The original draft rules for Chapter 295, Subchapter I, concerning Texas Environmental Lead Reduction were posted for comment from January 4, 2021 to January 19, 2021. This updated draft is now being posted to include the United States Environmental Protection Agency’s new dust-lead clearance levels and to correct formatting in the rules. Visit the [Environmental Lead Program](https://www.dshs.state.tx.us/elp/) website for more information.

TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 295 OCCUPATIONAL HEALTH

SUBCHAPTER I TEXAS ENVIRONMENTAL LEAD REDUCTION

§295.202. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accessible surface--An interior or exterior surface painted with lead-based paint that is accessible to a young child to mouth or chew.

(2) Accredited training program--A training program that has been accredited by the Department of State Health Services (department) to provide training for persons engaged in lead-based paint activities.

(3) Act--The Texas Occupations Code, Chapter 1955.

(4) Adequate quality control--A plan or design to ensure the authenticity, integrity, and accuracy of lead-based paint samples, including dust, soil, and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.

(5) Approved documented methodologies--Methods or protocols used to sample for the presence of lead in paint, dust, and soil. Approved documented methodologies may be found in the United States Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (2012 edition); Standard Specification for Wipe Sampling Materials for Lead in Surface Dust (ASTM Designation E1792); Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques (ASTM Designation E1728); Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques or equivalent method (ASTM Designation E1727); and other equivalent methods recognized by EPA, HUD, or the department.

(6) Arithmetic mean--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).

(7) ASTM--American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, Pennsylvania, 19428.

(8) Bare soil--Soil not covered with grass, sod, or some other similar vegetation. Bare soil includes sand.

(9) Certified lead abatement project designer--A person who has been certified by the department to prepare lead abatement project designs, occupant protection plans, and abatement reports.

(10) Certified lead abatement supervisor--A person who has been certified by the department to supervise and conduct lead abatements, and to prepare occupant protection plans and abatement reports.

(11) Certified lead abatement worker--A person who has been certified by the department to perform abatements.

(12) Certified lead firm--A company, contractor, partnership, corporation, sole proprietorship, association, or other business entity that performs or offers to perform lead-based paint activities, and that has been certified by the department.

(13) Certified lead inspector--A person who has been certified by the department to conduct lead inspections. Inspectors may also sample dust and soil for the purposes of abatement cleanup and clearance testing.

(14) Certified lead risk assessor--A person who has been certified by the department to conduct lead risk assessments, lead inspections and lead hazard screens. Risk assessors may also sample dust and soil for the purposes of lead abatement cleanup and clearance testing.

(15) Chewable surface--An interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an "accessible surface" as defined in 42 U.S.C. 4851b(2). Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.

(16) Child-occupied facility--A building or part of a building constructed before 1978, including, but not limited to, a day-care center, preschool, or kindergarten classroom, that is visited regularly by the same child, six years of age or younger, at least two days in any calendar week if the visits are for at least:

(A) three hours each day; and

(B) 60 hours each year.

(17) Clearance levels--Values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity. To achieve clearance when dust sampling is required, values below these levels must be achieved. Clearance levels that are appropriate when dust sampling is required may be found in §295.212(d)(13) of this title (relating to Standards for Conducting Lead Based Paint Activities).

(18) Commissioner--The Commissioner of the Department of State Health Services.

(19) Common area--A portion of target housing or a child-occupied facility 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.

(20) Common area group--A group of common areas that are similar in design, construction, and function. Common area groups include, but are not limited to, hallways, stairwells, and laundry rooms.

(21) Complete certification application--An application that contains, at a minimum:

(A)an original signature not photocopied, facsimiled, or electronically reproduced;

(B)a legible printed name and mailing address;

(C)any business or organization affiliation and mailing address;

(D) copies of any applicable required training course completion certificates issued by a department-accredited training provider within the specified time frames;

(E)documentation of any applicable required formal education in the form of a diploma, degree, or transcript;

(F)documentation of any applicable required work experience detailing job duties that includes verification contacts covering the minimum time frames required;

(G)documentation of any specified professional certification, professional engineer, or professional registration, if required;

(H)the appropriate certification fee; and

(I)for lead firms, documentation of items required in §295.211(b)(1) - (3) of this title (relating to Lead Firm Certification Requirements), as applicable.

(22) Component or building component--Specific design or structural elements or fixtures of target housing or a child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components, such as ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built-in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components, such as painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells, and air conditioners.

(23) Concentration--The relative content of a specific substance contained within a larger mass, such as the amount of the lead (in micrograms per gram or parts per million by weight) in a sample of dust or soil.

(24) Containment--A regulated area that has been sealed and designed to prevent the release of lead-containing dust or materials into surrounding areas.

(25) Course agenda--An outline of the key topics to be covered during a training course, including the time allotted to teaching each topic.

(26) Course test--An evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

(27) Course test blue print--Written documentation of the proportion of course test questions devoted to each major topic in the course curriculum.

(28) Department--The Department of State Health Services.

(29) Deteriorated paint--Any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

(30) Discipline--One of the specific types or categories of lead-based paint activities for which individuals may receive training from accredited programs and become certified by the department. For example, "lead worker" is a discipline.

(31) Distinct painting history--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, room, or unit of a building structure.

(32) Dripline--The area within three feet surrounding the perimeter of a building.

(33) Elevated blood lead level (EBL)--An absorption of lead that is a confirmed concentration of lead in whole blood of 20 µg/dl (micrograms of lead per deciliter of whole blood) for a single venous test or of 15-19 µg/dl in two consecutive tests taken three to four months apart.

(34) EHNG--Environmental Health Notifications Group within the Inspection Unit, Environmental and Consumer Safety Section, Department of State Health Services.

(35) Encapsulant--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. Only encapsulant products that meet the performance standards developed by ASTM (E1796, E1795) shall be used for lead hazard reduction.

(36) Encapsulation--The application of an encapsulant.

(37) Enclosure--A process that makes lead-based paint inaccessible by providing a physical barrier that is mechanically attached to a surface.

(38) EPA--The United States Environmental Protection Agency.

(39) Federal laws and rules--Applicable federal laws and regulations adopted in this paragraph:

(A) Toxic Substances Control Act (15 United States Code §2681 et seq.) Title IV, and the rules adopted by the EPA under that law for authorization of state programs;

(B) Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992, and any regulations or requirements adopted by the HUD regarding eligibility for grants to states and local governments; and

(C) any other requirements adopted by a federal agency with jurisdiction over lead hazards.

(40) Friction surface--An interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

(41) Guest instructor--An individual designated by the training program manager to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

(42) Hands-on skills assessment--An evaluation which tests the trainees' ability to perform satisfactorily the work practices and procedures used by a discipline, as well as any other skills covered in a training course.

(43) HEPA filter--A high-efficiency particulate air filter, capable of trapping and retaining 99.97% of mono-dispersed airborne particles 0.3 microns or larger in diameter.

(44) Historical records--Documentation which identifies the material makeup (including brand, color type, and lead content) and dates of application of paint and other surface coatings.

(45) HUD--The United States Department of Housing and Urban Development.

(46) HVAC--Heating, ventilation, and air conditioning systems.

(47) Impact surface--An interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of door frames.

(48) Inspection--A surface-by-surface investigation by a certified lead inspector or a certified lead risk assessor to determine the presence of lead-based paint including a written report explaining the results of the investigation.

(49) Interim controls--A set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

(50) Interior window sill--The portion of the horizontal window ledge that protrudes into the interior of the room.

(51) Lead Abatement--

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

(i) the removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil, when lead-based paint hazards are present in such paint, dust or soil; and

(ii) all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures; and

(iii) abatement projects, which specifically include, but are not limited to:

(I) 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 target housing or child-occupied facilities that:

(-a-) shall result in the permanent elimination of lead-based paint, lead-contaminated dust or soil, and other lead-based paint hazards; or

(-b-) are described in clauses (i) and (ii) of this subparagraph.

(II) projects resulting in the permanent elimination of a lead-based paint hazard, lead-based paint, and lead-contaminated dust or soil, conducted by persons certified in accordance with §§295.206 - 295.211 of this title relating to the certification requirements unless such projects are covered by subparagraph (B) of this paragraph;

(III) projects resulting in the permanent elimination of a lead-based paint hazard, lead-based paint, and lead-contaminated dust or soil, conducted by persons who, through their company name or promotional literature, represent, advertise, or hold themselves to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by subparagraph (B) of this paragraph; or

(IV) projects involving the permanent elimination of lead-based paint hazards, lead-based paint, or lead-contaminated dust or soil, that are conducted in response to state or local abatement orders.

(B) Excludes:

(i) renovation, remodeling, or landscaping activities, which 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;

(ii) interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards; and

(iii) demolition of target housing buildings and child-occupied facilities.

(52) Lead-based paint--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.

(53) Lead-based paint activity--Inspection, testing, risk assessment, risk reduction, lead abatement project design or planning, abatement or removal, or creation of lead-based paint hazards.

(54) Lead-based paint hazard--Hazardous lead-based paint, dust-lead hazard or soil-lead hazard as identified in this paragraph.

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

(i) any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill, or floor) are equal to or greater than the dust-lead hazard levels identified in subparagraph (B) of this paragraph;

(ii) 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) ;

(iii) any chewable lead-based painted surface on which there is evidence of teeth marks; and

(iv) any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(B) Dust-lead hazard. A dust-lead hazard is surface dust in a residential building or child-occupied facility that contains mass-per-area concentration of lead equal to or exceeding 10 micrograms per square foot (µg/ft2) on floors or 100 µg/ft2 on interior window sills based on wipe samples.

(C) Soil-lead hazard. A soil-lead hazard is bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding 400 parts per million (ppm) in a play area or average of 1,200 ppm of bare soil in the rest of the yard based on soil samples.

(55) Lead-hazard screen--An activity conducted by a certified risk assessor that involves limited paint and dust sampling to determine the presence of a lead-based paint hazard.

(56) Living area--Areas of a target housing unit or a child-occupied facility used by one or more children six years of age or younger, including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children's bedrooms.

(57) Loading--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.

(58) Mid-yard--An area of a residential yard approximately midway between the dripline of a residential building and the nearest property boundary or between the driplines of a residential building and another building on the same property.

(59) Multi-family dwelling--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.

(60) Non-profit--An entity which 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 inure to the benefit of any private shareholder or individual.

(61) OSHA--The Occupational Safety and Health Administration of the United States Department of Labor.

(62) Permanently covered soil--Soil which 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.

(63) Person--An individual, corporation, company, contractor, subcontractor, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, governmental entity, or any other association of individuals.

(64) Play area--An area of frequent soil contact by children six years of age or less 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.

(65) Principal instructor--The individual who has the primary responsibility for organizing and teaching a particular course.

(66) Recognized laboratory--An environmental laboratory recognized by EPA, pursuant to the Toxic Substances Control Act (TSCA) §405(b), as being capable of performing an analysis for lead content in materials, including paint, soil, and dust.

(67) Reduction--Any measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods, including, but not limited to, interim controls and abatement.

(68) Residential building--A building containing one or more residential dwellings.

(69) Residential dwelling--A dwelling that is:

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

(B) 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.

(70) Risk assessment--An assessment consists of:

(A) an on-site investigation conducted by a certified risk assessor to determine the existence, nature, severity, and location of lead-based paint hazards; and

(B) a written report by the person or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

(71) Room--A separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least six inches from an intersecting wall. Half walls or bookcases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened in porch that is used as a living area is a room.

(72) Soil Sample--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.

(73) Start-date--The date that the lead abatement begins.

(74) Stop-date--The date that all dust-wipe clearance levels are achieved and reported to the lead firm conducting the abatement for interior abatement, or for exterior abatement, the date that visual clearance levels are all achieved.

(75) Target housing--Any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is six years of age or younger resides or is expected to reside in such housing) or any zero-bedroom dwelling. As defined in this section, target housing includes the terms residential dwelling, multi-family dwelling, and unit.

(76) Testing--The collection of paint, soil, or dust-wipe samples for determining the presence of lead in paint or lead-based paint hazards by an EPA recognized laboratory or the use of an XRF.

(77) Training curriculum--An established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

(78) Training hour--At least 50 minutes of actual teaching, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.

(79) Training manager--The individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

(80) TSCA--Toxic Substances Control Act (15 United States Code §2681 et seq) Title IV.

(81) Unit--A room or connected group of rooms used or intended to be used by a single tenant or owner.

(82) Visual inspection for clearance testing--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, as indicated by the absence of visible residue, dust, and debris.

(83) Visual inspection for risk assessment--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.

(84) Weighted arithmetic mean--The arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the surface area it represents. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples of the same area as each other and of each single surface sample in the composite. The weighted arithmetic mean is obtained by summing, for all samples, the product of the sample's result multiplied by the number of subsamples in the sample, and dividing the sum by the total number of subsamples contained in all samples. For example, the weighted arithmetic mean of a single surface sample containing 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).

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

(86) Wipe sample--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 Determinations by Atomic Spectrometry Techniques," or equivalent method, with an acceptable wipe material as defined in ASTM E1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust."

(87) Working days--Monday through Friday including holidays that fall on those days.

(88) Worksite--An interior or exterior area at a target housing or child-occupied facility where lead-based paint abatement activity is taking place or is scheduled to take place.

(89) X-Ray Fluorescence Analyzer (XRF)--An instrument used to determine the concentration of lead in a sample; readings are in milligrams per square centimeter (mg/cm2) ).

(90) Zero-bedroom dwelling--Any residential dwelling in which the living area is not separated from the sleeping area. The term includes, but is not limited to, efficiencies, studio apartments, dormitory housing, military barracks, and rental of individual rooms in residential dwellings.

§295.212. Standards for Conducting Lead-Based Paint Activities.

(a) Inspection.

(1) Lead-based paint inspections shall be conducted only by persons certified by the department as an inspector or risk assessor and must be conducted according to the procedures in this section.

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

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

(B) If conducting an inspection in a multi-family dwelling or child-occupied facility, all components with a distinct painting history in every common area shall be tested for lead-based paint, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint.

(3) The collection and analysis of paint samples to determine the presence of lead-based paint shall be conducted using approved documented methodologies which incorporate adequate quality control procedures and analyzed according to subsection (e) of this section.

(4) The certified inspector or risk assessor shall prepare a written inspection report, which shall include the following information:

(A) date of inspection;

(B) address of buildings and units;

(C) date of construction of buildings and units;

(D) unit numbers (if applicable);

(E) name, address, and telephone number of the owner of buildings and units;

(F) name, signature, and certification number of each certified inspector, risk assessor, or both conducting testing;

(G) name, address, and telephone number of the certified firm employing or contracting with each inspector, risk assessor, or both;

(H) name, address, and telephone number of each recognized laboratory conducting an analysis of collected samples;

(I) each testing method, device, and sampling procedure employed for paint analysis, including quality control data, copy of laboratory reports, and, if used, the brand name, model, and serial number of any XRF device, including downloaded XRF data;

(J) specific locations of each painted component tested for the presence of lead-based paint; and

(K) the results of the inspection expressed according to the sampling method used.

(5) All inspection reports shall be retained for a minimum of three years.

(b) Lead hazard screen.

(1) A lead hazard screen shall be conducted only by persons certified by the department as risk assessors.

(2) A lead hazard screen shall be conducted as follows.

(A) Collect background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children six years of age or younger.

(B) A visual inspection of the residential dwelling or child-occupied facility and common area shall be conducted to:

(i) determine if any deteriorated paint is present; and

(ii) locate at least two dust sampling locations.

(C) If deteriorated paint is present, each surface with deteriorated paint and having a distinct painting history shall be tested, using approved documented methodologies, for the presence of lead-based paint.

(D) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways, or stairwells where one or more children, age six or younger, are most likely to come in contact with dust.

(E) In multi-family dwellings and child-occupied facilities, in addition to the floor and window samples required in subparagraph (D) of this paragraph, the risk assessor shall also collect composite dust samples from any common areas where one or more children six years of age or younger are likely to come into contact with dust.

(3) Any paint and dust samples shall be taken using approved documented methodologies that incorporate adequate quality control procedures.

(4) Any collected paint chip or dust samples shall be analyzed according to subsection (e) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(5) The risk assessor shall prepare a written lead hazard screen report, which shall include the following:

(A) the information required in a risk assessment report as specified in subsection (c) of this section, excluding paragraphs (11)(P) - (R); and

(B) recommendations concerning the desirability for follow-up risk assessments.

(6) All lead hazard screen reports shall be retained for a minimum of three years.

(c) Risk assessment.

(1) A lead risk assessment shall be conducted only by persons certified by the department as risk assessors and must be conducted according to the procedures in this subsection.

(2) A visual inspection for risk assessment of the residential dwelling or child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential sources of lead-based paint hazards. If deteriorated paint or other potential sources of lead-based paint hazards are present, each surface with deteriorated paint or each painted surface which is a potential lead-based paint hazard shall be tested using approved documented methodologies for the presence of lead.

(3) Background information shall be collected regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may result in lead-based paint exposure to one or more children six years of age or younger.

(4) The following surfaces which are determined, using approved documented methodologies to have a distinct painting history, shall be tested for the presence of lead:

(A) each friction surface or impact surface with visibly deteriorated paint; and

(B) all other surfaces with visibly deteriorated paint.

(5) In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sill(s) and floor shall be collected and analyzed for lead concentration in all living areas where one or more children six years of age or younger are most likely to come into contact with dust.

(6) For multi-family dwellings and child-occupied facilities, the samples required in paragraph (4) of this subsection shall be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in the following locations:

(A) common areas adjacent to the sampled residential dwelling or child-occupied facility; and

(B) dripline/foundation areas where bare soil is present.

(7) For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in each room, hallway or stairwell utilized by one or more children, age six and under, and in other common areas in the child-occupied facility where one or more children, age six and under, are likely to come into contact with dust.

(8) Soil samples shall be collected and analyzed for lead concentrations in the following locations:

(A) exterior play areas where bare soil is present;

(B) the rest of the yard (i.e., non-play areas) where bare soil is present; and

(C) dripline/foundation areas where bare soil is present.

(9) Any paint, dust, or soil sampling or testing shall be conducted using approved documented methodologies that incorporate adequate quality control procedures.

(10) Any collected paint chip, dust, or soil samples shall be analyzed according to subsection (e) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(11) A written risk assessment report shall be completed by a certified risk assessor and the report shall include the following information:

(A) date of assessment;

(B) physical address of building;

(C) date of construction of building;

(D) unit numbers (if applicable);

(E) name, address, and telephone number of the owner of each building or unit;

(F) name, signature, and certification number of the certified risk assessor conducting the assessment;

(G) name, address, and telephone number of the certified firm employing each risk assessor;

(H) name, address, and telephone number of each recognized laboratory conducting analysis of collected samples;

(I) results of the visual inspection;

(J) testing method and sampling procedure for paint analysis employed;

(K) specific locations of each painted component tested for the presence of lead-based paint;

(L) all data collected from on-site testing including quality control data and, if used, the brand name, model, and serial number of any XRF device (including downloaded XRF data);

(M) copies of all laboratory analysis on collected paint, soil, and dust samples;

(N) any other sampling results;

(O) any background information collected pursuant to paragraph (3) of this subsection;

(P) to the extent that they are used as part of the lead-based paint hazard determination, an evaluation of the adequacy of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-related hazards;

(Q) a description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards; and

(R) a description of recommended interim controls and abatement options for each identified lead-based paint hazard, and a suggested prioritization for taking each action based on the immediacy and severity of the hazard. If the use of an encapsulant or enclosure is recommended, the report shall include a maintenance and monitoring schedule for the encapsulant or enclosure.

(12) All risk assessment reports shall be retained for a minimum of three years.

(d) Abatement.

(1) A lead abatement shall be conducted only by an individual certified by the department as a worker or supervisor, and if conducted, shall be conducted according to the procedures in this subsection.

(2) A certified supervisor is required for each abatement project and shall be onsite during all work site preparation and during the post-abatement cleanup of work areas. At all other times when abatement activities are being conducted, the certified supervisor shall be available either directly or by phone or answering service, and able to be present at the work site in no more than two hours.

(3) The certified supervisor and the certified firm employing that supervisor shall ensure that all abatement activities are conducted according to the requirements of this subsection and all other federal, state, and local requirements.

(4) Notification of the commencement of lead-based paint abatement activities in target housing or child-occupied facilities or as a result of a federal, state, or local order shall be given to the department, according to the procedures established in §295.214 of this title (relating to Notifications), prior to the commencement of abatement activities.

(5) A written occupant protection plan shall be developed and implemented for all abatement projects and shall be prepared according to the following procedures.

(A) The occupant protection plan shall be unique to each residential dwelling or child-occupied facility and be developed prior to the abatement. The occupant protection plan shall describe the measures and management procedures that will be taken during the abatement to protect any individual with access to the abatement area from exposure to any lead-based paint hazards.

(B) A certified supervisor or project designer shall prepare and sign the occupant protection plan.

(C) The occupant protection plan must be kept at the worksite by the certified lead abatement firm at all times during any abatement activity.

(6) Unless presumed lead, a copy of the lead inspection or lead risk assessment report prepared for the lead abatement project shall be kept at the worksite by the certified lead abatement firm and be available for department inspection.

(7) The following work practices shall be followed during a lead abatement.

(A) Open-flame burning or torching of lead-based paint is prohibited.

(B) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with High Efficiency Particulate Air (HEPA) exhaust control capable of removing particles of 0.3 microns or larger from the air at 99.97% or greater efficiency.

(C) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than two square feet in any one room, hallway, or stairwell or totaling no more than 20 square feet on exterior surfaces.

(D) Operating a heat gun on lead-based paint is permitted only at a temperature below 1,100 degrees Fahrenheit.

(8) If conducted, soil abatement shall be conducted in one of the following ways.

(A) If soil is removed:

(i) the soil shall be replaced by soil with a lead concentration as close to local background as practicable, but less than 400 ppm; and

(ii) the soil that is removed shall not be used as top soil at another residential property or child-occupied facility.

(B) If soil is not removed, the soil shall be permanently covered, as defined in §295.202 of this title (relating to Definitions).

(9) The following post-abatement clearance procedures shall be performed by a certified inspector or risk assessor.

(A) Following an abatement, a visual inspection shall be performed to determine if deteriorated painted surfaces or visible amounts of dust, debris, or residue are still 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.

(B) Following the visual inspection and any post-abatement cleanup required by subparagraph (A) of this paragraph, clearance sampling for lead in dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques.

(C) Dust samples for clearance purposes shall be taken using approved documented methodologies that incorporate adequate quality control procedures.

(D) Dust samples for clearance purposes shall be taken a minimum of one hour after completion of final post-abatement cleanup activities.

(E) The following post-abatement clearance activities shall be conducted as appropriate based upon the extent or manner of abatement activities conducted in or to the residential dwelling or child-occupied facility.

(i) After conducting an abatement with containment between abated and unabated areas, one dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floors of each of no less than four rooms, hallways or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are less than four rooms, hallways or stairwells within the containment area, then all rooms, hallways or stairwells shall be sampled.

(ii) After conducting an abatement with no containment, two dust samples shall be taken from each of no less than four rooms, hallways or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one interior window sill and window trough (if present) and one dust sample shall be taken from the floor of each room, hallway or stairwell selected. If there are less than four rooms, hallways or stairwells within the residential dwelling or child-occupied facility then all rooms, hallways or stairwells shall be sampled.

(iii) Following an exterior paint abatement, a visual inspection shall be conducted to determine and ensure that all horizontal surfaces in the outdoor living area closest to the abated surface shall be cleaned of visible dust and debris. In addition, a visual inspection shall be conducted to determine the presence of paint chips in bare soil in common areas, on the dripline or next to the foundation below any abated exterior surface. If paint chips are present, they must be removed from the site and properly disposed, according to all applicable federal, state, and local requirements.

(F) The rooms, hallways or stairwells selected for sampling shall be selected according to approved documented methodologies.

(G) The certified inspector or risk assessor shall compare the residual lead dust level (as determined by the laboratory analysis) from each single surface dust sample with clearance levels in paragraph (13) of this subsection for lead in dust on floors, interior window sills, and window troughs or from each composite dust sample with the applicable clearance levels for lead in dust on floors, interior window sills, and window troughs divided by half the number of subsamples in the composite sample. If the residual lead level in a single surface dust sample equals or exceeds the applicable clearance level or if the residual lead level in a composite dust sample equals or exceeds the applicable clearance level divided by half the number of subsamples in the composite sample, the components represented by the failed sample shall be recleaned and retested.

(10) In a multi-family dwelling with similarly constructed and maintained units, random sampling for the purposes of clearance may be conducted, provided:

(A) the individuals who abate or clean the units do not know which units will be selected in the sample;

(B) a sufficient number of units are selected for sampling to provide a 95% level of confidence that no more than 5.0% or 50 of the units (whichever is smaller) in the sampled population exceed the appropriate clearance levels; and

(C) the selected units are sampled and evaluated for clearance according to the procedures found in paragraph (9) of this subsection.

(11) All lead-based paint waste materials from the abatement project must be disposed of in accordance with applicable federal, state, and local requirements.

(12) A written abatement report shall be prepared by a certified supervisor or project designer as required in this section. This report shall be completed within sixty days of the stop-date on each abatement notification. The abatement report shall include the following information:

(A) start and completion dates of abatement;

(B) the name and address of each certified firm conducting the abatement and the name of each supervisor assigned to the abatement project;

(C) the occupant protection plan prepared pursuant to paragraph (5) of this subsection;

(D) the name, address, and signature of each certified risk assessor or inspector conducting clearance sampling and the date of clearance testing;

(E) a copy of all laboratory reports of clearance testing and all soil analyses (if applicable) and the name of each recognized laboratory that conducted the analyses;

(F) a detailed written description of the abatement, including abatement methods used, locations of rooms or components, or both where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures;

(G) the name, address, and telephone number of the waste disposal site; and

(H) the name, signature, and the department certification number of the person completing the post-abatement report and the completion date of the report.

(13) Clearance levels for lead in dust that are appropriate for the purposes of this section are:

(A) dust wipes for floors: <10 micrograms per square foot (µg/ft2);

(B) dust wipes for interior window sills: <100µg/ft2; and

(C) dust wipes for window troughs: <400µg/ft2 .

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

(1) collected by persons certified by the department as a lead inspector or risk assessor; and

(2) ensured by the lead inspector or risk assessor to be analyzed by a laboratory recognized by the Environmental Protection Agency pursuant to §405(b) of the Toxic Substances Control Act (TSCA) as being capable of performing analyses for lead in paint chip, dust, and soil samples.

(f) Composite dust sampling. Composite dust sampling may only be conducted in the situations specified in subsections (b) - (d) of this section. If such sampling is conducted, the following conditions shall apply:

(1) composite dust samples shall consist of at least two subsamples;

(2) every component that is being tested shall be included in the sampling; and

(3) composite dust samples shall not consist of subsamples from more than one type of component.

(g) Determinations of presence of lead-based paint and lead hazards.

(1) Lead-based paint is present:

(A) 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

(B) on any surface like a surface tested in the same room equivalent that has a similar painting history and that is found to be lead-based paint.

(2) A paint-lead hazard is present:

(A) on any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill or floor) are equal to or greater than the dust hazard levels identified in paragraph (3)(A) of this subsection;

(B) on any chewable lead-based paint surface on which there is evidence of teeth marks;

(C) where there is any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component, such as a door knob that knocks into a wall or a door that knocks against its door frame; or

(D) if there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(3) A dust-lead hazard is present in a residential dwelling or child-occupied facility:

(A) in a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills are equal to or greater than 10 µg/ft2 for floors and 100 µg/ft2 for interior window sills, respectively;

(B) on floors or interior window sills in an unsampled residential dwelling in a multi family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property; or

(C) on floors or interior window sills in an unsampled common area in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled common area in the same common area group on the property.

(4) A soil-lead hazard is present:

(A) in a play area when the soil-lead concentration from a composite play area sample of bare soil is equal to or greater than 400 parts per million (ppm); or

(B) in the rest of the yard when the arithmetic mean lead concentration from a composite sample (or arithmetic mean of composite samples) of bare soil from the rest of the yard (i.e., non-play areas) for each residential building on a property is equal to or greater than 1,200 ppm.

(h) Recordkeeping. All reports or plans required in this section shall be maintained by the certified firm or individual contractor, who prepared the report, for no less than three years. The certified firm or individual contractor also shall provide copies of these reports to the building owner who contracted for its services and these reports shall be made available to the department upon request. Building owners are subject to the requirements mandated under §1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and 40 Code of Federal Regulations, §745, Subpart F, "Disclosure of Known Lead-based Paint and/or Lead-based Paint Hazards Upon Sale or Lease of Residential Property."