

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)t (16 **Del.C.** §122(3)t)
16 **DE Admin. Code** 4459

FINAL

ORDER

4459 Lead-Based Paint Hazards

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS"), Division of Public Health ("DPH") initiated proceedings to publish Regulation 4459 Lead-Based Paint Hazards. These proceedings were initiated pursuant to 29 **Del.C.** Ch. 101 and the authority as prescribed by 16 **Del.C.** §122(3)t).

DHSS initially published the proposed amendments to this regulation in the December 2023 issue of the *Delaware Register of Regulations* ("Register") (27 **DE Reg.** 407 (12/01/23)). Substantive changes were made to the regulation because of the public comment received (between December 1, 2023, and January 8, 2024). DHSS/DPH published the re-proposed regulation which included the additional revisions in the February 1, 2024, issue of the *Register* (27 **DE Reg.** 567). DHSS requested that written materials and suggestions from the public concerning the re-proposed regulation be delivered to DHSS by March 4, 2024, after which time DHSS would review information, factual evidence, and public comment to the said proposed regulations.

SUMMARY OF EVIDENCE:

No comments were received during the public comment period (of February 1, 2024, through March 4, 2024). Two minor changes are being made to the regulation as proposed, which include revisions to the definition of "Training Provider" and technical changes in subsection 3.2.1.2.

IMPACT ON THE STATE'S GREENHOUSE GAS EMISSIONS REDUCTION TARGETS AND RESILIENCY TO CLIMATE CHANGE:

The DPH Division Director has reviewed the proposed regulation as required by 29 *Del. C.* §10118(b)(3) and has determined that if promulgated, the regulation would have a *de minimis* impact on the State's resiliency to climate change because neither implementation nor compliance with the regulation would reasonably involve the increase in greenhouse gas emissions.

FINDINGS OF FACT:

Minor changes were made to the regulation since publication as re-proposed. The Department finds that the re-proposed regulations, and additional technical changes, as set forth in the attached copy should be adopted in the best interest of the public of the State of Delaware.

THEREFORE, IT IS ORDERED, that re-proposed Regulation 4459 Lead-Based Paint Hazards is adopted and shall become effective April 11, 2024 (ten days), after publication of the final regulation in the *Delaware Register of Regulations*.

3/13/2024 | 8:47 AM EDT

Date

Josette D. Manning, Esq.
DHSS Cabinet Secretary

4459 Lead-Based Paint Hazards

1.0 General Provisions

- 1.1 Preamble. These regulations are adopted by the Secretary of Delaware Health and Social Services pursuant to the Authority invested in the Secretary by 16 **Del.C.** §122(3)t). These regulations, which exclude homeowners working on their own residence under proper State of Delaware, county, and local requirements and whose residence is not occupied by a person or persons other than the owner and the owner's immediate family and no child residing in the residence has been identified as having an elevated blood lead level.
- 1.2 Purpose. These regulations shall be construed and applied to promote their underlying purpose of protecting the public health. They establish standards by which certified public or private organizations, firms, companies, and individuals engaged in lead-based paint activities in target housing and child-occupied facilities shall

adhere. These regulations establish standards for lead-based paint activities, including the training and certification of companies and workers engaged in lead-based paint activities, the establishment of work standards for lead-based paint activities, the accreditation of lead-based paint activities training programs, and the establishment of procedures for enforcement. Individuals and firms are encouraged to choose to require more stringent requirements.

- 1.3 Severability. If any provision or application of any provision of these regulations is held invalid, that invalidity shall not affect other provisions or applications of these regulations.

16 DE Reg. 537 (11/01/12)

26 DE Reg. 697 (02/01/23)

2.0 Definitions

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

- The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead painted surfaces or fixtures and the removal or covering of lead-contaminated soil; and
- All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.
- Specifically, abatement includes, but is not limited to:
 - 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 a child-occupied facility that:
 - Shall result in the permanent elimination of lead-based paint hazards; or
 - Are designed to permanently eliminate lead-based paint hazards and are described in the first and second bullets of this definition.
 - Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals certified by the Secretary pursuant to Section 4.0 of these regulations, unless such projects are covered by the last bullet in this definition.
 - 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 these regulations unless such projects are covered by the last bullet of this definition; or
 - Projects resulting in the permanent elimination of lead-based paint hazard, that are conducted in response to State of Delaware or local abatement orders.
 - 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, operation and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

"Accessible surface" means any interior or exterior surface, such as an interior windowsill, that a young child can mouth or chew.

"Accredited training program" means a training program that has been accredited by the Secretary, EPA, or a State or Tribal Program authorized by EPA to provide lead-based paint activities training.

"Accredited course" means a lead-based paint activities training course that has been accredited by the Secretary, EPA, or a State or Tribal Program authorized by EPA.

"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 State of Delaware and Federal holidays.

"Certification examination" means a test administered by the Secretary that measures an individual's knowledge of lead-based paint activities in a specific category or discipline.

"Certified Abatement Worker" means an individual who has been certified by the Secretary to perform abatements pursuant to Section 4.0.

"Certified firm" means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which the Secretary has issued a certificate of approval pursuant to Section 4.0.

"Certified Inspector" means an individual who has been certified by the Secretary to conduct inspections pursuant to Section 4.0. A certified inspector also samples for the presence of lead in dust and soil for the purpose of abatement clearance testing.

"Certified Project Designer" means an individual who has been certified by the Secretary, to prepare abatement project designs, occupant protection plans, and abatement reports pursuant to Section 4.0.

"Certified Risk Assessor" means an individual who has been certified by the Secretary to conduct risk assessments pursuant to Section 4.0.

"Certified Supervisor" means an individual who has been certified by the Secretary, to supervise and conduct abatements, and to prepare occupant protection plans and abatement reports pursuant to Section 4.0.

"Child-occupied facility" means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, 6 years of age or under on at least 2 different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours, and the combined weekly visits last at least 6 hours and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day-cares, preschools, and kindergarten classrooms.

"Clearance levels" are values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity.

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

"Common Area Group" means a group of common areas that are similar in design, construction, and function.

"Component" or **"Building Component"** means specific design or structural elements or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: ceilings, crown moldings, walls, chair rails, doors, door trim, floors, fireplaces, radiators, and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, windows 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 down spouts, ceilings, soffits, fascias, rake boards, corner boards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding handrails, stair risers and treads, stair stringers, columns, balustrades, windowsills 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 grams or parts per million by weight) in a sample of dust or soil.

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

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

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

"Course test blueprint" 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 & Social Services as defined in 29 Del.C. §7904(a).

"Deteriorated paint" means any interior or exterior paint or other coating that is cracking, flaking, chipping, chalking, or peeling, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separating from the substrate of a building component.

"Discipline" means one of the specific types or categories of lead-based paint activities identified in these regulations for which individuals may receive training from accredited programs and become certified by the Secretary. 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.

"Dust wipe sample" means a sample collected by wiping a representative surface of known area, as determined by ASTM E1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques, or equivalent method, with an acceptable wipe material as defined in ASTM E 1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust."

"Elevated blood lead level" or **"(EBLL)"** means an excessive absorption of lead that is a concentration of lead in whole blood of 3.5 µg/dL (micrograms of lead per deciliter of whole blood) or higher for a single venous test.

"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 U.S. Environmental Protection Agency.

"Firm" means any business company or partnership, sole proprietorship or individual doing business, association, non-profit organization, or other business entity, whether or not incorporated.

"Friction surface" means any interior or exterior surface that is subject to abrasion or friction, including, but not limited to window, floor, and stair tread surfaces.

"Guest instructor" means an individual, who meets or exceeds the requirements in subsection 3.3.2, has submitted documentation of these qualifications as provided in subsections 3.3.4.1 through 3.3.4.3 to the training provider, and is designated by the training 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 these regulations, as well as any other skill taught in a training course.

"Hazardous waste" means any waste subject to Delaware Department of Natural Resources and Environmental Control regulation as required in 7 Del.C. Ch. 63.

"HUD" means U.S. Department of Housing and Urban Development.

"Impact surface" means any interior or exterior surface such as surfaces on doors that is subject to damage by repeated impact or contact.

"Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a written report, or electronic equivalent, 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 windowsill" means the portion of the horizontal window ledge that protrudes into the interior of the room.

"Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5% 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 these regulations.

"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 lead-contaminated dust, lead-contaminated soil, or lead-based paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that could result in adverse human health effects.

"Lead-contaminated dust" means surface dust in residential dwellings or child-occupied facilities that contains an area or mass concentration of lead at or in excess of levels identified by both the State of Delaware and the EPA.

"Lead-contaminated soil" means bare soil on residential real property or on the property of a child-occupied facility that contains lead at or in excess of levels identified both by the State of Delaware and the EPA.

"Lead hazard screen" means a limited risk assessment activity that involves limited paint and dust sampling as described in subsection 5.3.

"Living area" means any area of residential dwelling used by 1 or more children aged 6 and under, including, but not limited to, living rooms, kitchen areas, dens, playrooms, 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.

"Local government" means a county, city, town, district, association, or other public body (including an agency comprised of 2 or more of the foregoing entities) created under State law.

"Multi-family dwelling" means a structure that contains more than 1 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.

"Non-profit" means any entity that has demonstrated to any branch of the Federal Government or to a State, municipal, tribal, or territorial government, that no part of its net earnings inures to the benefit of any private shareholder or individual.

"Paint in poor condition" means 10 square feet or more of deteriorated paint on exterior components with large surface areas; or more than 2 square feet of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors, doors); or more than 10% of the total surface areas of the component is deteriorated on interior or exterior components with small surface areas (windowsills, 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, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal, State, or local government.

"Play area" means an area of frequent soil contact by children aged 6 and 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.

"Proficiency test" means an extensive written examination designed to validate a person's level of competence regarding lead abatement techniques and safety, to include: knowledge of health hazards related to human exposure to lead dust and lead painted surfaces; construction safety; application of lead safe work practices; and containments designed to reduce or minimize worker and building occupant exposure to lead hazards, specialized equipment designed to reduce lead exposures or hazards for workers and residence occupants, specialized lead-based paint removal using chemicals, hazardous waste management, and specialized work practices.

"Recognized laboratory" means an environmental laboratory recognized by the 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.

"Renovation" means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part. The term renovation includes (but is not limited to): the removal, modification, or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (e.g., sanding, scraping, or other such activities that may generate paint dust); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather stripping) and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation. The term renovation does not include minor repair and maintenance activities, as defined by EPA regulations at 745.83.

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

"Residential dwelling" means a detached single-family dwelling unit, including attached structures such as porches and stoops; or 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 an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and the provision of a written report, or electronic equivalent, 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 6 inches from an intersecting wall. Half-walls or bookcases count as room separators if built in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened-in porch that is used as a living area is a room.

"Secretary" means the Administrator of the Department of Health and Social Services (DHSS) of the State of Delaware or the Secretary's designee, who shall hereafter in this document be referred to as: Secretary; the Secretary; or, Secretary, DHSS.

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

"State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, or any other territory or possession of the United States.

"Target housing" means any housing constructed prior to 1978, ~~except housing for the elderly or persons with disabilities (unless any 1 or more children aged 6 years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling or constructed during or after 1978 and contains components with lead-based paint.~~

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

"Training hour" means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and, if applicable, 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 program" means lead training curriculum accredited by the Secretary and offered to the public by a training provider.

"Training provider" means a firm that has been approved by the Delaware Department of **[Education Health and Social Services]** to provide training in Delaware and accredited by the Secretary to conduct accredited lead-based paint activities training programs to individuals engaged in lead-based paint activities.

"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 of relative to the surface area it represents. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples of the same area as each other and of each single surface sample in the composite. The weighted arithmetic mean is obtained by summing, for all samples, the product of the sample's result multiplied by the number of subsamples in the sample and dividing the sum by the total number of subsamples contained in all samples. For example, the weighted arithmetic mean of a single surface sample containing 60 µg/ft², a composite sample (three subsamples) containing 100 µg/ft², and a composite sample (four subsamples) containing 110 µg/ft² is 100 µg/ft². This result is based on the equation $[60+(3*100)+(4*110)]/(1+3+4)$.

"Window trough" means, for a typical double-hung window, the portion of the exterior windowsill between the interior windowsill (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 as the window "well."

3.0 Accreditation of Training Programs and Application and Renewal Requirements

- 3.1 Accreditation of training programs. It is unlawful for any person or firm to provide training or offer to provide training for any discipline of lead-based paint activity without first possessing an approval from the Secretary as an accredited training program.
 - 3.1.1 Accredited training programs shall offer and provide only training for the disciplines for which they are approved.
 - 3.1.2 The Secretary approves an accredited training program for any firm or business that applies and meets the qualifications specified in these regulations.
 - 3.1.3 A training provider 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 provider may also seek accreditation to offer refresher courses for each of the above listed disciplines.
- 3.2 Application process. The following are procedures a training provider shall follow to receive accreditation to offer lead-based paint activities courses:
 - 3.2.1 A training provider seeking accreditation shall submit a written application to the Secretary containing the following information:
 - 3.2.1.1 The training provider's business name, address, and telephone number.
 - 3.2.1.2 Written evidence that the **[applicant applicant's instructor]** has been approved by the Delaware Department of Education as a training provider **[if the training is part of any public education curriculum]**.
 - 3.2.1.3 A list of courses for which it is applying for accreditation.
 - 3.2.1.4 A statement signed by the training program manager certifying that the training program meets the requirements established in these regulations. If a training program uses EPA-recommended model training materials, or training materials approved by the Secretary, the training program manager shall include a statement certifying that, as well.
 - 3.2.1.5 The name and documentation of the qualifications of the training program manager.
 - 3.2.1.6 The names and documentation of qualifications of any principal instructors.
 - 3.2.1.7 If a training provider does not use EPA-recommended model training materials or training materials approved by the Secretary, its application for accreditation shall also include:
 - 3.2.1.7.1 A copy of the student and instructor manuals, or other materials to be used for each course.
 - 3.2.1.7.2 A copy of the course agenda for each course.
 - 3.2.1.8 All training providers shall include in their application for accreditation the following:
 - 3.2.1.8.1 A description of the facilities and equipment to be used for lecture and hands-on training.
 - 3.2.1.8.2 The name, address, and location of the training facility.
 - 3.2.1.8.3 A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course.
 - 3.2.1.8.4 A copy of the quality control plan as described in subsection 3.3.9.
 - 3.2.1.8.5 ~~A~~ An electronic payment, a certified check check, or a check written on a business account in the appropriate amount made payable to the Division of Public Health.
 - 3.2.1.8.6 A copy of the course test blueprint for each course.
 - 3.2.2 If a training program meets the requirements in subsection 3.3, then the Secretary shall approve the application for accreditation no more than 90 days after receiving a complete application from the training provider. 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 Secretary may, at the Secretary's discretion, work with the applicant to address inadequacies in the application for accreditation. The Secretary, within the 90-day period, may also request additional materials retained by the training provider under subsection 3.9. If the Secretary requests additional materials, the time period for approval may extend beyond 90 days. If a training provider's application is disapproved, the provider may reapply for accreditation at any time. Application fees for disapproved training programs will not be refunded.
 - 3.2.3 A training provider may apply for accreditation to offer courses or refresher courses in as many disciplines as it chooses. A training provider may seek accreditation for additional courses at any time as long as the provider can demonstrate that it meets the requirements of this section.

- 3.3 Requirements for the accreditation of training programs. For a training provider to obtain accreditation from the Secretary to offer lead-based paint activities courses, the program shall meet the following requirements:
- 3.3.1 The training program shall employ a training manager who has demonstrated experience, education, or training in the construction industry in the areas of lead abatement, painting, carpentry, renovation, remodeling, occupational safety and health or industrial hygiene, and meets 1 of the following requirements:
 - 3.3.1.1 At least 2 years of experience, education, or training in teaching workers or adults, that is satisfactory to the Secretary; or
 - 3.3.1.2 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
 - 3.3.1.3 Two years of experience in managing a training program specializing in environmental hazards.
 - 3.3.2 The training manager shall designate a qualified principal instructor for each course who has:
 - 3.3.2.1 Demonstrated experience, education, or training in teaching workers or adults; and
 - 3.3.2.2 Successfully completed at least 16 hours of any EPA-accredited or EPA-authorized State or Tribal-accredited lead-specified training; and
 - 3.3.2.3 Demonstrated experience, education, or training in lead abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.
 - 3.3.3 The principal instructor shall be responsible for the organization of the course, course delivery, and oversight of the teaching of all course material. The training manager may designate guest instructors as needed to for a portion of the course to provide instruction specific to the lecture, hands-on activities, or work practice portions of a course. However, the principal instructor is primarily responsible for teaching the course materials and must be present to provide instruction (or oversight of portions of the course taught by guest instructors) for the course for which he has been designated as the principal instructor.
 - 3.3.4 The following documents shall be accepted as evidence that training managers and principal instructors have the education, work experience, training requirements, or demonstrated experience, specifically listed in subsections 3.3.1 and 3.3.2. This documentation must be submitted with the accreditation application. Those documents include the following:
 - 3.3.4.1 Official academic transcripts or diploma as evidence of meeting the education requirements.
 - 3.3.4.2 Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.
 - 3.3.4.3 Certificates from train-the-trainer courses and lead-specific training courses, as evidence of meeting the training requirements.
 - 3.3.5 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.
 - 3.3.6 To become accredited in the following disciplines, the training program shall provide training courses that meet the following training requirements.
 - 3.3.6.1 Inspector course - a minimum of 24 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the Inspector course are contained in subsection 3.4.1.
 - 3.3.6.2 Risk Assessor course - a minimum of 16 training hours, with a minimum of 4 hours devoted to hands-on training activities. The minimum curriculum requirements for the Risk Assessor course are contained in subsection 3.4.2.
 - 3.3.6.3 Supervisor course - a minimum of 32 training hours, with a minimum of 8 hours devoted to hands-on activities. The minimum curriculum requirements for the Supervisor course are contained in subsection 3.4.3.
 - 3.3.6.4 Project Designer course - a minimum of 8 training hours. The minimum curriculum requirements for the Project Designer course are contained in subsection 3.4.4.
 - 3.3.6.5 Abatement Worker course - a minimum of 16 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the Abatement Worker course are contained in subsection 3.4.5.
 - 3.3.7 For each course offered, the training program shall conduct either a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that

discipline. Each student must successfully complete the hands-on skills assessment and receive a passing score on the course test to pass any course, or successfully complete a proficiency test.

- 3.3.7.1 The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or proficiency test to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics. For quality assurance, there will be periodic revision of the course assessment or proficiency test.
- 3.3.7.2 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. For quality assurance, there shall be periodic revision of the course assessment or proficiency test. The course test blueprint shall be submitted to the Secretary.
- 3.3.7.3 The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application.
- 3.3.8 The training program shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:
 - 3.3.8.1 The name, unique identification number, and address of the individual.
 - 3.3.8.2 The business name, address and phone number of the accredited training program provider and the name of the training manager.
 - 3.3.8.3 The name of the particular course that the individual completed.
 - 3.3.8.4 Dates of course completion/test passage.
- 3.3.9 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:
 - 3.3.9.1 Procedures for periodic revision of training materials and the course test to reflect innovations in the field.
 - 3.3.9.2 Procedures for the training manager's annual review of principal instructor competency.
- 3.3.10 The training program shall offer courses that teach the applicable work practice standards for conducting lead-based paint activities contained in Section 5.0. These standards must be taught in the appropriate courses and training environments to provide trainees with the knowledge needed to perform the lead-based paint activities they are responsible for conducting.
- 3.3.11 The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in this section.
- 3.3.12 The training provider and training manager must allow the Secretary to conduct, at the Secretary's discretion, either announced or unannounced audits of the training programs to verify the contents of the application for accreditation as described in subsection 3.2 and to confirm compliance with all program accreditation requirements.
- 3.3.13 The training manager must provide notification of lead-based paint activities courses offered.
 - 3.3.13.1 The training manager must provide the Secretary with notification of all lead-based paint activities courses offered. The Secretary must receive the original notification at least 7 business days prior to the start date of any lead-based paint activities course.
 - 3.3.13.2 The training manager must provide the Secretary 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:
 - 3.3.13.2.1 For lead-based paint activities courses beginning prior to the start date provided to the Secretary, an updated notification must be received by the Secretary at least 7 business days before the new start date.
 - 3.3.13.2.2 For lead-based paint activities courses beginning after the start date provided to the Secretary, an updated notification must be received by the Secretary at least 2 business days before the start date provided to the Secretary.
 - 3.3.13.2.3 The training manager must update the Secretary of any change in location of lead-based paint activities courses at least 7 business days prior to the start date provided to the Secretary.
 - 3.3.13.2.4 The training manager must update the Secretary regarding any course cancellations, or any other change to the original notification. Updated notifications must be received by the Secretary at least 2 business days prior to the start date provided to the Secretary.
 - 3.3.13.2.5 Each notification, including updates, must include the following:
 - 3.3.13.2.5.1 Notification type (original, update, cancellation).

- 3.3.13.2.5.2 Training program name, the Delaware accreditation number, address, and telephone number.
 - 3.3.13.2.5.3 Course discipline and type (initial/refresher).
 - 3.3.13.2.5.4 Dates and times of training.
 - 3.3.13.2.5.5 Training locations, telephone number, and address.
 - 3.3.13.2.5.6 Principal instructor's name.
 - 3.3.13.2.5.7 Training manager's name and signature.
 - 3.3.13.2.6 Notification must be accomplished using any of the following methods: Written or electronic notification to the Secretary. Written and electronic notifications of lead-based paint activities course schedules can be accomplished by using the guidance and sample form provided online at <http://dhss.delaware.gov/dhss/dph/hsp/leadregcomm.html>. All written notifications must be delivered by U.S. Postal Service, fax. All written notifications must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that the Secretary receives the notification by the required date).
 - 3.3.13.2.7 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 or location specified in the updated notification.
 - 3.3.13.2.8 No training program shall provide lead-based paint activities courses without first notifying the Secretary of such activities in accordance with the requirements of subsection 3.3.13.
 - 3.3.14 The training manager must provide notification following completion of lead-based paint activities courses.
 - 3.3.14.1 The training manager must provide the Secretary notification after the completion of any lead-based paint activities course. This notice must be received by the Secretary no later than 10 business days following course completion.
 - 3.3.14.2 The notification must include the following:
 - 3.3.14.2.1 Training program name, the Delaware accreditation number, address, and telephone number.
 - 3.3.14.2.2 Course discipline and type (initial/refresher).
 - 3.3.14.2.3 Dates of training.
 - 3.3.14.2.4 The following information for each student who took the course:
 - 3.3.14.2.4.1 Name.
 - 3.3.14.2.4.2 Address.
 - 3.3.14.2.4.3 Date of birth.
 - 3.3.14.2.4.4 Course completion certificate number.
 - 3.3.14.2.4.5 Course test score.
 - 3.3.14.2.4.6 A digital photograph of the student.
 - 3.3.14.2.5 Training manager's name and signature.
 - 3.3.14.3 Notification must be accomplished using any of the following methods: Written or electronic notification to the Secretary. Written and electronic notifications following lead-based paint activities training courses can be accomplished by using the guidance and sample form provided online at <http://dhss.delaware.gov/dhss/dph/hsp/leadregcomm.html>. All written notifications must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that the Secretary receives the notification by the required date).
- 3.4 Minimum training curriculum requirements. To become accredited to offer lead-based paint courses in the specific disciplines listed in this Section, 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 integral portions of the course.
 - 3.4.1 Inspector.
 - 3.4.1.1 Role and responsibilities of an Inspector.
 - 3.4.1.2 Background information on lead and its adverse health effects.
 - 3.4.1.3 Background information on Federal, State of Delaware, and local regulations and guidance that pertains to lead-based paint and lead-based paint activities.

- 3.4.1.4 Liability and insurance issues relating to lead-based paint abatement.
- 3.4.1.5 Lead-based paint inspection methods, including selection of rooms, and components for sampling or testing.*
- 3.4.1.6 Paint, dust, and soil sampling methodologies.*
- 3.4.1.7 Clearance standards and testing, including random sampling.*
- 3.4.1.8 Preparation of the final written, or electronic equivalent, inspection report.*
- 3.4.1.9 Record keeping.
- 3.4.2 Risk Assessor.
 - 3.4.2.1 Role and responsibilities of a Risk Assessor.
 - 3.4.2.2 Collection of background information to perform a risk assessment.
 - 3.4.2.3 Sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food.
 - 3.4.2.4 Liability and insurance issues relating to lead-based paint abatement.
 - 3.4.2.5 Visual inspection for the purposes of identifying potential sources of lead-based paint hazards.*
 - 3.4.2.6 Lead hazard screen protocol.
 - 3.4.2.7 Sampling for the other sources of lead exposure.*
 - 3.4.2.8 Interpretations of lead-based paint and other lead sampling results, including all applicable State of Delaware or Federal guidance or regulations pertaining to lead-based paint hazards.*
 - 3.4.2.9 Development of hazard control options, the role of interim controls and operations and maintenance activities to reduce lead-based paint hazards.
 - 3.4.2.10 Preparation of a final written, or electronic equivalent, risk assessment report.
- 3.4.3 Supervisor.
 - 3.4.3.1 Role and responsibilities of a Supervisor.
 - 3.4.3.2 Background information on lead and its adverse health effects.
 - 3.4.3.3 Background information on Federal, State of Delaware, and local regulations and guidance that pertain to lead-based paint abatement.
 - 3.4.3.4 Liability and insurance issues relating to lead-based paint abatement.
 - 3.4.3.5 Risk assessment and inspection report interpretation.*
 - 3.4.3.6 Development and implementation of an occupant protection plan and abatement report.
 - 3.4.3.7 Lead-based paint hazard recognition and control.*
 - 3.4.3.8 Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.*
 - 3.4.3.9 Interior dust abatement/cleanup or lead-based paint hazard control and reduction methods.*
 - 3.4.3.10 Soil and exterior dust abatement or lead-based paint hazard control and reduction methods.*
 - 3.4.3.11 Clearance standards and testing.*
 - 3.4.3.12 Cleanup and waste disposal.
 - 3.4.3.13 Record keeping.
- 3.4.4 Project Designer.
 - 3.4.4.1 Role and responsibilities of a Project Designer.
 - 3.4.4.2 Liability and insurance issues relating to lead-based paint abatement.
 - 3.4.4.3 Development and implementation of an occupant protection plan for large scale abatement projects.
 - 3.4.4.4 Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large scale abatement projects.
 - 3.4.4.5 Interior dust abatement/cleanup or lead hazard control and reduction methods for large scale abatement projects.
 - 3.4.4.6 Clearance standards and testing for large scale abatement projects.
 - 3.4.4.7 Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large scale abatement projects.
- 3.4.5 Abatement Worker.
 - 3.4.5.1 Role and responsibilities of an Abatement Worker.
 - 3.4.5.2 Background information on lead and its adverse health effects.

- 3.4.5.3 Background information on Federal, State of Delaware, and local regulations and guidance that pertain to lead-based paint abatement.
 - 3.4.5.4 Lead-based paint hazard recognition and control.*
 - 3.4.5.5 Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.*
 - 3.4.5.6 Interior dust abatement methods/cleanup or lead-based paint hazard reduction.*
 - 3.4.5.7 Soil and exterior dust abatement methods or lead-based paint hazard reduction.*
- 3.5 Requirements for the accreditation of refresher training programs. A training provider 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 accreditation to offer refresher training, a training provider must meet the following minimum requirements.
- 3.5.1 Refresher courses shall review the curriculum topics of the full-length course listed under subsection 3.4, as appropriate. In addition, to become accredited to offer refresher training courses, training providers shall ensure their courses of study include, at a minimum, the following:
 - 3.5.1.1 An overview of current safety practices relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.
 - 3.5.1.2 Current laws and regulations relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline.
 - 3.5.1.3 Current technologies relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.
 - 3.5.2 Each refresher course, except for the project designer course, shall last a minimum of 8 training hours. The Project Designer refresher course shall last a minimum of 4 training hours. Refresher courses for all disciplines, except Project Designer, must include a hands-on portion.
 - 3.5.3 For each refresher course offered (except Project Designer), the training provider shall conduct both a hands-on assessment, and at the completion of the course, a course test.
 - 3.5.4 A training provider may apply for accreditation of a refresher course concurrently with its application for accreditation of the corresponding training course as described in subsection 3.2. If so, the Secretary shall use the approval process described in subsection 3.2. In addition, the minimum requirements contained in subsection 3.3, except for requirements in subsection 3.3.6 and subsections 3.5.1, 3.5.2, and 3.5.3 shall also apply to the refresher course.
 - 3.5.5 A training provider seeking accreditation to offer refresher training courses only shall submit to the Secretary a written application containing the following information:
 - 3.5.5.1 The refresher course training provider's name, address, and telephone number.
 - 3.5.5.2 A list of courses for which it is applying for accreditation.
 - 3.5.5.3 The name and documentation of the qualifications of the training program manager.
 - 3.5.5.4 The names and documentation of the qualifications of the principal instructor.
 - 3.5.5.5 A statement signed by the training program manager certifying that the refresher training program meets the requirements established in subsection 3.3, except for the requirements in subsection 3.3.6. If a training program uses EPA-recommended model training materials, or training materials approved by the Secretary, the training program manager shall include a statement certifying that, as well.
 - 3.5.5.6 If the refresher training course materials are not based on EPA-developed training materials or training materials approved by the Secretary, the training provider's application for accreditation shall include:
 - 3.5.5.6.1 A copy of the student and instructor manuals to be used for each course.
 - 3.5.5.6.2 A copy of the course agenda for each course.
 - 3.5.5.7 All refresher training providers shall include in their application for accreditation the following:
 - 3.5.5.7.1 A description of the facilities and equipment to be used for lecture and hands-on training.
 - 3.5.5.7.2 The name, address, and location of the training facility.
 - 3.5.5.7.3 A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course, if applicable.
 - 3.5.5.7.4 A copy of the quality control plan as described in subsection 3.3.9.
 - 3.5.5.7.5 A certified check or a check written on a business account in the appropriate amount made payable to the Division of Public Health.
 - 3.5.5.7.6 A copy of the course test blueprint for each course.

- 3.5.5.8 The requirements in subsections 3.3.1 through 3.3.5 and subsections 3.3.7 through 3.3.14 apply to refresher training providers.
 - 3.5.5.9 If a refresher training program meets these requirements, the Secretary shall approve the application for accreditation no more than 90 days after receiving a complete application from the refresher training provider. 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 Secretary may, at the Secretary's discretion, work with the applicant to address inadequacies in the application for accreditation. The Secretary, within the 90-day period, may also request additional materials. If the Secretary requests additional materials, the time period for approval may extend beyond 90 days. If a refresher training provider's application is disapproved, the program provider may reapply for accreditation at any time. Application fees for disapproved refresher training programs will not be refunded.
- 3.6 Re-accreditation of training programs.
- 3.6.1 Unless re-accredited, a training program's accreditation (including refresher training accreditation) shall expire 2 years after the date of issuance. If a training program meets the requirements of this section, the training program shall be re-accredited.
 - 3.6.2 A training provider seeking program re-accreditation shall submit an application no later than 180 days before its accreditation expires.
 - 3.6.3 The training provider's application for program re-accreditation shall contain:
 - 3.6.3.1 The training provider's name, address, and telephone number.
 - 3.6.3.2 A list of courses for which it is applying for re-accreditation.
 - 3.6.3.3 The name and qualifications of the training program manager.
 - 3.6.3.4 The names and qualifications of the principal instructors.
 - 3.6.3.5 A description of any material changes to the training facility, equipment or course materials since its last application was approved.
 - 3.6.3.6 A statement signed by the program manager stating:
 - 3.6.3.6.1 That the training program complies at all times with all requirements in subsections 3.3 and 3.5, as applicable; and
 - 3.6.3.6.2 The record keeping and reporting requirements in subsection 3.9 shall be followed.
 - 3.6.3.7 A certified check or a check written on a business account in the appropriate amount made payable to the Division of Public Health.
 - 3.6.4 The Secretary has the authority to audit the training program to verify the contents of the application for re-accreditation as described in subsection 3.6.3. The training provider shall allow the Secretary to audit the training program.
- 3.7 Suspension, revocation, and modification of accredited training programs.
- 3.7.1 The Secretary may, after notice, and an opportunity for hearing, suspend, revoke, or modify training provider or program accreditation, including refresher training accreditation, if a training provider, training manager, or other person with supervisory authority over the training program has:
 - 3.7.1.1 Misrepresented the contents of a training course.
 - 3.7.1.2 Failed to submit required information or notifications in a timely manner.
 - 3.7.1.3 Failed to maintain required records.
 - 3.7.1.4 Falsified accreditation records, instructor qualifications, or other accreditation-related information or documentation.
 - 3.7.1.5 Failed to comply with the training standards and requirements in this section.
 - 3.7.1.6 Failed to comply with Federal, State of Delaware, or local lead-based paint statutes or regulations.
 - 3.7.1.7 Made false or misleading statements in its application for accreditation or re-accreditation.
 - 3.7.1.8 Denied the Secretary access to enter premises or facilities where training providers and training programs conduct business to execute reasonable inspection to ensure compliance with regulations.
 - 3.7.2 In addition to an administrative or judicial finding of violation in any jurisdiction, 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.
- 3.8 Procedures for suspension, revocation, or modification of training program accreditation.
- 3.8.1 Prior to taking action to suspend, revoke, or modify the accreditation of a training provider or program, the Secretary shall notify the affected entity in writing of the following:

- 3.8.1.1 The legal and factual basis for the suspension, revocation, or modification.
- 3.8.1.2 The anticipated commencement date and duration of suspension, revocation, or modification.
- 3.8.1.3 Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification, or to receive accreditation in the future.
- 3.8.1.4 The opportunity and method for requesting a hearing prior to final action to suspend, revoke, or modify accreditation.
- 3.8.1.5 Any additional information which the Secretary may provide.
- 3.8.2 If a hearing is requested by the accredited training provider, the Secretary shall:
 - 3.8.2.1 Provide the affected entity an opportunity to offer written statements in response to the Secretary'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.
 - 3.8.2.2 Provide the affected entity such other procedural opportunities as the Secretary may deem appropriate to ensure a fair and impartial hearing.
 - 3.8.2.3 Appoint an official Hearing Officer. No person shall serve as Hearing Officer if the person has had any prior involvement with the specific matter.
- 3.8.3 The Hearing Officer appointed pursuant to subsection 3.8.2 shall:
 - 3.8.3.1 Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing.
 - 3.8.3.2 Consider all relevant evidence, explanation, comment, and argument submitted.
 - 3.8.3.3 Notify the Secretary in writing within 45 days of completion of the hearing of the Hearing Officer's decision. The Secretary shall either accept or reject the decision. If accepted, the Secretary issues a final order within 45 of receiving the Hearing Officer's decision. Such an order is a final agency action, which may be subject to judicial review.
- 3.8.4 If the Secretary determines that the public health, interest, or welfare warrants immediate action to suspend the accreditation of any training provider or program prior to the opportunity for a hearing, or if the training provider or program denies the Secretary access for purposes of inspection, the Secretary shall:
 - 3.8.4.1 Notify the affected entity of its intent to immediately suspend training program accreditation for the reasons listed in subsection 3.7.1. If a suspension, revocation, or modification notice has not previously been issued pursuant to subsection 3.7.1, it shall be issued at the same time the emergency suspension notice is issued.
 - 3.8.4.2 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.
 - 3.8.4.3 Notify the affected entity of the anticipated commencement date and duration of the immediate suspension.
 - 3.8.4.4 Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.
- 3.8.5 Any notice, decision, or order issued by the Secretary under this section, any transcripts or other verbatim record of oral testimony, and any documents filed by an accredited training provider in a hearing under this section shall be available to the public. 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.
- 3.8.6 The public shall be notified of the suspension, revocation, modification, or reinstatement of a training program's accreditation through appropriate mechanisms.
- ~~3.8.7 The Secretary shall maintain a list of parties whose accreditation has been suspended, revoked, modified, or reinstated.~~
- 3.9 Training program record keeping requirements.
 - 3.9.1 Accredited training providers shall maintain, and make available to the Secretary, upon request, the following records:
 - 3.9.1.1 All documents specified in subsection 3.3.4 that demonstrate the qualifications of the training manager and principal instructors listed in subsections 3.3.1 and 3.3.2.
 - 3.9.1.2 Current curriculum/course materials and documents reflecting any changes made to these materials.
 - 3.9.1.3 Information regarding how the hands-on assessment is conducted, including, but not limited to:
 - 3.9.1.3.1 Who conducts the assessment.
 - 3.9.1.3.2 How the skills are graded.

- 3.9.1.3.3 What facilities are used.
- 3.9.1.3.4 The pass/fail rate.
- 3.9.1.4 The quality control plan as described in subsection 3.3.9.
- 3.9.1.5 Results of the students' hands-on skills assessments and course tests, and a record of each student's course completion certificate.
- 3.9.1.6 The course test blueprint.
- 3.9.1.7 Any other material not listed above in subsections 3.9.1.1 through 3.9.1.6 that was submitted to the Secretary as part of the program's application for accreditation.
- 3.9.2 The training provider shall retain these records at the address specified on the training provider accreditation application or as modified in accordance with subsection 3.9.3 for a minimum of 3 years and 6 months.
- 3.9.3 The training provider shall notify the Secretary in writing within 30 days of changing the address specified on its training program accreditation application or transferring the records from that address.
- 3.10 Amendment of accreditation.
 - 3.10.1 A training provider must amend its program accreditation within 90 days of the date a change occurs to information included in the program's most recent application. If the training provider fails to amend its program accreditation within 90 days of the date the change occurs, the program may not provide training until its accreditation is amended.
 - 3.10.2 To amend an accreditation, a training provider must submit a completed "Accreditation Application for Training Providers," signed by an authorized agent of the training provider, noting on the form that it is submitted as an amendment and indicating the information that has changed.
 - 3.10.3 If the amendment includes a new training program manager, any new or additional principal instructors, or any new permanent training locations, the training provider is not permitted to provide training under the new training manager or offer courses taught by any new principal instructors or at the new training locations until the Secretary approves the amendment or 30 days have elapsed, whichever occurs earlier. Except:
 - 3.10.3.1 If the amendment includes a new training program manager or new or additional principal instructor that was identified in a training provider accreditation application that EPA has already approved under this section, the training provider may begin to provide training under the new training manager or offer courses taught by the new principal instructor on an interim basis as soon as the provider submits the amendment to the Secretary. The training provider may continue to provide training under the new training manager or offer courses taught by the new principal instructor if the Secretary approves the amendment or does not disapprove the amendment within 30 days.
 - 3.10.3.2 If the amendment includes a new permanent training location, the training provider may begin to provide training at the new permanent training location on an interim basis as soon as the provider submits the amendment to the Secretary. The training provider may continue to provide training at the new permanent training location if the Secretary approves the amendment or does not disapprove the amendment within 30 days.
- 3.11 Inspections.
 - 3.11.1 To execute reasonable inspections and ensure compliance with these regulations, the Secretary has the authority to enter premises or facilities where certified firms and training programs conduct business and training programs.

16 DE Reg. 537 (11/01/12)

26 DE Reg. 697 (02/01/23)

4.0 Certification of Individuals and Firms Engaged in Lead-Based Paint Activities

- 4.1 Certification of individuals.
 - 4.1.1 Individuals seeking certification to engage in lead-based paint activities must either:
 - 4.1.1.1 Submit to the Secretary, an application demonstrating that they meet the requirements established in subsections 4.2 and 4.3 for the particular discipline for which certification is sought; or
 - 4.1.1.2 Pass the appropriate State of Delaware certification examination and submit to the Secretary, an application that includes:
 - 4.1.1.2.1 A copy of a valid lead-based paint activities certification (or equivalent) from a State or Tribal program that has been authorized by the EPA;
 - 4.1.1.2.2 A digital photo of the applicant; and

4.1.1.2.3 The associated certification fee.

4.1.2 Following the submission of an application demonstrating that all the requirements of this section have been met, the Secretary shall certify an applicant as an Inspector, Risk Assessor, Supervisor, Project Designer, or Abatement Worker, as appropriate.

4.1.3 Upon receiving certification from the Secretary, 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 5.0 of these regulations.

4.1.4 It shall be a violation of the work practice standards for conducting lead-based paint activities for an individual to conduct any of the lead-based paint activities described in Section 5.0 if that individual has not been certified by the Secretary pursuant to this section to do so.

4.1.5 An individual certified outside of Delaware as an Abatement Worker under a jurisdiction with which Delaware does not have reciprocity (see subsection 6.3) may apply for provisional certification for a period of 1 year provided the individual's certification is issued through an EPA-approved training course and approved provider.

4.2 Discipline Requirements.

4.2.1 To become certified as an Inspector, Risk Assessor, or Supervisor an individual must:

4.2.1.1 Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training provider;

4.2.1.2 Pass the certification examination in the appropriate discipline; and,

4.2.1.3 Meet or exceed the following experience and education requirements:

4.2.1.3.1 Inspectors.

4.2.1.3.1.1 No additional experience or education requirements.

4.2.1.3.2 Risk Assessors.

4.2.1.3.2.1 Successful completion of an accredited training course for Inspectors; and

4.2.1.3.2.2 Bachelor's degree and 1 year of experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction), or an associate's degree with 2 years' experience in a related field; or

4.2.1.3.2.3 Certification as an industrial hygienist, professional engineer, registered architect or certification in a related engineering/health/environmental field (e.g. safety professional, environmental scientist); or

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

4.2.1.3.3 Supervisor.

4.2.1.3.3.1 One year of experience as meeting the standards of a certified lead-based paint Abatement Worker; or

4.2.1.3.3.2 At least 2 years of experience in a related field (e.g., lead, asbestos, or environmental remediation work) or in the building trades.

4.2.2 To become certified as an Abatement Worker or Project Designer an individual must:

4.2.2.1 Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training provider; and

4.2.2.2 Meet or exceed the following experience and education requirements:

4.2.2.2.1 Abatement Workers.

4.2.2.2.1.1 No additional experience or education requirements.

4.2.2.2.2 Project Designers.

4.2.2.2.2.1 Successful completion of an accredited training course for Supervisors.

4.2.2.2.2.2 Bachelor's degree in engineering, architecture, or a related profession, and 1 year of experience in building construction and design or a related field; or,

4.2.2.2.2.3 Four years of experience in building construction and design or a related field.

4.2.3 The following documents shall be recognized by the Secretary as evidence of meeting the requirements listed in subsection 4.2:

4.2.3.1 Official academic transcripts or diploma, as evidence of meeting the education requirements.

4.2.3.2 Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

- 4.2.3.3 Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.
 - 4.2.4 In order to take the certification examination for a particular discipline an individual must:
 - 4.2.4.1 Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training provider.
 - 4.2.4.2 Meet or exceed the education and experience requirements in subsections 4.2.1 and 4.2.2.
 - 4.2.5 After passing the appropriate certification examination (if required); submitting an application demonstrating that the individual meets the appropriate training, education, and experience prerequisites described in subsections 4.2.1 and 4.2.2; signing a statement that certified individuals must permit the Secretary access to enter premises or facilities where the certified individual conducts business, including work sites, to execute reasonable inspection, including taking samples, to ensure compliance with regulations; and paying the associated fee, an individual shall be issued a certificate by the Secretary. To maintain certification, an individual must be re-certified as described in subsection 4.4.
 - 4.2.6 An individual may take the certification examination for a lead inspector, risk assessor or supervisor no more than 2 times within 6 months of the date of the initial accredited program course test for that discipline.
 - 4.2.7 If an individual does not pass the certification examination for a lead inspector, risk assessor or supervisor within 6 months of the date of the initial accredited program course test, the individual must retake the appropriate course from an accredited training program before reapplying for certification.
- 4.3 Re-Certification of Individuals.
- 4.3.1 Except as provided in subsection 4.3.2, to maintain certification in a particular discipline, a certified individual shall apply to and be re-certified by the Secretary in that discipline within 2 years from the date of successful completion of the initial or refresher training course, as applicable.
 - 4.3.2 An individual may apply to and be recertified by the Secretary during the 6-month period following certification expiration only if the individual has not performed any lead-based paint activities authorized by that certification after the date that the certification expired.
 - 4.3.3 An individual shall be re-certified if the individual successfully completes the appropriate accredited refresher training course, submits a valid copy of the appropriate refresher course completion certificate, signs a statement that certified individuals must permit the Secretary access to enter premises or facilities where the certified individual performs lead-based paint activities, including work sites, to execute reasonable inspection, including taking samples, to ensure compliance with regulations, and pays the associated fee.
 - 4.3.4 An individual may maintain re-certification for multiple disciplines by successfully completing the appropriate highest discipline accredited refresher training course and meeting the experience and education parameters defined in subsection 4.2 for those disciplines.
- 4.4 Certification of firms.
- 4.4.1 All firms which perform or offer to perform any of the lead-based paint activities described in Section 5.0 shall be certified by the Secretary.
 - 4.4.2 A firm seeking certification shall submit to the Secretary, the required fee, a certification application, and a letter attesting the following:
 - 4.4.2.1 The firm shall only employ appropriately certified employees to conduct lead-based paint activities;
 - 4.4.2.2 The firm and its employees shall follow the work practice standards in Section 5.0 for conducting lead-based paint activities; and
 - 4.4.2.3 The firm and its employees shall permit the Secretary access to enter premises or facilities where the certified firm conducts business, including work sites, to execute reasonable inspection, including taking samples, to ensure compliance with regulations.
 - 4.4.3 From the date of receiving the firm's certification application, letter, and the associated fee, the Secretary shall have 45 days to approve or disapprove the firm's request for certification. Within that time, the Secretary shall respond with either a certificate of approval or a letter describing the reasons for disapproval.
 - 4.4.4 The firm shall maintain all records pursuant to requirements in Section 5.0.
 - 4.4.5 Firms shall apply to the Secretary for certification to engage in lead-based paint activities.
 - 4.4.6 Combined Renovation and Lead-Based Paint Activities Firm Applications will have no additional cost to the initial \$550 Delaware certification fee for the Lead-Based Paint Activities Firm Applications.
- 4.5 Recertification of firms.
- 4.5.1 To maintain certification, a firm shall apply to and be re-certified by the Secretary every 2 years.

- 4.5.2 The recertification application shall be approved if it meets the requirements in subsection 4.4.2 and includes the appropriate fee.
- 4.6 Suspension, revocation, and modification of certifications of individuals engaged in lead-based-paint activities.
 - 4.6.1 The Secretary may, after notice and opportunity for hearing, suspend, revoke, or modify an individual's certification if an individual has:
 - 4.6.1.1 Obtained training documentation through fraudulent means.
 - 4.6.1.2 Gained admission to and completed an accredited training program through misrepresentation of admission requirements.
 - 4.6.1.3 Obtained certification through misrepresentation of certification requirements or related documents dealing with education, training, professional registration, or experience.
 - 4.6.1.4 Performed work requiring certification at a job site without having proof of certification.
 - 4.6.1.5 Permitted the duplication or use of the individual's own certificate by another.
 - 4.6.1.6 Performed work for which appropriate certification has not been received.
 - 4.6.1.7 Failed to comply with the appropriate work practice standards for lead-based paint activities in Section 5.0.
 - 4.6.1.8 Failed to comply with Federal, State of Delaware or local lead-based paint statutes or regulations.
 - 4.6.1.9 Denied the Secretary access to enter premises or facilities where the certified individual conducts business, including work sites, to execute reasonable inspection, including taking samples, to ensure compliance with regulations.
 - 4.6.2 In addition to an administrative or judicial finding or 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.
- 4.7 Suspension, revocation, and modification of certification of firms engaged in lead-based paint activities.
 - 4.7.1 The Secretary may, after notice and opportunity for hearing, suspend, revoke, or modify a firm's certification if a firm has:
 - 4.7.1.1 Performed work requiring certification at a job site with individuals who are not certified.
 - 4.7.1.2 Failed to comply with the work practice standards established in Section 5.0.
 - 4.7.1.3 Misrepresented facts in its certification application or letter.
 - 4.7.1.4 Failed to maintain required records.
 - 4.7.1.5 Failed to comply with Federal, State of Delaware, or local lead-based paint statutes or regulations.
 - 4.7.1.6 Denied the Secretary access to enter premises or facilities where the certified firm conducts business, including work sites, to execute reasonable inspection, including taking samples, to ensure compliance with regulations.
 - 4.7.2 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.
- 4.8 Procedures for suspension, revocation, or modification of the certification of individuals or firms.
 - 4.8.1 Prior to taking action to suspend, revoke, or modify the certification of any individual or firm, the Secretary shall notify the affected entity in writing of the following:
 - 4.8.1.1 The legal and factual basis for the suspension, revocation, or modification.
 - 4.8.1.2 The anticipated commencement date and duration of the suspension, revocation, or modification.
 - 4.8.1.3 Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification or to receive certification in the future.
 - 4.8.1.4 The opportunity and method for requesting a hearing prior to final action to suspend, revoke, or modify certification.
 - 4.8.1.5 Any additional information which the Secretary may provide.
 - 4.8.2 If a hearing is requested by the certified individual or firm, the Secretary shall:
 - 4.8.2.1 Provide the affected entity an opportunity to offer written statements in response to the Secretary'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.
 - 4.8.2.2 Provide the affected entity such other procedural opportunities as the Secretary may deem appropriate to ensure a fair and impartial hearing.
 - 4.8.2.3 Appoint an official Hearing Officer. No person shall serve as Hearing Officer if the person has had any prior involvement with the specific matter.

- 4.8.3 The Hearing Officer appointed pursuant to subsection 4.8.2.3 shall:
 - 4.8.3.1 Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing.
 - 4.8.3.2 Consider all relevant evidence, explanation, comment, and argument submitted.
 - 4.8.3.3 Notify the Secretary in writing within 45 days of completion of the hearing of the Hearing Officer's decision. The Secretary shall either accept or reject the decision. If accepted, the Secretary issues a final order within 45 of receiving the Hearing Officer's decision. Such an order is a final agency action, which may be subject to judicial review.
- 4.8.4 If the Secretary determines that the public health, interest, or welfare warrants immediate action, to suspend the certification of any individual or firm, or if an individual or firm denies the Secretary access for purposes of inspection or taking samples, prior to the opportunity for a hearing, the Secretary shall:
 - 4.8.4.1 Notify the affected entity of its intent to immediately suspend certification for the reasons listed in subsections 4.6.1 or 4.7.1. If a suspension, revocation, or modification notice has not previously been issued pursuant to subsection 4.8.1, it shall be issued at the same time the immediate suspension notice is issued.
 - 4.8.4.2 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.
 - 4.8.4.3 Notify the affected entity of the commencement date and duration of the immediate suspension.
 - 4.8.4.4 Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.
- 4.8.5 Any notice, decision, or order issued by the Secretary under this section, any transcripts 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. 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.
- 4.9 To execute reasonable inspections, including taking samples, and ensure compliance with these regulations, the Secretary has the authority to enter premises where certified firms and certified individuals conduct business and perform work.

16 DE Reg. 537 (11/01/12)

26 DE Reg. 697 (02/01/23)

5.0 Work Practice Standards for Conducting Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities

- 5.1 Effective date, applicability, and terms.
 - 5.1.1 All lead-based paint activities shall be performed pursuant to the work practice standards contained in this section.
 - 5.1.2 When performing any lead-based paint activity described by a certified firm or a 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.
 - 5.1.3 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 747-R-95-001); 40 CFR Part 745 subpart D – Lead Based Paint Hazards; and other methods and guidelines deemed equivalent by EPA or HUD.
 - 5.1.4 Determinations.
 - 5.1.4.1 Lead-based paint is present:
 - 5.1.4.1.1 On any surface that is tested and found to contain lead equal to or in excess of 1.0 milligrams per square centimeter or equal to or in excess of 0.5% by weight; and
 - 5.1.4.1.2 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.
 - 5.1.4.2 A paint-lead hazard is present:
 - 5.1.4.2.1 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 windowsill or floor) are equal to or greater than the dust hazard levels identified in subsection 5.6.8.8.
 - 5.1.4.2.2 On any chewable lead-based paint surface on which there is evidence of teeth marks;

- 5.1.4.2.3 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
- 5.1.4.2.4 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.
- 5.1.4.3 A dust-lead hazard is present in a residential dwelling or child occupied facility:
 - 5.1.4.3.1 In a residential dwelling on floors and interior windowsills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior windowsills is equal to or greater than 10 $\mu\text{g}/\text{ft}^2$ for floors and 100 $\mu\text{g}/\text{ft}^2$ for interior windowsills, respectively;
 - 5.1.4.3.2 On floors or interior windowsills in an unsampled residential dwelling in a multi-family dwelling, if a dust-lead hazard is present on floors or interior windowsills, respectively, in at least one sampled residential unit on the property; and
 - 5.1.4.3.3 On floors or interior windowsills in an unsampled common area in a multi-family dwelling, if a dust-lead hazard is present on floors or interior windowsills, respectively, in at least one sampled common area in the same common area group on the property.
- 5.1.4.4 A soil-lead hazard is present:
 - 5.1.4.4.1 In a play area when the soil-lead concentration from a composite play area sample of bare soil is equal to or greater than 400 parts per million; or
 - 5.1.4.4.2 In the rest of the yard when the arithmetic mean lead concentration from a composite sample (or arithmetic mean of composite samples) of bare soil from the rest of the yard (i.e., non-play areas) for each residential building on a property is equal to or greater than 1,200 parts per million.
- 5.1.5 Clearance levels that are appropriate for the purposes of this section may be found listed in subsection 5.6.8.8; in the EPA Guidance on Residential Lead-based Paint, Lead-Contaminated Dust, and Lead Contaminated Soil; or other methods and guidelines deemed equivalent by the EPA or HUD.

5.2 Inspection.

- 5.2.1 An inspection shall be conducted only by a person certified by the Secretary as an Inspector or Risk Assessor and, if conducted, must be conducted according to the procedures in this section.
- 5.2.2 When conducting an inspection, the following locations shall be selected according to documented methodologies listed in subsection 5.1 and tested for the presence of lead-based paint:
 - 5.2.2.1 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 not to contain lead-based paint; and
 - 5.2.2.2 In a multi-family dwelling and in a child-occupied facility, in addition to the requirements of subsection 5.2.1, each component in every common area with a distinct painting history, except those components that the Inspector or Risk Assessor determines to have been replaced after 1978, or to not contain lead-based paint.
- 5.2.3 Paint shall be sampled in the following manner:
 - 5.2.3.1 The analysis of paint to determine the presence of lead shall be conducted using documented methodologies listed in subsection 5.1, which incorporate adequate quality control procedures; and
 - 5.2.3.2 All collected paint chip samples shall be analyzed according to subsection 5.7 to determine if they contain detectable levels of lead that can be quantified numerically.
- 5.2.4 The certified Inspector or Risk Assessor shall prepare an inspection report which shall include the following information:
 - 5.2.4.1 Date of each inspection.
 - 5.2.4.2 Address of building.
 - 5.2.4.3 Date of construction.
 - 5.2.4.4 Apartment numbers (if applicable).
 - 5.2.4.5 Name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility.
 - 5.2.4.6 Name, signature, and certification number of each certified Inspector or Risk Assessor conducting testing.

- 5.2.4.7 Name, address and telephone number of the certified firm employing each Inspector or Risk Assessor, if applicable.
 - 5.2.4.8 Each testing method, device, and sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any x- ray fluorescence (XRF) device.
 - 5.2.4.9 Specific locations of each painted component tested for the presence of lead-based paint.
 - 5.2.4.10 The results of the inspection expressed in terms appropriate to the sampling method used.
- 5.3 Lead hazard screen.
- 5.3.1 A lead hazard screen shall be conducted only by a person certified by the Secretary as a Risk Assessor.
 - 5.3.2 If conducted, a lead hazard screen shall be conducted as follows:
 - 5.3.2.1 Background information regarding the physical characteristics of the residential dwelling or a child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children aged six years and under shall be collected.
 - 5.3.2.2 A visual inspection of a residential dwelling or a child-occupied facility shall be conducted to:
 - 5.3.2.2.1 Determine if any deteriorated paint is present, and
 - 5.3.2.2.2 Locate at least two dust sampling locations in areas frequently used by children.
 - 5.3.2.3 If deteriorated paint is present, each surface with deteriorated paint, determined using documented methodologies listed in subsection 5.1, to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead.
 - 5.3.2.4 In residential dwellings, two (either composite or single surface) dust wipe samples shall be collected, one from the floors and the other from the windows, in rooms, hallways, and stairwells where one or more children aged six and under are most likely to come in contact with dust.
 - 5.3.2.5 In multi-family dwellings and in child-occupied facilities, in addition to the floor and window samples required in subsection 5.3.2.4, the Risk Assessor shall collect composite or single surface dust wipe samples from common areas where one or more children aged six and under are most likely to come into contact with dust.
 - 5.3.2.6 If composite dust wipe samples identify lead hazards, additional single surface dust wipe samples will be necessary to determine where the lead hazards are located.
 - 5.3.3 Dust wipe samples shall be collected and analyzed in the following manner:
 - 5.3.3.1 All dust wipe samples shall be taken using documented methodologies listed in subsection 5.1 that incorporate adequate quality control procedures.
 - 5.3.3.2 All collected dust wipe samples shall be analyzed according to subsections 5.6 and 5.7 to determine if they contain detectable levels of lead that can be quantified numerically.
 - 5.3.4 Paint shall be sampled in the following manner:
 - 5.3.4.1 The analysis of paint to determine the presence of lead shall be conducted using documented methodologies listed in subsection 5.1 that incorporate adequate quality control procedures; and
 - 5.3.4.2 All collected paint chip samples shall be analyzed according to subsection 5.7 to determine if they contain detectable levels of lead that can be quantified numerically.
 - 5.3.5 The Risk Assessor shall prepare a lead hazard screen report, which shall include the following information:
 - 5.3.5.1 The information required in a risk assessment report as specified in subsection 5.4, including subsections 5.4.11.1 through 5.4.11.14, and excluding subsections 5.4.11.15 through 5.4.11.18. Additionally, any background information collected pursuant to subsection 5.3.2.1 shall be included in the risk assessment report; and
 - 5.3.5.2 Recommendations, if warranted, for a follow-up risk assessment, and as appropriate, any further actions.
- 5.4 Risk assessment.
- 5.4.1 A risk assessment shall be conducted only by a person certified by the Secretary as a Risk Assessor and, if conducted, must be conducted according to the procedures in this paragraph.
 - 5.4.2 A visual inspection for risk assessment of the residential dwelling or a child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and locate other potential lead-based paint hazards.
 - 5.4.3 Background information regarding the physical characteristics of the residential dwelling or the child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children aged six years and under shall be collected.
 - 5.4.4 The following surfaces which are determined, using documented methodologies, to have a distinct painting history, shall be tested for the presence of lead:

- 5.4.4.1 Each friction surface or impact surface with visibly deteriorated paint and
- 5.4.4.2 All other surfaces with visibly deteriorated paint.
- 5.4.5 In residential dwellings, dust wipe samples (either composite or single surface samples) from the interior windowsills and floor shall be collected and analyzed for lead concentration in all living areas where one or more children aged six and under are most likely to come into contact with dust.
- 5.4.6 For multi-family dwellings and child-occupied facilities, in addition to the requirements of subsection 5.4.5, interior windowsills and floor dust wipe samples (either composite or single surface samples) shall be collected and analyzed for lead concentration in the following locations:
 - 5.4.6.1 Common areas adjacent to the sampled residential dwelling and child-occupied facility; and
 - 5.4.6.2 Other common areas in the building where the Risk Assessor determines that one or more children aged six and under are likely to come into contact with dust.
- 5.4.7 For child-occupied facilities, interior windowsills and floor dust wipe samples (either composite or single surface samples) shall be collected and analyzed for lead concentration in each room, kitchen, hallway, and stairwell utilized by one or more children aged six and under, and in other common areas in the child-occupied facility where the Risk Assessor determines one or more children aged six and under are likely to come into contact with dust.
- 5.4.8 Soil samples shall be collected and analyzed for lead concentrations in the following locations:
 - 5.4.8.1 Exterior play areas where bare soil is present;
 - 5.4.8.2 Dripline/foundation areas where bare soil is present; and
 - 5.4.8.3 Non-play areas where bare soil is present.
- 5.4.9 Any paint, dust, or soil sampling or testing shall be conducted using documented methodologies listed in subsections 5.1 and 5.6 that incorporate adequate quality control procedures.
- 5.4.10 Any collected paint chip, dust or soil samples shall be analyzed according to subsection 5.7 to determine if they contain detectable levels of lead that can be quantified numerically.
- 5.4.11 The certified Risk Assessor shall prepare a risk assessment report which shall include the following information:
 - 5.4.11.1 Date of assessment.
 - 5.4.11.2 Address of each building.
 - 5.4.11.3 Date of construction of each building.
 - 5.4.11.4 Apartment number (if applicable).
 - 5.4.11.5 Name, address, and telephone number of each owner of each building.
 - 5.4.11.6 Name, signature, and State of Delaware certification number of the certified Risk Assessor conducting the assessment.
 - 5.4.11.7 Name, address, and telephone number of the certified firm employing each certified risk assessor, if applicable.
 - 5.4.11.8 Name, address, and telephone number of each recognized laboratory conducting analysis of collected samples, if applicable.
 - 5.4.11.9 Results of the visual inspection.
 - 5.4.11.10 Testing method and sampling procedure for paint analysis employed.
 - 5.4.11.11 Specific locations of each painted component tested for the presence of lead.
 - 5.4.11.12 All data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device.
 - 5.4.11.13 All results of laboratory analysis on collected paint, soil, and dust wipe samples.
 - 5.4.11.14 Any other sampling results.
 - 5.4.11.15 Any background information collected pursuant to subsection 5.4.3.
 - 5.4.11.16 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.
 - 5.4.11.17 A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards.
 - 5.4.11.18 A description of interim controls and 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.

5.5 Interim Controls.

5.5.1 Interim controls of lead-based paint hazards identified in a risk assessment shall be conducted in accordance with the provisions of these regulations. Interim control measures include paint stabilization of deteriorated lead-based paint, treatments for friction and impact surfaces where levels of lead dust are above the levels specified in subsection 5.1.4.3.1, dust control, and lead-contaminated soil control. As provided by Section 2.0, interim controls may be performed in combination with, or be replaced by, abatement methods. If Lead Abatement activity and Interim Controls are to be performed at the same structure, the Abatement firm can perform both activities. In addition, individuals certified as RRP Renovator pursuant to 16 DE Admin. Code 4459B may perform the Interim Controls but may not perform lead abatement activities.

5.5.2 Paint stabilization.

5.5.2.1 Interim control treatments used to stabilize deteriorated lead-based paint shall be performed in accordance with the requirements of this section. Interim control treatments of intact, factory applied prime coatings on metal surfaces are not required. Finish coatings on such surfaces shall be treated by interim controls if those coatings contain lead-based paint.

5.5.2.2 Any physical defect in the substrate of a painted surface or component that is causing deterioration of the surface or component shall be repaired before treating the surface or component.

5.5.2.3 Before applying new paint, all loose paint and other loose material shall be removed from the surface to be treated. Acceptable methods for preparing the surface to be treated include wet scraping, wet sanding, and power sanding performed in conjunction with a HEPA filtered local exhaust attachment operated according to the manufacturer's instructions.

5.5.2.4 Dry sanding or dry scraping is permitted only in accordance with subsection 5.6.6.3 (i.e., for electrical safety reasons or for specified minor amounts of work).

5.5.2.5 Paint stabilization shall include the application of a new protective coating or paint. The surface substrate shall be dry and protected from future moisture damage before applying a new protective coating or paint. All protective coatings and paints shall be applied in accordance with the manufacturer's recommendations.

5.5.2.6 Paint stabilization shall incorporate the use of safe work practices in accordance with subsection 5.6.6.

5.5.3 Friction and impact surfaces.

5.5.3.1 Interim control treatments for friction surfaces shall eliminate friction points or treat the friction surface, so that paint is not subject to abrasion.

5.5.3.2 Interim control treatments for impact surfaces shall protect the paint from impact.

5.5.3.3 Interim control for impact or friction surfaces does not include covering such a surface with a coating or other treatment, such as painting over the surface, that does not protect lead-based paint from impact or abrasion.

5.6 Abatement.

5.6.1 An abatement shall be conducted only by a firm or an individual certified by the Secretary. Abatement shall be conducted according to the procedures in this section.

5.6.2 A certified Supervisor is required for each abatement project and shall be on site during all abatement work.

5.6.3 The certified Supervisor and the certified firm employing that supervisor, shall ensure that all abatement activities are conducted according to the requirements of these regulations and all other Federal, State of Delaware, and local requirements.

5.6.4 Written or electronic notification of the commencement of lead-based paint abatement activities, including but not limited to interim controls in target housing or a child-occupied facilities or as a result of a Federal, State of Delaware, or local order shall be given to the Secretary five (5) business days prior to the commencement of abatement activities.

5.6.4.1 Notification for lead-based paint abatement activities and interim controls required in response to an elevated blood lead level (EBLL) determination, or Federal, State of Delaware, or local emergency abatement order should be received by the Secretary 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 or location provided to the Secretary change, an updated notification must be received by the Secretary on or before the start date provided to the Secretary. Documentation showing evidence of an EBLL determination or a copy of the Federal/State of Delaware/local

- emergency abatement order must be included in the written or electronic notification to take advantage of this abbreviated notification period.
- 5.6.4.2 Except as provided in subsection 5.6.4.1, updated notification must be provided the Secretary for lead-based paint abatement activities and interim controls that will begin on a date other than the start date specified in the original notification, as follows:
- 5.6.4.2.1 For lead-based paint abatement activities and interim controls beginning prior to the start date provided to the Secretary an updated notification must be received by the Secretary at least five business days before the new start date included in the notification.
- 5.6.4.2.2 For lead-based paint abatement activities and interim controls beginning after the start date provided to the Secretary an updated notification must be received by the Secretary on or before the start date provided to the Secretary.
- 5.6.4.3 Except as provided in subsection 5.6.4.1, updated notification must be provided to the Secretary for any change in location of lead-based paint abatement activities at least five business days prior to the start date provided to the Secretary.
- 5.6.4.4 Updated notification must be provided to the Secretary when lead-based paint abatement activities and interim controls are canceled, or when there are other significant changes including, but not limited to, when the square footage or acreage to be abated changes by more than 20%. This updated notification must be received by the Secretary on or before the start date provided to the Secretary, or if work has already begun, within 24 hours of the change.
- 5.6.4.5 The following must be included in each notification:
- 5.6.4.5.1 Notification type (original, updated, cancellation).
- 5.6.4.5.2 Date when lead-based paint abatement activities or interim controls will start.
- 5.6.4.5.3 Date when lead-based paint abatement activities or interim controls will end (approximation using best professional judgment).
- 5.6.4.5.4 Firm's name, State of Delaware certification number, address, telephone number.
- 5.6.4.5.5 Type of building (e.g., single-family dwelling, multi-family dwelling, child-occupied facilities) on or in which abatement work or interim controls will be performed.
- 5.6.4.5.6 Property name (if applicable).
- 5.6.4.5.7 Property address including apartment or unit numbers (if applicable) for abatement work or interim controls.
- 5.6.4.5.8 Documentation showing evidence of an EBL determination or a copy of the Federal/State of Delaware/local emergency abatement order, if using the abbreviated time period as described in subsection 5.6.4.
- 5.6.4.5.9 Name and Delaware certification number of the project supervisor.
- 5.6.4.5.10 Approximate square footage/acreage to be abated.
- 5.6.4.5.11 Brief description of abatement activities to be performed.
- 5.6.4.5.12 Name, title, and signature of the representative of the certified firm who prepared the notification.
- 5.6.4.6 Notification must be accomplished using any of the following methods: Written or electronic. Written and electronic notifications of lead-based paint abatement activities and interim controls can be accomplished by using the guidance and sample form provided online at <http://dhss.delaware.gov/dhss/dph/hsp/leadregcomm.html> or similar form containing the information required in subsection 5.6.4.5. All written notifications must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow three additional business days for delivery in order to ensure that the Secretary receives the notification by the required date).
- 5.6.4.7 Lead-based paint abatement activities and interim controls 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.
- 5.6.4.8 No firm or individual shall engage in lead-based paint abatement activities nor interim controls, as defined in Section 2.0, prior to notifying the Secretary of such activities according to the requirements of subsection 5.6.4.
- 5.6.5 A written occupant protection plan, or electronic equivalent, shall be developed for all abatement and interim control projects and shall be prepared according to the following procedures:
- 5.6.5.1 The occupant protection plan shall be unique to each residential dwelling or child-occupied facility and be developed prior to the abatement or interim control. The occupant protection plan shall

describe the measures and management procedures that will be taken during the abatement or interim control to protect the building occupants from exposure to any lead-based paint hazards.

- 5.6.5.2 A certified Supervisor or Project Designer shall prepare the occupant protection plan.
- 5.6.6 The work practices listed below shall be restricted during an abatement or interim control as follows:
 - 5.6.6.1 Open flame burning or torching of lead-based paint is prohibited;
 - 5.6.6.2 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 that removes particles of 0.3 microns or larger from the air at 99.97% or greater efficiency;
 - 5.6.6.3 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 20 square feet on exterior surfaces; and
 - 5.5.6.4 Operating a heat gun on lead-based paint is permitted only at temperatures below 1,100 degrees Fahrenheit.
- 5.6.7 If conducted, soil abatement shall be conducted in one of the following ways:
 - 5.6.7.1 If soil is removed, the lead-contaminated soil shall be replaced with soil with a lead concentration as close to local background as practical, but not greater than ~~400 PPM~~ 100 milligrams per kilogram.
 - 5.6.7.2 If soil is not removed, the lead-contaminated soil shall be permanently covered, as defined in "Permanently covered soil".
 - 5.6.7.3 Lead contaminated soil that is removed shall not be used as topsoil at other residential property or child-occupied facility and shall be disposed of in accordance with applicable Federal, State, and local requirements.
- 5.6.8 The following post-abatement or interim control clearance procedures shall be performed only by a certified Inspector or Risk Assessor:
 - 5.6.8.1 Following an abatement or interim control, a visual inspection shall be performed to determine if deteriorated painted surfaces or visible amounts of dust, debris, or residue are present. If deteriorated painted surfaces or visible amounts of dust, debris, or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures.
 - 5.6.8.2 Following the visual inspection and any post-abatement cleanup required by subsection 5.6.8.1, clearance sampling for lead-contaminated dust shall be conducted. Clearance sampling may be conducted by employing single surface sampling or composite sampling techniques.
 - 5.6.8.3 Dust wipe samples for clearance purposes shall be taken using documented methodologies listed in subsection 5.1 that incorporate adequate quality control procedures.
 - 5.6.8.4 Dust wipe samples for clearance purposes shall be taken a minimum of one hour after completion of final post-abatement or interim control cleanup activities.
 - 5.6.8.5 The following post-abatement or interim control clearance activities shall be conducted as appropriate based upon the extent or manner of abatement or interim control activities conducted in or to a residential dwelling or a child-occupied facility:
 - 5.6.8.5.1 After conducting an abatement or interim control with containment between work areas and nonwork areas:
 - 5.6.8.5.1.1 Dust wipe samples shall be taken from no fewer than four rooms, hallways, and stairwells within the containment area. If there are fewer than four rooms, hallways, and stairwells within the containment area, then all rooms, hallways, and stairwells shall be sampled.
 - 5.6.8.5.1.2 For each room, one dust wipe sample shall be taken from one interior windowsill, one dust wipe sample shall be taken from the floor and one dust wipe sample shall be taken from a window trough (if present). A window trough sample is not required if all windows within the containment area were closed and sealed with plastic during abatement activities.
 - 5.6.8.5.1.3 In addition, one dust wipe sample shall be taken from the floor outside the containment area.
 - 5.6.8.5.2 After conducting an abatement or interim control with no containment:
 - 5.6.8.5.2.1 Dust wipe samples shall be taken from no fewer than four rooms, hallways, and stairwells in the residential dwelling or a child-occupied facility. If there are fewer than four rooms, hallways, or stairwells within the residential dwelling or child-occupied facility then all rooms, hallways, and stairwells shall be sampled.

- 5.6.8.5.2.2 For each room, one dust wipe sample shall be taken from one interior windowsill, one dust wipe sample shall be taken from the floor, and one dust wipe sample shall be taken from a window trough (if present). A window trough sample is not required if all windows were closed and sealed with plastic during abatement activities.
- 5.6.8.5.3 Following an exterior paint abatement or interim control 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 of Delaware, and local requirements.
- 5.6.8.6 The rooms, hallways, and stairwells selected for sampling shall be selected according to documented methodologies listed in subsection 5.1.
- 5.6.8.7 The certified Inspector or Risk Assessor shall compare the residual lead level (as determined by the laboratory analysis) from each single surface dust wipe sample with clearance levels in subsection 5.6.8.8 for lead in dust on floors, interior windowsills and window troughs or from each composite dust wipe sample with the applicable clearance levels for lead in dust on floors, interior windowsills, and window troughs divided by half the number of subsamples in the composite sample. If the residual lead level in a single surface dust wipe sample equals or exceeds the applicable clearance level or if the residual lead level in a composite dust wipe 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 retested.
- 5.6.8.8 The clearance levels for lead in dust are 10 $\mu\text{g}/\text{ft}^2$ for floors, 100 $\mu\text{g}/\text{ft}^2$ for interior windowsills, and 400 $\mu\text{g}/\text{ft}^2$ for window troughs.
- 5.6.9 In a multi-family dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:
 - 5.6.9.1 The certified individuals who abate or clean the residential dwellings do not know which residential dwelling will be selected for the random sample.
 - 5.6.9.2 A sufficient number of residential dwellings are selected for dust sampling to provide a 95% level of confidence that no more than 5.0% or 50 of the residential dwellings (whichever is smaller) in the randomly sampled population exceed the appropriate clearance levels.
 - 5.6.9.3 The randomly selected residential dwellings shall be sampled and evaluated for clearance according to the procedures found in subsection 5.6.8.
- 5.6.10 An abatement report shall be prepared and signed by a certified supervisor or project designer. The abatement report shall include the following information:
 - 5.6.10.1 Start and completion dates of abatement.
 - 5.6.10.2 The names and address of each certified firm conducting the abatement and the name of each Supervisor assigned to the abatement project.
 - 5.6.10.3 The occupant protection plan prepared pursuant to subsection 5.6.5.
 - 5.6.10.4 The name, address, and signature of each certified Risk Assessor or Inspector conducting a clearance sampling and the date of clearance testing.
 - 5.6.10.5 The results of clearance testing and all soil analyses (if applicable) and the name of each recognized laboratory that conducted the analyses.
 - 5.6.10.6 A detailed written report, or electronic equivalent, describing the abatement, including abatement methods used, locations of rooms and components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures. The report shall also detail any deviations, changes or abnormalities from the original scope of work.
- 5.7 Collection and laboratory analysis of samples.
 - 5.7.1 Any paint, chip, dust, or soil samples collected pursuant to the work practice standards contained in this section shall be:
 - 5.7.1.1 Collected by persons certified as an Inspector or Risk Assessor by the Secretary; and,
 - 5.7.1.2 Analyzed by a recognized laboratory that is accredited and proficient to perform analyses for lead compounds in paint chip, dust, and soil samples.
- 5.8 Composite dust wipe sampling.

5.8.1 Composite dust wipe sampling may only be conducted in the situations specified in 5.3 through 5.6. If such sampling is conducted, the following conditions shall apply:

5.8.1.1 Composite dust wipe samples shall consist of at least two sub-samples;

5.8.1.2 Every component that is being tested shall be included in the sampling; and

5.8.1.3 Composite dust wipe samples shall not consist of sub-samples from more than one type of component.

5.9 Record keeping.

5.9.1 All reports or plans required in this section shall be maintained by the certified individual or firm, if any, who prepared the report for no fewer than three years and six months. The certified individual or firm also shall provide a copy of these reports to the building owner who contracted for its services.

5.10 Inspections.

5.10.1 To ensure compliance with regulations, the Secretary has the authority to conduct inspections of and take samples at work sites and business premises of any firm or individual that conducts business in Delaware covered by these regulations.

5.11 Reporting.

5.11.1 All reports or plans required in this section may become subject to quarterly reporting requirements as deemed necessary and appropriate by the Secretary after lawful notification.

16 DE Reg. 537 (11/01/12)

26 DE Reg. 697 (02/01/23)

6.0 Certification, Fees, and Reciprocity

6.1 Certification of Occupations and Accreditation of Other Training Programs.

6.1.1 Lead-based paint activities as defined by these regulations shall only be conducted according to the procedures and work practice standards contained in these regulations.

6.1.2 No individual or firm shall make offer to perform or perform any lead-based paint activity as defined by these regulations unless certified to perform that activity according to the procedures.

6.2 Fees.

6.2.1 Fees shall be remitted by certified check or money order and made payable to the Division of Public Health. Fees are not refundable.

6.2.2 The annual fee for an initial or a renewal of a certified Abatement Worker shall be \$25.00.

6.2.3 The annual fee for an initial or a renewal of a Certified Firm, Supervisor, Project Designer, Lead Inspector and Risk Assessor shall be \$50.00.

6.2.4 The annual fee for an initial or a renewal of an accredited training program shall be \$200.00 for each type of course for which training will be provided. There is no fee for accreditation amendments.

6.2.5 Applicants who submit a dishonored check will be charged a service fee in addition to the required application fee that is in accordance with department policy.

6.3 Reciprocity.

6.3.1 The Secretary may enter into reciprocal agreements with other states and jurisdictions that have been authorized by the EPA.

16 DE Reg. 537 (11/01/12)

26 DE Reg. 697 (02/01/23)

7.0 Compliance and Enforcement Procedures

7.1 General.

7.1.1 The failure or refusal to comply with any requirement of these regulations is a prohibited act.

7.1.2 The failure or refusal to establish, maintain, provide copy or permit access to records or reports as required in these regulations is a prohibited act.

7.1.3 The failure or refusal to permit entry or inspection as required by these regulations is a prohibited act.

7.1.4 In addition to the above, any individual or certified abatement firm that performs any of the following acts shall be deemed to have committed a prohibited act. These include but are limited to the following:

7.1.4.1 Obtaining certification through fraudulent representation.

7.1.4.2 Failing to obtain certification from the Secretary and performing work at a job site.

7.1.4.3 Fraudulently obtaining certification and engaging in any lead-based paint activity requiring certification.

7.2 Penalty.

7.2.1 Violators are subject to sanctions pursuant to 16 **Del.C.** §107 for each violation of the requirements established in these regulations.

11 DE Reg. 759 (12/01/07)

16 DE Reg. 537 (11/01/12)

26 DE Reg. 697 (02/01/23)

27 DE Reg. 766 (04/01/24) (Final)