a building.

"EBL" means elevated blood lead level.

"Elevated blood lead level" (EBL) means an excessive absorption of lead that is a confirmed concentration of lead in whole blood of twenty micrograms of lead per deciliter of whole blood for a single venous test or of fifteen to nineteen micrograms of lead per deciliter of whole blood in two consecutive tests taken three to four months apart.

"Encapsulant" means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating, with or without reinforcement materials, or an adhesively bonded covering material.

"Encapsulation" means the application of an encapsulant.

"Enclosure" means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

"EPA" means the United States Environmental Protection Agency.

"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.

"Guest instructor" means an individual designated by the training program manager or principal instructor to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

"Hands-on skills assessment" means an evaluation which tests the trainees' ability to satisfactorily perform the work practices and procedures identified in this chapter, as well as any other skill taught in a training course.

"Hazardous waste" means any waste as defined in 40 CFR 261.3 or section 342J-2, HRS.

"HRS" means Hawaii Revised Statutes.

"Impact surface" means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of doorframes.

"Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

"Interim 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.

"Interior window sill" means the portion of the horizontal window ledge that protrudes into the interior of the room.

"Lead abatement professional" means an individual certified to conduct lead-based paint activities under section 11-41-5 as a worker, supervisor, project designer, inspector, or risk assessor.

"Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of one milligram per square centimeter or more than 0.5 percent by weight.

"Lead-based paint activities" means, in the case of target housing and child-occupied facilities,

inspection, risk assessment, and abatement, as defined in this chapter.

"Lead-based paint activities courses" means initial and refresher training courses (worker, supervisor, inspector, risk assessor, project designer) provided by accredited training programs.

"Lead-based paint hazard" means hazardous lead-based paint, dust-lead hazard or soil-lead hazard as identified in section 11-41-3.

"Lead-hazard screen" is a limited risk assessment activity that involves limited paint and dust sampling as described in section 11-41-6.

"Living area" means any area of a residential dwelling used by one or more children age six and under, including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children's bedrooms.

"Loading" means the quantity of a specific substance present per unit of surface area, such as the amount of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters.

"Mid-yard" means an area of a residential yard approximately midway between the dripline of a residential building and the nearest property boundary or between the driplines of a residential building and another building on the same property.

"Multi-family dwelling" means a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

"Paint in poor condition" means more than ten square feet of deteriorated paint on exterior components with large surface areas; or more than two square feet of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors, doors); or more than ten percent of the total surface area of the component is deteriorated on interior or exterior components with small surface areas (window sills, baseboards, soffits, trim).

"Permanently covered soil" means soil that has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

"Person" means any natural or judicial person including any individual, corporation, partnership, trust, estate, or association; any Indian Tribe, state, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the federal government.

"Play area" means an area of frequent soil contact by children six years of age or under as indicated by, but not limited to, such factors including the following: the presence of play equipment (e.g., sandboxes, swing sets, and sliding boards), toys, or other children's possessions, observations of play patterns, or information provided by parents, residents, care givers, or property owners.

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

"Recognized laboratory" means an environmental laboratory recognized by EPA as being capable of performing an analysis for lead compounds in paint, soil, and dust.

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

"Residential building" means a building containing one or more residential dwellings.

"Residential dwelling" means:

- (1) a detached single family dwelling unit, including attached structures such as porches and stoops; or

- (2) a single family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

"Risk assessment" means

- (1) an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and
- (2) the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

"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.

"Soil sample" means a sample collected in a representative location using ASTM E1727, "Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques," or equivalent method.

"Start date" means the first day of any lead-based paint activities training course or lead-based paint abatement activity.

"Start date provided to the department" means the start date included in the original notification or the most recent start date provided to the department in an updated notification.

"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 under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling.

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

"Training hour" means at least fifty minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and or hands-on experience.

"Training manager" means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

"Training provider" means any organization or entity accredited under section 11-41-4 to offer lead-based paint activities courses.

"Visual inspection for clearance testing" means the visual examination of a residential dwelling or a child-occupied facility following an abatement to determine whether or not the abatement has been successfully completed.

"Visual inspection for risk assessment" means the visual examination of a residential dwelling or a child-occupied facility to determine the existence of deteriorated lead-based paint or other potential sources of lead-based paint hazards.

"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 sixty micrograms per square foot, a composite sample (three subsamples) containing one hundred micrograms per square foot, and a composite sample (four subsamples) containing one hundred ten micrograms per square foot is 100 micrograms per square foot. This result is based on the equation

$$[60+(3 \times 100)+(4 \times 110)] / (1+3+4).$$

"Window trough" means, for a typical double-hung window, the portion of the exterior window sill between the interior window sill (or stool) and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. The window trough is sometimes referred to as the window "well".

"Wipe sample" means a sample collected by wiping a representative surface of known area, as determined by ASTM E1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques," or equivalent method, with an acceptable wipe material as defined in ASTM E1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust."
[Eff: **OCT 03 2005**] (Auth: HRS §§342P-3, 342P-41)
(Imp: HRS §§342P-3, 342P-41)

§11-41-3 Lead-based paint hazards. This section identifies lead-based paint hazards. The standards for lead-based paint hazards apply to target housing and child-occupied facilities. Nothing in this section requires the owner of property(ies) subject to these standards to evaluate the property(ies) for the presence of lead-based paint hazards or take any action

to control these conditions if one or more of them is identified.

(a) Paint-lead hazard. A paint-lead hazard is any of the following:

- (1) Any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill, or floor) are equal to or greater than the dust-lead hazard levels identified in subsection (b).
- (2) Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a doorknob that knocks into a wall or a door that knocks against its doorframe).
- (3) Any chewable lead-based painted surface on which there is evidence of teeth marks.
- (4) Any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(b) Dust-lead hazard. A dust-lead hazard is surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding forty micrograms per square foot on floors or two hundred fifty micrograms per square foot on interior window sills based on wipe samples.

(c) Soil-lead hazard. A soil-lead hazard is bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding four hundred parts per million in a play area or average of one thousand two hundred parts per million of bare soil in the rest of the yard based on soil samples.

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(d) Work practice requirements. Applicable certification, occupant protection, and clearance requirements and work practice standards are found in regulations issued by the department at HAR Title 11, Chapter 41, and in regulations issued by the department of Housing and Urban Development (HUD) at 24 CFR Part 35, Subpart R.

(e) The work practice standards in those regulations do not apply when treating paint-lead hazards of less than two square feet of deteriorated lead-based paint per room or equivalent, or twenty square feet of deteriorated paint on the exterior building, or ten percent of the total surface area of deteriorated paint on an interior or exterior type of component with a small surface area.

[Eff: **OCT 03 2005**] (Auth: HRS §§342P-3, 342P-41, 342P-42) (Imp: HRS §§342P-3, 342P-41, 342P-42)

§11-41-4 Accreditation of training programs: target housing and child-occupied facilities. (a)

Scope:

- (1) A training program may seek accreditation to offer lead-based paint activities courses in any of the following disciplines: inspector, risk assessor, supervisor, project designer, and abatement worker. A training program may also seek accreditation to offer refresher courses for each of the above listed disciplines.
- (2) A training program shall not provide, offer, or claim to provide department-accredited lead-based paint activities courses without applying for and receiving accreditation from the department as required under subsection (b).

(b) Application process: The following are procedures a training program shall follow to receive departmental accreditation to offer lead-based paint activities courses:

- (1) A training program seeking accreditation shall submit a written application to the department containing the following information:
 - (A) The training program's name, address, and telephone number.
 - (B) A list of courses for which it is applying for accreditation.
 - (C) A statement signed by the training program manager certifying that the training program meets the requirements established in subsection (c). If a training program uses EPA-recommended model training materials, or training materials approved by a state or Indian Tribe that has been authorized by the EPA, the training program manager shall include a statement certifying that, as well.
 - (D) If a training program does not use EPA-recommended model training materials or training materials approved by an authorized state or Indian Tribe, its application for accreditation shall also include:
 - (i) A copy of the student and instructor manuals, or other materials to be used for each course, and
 - (ii) A copy of the course agenda for each course.
 - (E) All training programs shall include in their application for accreditation the following:
 - (i) A description of the facilities and equipment to be used for lecture and hands-on training;

- (ii) A copy of the course test blueprint for each course;
 - (iii) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course; and
 - (iv) A copy of the quality control plan as described in subsection (c)(9).
- (2) If a training program meets the requirements in subsection (c), then the department shall approve the application for accreditation no more than sixty days after receiving a complete application from the training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the department may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. The department may also request additional materials retained by the training program under subsection (i). If a training program's application is disapproved, the program may reapply for accreditation at any time.
- (3) A training program may apply for accreditation to offer courses or refresher courses in as many disciplines as it chooses. A training program may seek accreditation for additional courses at any time as long as the program can demonstrate that it meets the requirements of this section.

(c) Requirements for the accreditation of training programs. For a training program to obtain accreditation from the department to offer lead-based paint activities courses, the program shall meet the following requirements:

- (1) The training program shall employ a training manager who has:
 - (A) At least two years of experience, education, or training in teaching workers or adults; or
 - (B) 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
 - (C) Two years of experience in managing a training program specializing in environmental hazards; and
 - (D) Demonstrated experience, education or training in the construction industry including: lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.
- (2) The training manager shall designate a qualified principal instructor for each course who has:
 - (A) Demonstrated experience, education, or training in teaching workers or adults; and
 - (B) Successfully completed at least sixteen hours of any EPA or department-accredited, or EPA-authorized state or Indian Tribal-accredited, lead-specific training; and
 - (C) Demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.
- (3) The principal instructor shall be responsible for the organization of the course and oversight of the teaching of all course

material. The training manager may designate guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

- (4) The following documents shall be recognized by the department as evidence that training managers and principal instructors have the education, work experience, training requirements or demonstrated experience, specifically listed in paragraphs (1) and (2). This documentation need not be submitted with the accreditation application, but, if not submitted, shall be retained by the training program as required by the record keeping requirements contained in subsection (i). Those documents include the following:
 - (A) Official academic transcripts or diplomas as evidence of meeting the education requirements;
 - (B) Resumes, letters of reference, or documentation of work experience as evidence of meeting the work experience requirements; and
 - (C) Certificates from train-the-trainer courses and lead-specific training courses as evidence of meeting the training requirements.
- (5) The training program shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.
- (6) To become accredited in the following disciplines, the training program shall provide training courses that meet the following training hour requirements:

- (A) The inspector course shall last a minimum of twenty-four training hours, with a minimum of eight hours devoted to hands-on training activities. The minimum curriculum requirements for the inspector course are contained in subsection (d) (1).
 - (B) The risk assessor course shall last a minimum of sixteen training hours, with a minimum of four hours devoted to hands-on training activities. The minimum curriculum requirements for the risk assessor course are contained in subsection (d) (2).
 - (C) The supervisor course shall last a minimum of thirty-two training hours, with a minimum of eight hours devoted to hands-on activities. The minimum curriculum requirements for the supervisor course are contained in subsection (d) (3).
 - (D) The project designer course shall last a minimum of eight training hours. The minimum curriculum requirements for the project designer course are contained in subsection (d) (4).
 - (E) The abatement worker course shall last a minimum of sixteen training hours, with a minimum of eight hours devoted to hands-on training activities. The minimum curriculum requirements for the abatement worker course are contained in subsection (d) (5).
- (7) 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 on the course test to pass any course.

- (A) 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 subsection (d).
 - (B) 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.
 - (C) The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application.
- (8) The training program shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:
- (A) The name, a unique identification number, and address of the individual;
 - (B) The name of the particular course that the individual completed;
 - (C) The dates of course completion/test passage; and
 - (D) The name, address, and telephone number of the training program.

- (9) The training manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:
- (A) Procedures for periodic revision of training materials and the course test to reflect innovations in the field.
 - (B) Procedures for the training manager's annual review of principal instructor competency.
- (10) The training program shall offer courses which teach the work practice standards for conducting lead-based paint activities contained in section 11-41-6, and other standards developed by EPA. 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.
- (11) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in this section.
- (12) The training manager shall allow the department to audit the training program to verify the contents of the application for accreditation as described in subsection (b).
- (13) The training manager must provide notification of lead-based paint activities courses offered.
- (A) The training manager must provide the department with notice of all lead-based paint activities courses offered. The original notice must be received by the department at least seven business days prior to the start date of any lead-based paint activities course.
 - (B) The training manager must provide the

department updated notification when lead-based paint activities courses will begin on a date other than the start date specified in the original notification, as follows:

- (i) For lead-based paint activities courses beginning prior to the start date provided to the department, an updated notification must be received by the department at least seven business days before the new start date.
 - (ii) For lead-based paint activities courses beginning after the start date provided to the department, an updated notification must be received by the department at least two business days before the start date provided to the department.
- (C) The training manager must update the department of any change in location of lead-based paint activities courses at least seven business days prior to the start date provided to the department.
- (D) The training manager must update the department regarding any course cancellations, or any other change to the original notification. Updated notifications must be received by the department at least two business days prior to the start date provided to the department.
- (E) Each notification, including updates, must include the following:
- (i) Notification type (original, update, cancellation).
 - (ii) Training program name, departmental accreditation number, address, and telephone number.
 - (iii) Course discipline, type (initial/refresher), and the

language in which instruction will be given.

- (iv) Date(s) and time(s) of training.
 - (v) Training location(s) telephone number, and address.
 - (vi) Principal instructor's name.
 - (vii) Training manager's name and signature.
- (F) All notifications shall be in writing. Written notification of lead-based paint activities courses can be accomplished by using either the sample form titled "Lead-based Paint Activities Training Course Schedule" or a similar form developed by the training program containing the required information. All written notices shall be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery.
- (G) Lead-based paint activities courses must not begin on a date, or at a location other than that specified in the original notification unless an updated notification identifying a new start date or location is submitted, in which case the course must begin on the new start date and or location specified in the updated notice.
- (H) No training program shall provide lead-based paint activities courses without first notifying the department of such activities in accordance with the requirements of this paragraph.
- (14) The training manager must provide notification following completion of lead-based paint activities courses.
- (A) The training manager shall provide the department notification after the completion of any lead-based paint activities course. This notice must be received by the department no later than

ten business days following course completion.

(B) The notification must include the following:

- (i) Training program name, departmental accreditation number, address, and phone number.
- (ii) Course discipline and type (initial/refresher).
- (iii) Date(s) of training.
- (iv) For each student who took the course; the student's name, address, social security number, course completion certificate number, and test score.
- (v) The training manager's name and signature.

(C) All notifications shall be in writing. Written notification following lead-based paint activities training courses can be accomplished by using either the sample form titled "Lead-based Paint Activities Training Course Follow-up" or a similar form developed by the training program containing the required information. All written notices shall be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery.

[Eff **OCT 03 2005**] (Auth: HRS
§§342P-3, 342P-41, 342P-42) (Imp: HRS
§§342P-3, 342P-41, 342P-42)

(d) Minimum training curriculum requirements. To become accredited to offer lead-based paint courses instruction in the specific disciplines listed below, training programs must ensure that their courses of study include, at a minimum, the following course topics. Requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course.

(1) Inspector.

(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 regulations 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.
 - (H) Record keeping.
- (2) Risk assessor.
- (A) Role and responsibilities of a risk assessor.
 - (B) Collection of background information to perform a 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 regulations 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.

- (I) Preparation of a final risk assessment report.
- (3) 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 regulations 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.
 - (M) Record keeping.
- (4) Project designer.
 - (A) 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.
 - (F) Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large-scale abatement projects.
- (5) 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 regulations 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-based paint hazard reduction.*
 - (G) Soil and exterior dust abatement methods or lead-based paint hazard reduction.*

(e) Requirements for the accreditation of refresher training programs. A training program may seek accreditation to offer refresher training courses in any of the following disciplines: inspector, risk assessor, supervisor, project designer, and abatement worker. To obtain departmental accreditation to offer refresher training, a training program must meet the following minimum requirements:

- (1) Each refresher course shall review the curriculum topics of the full-length courses listed under subsection (d) of this section, as appropriate. In addition, to become accredited to offer refresher training courses, training programs shall ensure that their courses of study include, at a minimum,

the following:

- (A) An overview of current safety practices relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.
 - (B) Current laws and regulations relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.
 - (C) Current technologies relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.
- (2) 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.
 - (3) For each course offered the training program shall conduct a hands-on assessment (if applicable), and at the completion of the course, a course test.
 - (4) A training program may apply for accreditation of a refresher course concurrently with its application for accreditation of the corresponding training course as described in subsection (b). If so, the department shall use the approval procedure described in subsection (b). In addition, the minimum requirements contained in subsection (c) (except for the requirements listed in subsection (c)(6)), and paragraphs (1) to (3) shall also apply.
 - (5) A training program seeking accreditation to offer refresher training courses only shall submit a written application to the department containing the following information:
 - (A) The refresher training program's name, address, and telephone number.

- (B) A list of courses for which it is applying for accreditation.
- (C) A statement signed by the training program manager certifying that the refresher training program meets the minimum requirements established in subsection (c), except for the requirements in subsection (c)(6). If a training program uses EPA-developed model training materials, or training materials approved by a state or Indian Tribe that has been authorized by EPA to develop its refresher training course materials, the training manager shall include a statement certifying that, as well.
- (D) If the refresher training course materials are not based on EPA-developed model training materials or training materials approved by an authorized state or Indian Tribe, the training program's application for accreditation shall include:
 - (i) A copy of the student and instructor manuals to be used for each course
 - (ii) A copy of the course agenda for each course.
- (E) All refresher training programs shall include in their application for accreditation the following:
 - (i) A description of the facilities and equipment to be used for lecture and hands-on training.
 - (ii) A copy of the course test blue print for each course.
 - (iii) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course (if applicable).
 - (iv) A copy of the quality control plan as described in subsection (c)(9).

(F) The requirements in subsections (c) (1) through (c) (5), and (c) (7) through (c) (14) apply to refresher training providers.

- (6) If a refresher training program meets the requirements listed in this subsection, then the department shall approve the application for accreditation no more than sixty days after receiving a complete application from the refresher training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the department may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. The department may also request additional materials retained by the refresher training program under subsection (i). If a refresher training program's application is disapproved, the program may reapply for accreditation at anytime.
- (f) Re-accreditation of training programs.
- (1) Unless re-accredited, a training program's accreditation (including refresher training accreditation) shall expire four years after the date of issuance. If a training program meets the requirements of this section, the training program shall be re-accredited.
- (2) A training program seeking re-accreditation shall submit an application to the department no later than sixty days before its accreditation expires. If a training program does not submit its application for re-accreditation by that date, the department cannot guarantee that the program will be re-accredited before the end of the accreditation period.
- (3) The training program's application for re-

accreditation shall contain:

- (A) The training program's name, address, and telephone number.
- (B) A list of courses for which it is applying for re-accreditation.
- (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 that the training program complies at all times with all requirements in subsections (c) and (e), as applicable; and that the record keeping and reporting requirements of subsection (i) shall be followed.
- (E) Upon request, the training program shall allow the department to audit the training program to verify the contents of the application for re-accreditation as described in this paragraph.

(g) Suspension, revocation, and modification of accredited training programs.

- (1) The department may, after notice and an opportunity for hearing, suspend, revoke, or modify training program accreditation (including refresher training accreditation) if a training program, training manager, or other person with supervisory authority over the training program has:

- (A) Misrepresented the contents of a training course to the department or the student population, or both.
- (B) Failed to submit required information or notifications in a timely manner.
- (C) Failed to maintain required records.
- (D) Falsified accreditation records, instructor qualifications, or other accreditation-related information or documentation.

- (E) Failed to comply with the training standards and requirements in this section.
 - (F) Failed to comply with federal, state, or local lead-based paint statutes or regulations.
 - (G) Made false or misleading statements to the department in its application for accreditation or re-accreditation, which the department relied upon in approving the application.
- (2) In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.
- (h) Procedures for suspension, revocation or modification of training program accreditation.
- (1) Prior to taking action to suspend, revoke, or modify the accreditation of a training program, the department shall notify the affected entity in writing of the following:
- (A) The legal and factual basis for the suspension, revocation, or modification.
 - (B) The anticipated commencement date and duration of the suspension, revocation, or modification.
 - (C) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification, or to receive accreditation in the future.
 - (D) The opportunity and method for requesting a hearing prior to final action by the department to suspend, revoke or modify accreditation.
 - (E) Any additional information, as appropriate, which the department may provide.
- (2) If a hearing is requested by the accredited training program, the department shall:

- (A) Provide the affected entity an opportunity to offer written statements in response to the department's assertions of the legal and factual basis for its proposed action, and any other explanations, comments, and arguments it deems relevant to the proposed action.
 - (B) Provide the affected entity such other procedural opportunities, as the department may deem appropriate to ensure a fair and impartial hearing.
 - (C) Appoint hearing officer to conduct the hearing.
 - (D) No person shall serve as hearing officer if he or she has had any prior connection with the specific matter.
- (3) The hearing officer appointed pursuant to paragraph (2) shall:
- (A) Conduct a fair, orderly, and impartial hearing within ninety days of the request for a hearing.
 - (B) Consider all relevant evidence, explanation, comment, and argument submitted.
 - (C) Notify the affected entity in writing within ninety days of completion of the hearing of his or her decision and order. Such an order is a final agency action that may be subject to judicial review.
- (4) If the department determines that the public health, interest, or welfare warrants immediate action to suspend the accreditation of any training program prior to the opportunity for a hearing, it shall:
- (A) Notify the affected entity of its intent to immediately suspend training program accreditation for the reasons listed in subsection (g) (1). If a suspension, revocation, or modification notice has not previously been issued pursuant to subsection (g) (1), it shall be issued at

- the same time the emergency suspension notice is issued.
- (B) Notify the affected entity in writing of the grounds for the immediate suspension and why it is necessary to suspend the entity's accreditation before an opportunity for a suspension, revocation or modification hearing.
 - (C) Notify the affected entity of the anticipated commencement date and duration of the immediate suspension.
 - (D) Notify the affected entity of its right to request a hearing on the immediate suspension within fifteen days of the suspension taking place and the procedures for the conduct of such a hearing.
- (5) Any notice, decision, or order issued by the department under this section, any transcripts or other verbatim record of oral testimony, and any documents filed by an accredited training program in a hearing under this section shall be available to the public, except as otherwise provided by law. Any such hearing at which oral testimony is presented shall be open to the public, except that the hearing officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment.
 - (6) The public shall be notified of the suspension, revocation, modification or reinstatement of a training program's accreditation through appropriate mechanisms.
 - (7) The department shall maintain a list of parties whose accreditation has been suspended, revoked, modified or reinstated.
 - (i) Training program record keeping requirements.
 - (1) Accredited training programs shall maintain, and make available to the department, upon request, the following records:

- (A) All documents specified in subsection (c) (4) that demonstrate the qualifications listed in subsection (c) (1) and (c) (2) of the training manager and principal instructors.
 - (B) Current course or curriculum materials and documents reflecting any changes made to these materials.
 - (C) The course test blueprint.
 - (D) 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 or fail rate.
 - (E) The quality control plan as described in subsection (c) (9).
 - (F) Results of the students' hands-on skills assessments and course tests, and a record of each student's course completion certificate.
 - (G) Any other material not listed above in subparagraphs (A) to (F) that was submitted to the department as part of the program's application for accreditation.
- (2) The training program shall retain these records at the address specified on the training program accreditation application (or as modified in accordance with paragraph (3)) for a minimum of three years and six months.
- (3) The training program shall notify the department in writing within thirty days of changing the address specified on its training program accreditation application or transferring the records from that address.
- (j) Accreditation based on current EPA accreditation: Any training program which received accreditation from EPA before the effective date of

this rule meets the requirements of this section and shall pay no fees until the expiration date of current EPA accreditation. Training programs which have received accreditation from an EPA-authorized state or Indian Tribal program before the effective date of this rule will also be eligible for accreditation by the department. [Eff: **OCT 03 2005**] (Auth: HRS §§342P-3, 342P-41) (Imp: HRS §§342P-3, 342P-41)

§11-41-5 Certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities. (a) Certification of individuals.

- (1) Individuals seeking certification by the department to engage in lead-based paint activities must submit to the department an application demonstrating that they meet the requirements established in subsection (b) or (c) for the particular discipline for which certification is sought;
 - (2) Following the submission of an application demonstrating that all the requirements of this section have been met, the department shall certify an applicant as an inspector, risk assessor, supervisor, project designer, or abatement worker, as appropriate.
 - (3) Upon receiving certification from the department, individuals conducting lead-based paint activities shall comply with the work practice standards for performing the appropriate lead-based paint activities as established in section 11-41-6.
 - (4) It shall be a violation of this chapter for an individual to conduct any of the lead-based paint activities described in section 11-41-6 if that individual has not been certified by the department pursuant to this section to do so.
- (b) Inspector, risk assessor or supervisor.

- (1) To become certified by the department as an inspector, risk assessor, or supervisor, pursuant to subsection (a)(1), an individual must: successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program; pass the certification exam in the appropriate discipline offered by the department; and meet or exceed the following experience or education requirements, or both:
- (A) Inspectors.
- (i) No additional experience or education requirements, or both.
 - (ii) [Reserved]
- (B) Risk assessors.
- (i) Successful completion of an accredited training course for inspectors; and
 - (ii) Bachelor's degree and one year of experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction), or an Associate's degree and two years experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction); or
 - (iii) Certification as an industrial hygienist, professional engineer, registered architect or certification in a related engineering, health, or environmental field (e.g., safety professional, environmental scientist); or
 - (iv) A high school diploma (or equivalent), and at least three years of experience in a related field (e.g., lead, asbestos, environmental remediation work or

- construction).
- (C) Supervisor:
- (i) One year of experience as a certified lead-based paint abatement worker; or
 - (ii) At least two years of experience in a related field (e.g. lead, asbestos, or environmental remediation work) or in the building trades.
- (2) The following documents shall be recognized by the department as evidence of meeting the requirements listed in paragraph (1):
- (A) Official academic transcripts or diploma, as evidence of meeting the education requirements.
 - (B) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.
 - (C) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.
- (3) In order to take the certification examination for a particular discipline an individual must:
- (A) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.
 - (B) Meet or exceed the education or experience requirements, or both, in paragraph (1).
- (4) After passing the appropriate certification exam and submitting an application demonstrating that he or she meets the appropriate training, education, and or experience prerequisites described in paragraph (1), an individual shall be issued

- a certificate by the department. To maintain certification, an individual must be re-certified as described in subsection (e).
- (5) An individual may take the certification exam no more than three times within sixty days of receiving a course completion certificate.
 - (6) If an individual does not pass the certification exam and receive a certificate within sixty days of receiving his or her course completion certificate, the individual must retake the appropriate course from an accredited training program before reapplying for certification from the department.
- (c) Abatement worker and project designer.
- (1) To become certified by the department as an abatement worker or project designer, pursuant to subsection (a) (1), an individual must:
 - (A) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.
 - (B) Meet or exceed the following additional experience or education requirements:
 - (i) Abatement workers: No additional experience or education requirement.
 - (ii) Project designers: Successful completion of an accredited training course for supervisors; and either a 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 four years of experience in building construction and design (or a related field) in lieu of the educational requirement.
 - (2) The following documents shall be recognized by the department as evidence of meeting the requirements listed in this subsection:

- (A) Official academic transcripts or diploma, as evidence of meeting the education requirements.
 - (B) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.
 - (C) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.
- (3) After successfully completing the appropriate training courses and meeting any other qualifications described in paragraph (1), an individual shall be issued a certificate from the department. To maintain certification, an individual must be re-certified as described in subsection (e).

(d) Certification based on current EPA certification. Any individual who received EPA certification in a lead-based paint activity before the effective date of this rule meets the requirements of this section and shall pay no fees until the expiration of the current EPA certification. Individuals who have received lead-based paint activities certification at an EPA-authorized state or Indian Tribal accredited training program before the effective date of this rule shall also be eligible for certification by the department.

(e) Re-certification.

- (1) To maintain certification in a particular discipline, a certified individual shall apply to and be re-certified by the department in that discipline every three years if the individual completed a training course with a course test and hands-on assessment.
- (2) An individual shall be re-certified if the individual successfully completes the appropriate accredited refresher training

course and submits a valid copy of the appropriate refresher course completion certificate.

- (f) Certification of firms.
 - (1) All firms which perform or offer to perform any of the lead-based paint activities described in section 11-41-6 shall be certified by the department.
 - (2) A firm seeking certification shall submit to the department a letter attesting that the firm shall only employ appropriately certified employees to conduct lead-based paint activities, and that the firm and its employees shall follow the work practice standards in section 11-41-6 for conducting lead-based paint activities.
 - (3) From the date of receiving the firm's letter requesting certification, the department shall have sixty days to approve or disapprove the firm's request for certification. Within that time, the department shall respond with either a certificate of approval or a letter describing the reasons for disapproval.
 - (4) The firm shall maintain all records pursuant to the requirements in section 11-41-6.
 - (5) To maintain certification a firm shall be recertified by the department every three years.

(g) Suspension, revocation, and modification of certifications of individuals engaged in lead-based paint activities.

- (1) The department may, after notice and opportunity for hearing, suspend, revoke, or modify an individual's certification if an individual has:
 - (A) Obtained training documentation through fraudulent means.
 - (B) Gained admission to and completed an accredited training program through misrepresentation of admission

- requirements.
- (C) Obtained certification through misrepresentation of certification requirements or related documents dealing with education, training, professional registration, or experience.
 - (D) Performed work requiring certification at a job site without having proof of certification.
 - (E) Permitted the duplication or use of the individual's own certificate by another.
 - (F) Performed work for which certification is required, but for which appropriate certification has not been received.
 - (G) Failed to comply with the appropriate work practice standards for lead-based paint activities at section 11-41-6.
 - (H) Failed to comply with federal, state, or local lead-based paint statutes or regulations.
- (2) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.
- (h) Suspension, revocation, and modification of certifications of firms engaged in lead-based paint activities.
- (1) The department may, after notice and opportunity for hearing, suspend, revoke, or modify a firm's certification if a firm has:
 - (A) Performed work requiring certification at a job site with individuals who are not certified.
 - (B) Failed to comply with the work practice standards established in section 11-41-6.
 - (C) Misrepresented facts in its letter of application for certification to the department.
 - (D) Failed to maintain required records.

- (E) Failed to comply with federal, state, or local lead-based paint statutes or regulations.
- (2) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.
 - (i) Procedures for suspension, revocation, or modification of the certification of individuals or firms.
 - (1) If the department decides to suspend, revoke, or modify the certification of any individual or firm, it shall notify the affected entity in writing of the following:
 - (A) The legal and factual basis for the suspension, revocation, or modification.
 - (B) The commencement date and duration of the suspension, revocation, or modification.
 - (C) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification or to receive certification in the future.
 - (D) The opportunity and method for requesting a hearing prior to final departmental action to suspend, revoke, or modify certification.
 - (E) Any additional information, as appropriate, which the department may provide.
 - (2) If a hearing is requested by the certified individual or firm, the department shall:
 - (A) Provide the affected entity an opportunity to offer written statements in response to the department's assertion of the legal and factual basis and any other explanations, comments, and arguments it deems relevant to the proposed action.
 - (B) Provide the affected entity such other

procedural opportunities, as the department may deem appropriate to ensure a fair and impartial hearing.

(C) Appoint hearing officer to conduct the hearing. No person shall serve as hearing officer if he or she has had any prior connection with the specific matter.

(3) The hearing officer shall:

(A) Conduct a fair, orderly, and impartial hearing within ninety days of the request for a hearing;

(B) Consider all relevant evidence, explanation, comment, and argument submitted; and

(C) Notify the affected entity in writing within ninety days of completion of the hearing of his or her decision and order. Such an order is a final departmental action subject to judicial review.

(4) If the department determines that the public health, interest, or welfare warrants immediate action to suspend the certification of any individual or firm prior to the opportunity for a hearing, it shall:

(A) Notify the affected entity of its intent to immediately suspend certification for the reasons listed in subsections (g) (1) and (h) (1). If a suspension, revocation, or modification notice has not previously been issued, it shall be issued at the same time the immediate suspension notice is issued.

(B) Notify the affected entity in writing of the grounds upon which the immediate suspension is based and why it is necessary to suspend the entity's certification before an opportunity for a hearing to suspend, revoke, or modify the individual's or firm's certification.

(C) Notify the affected entity of the commencement date and duration of the

immediate suspension.

- (D) Notify the affected entity of its right to request a hearing on the immediate suspension within fifteen days of the suspension taking place and the procedures for the conduct of such a hearing.
- (5) Any notice, decision, or order issued by the department under this section, transcript or other verbatim record of oral testimony, and any documents filed by a certified individual or firm in a hearing under this section shall be available to the public, except as otherwise provided by law. Any such hearing at which oral testimony is presented shall be open to the public, except that the hearing officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment. [Eff **OCT 03 2005**]
 (Auth: HRS §§342P-3, 342P-28, 342P-41)
 (Imp: HRS §§342P-3, 342P-28, 342P-41)

§11-41-6 Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities. (a) Applicability and terms.

- (1) All lead-based paint activities shall be performed pursuant to the work practice standards contained in this section.
- (2) When performing any lead-based paint activity described by the certified individual as an inspection, lead-hazard screen, risk assessment or abatement, a certified individual must perform that activity in compliance with the appropriate requirements below.
- (3) Documented methodologies that are appropriate for this section are found in the following:
 The U.S. Department of Housing and Urban

Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing; the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil; the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 7474-R-95-001); regulations, guidance, methods or protocols issued by states and Indian Tribes that have been authorized by EPA; and other equivalent methods and guidelines.

- (4) Clearance levels are appropriate for the purposes of this section may be found in the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead Contaminated Soil or other equivalent guidelines.

(b) Inspection.

- (1) An inspection shall be conducted only by a person certified by the department as an inspector or risk assessor and, if conducted, must be conducted according to the procedures in this subsection.

- (2) When conducting an inspection, the following locations shall be selected according to documented methodologies and tested for the presence of lead-based paint:

(A) In a residential dwelling and child-occupied facility, each component with a distinct painting history and each exterior component with a distinct painting history shall be tested for lead-based paint, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint; and

(B) In a multi-family dwelling or child-occupied facility, each component with a distinct painting history in every common area, except those components that the

- inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint.
- (3) Paint shall be sampled in the following manner:
- (A) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and
 - (B) All collected paint chip samples shall be analyzed according to subsection (f) to determine if they contain detectable levels of lead that can be quantified numerically.
- (4) The certified inspector or risk assessor shall prepare an inspection report which shall include the following information:
- (A) Date of each inspection.
 - (B) Address of building.
 - (C) Date of construction.
 - (D) Apartment numbers (if applicable).
 - (E) Name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility.
 - (F) Name, signature, and certification number of each certified inspector and or risk assessor conducting testing.
 - (G) Name, address, and telephone number of the certified firm employing each inspector or risk assessor, if applicable.
 - (H) Each testing method and device or sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any x-ray fluorescence (XRF) device.
 - (I) Specific locations of each painted component tested for the presence of lead-based paint.
 - (J) The results of the inspection expressed

in terms appropriate to the sampling method used.

- (c) Lead hazard screen.
 - (1) A lead hazard screen shall be conducted only by a person certified by the department as a risk assessor.
 - (2) If conducted, a lead hazard screen shall be conducted as follows:
 - (A) 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 under, shall be collected.
 - (B) A visual inspection of the residential dwelling 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 residential dwellings two composite dust samples shall be collected, one from the floors and the other from the windows in rooms, hallways or stairwells where one or more children, age six and under, are most likely to come in contact with dust.
 - (E) In multi-family dwellings and child-occupied facilities, in addition to the floor and window samples required in subparagraph (D), the risk assessor shall also collect composite dust samples from common areas where one or more children,

- age six and under, 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 subsection (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 subsection (f) to determine if they contain detectable levels of lead that can be quantified numerically.
 - (5) The risk assessor shall prepare a lead hazard screen report, which shall include the following information:
 - (A) The information required in a risk assessment report as specified in subsection (d). Additionally, any background information collected pursuant to paragraph (2) (A) shall be included in the risk assessment report; and
 - (B) Recommendations, if warranted, for a follow-up risk assessment, and as appropriate, any further actions.
- (d) Risk assessment.
- (1) A risk assessment shall be conducted only by a person certified by the department as a risk assessor and, if conducted, must be conducted according to the procedures in this

- subsection.
- (2) A visual inspection for risk assessment of the residential dwelling or child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential lead-based paint hazards.
 - (3) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant-use patterns that may cause lead-based paint exposure to one or more children age six years and under shall be collected.
 - (4) The following surfaces which are determined, using documented methodologies, to have a distinct painting history, shall be tested for the presence of lead:
 - (A) Each friction surface or impact surface with visibly deteriorated paint; and
 - (B) All other surfaces with visibly deteriorated paint.
 - (5) In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sill(s) and floor shall be collected and analyzed for lead concentration in all living areas where one or more children, age six and under, are most likely to come into contact with dust.
 - (6) For multi-family dwellings and child-occupied facilities, the samples required in subsection (d)(4) shall be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in the following locations:
 - (A) Common areas adjacent to the sampled residential dwelling or child-occupied facility; and
 - (B) Other common areas in the building where the risk assessor determines that one or

- more children, age six and under, are likely to come into contact with dust.
- (7) For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in each room, hallway or stairwell utilized by one or more children, age six and under, and in other common areas in the child-occupied facility where one or more children, age six and under, are likely to come into contact with dust.
 - (8) Soil samples shall be collected and analyzed for lead concentration in the following locations:
 - (A) Exterior play areas where bare soil is present; and
 - (B) The rest of the yard (i.e., non-play areas) where bare soil is present.
 - (9) Any paint, dust, or soil sampling or testing shall be conducted using documented methodologies that incorporate adequate quality control procedures.
 - (10) Any collected paint chip, dust, or soil samples shall be analyzed according to subsection (f) to determine if they contain detectable levels of lead that can be quantified numerically.
 - (11) The certified risk assessor shall prepare a risk assessment report which shall include the following information:
 - (A) Date of assessment.
 - (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, and certification of the certified risk assessor conducting the assessment.
 - (G) Name, address, and telephone number of

- the certified firm employing each certified risk assessor if applicable.
- (H) Name, address, and telephone number of each recognized laboratory 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.
 - (L) All data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device.
 - (M) All results of laboratory analysis on collected paint, soil, and dust samples.
 - (N) Any other sampling results.
 - (O) Any background information collected pursuant to subsection (d) (3).
 - (P) 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.
 - (Q) A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards.
 - (R) A description of interim controls and or abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.
- (e) Abatement.

- (1) An abatement shall be conducted only by an individual certified by the department, and if conducted, shall be conducted according to the procedures in this subsection.
- (2) A certified supervisor is required for each abatement project and shall be onsite during all work site preparation and during the post-abatement cleanup of work areas. At all other times when abatement activities are being conducted, the certified supervisor shall be onsite or available by telephone, pager or answering service and able to be present at the work site in no more than two hours.
- (3) The certified supervisor and the certified firm employing that supervisor shall ensure that all abatement activities are conducted according to the requirements of this section and all other federal, state and local requirements.
- (4) A certified firm or individual must notify the department of lead-based paint abatement activities as follows:
 - (A) Except as provided in subparagraph (B), the department must be notified prior to conducting lead-based paint abatement activities. The original notice must be received by the department at least five business days before the start date of any lead-based paint abatement activities.
 - (B) Notification for lead-based paint abatement activities required in response to an elevated blood lead level (EBL) determination, or federal, state, Tribal, or local emergency abatement order must be received by the department as early as possible before, but must be received no later than, the start date of the lead-based paint abatement activities. Should the start date and or location provided

to the department change, an updated notification must be received by the department on or before the start date provided to the department. Documentation showing evidence of an EBL determination or a copy of the federal, state, Tribal or local emergency abatement order must be included in the written notification to take advantage of this abbreviated notification period.

- (C) Except as provided in subparagraph (B), updated notification must be provided to the department for lead-based paint abatement activities that will begin on a date other than the start date specified in the original notification, as follows:
 - (i) For lead-based paint abatement activities beginning prior to the start date provided to the department, an updated notification must be received by the department at least five business days before the new start date included in the notification.
 - (ii) For lead-based paint abatement activities beginning after the start date provided to the department, an updated notification must be received by the department on or before the start date provided to the department.
- (D) Except as provided in subparagraph (B), updated notification must be provided to the department for any change in location of lead-based paint abatement activities at least five business days prior to the start date provided to the department.
- (E) Updated notification must be provided to the department when lead-based paint abatement activities are cancelled, or when there are other significant changes

including, but not limited to, when the square footage or acreage to be abated changes by more than twenty percent. This updated notification must be received by the department on or before the start date provided to the department, or if work has already begun, within twenty-four hours of the change.

(F) The following must be included in each notification:

- (i) Notification type (original, updated, cancellation).
- (ii) Date when lead-based paint abatement activities will start.
- (iii) Date when lead-based paint abatement activities will end (approximation using best professional judgement).
- (iv) Firm's name, departmental certification number, address, telephone number.
- (v) Type of building (e.g. single family dwelling, multi-family dwelling, child-occupied facilities) on or in which abatement work will be performed.
- (vi) Property name (if applicable).
- (vii) Property address including apartment or unit number(s) (if applicable) for abatement work.
- (viii) Documentation showing evidence of an EBL determination or a copy of the federal, state, Tribal, or local emergency abatement order, if using the abbreviated time period as described in subparagraph (B).
- (ix) Name and departmental certification number of the project supervisor.
- (x) Approximate square footage or acreage to be abated.
- (xi) Brief description of abatement activities to be performed.

- (xii) Name, title, and signature of the representative of the certified firm who prepared the notification.
 - (G) All notifications shall be in writing. Written notification can be accomplished using either the sample form titled "Notification of Lead-based Paint Abatement Activities" or similar form. All written notices shall be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery.
 - (H) Lead-based paint abatement activities shall not begin on a date, or at a location other than that specified in either an original or updated notification, in the event of changes to the original notification.
 - (I) No firm or individual shall engage in lead-based paint abatement activities, as defined in section 11-41-2, prior to notifying the department of such activities according to requirements of this paragraph.
- (5) A written occupant protection plan shall be developed for all abatement projects and shall be prepared according to the following procedures:
- (A) The occupant protection plan shall be unique to each residential dwelling or child-occupied facility and be developed prior to the abatement. The occupant protection plan shall describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards.
 - (B) A certified supervisor or project designer shall prepare the occupant protection plan.
- (6) The work practices listed below shall be restricted during an abatement as follows:

- (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 conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than two square feet in any one room, hallway or stairwell or totaling no more than twenty square feet on exterior surfaces; and
 - (D) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100 degrees Fahrenheit.
- (7) If conducted, soil abatement shall be conducted in one of the following ways:
- (A) If the 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 four hundred 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 section 11-41-2.
- (8) 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 residues 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 by subparagraph (A), clearance sampling for lead in 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 residential dwelling 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 floors of each of no less than four rooms, hallways or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are less than four

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

- (ii) After conducting an abatement with no containment, two dust samples shall be taken from each of no less than four rooms, hallways or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one interior window sill and window trough (if present) and one dust sample shall be taken from the floor of each room, hallway or stairwell selected. If there are less than four rooms, hallways or stairwells within the residential dwelling or child-occupied facility, then all rooms, hallways or stairwells shall be sampled.
- (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 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 in subparagraph (H) for lead in dust on floors, interior window sills, and window troughs or from each composite dust sample with the applicable clearance levels for lead in dust on floors, interior window sills and window troughs divided by half the number of subsamples in the composite sample. If the residual lead levels 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 re-cleaned and re-tested.

- (H) The clearance levels for lead in dust are: forty micrograms per square foot for floors, two hundred fifty micrograms per square foot for interior window sills, and four hundred micrograms per square foot for window troughs.
- (9) In a multi-family dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:
- (A) The certified individuals who abate or clean the residential dwellings do not know which residential dwelling will be selected for the random sample.
- (B) A sufficient number of residential dwellings are selected for dust sampling to provide a ninety-five percent level of confidence that no more than five percent or fifty of the residential dwellings (whichever is smaller) in the randomly sampled population exceed the appropriate

clearance levels.

- (C) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to the procedures found in subsection (e) (8).
- (10) An 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 and address of each certified firm conducting the abatement and the name of each supervisor assigned to the abatement project.
 - (C) The occupant protection plan prepared pursuant to subsection (e) (5).
 - (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 that conducted the analyses.
 - (F) A detailed written description of the abatement, including abatement methods used, locations of rooms and or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures.

(f) Collection and laboratory analysis of samples. Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in this section shall be:

- (1) Collected by persons certified by the department as an inspector or risk assessor; and
- (2) Analyzed by a laboratory recognized by EPA 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 subsections (c) through (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 one milligram 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 (e.g., the window sill or floor) are equal to or greater than the dust hazard levels identified in section 11-41-3(b);
 - (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 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); and
- (D) If there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.
- (3) A dust-lead hazard is present in a residential dwelling or child-occupied facility:
- (A) In a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills are equal to or greater than forty micrograms per square foot for floors and two hundred fifty micrograms per square foot 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 four hundred 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 (i.e., non-play areas) for each residential building on a property is equal to or greater than one thousand two hundred parts per million.

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

[Eff: **OCT 03 2005**] (Auth: HRS §§342P-3, 342P-41)
(Imp: HRS §§342P-3, 342P-41)

§11-41-7 [Reserved].

§11-41-8 [Reserved].

§11-41-9 [Reserved].

§11-41-10 Fees. (a) Training program accreditation fees:

- (1) The application for accreditation shall be accompanied by a non-refundable, initial training program accreditation fee of \$4,000 payable to the department. Upon determination that an applicant meets the requirements of the rules, the department shall issue an accreditation for four years.
- (2) The application for re-accreditation shall be accompanied by a non-refundable, training program re-accreditation fee of \$4,000

payable to the department. Upon determination that an applicant meets the requirements of the rules, the department shall issue a re-accreditation for four years.

- (3) A non-refundable \$15 fee shall be charged for replacement of an accreditation document.

(b) Certification fees:

- (1) The application for certification and re-certification shall be accompanied by a non-refundable, certification fee payable to the department. The certification fees are as follows:
- (A) Inspector-\$250
 - (B) Risk assessor-\$375
 - (C) Supervisor-\$300
 - (D) Abatement worker-\$150
 - (E) Project designer-\$300
 - (F) Lead-based paint activities firm-\$400
- (2) A non-refundable \$15 fee shall be charged for replacement of a certification document.
- (3) In addition to the fees in paragraph (1) individuals required to take a certification examination pursuant to this chapter as a supervisor, inspector, or risk assessor, shall submit a non-refundable examination fee of \$25 payable to the department. (Fees shall be deposited to the credit of the noise, radiation, and indoor air quality special fund).

(c) Notification fees. The fees for notification of the commencement of lead-based paint abatement activities based on the square footage of lead-based paint, or cubic footage of lead contaminated soil to be abated shall be paid by the certified lead-based paint activities firm as follows:

- (A) Less than fifty square or cubic feet-\$25
- (B) Greater than or equal to fifty square or cubic feet, but less than five hundred square or cubic feet-\$50
- (C) Greater than or equal to five hundred square or cubic feet, but less than five

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thousand square or cubic feet-\$150
(D) Greater than or equal to five thousand
square or cubic feet-\$300

(d) The fees collected pursuant to this section shall be made payable to the department.

[Eff **OCT 03 2005**] (Auth: HRS §§342P-3, 342P-28, 342P-40, 342P-41) (Imp: HRS §§342P-3, 342P-28, 342P-40, 342P-41)

§11-41-11 Lead-based paint activities requirements. Lead-based paint activities, as defined in this chapter, shall only be conducted according to the procedures and work practice standards contained in section 11-41-6 of this chapter. No individual or firm may offer to perform or perform any lead-based paint activity as defined in this part, unless certified to perform that activity according to the procedures in section 11-41-5. [Eff **OCT 03 2005**] (Auth: HRS §§342P-3, 342P-41) (Imp: HRS §§342P-3, 342P-41)

§11-41-12 Enforcement. (a) If the director determines that any person has violated or is in violation of this chapter, any rule adopted pursuant to this chapter, any accepted schedule, any order issued under this section, or any condition of a certification or accreditation issued pursuant to this chapter, the director shall, impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing the non-adherence or violation with reasonable particularity.

(b) Any order issued under this chapter shall become final, unless, not later than twenty days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after the notice of penalty is served, unless the person or persons named

therein request in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the director shall require the alleged violator or violators to appear before the director for a hearing at a time and place specified in the notice to answer the charges complained of.

(c) Any hearing conducted under this section shall be conducted as a contested case in accordance with chapter 91, HRS. If, after a hearing held pursuant to this section, the director finds that a violation or violations have occurred, the director shall affirm or modify any penalties imposed, modify or affirm the order previously issued, or issue an appropriate order or orders for the prevention, abatement, or control of the violation or discharges involved or the taking of such other corrective action as may be appropriate. If, after a hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind the order or penalty. Any order issued after a hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation or discharges.

(d) If the amount of any administrative penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the state to collect the administrative penalty, which shall be a government realization.

(e) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

(f) Failure or refusal to comply with any requirement of Sections 11-41-4, 11-41-5, 11-41-6, or 11-41-11 is a prohibited act under chapter 342-P, HRS.

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(g) Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports as required by sections 11-41-4, 11-41-5, or 11-41-6 is a prohibited act under chapter 342-P, HRS.

(h) Failure or refusal to permit entry or inspection as required by section 11-41-13 is a prohibited act under chapter 342-P, HRS.

(i) In addition to the above, any individual or firm that performs any of the following acts shall be deemed to have committed a prohibited act under chapter 342-P, HRS. These include the following:

- (1) Obtaining certification through fraudulent representation;
- (2) Failing to obtain certification from the department and performing work requiring certification at a job site; or
- (3) Fraudulently obtaining certification and engaging in any lead-based paint activities requiring certification.

(j) Violators are subject to civil and criminal sanctions pursuant to chapter 342-P, HRS.

[Eff: OCT 03 2005] (Auth: HRS §§342P-3, 342P-5)
(Imp: HRS §§342P-3, 342P-5)

§11-41-13 Inspections. The director may enter and inspect any building or place, as set forth in section 342P-4, HRS, to investigate an actual or suspected source, use, or presence of lead to ascertain compliance or non-compliance with this chapter, any rule or standard adopted by the department pursuant to this chapter, or any order issued by the department pursuant to this chapter, and to make reasonable tests in connection therewith. Nothing in this section shall be construed to permit a warrantless search of a single-family residence, unless the owner or occupier of the dwelling has consented to such a warrantless search. No confidential information secured pursuant to this chapter by any official or employee's employment in the prevention, control, or abatement of

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lead, shall be disclosed by the official or employee except as it relates directly to lead and then only in connection with the official's or employee's official duties and within the scope and course of the official's or employee's employment.

[Eff **OCT 03 2005**] (Auth: HRS §§342P-3, 342-P-4, 342P-5) (Imp: HRS §§342P-3, 342-P-4, 342P-5)

DEPARTMENT OF HEALTH

Chapter 11-41, Hawaii Administrative Rules, on the Summary Page dated SEP 19 2005, was adopted on SEP 19 2005, following public hearings held on April 22, 2004 in Hilo, Hawaii, April 23, 2004 in Kailua-Kona, Hawaii, May 4, 2004 in Lihue, Hawaii, May 6, 2004 in Wailuku, Hawaii, and May 7, 2004 in Honolulu, Hawaii, after public notice was given in the Hawaii State and County Public Notices on March 19, 2004 and March 29, 2004.

The adoption of chapter 11-41 shall take effect ten days after filing with the Office of the Lieutenant Governor.



Chiyome L. Fukino, M.D.
Director of Health

APPROVED:



Linda Lingle
Governor
State of Hawaii

Dated: 9/21/05

APPROVED AS TO FORM:



Deputy Attorney General

Filed