

# RULES AND REGULATIONS

## Title 34—LABOR AND INDUSTRY

### DEPARTMENT OF LABOR AND INDUSTRY

#### [34 PA. CODE CH. 203]

#### Lead Occupation Accreditation and Certification

The Department of Labor and Industry (Department), by this order, adopts Chapter 203 (relating to lead-based paint occupations accreditation and certification) to read as set forth in Annex A.

##### A. *Effective Date*

These regulations are effective immediately upon publication in the *Pennsylvania Bulletin*.

##### B. *Contact Person*

For further information, the contact person is Sharon Lawson, Administrator, Asbestos Division, Bureau of Occupational and Industrial Safety, 1402 Labor and Industry Building, Seventh and Forster Streets, Harrisburg, PA 17120, (717)772-3396.

##### C. *Statutory Authority*

These regulations are adopted under the authority contained in section 4 of the Lead Certification Act (act) (35 P. S. § 5904) and section 1002 of the Lead-Based Paint Hazard Reduction Act (42 U.S.C.A. § 4851.)

##### D. *Background and Purpose*

The act was adopted to protect the public health and safety by prevention of exposure to lead through the regulation of lead-based paint activity. The purpose of the regulations is to establish a program to: train individuals engaged in lead-based paint activities to ensure that they have the necessary skill, training, experience and competence to perform these activities; accredit training providers to ensure that appropriate instruction is provided to persons engaged in lead-based paint abatement occupations; and to enforce work practices standards.

##### E. *Public Comments*

Notice of proposed rulemaking was published at 26 Pa.B. 1133 (March 16, 1996) and set forth a 30-day public comment period.

##### F. *Summary of Comments and Changes From Proposed Rulemaking*

The Department received 17 public comments and comments from the Independent Regulatory Review Commission (IRRC).

##### *Purpose of Proposed Rulemaking*

Several of the commentators raised questions and suggested changes to the purpose of proposed rulemaking section in the Preamble. The Department chose to concentrate its review and changes in the substantive regulations rather than on the form of the Preamble.

One commentator stated that the regulations should state specific goals. The Legislative intent of the act which is also the purpose of the regulations is stated in the act (35 P. S. § 5902).

One commentator also seemed to suggest that there should be public hearings on these regulations. The Department has determined that written comments dur-

ing the public comment period gave individuals and groups an adequate forum in which to make comments and suggestions concerning these regulations. The Department, prior to publication of the proposed rulemaking, solicited comments from the lead-based paint abatement industry and attempted (when appropriate) to incorporate some of the comments and suggestions made by the industry.

##### *Section 203.1—Definitions.*

Several individuals questioned why the definitions of "abatement" did not include "renovation and remodeling or landscaping activities." Section 4(b) of the act (35 P. S. § 5904(b)) specifically states that the regulations can be no more stringent than the Environmental Protection Agency's (EPA) model plan. The EPA's model plan does not include renovation, remodeling or landscaping. The Department, therefore cannot regulate these activities.

Several commentators and IRRC stated that the definition of "accessible surface" used the term "young child," which is not defined. The Department has amended the definition of "accessible surface" to use the term "child," which is defined in the regulation.

Several commentators questioned the definition of "contractor." One stated that it was not defined. It is defined in § 203.1 as "certified contractor." The EPA model plan definitions are also incorporated by reference in § 203.2(d). One commentator stated that the definition of "person" does not include a contractor or firm. The definition of "certified contractor" includes both contractors and firms.

Two commentators suggested changes in the definition of "friction surface." This definition is from the EPA model plan. To avoid confusion or conflict between State and Federal regulatory definitions, the Department has determined that a change to this definition would not be appropriate.

Several commentators stated that inspector and risk assessor occupations should be treated as separate and distinct occupations. Two comments were received regarding the planner-project designer occupational title. Several commentators and IRRC stated that the EPA's rulemaking and the act have different occupational titles with different training requirements. To deal with these differences, the Department has amended its regulations using the act's occupational titles and incorporating the EPA's occupational titles into the definitions of the act's titles.

One commentator stated the term "public building" should be replaced by "child occupied facility" in the EPA model plan. The Department has drafted the regulation to deal with changes in the Federal map. Section 203.2(d) (relating to general administrative requirements) incorporates the EPA model plan and its changes by reference.

One commentator disliked the use of the term "single-family dwelling" in the definition of "residential dwelling." One commentator suggested changing the term "zero-bedroom dwelling" to "zero-bedroom residential dwelling" in the definition of "target housing." Another commentator disagreed with the definition of "superstructure." The Department cannot change the statutory definition of a term through regulations.

Another commentator felt that the definition of "risk assessment" was unclear. The definition of "risk assess-

ment” is the same as the definition in the act. The Department has made no change in this definition.

Finally, one commentator stated that there were no definitions for “worker” and “supervisor” in these regulations. The Department has added those definitions to the regulations.

*Section 203.2—General administrative requirements.*

One commentator suggested changing the term “employment” to “certification” in § 203.2(b)(3) and expanding § 203.2(c) to include inspection and risk assessment. The Department changed subsection (b)(3) as suggested and amended subsection (c) to include all “lead-based paint activities.”

Another commentator stated that the EPA may later add additional classifications and the Department may wish to do so also. This is addressed in § 203.2(d). The regulations reference 40 CFR Part 745 (relating to lead-based paint poisoning prevention in certain residential structures), and incorporate successor regulations by reference.

*Section 203.3—Training course accreditation procedures*

IRRC commented that § 203.3(b)(3) stated that to receive accreditation the applicant must meet the Department’s requirements. IRRC felt that the regulations did not adequately state the Department’s requirements. The Department has amended its regulations to state that the courses must comply with EPA requirements with citation to these requirements.

IRRC commented that the reaccreditation process for training providers seemed unnecessarily burdensome. To address IRRC’s concern, the Department has revised § 203.3(b)(6) to clearly state that the reaccreditation process is separate from and less burdensome than the original accreditation process. The renewal application will only require a provider to reaffirm its address and identifying information and inform the Department of any changes to its courses.

IRRC also commented on the Department’s requirement of the minimum number of multiple choice test questions that must be contained in each lead occupation course test. IRRC stated that the EPA did not have such a requirement. The Department has deleted its test question minimum requirement from § 203.3(c)(3). The Department will follow the EPA’s requirements. Proposed § 203(c)(5) has also been amended to state that a passing grade on the course test is 70%. There was a typographical error in the proposal.

One commentator also questioned the grading requirement for the hands-on portion of the training. Neither the Department’s regulations nor the EPA model plan have grading requirements for hands-on training.

IRRC commented that the requirement for training providers to provide the third-party testing agency with the student’s address, telephone number, unique identification number and course test score within 5 days of the completion of the course was unduly burdensome. The Department has deleted the requirement in § 203.3(e) that the training provider provide the third-party testing agency with student identification information. The Department has amended this section to require that the training provider give the student documentation of successful completion of the training course and provide a copy of the documentation to the Department. The time frame to provide this information has also been expanded from 5 to 15 days.

One commentator questioned the required items on the training certificate. The Department has deleted the requirement in § 203.3(e)(3)(vi) which required the date of the course. All other requirements remain the same.

One commentator stated that the regulation failed to address specific training instructor qualifications. Section 203.2(d) incorporates by reference the EPA model plan, which sets out specific instructor qualifications in 40 CFR 745.255(c)(2)(i), (ii)—(iii).

IRRC questioned the Department’s provision for conditional accreditation. Under the proposed regulations, conditional accreditation was given to providers so they may begin their course within a reasonable time after they apply for accreditation. Based on IRRC’s suggestion, the Department has deleted its conditional accreditation provisions from § 203.3. The Department will not give conditional accreditation. The Department will only give full accreditation. If problems arise after a Department audit of the course, the Department will work with the training provider to correct the problem. If the problem continues, the Department will take steps to revoke the training provider’s accreditation.

IRRC commented that the Department’s annual reaccreditation is more stringent than the Federal requirement, which requires reaccreditation once every 3 years. IRRC stated that section 4 of the act prohibits the Department’s regulations from being more stringent than the Federal regulations. The act specifically requires annual reaccreditation for training providers. The Department cannot promulgate regulations which are contrary to the act. It is the act, not the regulations, which is more stringent than the Federal regulations. To address IRRC’s concerns about the burden of the reaccreditation process on training providers, the Department has revised § 203.3(b)(6) to state clearly that the reaccreditation process is separate from and less burdensome than the original accreditation process. The renewal application will only require a provider to reaffirm its address and identifying information and inform the Department of any changes to its courses.

*Section 203.4—Certification procedures and requirements.*

One commentator questioned the Department’s enforcement resources. He stated that, unless the Department is able to provide adequate resources in its enforcement efforts and require lead abatement contractor notification, these regulations will only serve to increase costs for complying contractors. Section 203.10 (relating to contractor notification requirement) requires notification prior to commencing lead abatement work. Section 203.9 (relating to enforcement procedures and penalties) outlines the enforcement procedures. The Department plans to enforce the act vigorously.

IRRC commented that the regulations do not specifically require an individual to pass a certification examination to become fully certified. The Department has amended § 203.4(b) to state specifically that an individual must successfully complete a training course and pass a certification examination in order to become fully certified.

One commentator expressed concern about the different levels of regulations (Federal, State and local) and compliance with each. The Department has incorporated the EPA model plan in its regulations by reference. This should simplify compliance. Several commentators questioned the use of a third-party testing agency, stating that it was costly, inconvenient, and if used, should be used for all occupations. The EPA requires third-party testing for three of the lead-based paint occupations.

IRRC also recommended that the third-party test fee be stated in the regulations. The Department cannot at this point add that information to the regulations. The Department has not yet published its request for proposal for a third-party testing service, and therefore does not know what a third-party testing company will charge. Also, this fee may change over the years due to examination attendance and inflation. The Department will print the test fee with the general application and certification information which will be available to the public.

Several commentators questioned the course requirements for occupations. The course requirements follow the EPA model plan. One commentator asked if there should be a limit to the period of time in which an applicant can apply for certification in § 203.4(b). The certification period is based on the expiration of the training certificate. This creates an automatic 1-year time period from the completion of training for certification. The Department has further clarified this issue in § 203.4(g).

Several commentators questioned the certification of firms. The EPA model plan, which is incorporated by reference, addresses the certification of firms in 40 CFR 745.226 (relating to certification of individuals and firms engaged in lead-based paint activities; target housing and child occupied facilities). Pennsylvania will administer and enforce its program in accordance with the model plan.

#### *Section 203.6—Work Practices*

Several commentators stated that this section of the regulations referred to the Department of Housing and Urban Development (HUD) standards. HUD uses guidelines not standards. The regulations have been changed to reference HUD guidelines. One commentator noted that the EPA standards and HUD guidelines are not always consistent, and the Department's requirement that both HUD and EPA standards be followed could create some problems. The Department has amended § 203.6(a) to state that, if HUD and EPA standards conflict, the EPA standards should be followed.

IRRC commented that the regulations allowed the Department the broad power to require additional unspecified information at the work site. IRRC recommended that this provision be deleted or that the Department specifically state information required at the work site. The Department deleted § 203.6(b)(1)(vi), which would have allowed the Department to request additional information from contractors.

#### *Section 203.7—Reciprocity*

IRRC commented that the regulations stated that the Department may enter into reciprocal agreements with other jurisdictions for reciprocity, whereas, the act requires the Department to do so. The Department has amended § 203.7(a) to require the Department to establish reciprocal agreements with other jurisdictions for training and certification requirements.

IRRC along with several other commentators stated that the regulations should be amended to include a grandfather clause that will describe how the Department will exempt individuals who have successfully completed a lead-based paint training course that meets the Department educational standards. Section 203.7(a)(2) has been amended to specifically include occupation certification and course accreditation received prior to November 8, 1997.

#### *Section 203.8—Fees*

IRRC and numerous other commentators suggested that the fees are excessive. The Department has reviewed its fee structure in relationship to the information requested by IRRC in its comments. The fee structure was developed to cover costs only. The risk assessor, project designer and inspector fees have been reduced by \$100. The supervisor fee was reduced by \$25. The Department expects to do no more than cover the cost of the program with the fees collected.

Several commentators questioned the waiver of fees. The act provides a certification and accreditation fee waiver for State and local governments and nonprofit organizations. The Department is limited by statutory requirements and cannot extend this waiver to other parties.

#### *Section 203.9—Enforcement procedures and penalties*

One commentator stated that an appeal process should be developed for disagreement over citations. Section 203.9(e) allows for exceptions to Department orders to be filed within 15 days after receipt of notification of penalty. This allows for an appeal from a Department order or finding of a violation.

One commentator stated that § 203.9(b)(2) should be amended to state how long an order of violation should be posted on the premises. This commentator also stated that the act held the property owner liable and not the contractor. The act holds any person who causes, permits or allows lead-based paint activity to be performed in violation of the act liable. This would include contractors and property owners.

#### *Section 203.10—Contractor notification requirements*

IRRC commented that the notification requirement in the proposed regulations was duplicative of the notification required by the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and the Department of Environmental Protection's (DEP) regulations. The Department attempted to change these regulations to reference DEP's regulation and to state that compliance with the DEP's regulations are sufficient to comply with these regulations and the act. However, after several discussions with DEP, it appears that the notification required by DEP under the Solid Waste Management Act will not provide the Department with sufficient notification that lead abatement activity will be occurring. DEP's notification only requires reporting of the amount of solid waste. It does not require notification of the type of waste disposed or the location of the abatement project. If the Department were to rely on the DEP solid-waste notification, it would be unable to enforce these regulations or the act.

IRRC commented that fax notification should be allowed and that the Department should state that in these regulations. The Department has amended § 203.10(a)(2) to allow fax notification.

Finally, IRRC questioned the need for the Department to have a copy of the contractors' Model OSHA Written Compliance Plan. In response the Department has deleted that provision from § 203.10(b).

### G. *Benefits and Costs*

#### *Affected Persons*

These regulations will affect the general public, lead-based paint contractors, workers and training providers.

#### *Fiscal Impact and Paperwork*

These regulations will increase costs to the State and to lead-based paint abatement contractors, training providers and consumers of lead-based paint abatement activities. This is a public safety issue and will provide training to workers to prevent exposure and illness to lead-based paint abatement workers.

### H. *Sunset Date*

A sunset date is not appropriate because these standards will be necessary as long as the EPA is regulating this industry and as long as lead-based paint abatement is occurring.

### I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 28, 1996, the Department submitted a copy of the notice of proposed rulemaking published at 26 Pa.B. 1133 (March 16, 1996), to IRRC and to the Chairpersons of the House Committee on Labor Relations and the Senate Committee on Labor and Industry. In accordance with section 5(b.1) of the Regulatory Review Act, the Department provided the Committees with a copy of IRRC's comments.

In preparing these final-form regulations, the Department has considered the public comments received and the comments received from IRRC.

These final-form regulations were deemed approved by the House and Senate Committees on August 13, 1997. IRRC met on August 22, 1997, and approved the regulations in accordance with section 5(c) of the Regulatory Review Act.

### J. *Findings of the Department*

The Department finds that:

(1) Public notice of intention to adopt these regulations was given in accordance with sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240)(45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa.Code §§ 7.1 and 7.2.

(2) A public-comment period was provided as required by law, and that all comments received were considered.

(3) Modifications to the proposed text do not enlarge the original purposes or the scope of the proposed regulations.

(4) These regulations are necessary and appropriate to the administration and enforcement of the act.

### K. *Order*

The Department, acting in accordance with the authorizing statutes, hereby orders that:

(a) The regulations of the Department, 34 Pa.Code, is amended by adding §§ 203.1—203.10 to read as set forth in Annex A.

(b) The Secretary shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to legality and form, as required by law.

(c) The Secretary shall certify this order and Annex A, and shall deposit them with the Legislative Reference Bureau, as required by law.

(d) The regulations, as set forth in Annex A, shall take effect upon publication in the *Pennsylvania Bulletin*.

JOHNNY J. BUTLER,  
*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 4596 (September 6, 1997).)*

**Fiscal Note:** Fiscal Note 12-47 remains valid for the final adoption of the subject regulations.

## Annex A

### TITLE 34. LABOR AND INDUSTRY

#### PART X. BUREAU OF OCCUPATIONAL AND INDUSTRIAL SAFETY

#### CHAPTER 203. LEAD-BASED PAINT OCCUPATION ACCREDITATION AND CERTIFICATION

Sec.	
203.1.	Definitions.
203.2.	General administrative requirements.
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203.4.	Certification procedures and requirements.
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203.9.	Enforcement procedures and penalties.
203.10.	Contractor notification requirements.

#### § 203.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings:

*Abatement*—A set of measures designed to eliminate or reduce lead-based paint hazards in accordance with standards established by the EPA.

(i) The term includes the following:

(A) The removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures and the removal or covering of lead-contaminated soil.

(B) The preparation, cleanup, disposal and post-abatement, clearance-testing activities associated with these measures.

(C) Less-than-full abatement whereby the sources of lead contamination are reduced sufficiently to create a "lead-safe" environment rather than a "lead-free" environment.

(ii) The term does not include renovation and remodeling or landscaping activities by contractors whose primary intent is not to permanently eliminate or reduce lead-based paint hazards, but is instead to repair, restore or remodel a given structure or dwelling.

(iii) The term does not include renovation and remodeling activities conducted by homeowners in their homes.

*Accessible surface*—An interior or exterior surface painted with lead-based paint that is accessible for a child to mouth or chew.

*Accreditation*—A certificate issued by the Department permitting a person to conduct lead-based paint occupation training courses.

*Act*—The Lead Certification Act (35 P. S. § 5901—5916).

*CDC*—The United States Centers for Disease Control and Prevention.

*Certification*—A certificate issued by the Department permitting a person to work in a lead-based paint occupation and which contains a recent photograph of that person.

*Certified contractor*—A person, firm, company or institution which has been approved by the Department to perform lead-based paint activities in this Commonwealth. This term includes a “certified firm” as defined by the EPA’s regulation at 40 CFR 745.223 (relating to definitions).

*Children*—Individuals who are under 6 years of age.

*Commercial building*—A building constructed for the purpose of commercial or industrial activity and not primarily intended for use by the general public, including office complexes, industrial buildings, warehouses, factories and storage facilities.

*Deleading*—Activities conducted by a person who offers to eliminate or reduce lead-based paint or lead-based paint hazards or to plan these activities.

*Demolition*—Pulling down or completely destroying a building or structure or substantial removal of building elements.

*Department*—The Department of Labor and Industry of the Commonwealth.

*Discipline*—A classification for a specific lead-hazard activity.

*EPA*—The Environmental Protection Agency.

*Friction surface*—An interior or exterior surface that is subject to abrasion or friction. The term includes certain window, floor and stair surfaces.

*Hazard activities*—Any set of measures designed to eliminate or reduce lead hazards in accordance with standards established by the EPA and other Federal agencies.

*Hazardous condition*—A condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil or a lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces or impact surfaces that would result in adverse human health effects as established by the administrator of the EPA under section 403 of the Toxic Substance Control Act (15 U.S.C.A. § 2683).

*HUD*—The Department of Housing and Urban Development.

*Impact surface*—An interior or exterior surface that is subject to damage by repeated impacts; for example, certain parts of door frames.

*Inspection*—

(i) A surface-by-surface investigation to determine the presence of lead-based paint, as provided in section 302(c) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C.A. § 4822(c)).

(ii) The provision of a written report explaining the results of the investigation.

*Inspector-risk assessor*—A person trained and certified to perform all activities of the inspector-technician as well as to identify the presence of lead-based paint and to collect additional information designed to assess the level of risk to residents of target housing. The term includes a “certified risk-assessor” as defined by the EPA’s regulation in 40 CFR 745.223.

*Inspector-technician*—A person trained and certified to perform inspections solely for the purpose of determining the presence of lead-based paint through the use of onsite testing, such as XRF analysis, and the collection of samples for laboratory analysis. The term includes a “certified inspector” as defined by the EPA’s regulation in 40 CFR 745.223.

*Lead-based paint*—Paint or other surface coatings that contain lead in excess of the most current HUD standards, or in the case of paint or other surface coatings on target housing, such lower level as may be established by the Secretary of HUD under section 302(c) of the Lead-Based Paint Poisoning Prevention Act.

*Lead-based paint activities*—The term includes the following:

(i) With respect to target housing, the term includes risk assessment, inspection and abatement.

(ii) With respect to a public building constructed before 1978, or a commercial building, bridge or other structure or superstructure, the term includes identification of lead-based paint and materials containing lead-based paint, deleading and removal of lead from bridges and demolition.

*Lead-based-paint hazard*—A condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces or impact surfaces, which exposure would result in adverse human health effects as established by the Department.

*Nonprofit training provider*—A training provider organized for a purpose not involving pecuniary profit, incidental or otherwise, to its members.

*Occupations*—Occupations include worker, supervisor, inspector, risk-assessor, inspector-technician, project designer and all other occupations covered by EPA and OSHA rules, regulations and guidelines on lead-based paint activities.

*OSHA*—The Occupational Safety and Health Administration.

*Person*—Any of the following:

(i) An individual.

(ii) A corporation, partnership or association.

(iii) The Commonwealth, including an agency and instrumentality of the Commonwealth.

(iv) A political subdivision, including an agency or instrumentality of a political subdivision.

*Planner-project designer*—A person trained and certified to plan and design lead-based-paint activities. The term includes a “certified project designer” as defined by the EPA’s regulation in 40 CFR 745.223.

*Public building*—A building constructed prior to 1978 which is generally open to the public or occupied or visited by children. The term includes schools, day-care centers, museums, airport terminals, hospitals, stores, restaurants, office building, convention centers and government buildings. The term excludes target housing.

*Renovation and remodeling activities*—Activities whose primary intent is not to permanently eliminate or reduce lead-based-paint hazards, but is instead to repair, restore or remodel a given structure or dwelling.

*Residential dwelling*—The term includes the following:

(i) A single-family dwelling including attached structures such as porches and stoops.

(ii) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit and in which each unit 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 individuals.

*Risk assessment*—Onsite investigation to determine and report the existence, nature, severity and location of lead hazards in residential dwellings, including the following:

(i) Information gathering regarding the age and history of the housing and occupancy by children under 6 years of age.

(ii) Visual inspection.

(iii) Wipe sampling or other environmental testing and sampling techniques.

(iv) Other activity as may be appropriate.

(v) Provision of a report explaining the results of the investigation.

*Secretary*—The Secretary of Labor and Industry of the Commonwealth.

*Superstructure*—A large steel or other industrial structure, such as a bridge or water tower which might contain lead-based materials.

*Supervisor*—A person trained and certified to oversee lead-based paint activities on target housing and public and commercial building job sites. The term includes a "certified supervisor" as defined in the EPA's regulation in 40 CFR 745.223.

*Target housing*—Housing constructed prior to 1978, or any zero-bedroom dwelling. The term excludes housing for the elderly or persons with disabilities unless a child who is under 6 years of age resides or is expected to reside in the housing.

*XRF analyzer*—A machine that utilizes X-Ray Fluorescence (XRF) to test for the presence of lead-based paint.

*Worker*—A person who has been trained by an accredited training program and certified under the act and this chapter to perform lead-based paint abatement activities. The term includes "certified abatement worker" as defined by the EPA's regulation in 40 CFR 745.223.

### § 203.2. General administrative requirements.

(a) This chapter implements the certification, accreditation, work practices and other requirements of the Act.

(b) This chapter applies to the following persons:

(1) Persons engaged in lead-based-paint occupations within this Commonwealth. An individual or company may not engage in lead-based-paint activities or lead-based paint abatement without the appropriate certification.

(2) Persons performing lead-based-paint abatement upon or within a building which they own or occupy who utilize employees to perform lead-based-paint abatement.

(3) Training course providers desiring to provide training courses required for certification in any lead-based-paint-abatement occupations within this Commonwealth.

(c) This chapter does not relieve any person subject to the act from any duty or responsibility under other Federal or State statutes or regulations, or local ordinances relating to lead-based paint activities.

(d) EPA standards found in 40 CFR Part 745 (relating to lead-based paint poisoning prevention in certain residential structures), are incorporated by reference as the standards by which to carry out the provisions of the act. If EPA regulations and this chapter conflict, this chapter applies.

(e) The Department will publish notice of EPA regulation changes in the *Pennsylvania Bulletin*.

### § 203.3. Training course accreditation procedures.

(a) *Federal requirements.* Training providers shall meet the EPA training course requirements in 40 CFR, Part 745 (relating to lead-based poisoning prevention in certain residential structures).

(b) *Accreditation of initial and refresher courses.*

(1) A person may apply to the Department for approval to conduct training courses, including refresher training courses. A person desiring to apply as an approved training provider for a specific course shall complete an application prescribed by the Department and submit the completed application with the appropriate fee prescribed in § 203.8 (relating to fees). The application shall be received by the Department at least 30 days prior to the first course session. The Department will not process an application which is submitted without the fee or that is incomplete.

(2) A provider requesting accreditation of a training course given outside this Commonwealth shall, in addition to complying with paragraph (1), submit copies of applicable State or Federal approvals, along with the name, address and telephone number of the person, department or agency giving the approval.

(3) The Department will grant accreditation of a training course and issue a certificate of accreditation when it has determined from a complete review of application materials that the course meets the EPA's requirements.

(4) The Department will inform the provider in writing of its reasons for denying accreditation. The Department may schedule a reevaluation at its discretion.

(5) Course accreditation shall be renewed annually. A person applying for reaccreditation shall reaffirm his address and course information on a form prescribed by the Department and shall provide the Department with a description of course changes since his last accreditation or reaccreditation application.

(c) *Course test.*

(1) A monitored final written examination will be required for all courses unless provided for in this chapter. For students who are unable to take a written examination, the Department may accept an equivalent oral examination.

(2) Training course instructors who provide oral examinations for students who are unable to take a written examination shall issue an answer sheet to be marked by the attendee. The student shall sign the answer sheet, and it shall become a part of the training course provider's recordkeeping as described within this chapter.

(3) A passing grade on the course test is a score of 70%.

(d) *Changes to accredited training courses.*

(1) A provider may change an accredited training course only with approval of the Department. The provider shall submit to the Department written notice of the contemplated change at least 10 days before its proposed implementation date. The Department may waive the 10-day requirement for good cause shown.

- (2) Changes may include the following:
  - (i) Topic covered.
  - (ii) Course materials.
  - (iii) Training course instructors.
  - (iv) Teaching methods.
  - (v) Dates and location of scheduled courses.
  - (vi) Language in which course is given.
- (e) *Training course provider requirements.*

(1) The provider shall notify the Department in writing of the scheduled commencement of a course at least 5 days before the first session.

(2) The provider shall cooperate with the Department in all matters relating to the conduct of the course and shall permit representatives of the Department to attend course sessions at no cost. The provider shall make available to the Department, upon request and at no cost, course materials, examinations and records.

(3) The provider shall provide each student who has met the qualifications for supervisor, risk assessor or inspector with a training certificate, and shall provide the Department within 15 days of the successful completion of the course a copy of each student's training certificate.

**§ 203.4. Certification procedures and requirements.**

(a) *Federal requirements.* Applicants for certification shall meet the EPA certification course requirements in 40 CFR Part 745 (relating to lead-based paint poisoning prevention in certain residential structures).

(b) *Certification of individuals.* An applicant for certification in a lead-based-paint occupation shall successfully complete a lead-based-paint training course accredited by the Department and pass an examination approved by the Department. Applicants shall submit a completed application on a form provided by the Department, along with the appropriate fee designated in subsection (d), and a copy of training certificate required under EPA regulations. The Department will not process an application that is incomplete or submitted without the proper fee.

(c) *Contractor certification.* Applications for certification of a contractor or firm shall be submitted in the same manner as provided by subsection (b), except that no EPA training certificate will be required.

(d) *Proof of certification.*

(1) A person engaged in a lead-based-paint occupation shall possess a Commonwealth-issued photo identification card or Commonwealth notification for a photo identification card. This documentation shall be available at each work site for inspection by the Department.

(2) A person whose photo identification card or Commonwealth notification for a photo identification card is lost or destroyed shall notify the Department in writing within 2 days, and shall maintain a copy of the written notification at the work site until the Department issues a new photo identification card or Commonwealth notification for a photo identification card.

(3) A contractor or firm shall have available on the work site a contractor certification issued by the Department.

(e) *Renewal.* Certification shall be renewed annually in the same manner as provided in subsections (a) and (b). Photo identification cards and contractor certifications will be issued annually.

(f) *Supervisors.* A certified supervisor may perform the tasks of a worker.

**§ 203.5. Denial, suspension or revocation of certification or accreditation.**

(a) *Grounds.*

(1) The Department may deny an application for certification or accreditation, and may suspend or revoke a certification or accreditation issued under the act and this chapter for one or more of the following reasons:

(i) Fraudulently or deceptively obtaining or attempting to obtain accreditation or certification.

(ii) Failure to meet the requirements of the act or this chapter.

(iii) Failure to meet applicable Federal or State standards relating to lead-based-paint activities.

(iv) Failure to pay a required fee.

(v) Failure to meet EPA standards for conducting lead-based-paint activities found at 40 CFR Part 745 (relating to lead-based poisoning prevention in certain residential structures).

(b) *Notice and hearing.*

(1) Actions of the Department related to denial, suspension or revocation will be subject to the right of notice, hearing and adjudication in accordance with 2 Pa.C.S. (relating to administrative law and procedure). Hearings will be conducted under 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedures).

(2) After hearing, the Department by written order may affirm, reverse, or modify the denial, suspension or revocation.

(c) *Administrative proceedings, civil actions and criminal proceedings.* Denial, suspension or revocation of certification or accreditation will not affect or mitigate an administrative proceeding, civil action or criminal proceeding permitted by the act or this chapter or by any other law or regulation.

**§ 203.6. Work practices.**

(a) Work practices shall conform to HUD and EPA guidelines, rules and regulations on lead-based-paint activities. If HUD and EPA standards conflict, EPA standards shall be followed.

(b) Additional recordkeeping requirements are as follows:

(1) The lead-based-paint contractor shall maintain a list of individuals engaged in lead-based-paint occupations or who enter the lead-based-paint abatement project area at each job site. The list shall include the following information:

- (A) Names.
- (B) Certification identification number.
- (C) Job classification or job title.
- (D) Time in daily.
- (E) Time out daily.

(2) These records shall be available to the Department upon request.

**§ 203.7. Reciprocity.**

(a) *Certification of occupations and accreditation of other training programs.*

(1) The Department will enter into reciprocal agreements with other states and jurisdictions which have established accreditation and certification requirements substantially similar to those in the act and this chapter.

(2) The Department will designate, by notice in the *Pennsylvania Bulletin*, states and jurisdictions which have certification and accreditation programs for which the Department has granted reciprocity. Reciprocity for certification and accreditation will include certifications and course accreditations granted before November 8, 1997.

(b) *Procedure and fees.*

(1) A person applying for accreditation under this section shall comply with § 203.3(b) (relating to training course accreditation procedures) and pay the appropriate fee in § 203.8 (relating to fee).

(2) A person applying for certification under this section shall comply with § 203.4(b) (relating to certification procedures and requirements) and pay the appropriate fee in § 203.8.

**§ 203.8. Fees.**

(a) *General information.* This section sets out the Department's certification and accreditation fees. Fees shall be remitted by check or money order made payable to the Commonwealth of Pennsylvania. Fees are not refundable.

(b) *Certification fees.* Applicants for certification in lead occupations shall remit the following initial and annual renewal fees:

- |   |       |
|---|-------|
| (1) Lead-based-paint planner/project designer | \$200 |
| (2) Lead-based-paint inspector/risk assessor  | \$200 |
| (3) Lead-based-paint supervisor               | \$ 75 |
| (4) Lead-based-paint worker                   | \$ 50 |
| (5) Lead-based-paint contractor               | \$500 |

(c) *Training course accreditation fees.* Providers of training courses shall remit the following initial and annual renewal accreditation fees:

- |  |         |
|--|---------|
| (1) Application for each initial training course             | \$1,000 |
| (2) Renewal of accreditation for the initial training course | \$ 500  |

(d) *Refresher training course accreditation fees.* Providers of refresher training courses shall remit the following initial accreditation and annual renewal fees:

- |  |        |
|--|--------|
| (1) Accreditation of each refresher lead-based-paint course        | \$ 500 |
| (2) Renewal of accreditation for refresher lead-based-paint course | \$ 250 |

(e) *Maximum fee.* Within a calendar year, cumulative course accreditation fees may not exceed \$5,000 for an individual training provider.

(f) *Waiver of fees.* Accreditation fees may not be imposed on any State, local government or nonprofit training provider; nor will certification fees be imposed on any State, local government or nonprofit training provider, as long as employees actually perform the lead-based-paint activities.

**§ 203.9. Enforcement procedures and penalties.**

(a) *General rule.* A person may not cause, suffer, permit or allow a lead-based-paint activity to be performed in violation of the act or this chapter. A person may not cause, suffer, permit or allow the performance of an act or

operation in violation of an order issued by the Department under the act or this chapter.

(b) *Violations.* The Department has the power to issue an order requiring compliance with the act or this chapter.

(1) An order shall be served, personally or by certified mail, upon the person being charged with the violation.

(2) In the case of a violation of lead-based-paint work practice standards, a copy of the order shall also be served, personally or by certified mail, upon the property owner and a copy shall be posted on the premises.

(c) *Hazardous conditions.* If the Department determines that a hazardous condition exists, the Department, may do one or more of the following:

(1) Issue an order to those engaged to cease immediately all lead-based-paint activities until the condition is corrected.

(2) Issue an order to remove any workers except those needed to abate the hazard from the project work area until the condition is corrected to prevent further project activity.

(3) Issue an order to evacuate appropriate portions of the site until the condition is corrected.

(4) Certify the existence of a lead-based-paint hazard that exists due to the failure of a contractor or employe to comply with the act, charge the added cost of corrective cleanup or removal to the contractor responsible for the hazardous condition which exists due to the noncompliance, and collect the cost by lien or other means as may be authorized by law.

(5) Apply to an appropriate court for relief by injunction or restraining order against any person responsible for the hazardous condition.

(d) *Penalties.* In addition to the sanctions or remedial orders provided in this section, a person who fails to comply with a requirement of the act, this chapter or who fails to obey an order issued by the Department, may be subject to one or more of the following penalties:

(1) Denial, suspension or revocation of accreditation or certification for a person, training provider or contractor as provided in § 203.5 (relating to denial, suspension or revocation of certification or accreditation).

(2) Administrative penalties of not more than \$1,000 for the first offense, not more than \$5,000 on the second offense and not more than \$10,000 for each subsequent offense. Each day a violation continues to exist shall constitute an additional, separate and distinct violation.

(i) If the violating person is a contractor, in determining the penalty, consideration shall be given to the appropriateness of the penalty to the size of the business of the person charged, taking into account the number of employees employed by that person, dollar volume of sales or business, amount of capital investment and financial resources and other information as may be available relative to the size of the business of the person.

(ii) In determining the penalty, consideration shall be given to appropriateness of the penalty to the gravity of the violation or violations, taking into account factors including history of prior violations; evidence of willfulness or failure to take reasonable precautions to prevent violations; and, the extent of exposure to hazardous conditions.

(e) *Finality of determination.* An administrative determination of a civil penalty for a violation of the act or this



chapter shall become final 15-calendar days after receipt of the notice-of-penalty determination by certified mail by the person so charged, unless the person has filed, with the Department, an exception to the determination that the violation for which the penalty is imposed occurred.

**§ 203.10. Contractor notification requirements.**

(a) *Notification.*

(1) Lead-based paint abatement contractors shall notify the Department before engaging in any lead-based paint abatement project in the manner prescribed by the Department.

(2) Notification shall be postmarked or hand delivered to the Department at least 5 business days prior to the project start date. The Department will accept notification by fax at least 5 business days prior to the project start date if followed by original written and signed notification.

(3) In the case of an emergency project, verbal notification shall be given immediately to the Department and written notification shall be provided to the Department within 1 business day of the emergency. Notification by fax in emergencies is acceptable if followed by original written and signed notification.

(b) *Changes to notification.*

(1) If there is a change in any of the information provided on the notification form, the contractor shall immediately notify the Department of the changes in the manner provided in subsection (a)(3), provided that:

(i) In the case of a postponement of the start date, the contractor provides the Department with immediate verbal notification and submits written confirmation of the postponement within 1 business day before the original start date.

(ii) In the case of an advancement of the start date, the contractor provides the Department with written notification of the advancement at least 5 business days prior to the new start date.

(iii) Notification by fax is acceptable if followed by the original written and signed notification.

(2) Notification to the Department does not relieve the lead-based-paint contractor of the responsibility for making written notification as may be required by a municipality, agency of the Commonwealth, or agency of the Federal government.

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