

105 CMR: DEPARTMENT OF PUBLIC HEALTH

105 CMR 460.000: LEAD POISONING PREVENTION AND CONTROL

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460.010: Purpose

105 CMR 460.000 interprets and implements M.G.L. c. 111, §§ 189A through 199B, which establish a statewide program for the prevention and control of lead poisoning.

460.020: Meaning of Terms

Terms shall have the meanings set forth in 105 CMR 460.020 when used in 105 CMR 460.000, unless the context or subject matter clearly requires a different interpretation.

Abatement means the removal of paint, plaster or other accessible structural material containing dangerous levels of lead or the replacement of the architectural fixture or element containing paint or other accessible structural material containing dangerous levels of lead.

Accessible, Mouthable Surfaces mean windowsills five feet or less from the floor, stair tread, or ground; handrails; and railing caps.

Approved Coverings mean rigid or flexible materials approved by the Director to cover surfaces to contain lead hazards. Approved Coverings include, but are not limited to, wood, sheet metal, vinyl, Plexiglass, rubber mats, durable carpet, vinyl-backed wallpaper, laminate, linoleum, gypsum board, Sheetrock, blueboard, acrylic sheets, paneling, and tile.

A.S.T.M. means *American Society for Testing and Materials*.

A.S.T.M. Standard Method C 738 means the *Standard Method of Test for Lead and Cadmium Extracted from Glazed Ceramic Surfaces*.

A.S.T.M. Standard Method E 1796-03 means the *Standard Guide for Selection and Use of Liquid Coating Encapsulation Products for Leaded Paint in Buildings* as published by A.S.T.M.

A.S.T.M. Standard Method E 1797 means the *Standard Specification for Reinforced Liquid Coating Encapsulation Products for Leaded Paint in Buildings* as published by A.S.T.M.

A.S.T.M. Standard Method E 1975-04 means the *Standard Specification for Non-reinforced Liquid Coating Encapsulation Products for Leaded Paint in Buildings* as published by A.S.T.M.

Authorized Person means a person who may legally perform an abatement or containment activity for which he or she has received the required training or course of instruction and, as necessary, a license, all in accordance with the requirements of 105 CMR 460.000, 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations* and the training materials approved by the Director.

Blood Lead Level of Concern means a concentration of lead in whole venous blood from 5 to less than 10 micrograms per deciliter in a child younger than six years old. Blood Lead Level of Concern shall be used for surveillance and outreach for children at risk of lead poisoning.

460.020: continued

Code Enforcement Agency means the State Lead Poisoning Prevention Program or its agent, or the local board of health or other agency responsible for enforcing the State Sanitary Code or sections thereof, adopted pursuant to M.G.L. c. 111, § 127A, and responsible, pursuant to M.G.L. c. 111, § 198, for enforcing M.G.L. c. 111, §§ 194, 194A, 196 and 197.

Commissioner means the Commissioner of Public Health appointed pursuant to M.G.L. c. 17, § 2.

Common Area means a hallway, stairway, passageway, or other interior or exterior space shared by occupants of a multi-unit residential premises. Common areas do not include rooms or spaces to which a child has no possible access, as determined in accordance with policies and inspector training materials approved by the Director.

Containment means the encapsulation, covering or enclosing by means authorized by the Director, of paint, plaster or other accessible structural material containing dangerous levels of lead.

Dangerous Levels of Lead means the level of lead in paint, other coating, plaster or putty which materially endangers the health of children or adults by producing a substantial and serious danger of lead poisoning.

- (1) When present in paint or coatings offered for sale, a dangerous level of lead shall be deemed to be 90 parts per million or greater as measured by atomic absorption spectrophotometry.
- (2) When present in a dried film including, but not limited to, paint, glaze, stain, varnish or other substance on any toy, furniture or other articles, or when present in paint, other coating, plaster or putty on residential surfaces, a dangerous level of lead shall be deemed to be the following:
 - (a) a positive reaction with a 6% to 8% sodium sulfide solution, indicative of 0.5% or more lead by dry weight; or
 - (b) equal to or more than 1.0 milligram of lead per square centimeter (mg/cm²) of surface as measured on site by a mobile X-ray fluorescence analyzer; or
 - (c) equal to or more than 5,000 parts per million (ppm) or equal to or more than 0.5% by dry weight, as measured by atomic absorption spectrophotometry.
- (3) When present in a glaze or enamel on a glass, ceramic, porcelain or porcelain-coated cooking, eating or drinking utensil, or a porcelain-coated household appliance or fixture, a dangerous level of lead shall be deemed to be two parts per million or greater as tested by A.S.T.M. Standard Method C 738.
- (4) Grandfather Compliance Provision. Surfaces identified pursuant to the provisions of 105 CMR 460.730 to contain a level of lead between 1.0 and 1.2 milligrams per square centimeter, inclusive, and in compliance with the provisions of 105 CMR 460.000 prior to August 30, 2002, shall be deemed not to contain a dangerous level of lead, provided such surfaces are maintained in an intact condition.

Deleading Technology Task Force means the Task Force established by the Director pursuant to M.G.L. c. 111, § 192A to review, evaluate and recommend new methods to abate or contain paint or other accessible structural materials containing a dangerous level of lead.

Demolition means removing an architectural component or fixture by destruction, as distinguished from removing the component piece by piece.

Director means the Director of the Childhood Lead Poisoning Prevention Program in the Department of Public Health.

Dwelling Unit means the room or group of rooms within a residential premises used or intended for use by one individual, family or household for living, sleeping, cooking and eating. Dwelling Unit includes a condominium.

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Emergency Lead Management Plan means the entire interim control regulatory process, set forth at 105 CMR 460.105, beginning with risk assessment and extending through issuance of a Letter of Interim Control, monitoring and maintenance, recertification and repair and revocation, under which urgent lead hazards are addressed, in accordance with M.G.L. c. 111, § 197(b) and 105 CMR 460.105, until achieving full compliance with M.G.L. c. 111, § 197(c) and 105 CMR 460.110.

Encapsulant means a coating product applied in liquid form, with or without a structural reinforcement, that is formulated to be a long-lasting and resilient covering that forms an effective barrier over paint or other coatings containing a dangerous level of lead.

Friction Surfaces mean doors, door jambs, and stair treads.

Full Compliance means the abatement and/or containment of paint, plaster or other accessible structural material containing dangerous levels of lead in compliance with M.G.L. c. 111, § 197(c) and 105 CMR 460.110 and 460.760.

HEPA Filter Vacuum Cleaner means a vacuum cleaner equipped with a high efficiency particulate air (HEPA) filter capable of filtering out particles of 0.3 microns or greater diameter from a body of air at 99.97% efficiency or greater. Vacuum cleaners equipped with filters capable of filtering out particles of less than 0.3 microns diameter at 99.97% efficiency or greater may be substituted for HEPA filter vacuums.

Inspector, Code Enforcement means any lead inspector who is an employee or agent of a local code enforcement agency or the State Program.

Inspector, Code Enforcement Lead Determination means an employee or agent of a code enforcement agency who has completed a specialized code enforcement lead determination inspector training program and field apprenticeship as prescribed by the Director. Code enforcement lead determination inspectors are licensed to perform the lead determination enforcement procedure in accordance with 105 CMR 460.700(B), and to perform lead dust monitoring in accordance with 105 CMR 460.170, but they may not perform full lead inspections, issue letters of compliance or carry out other activities of a lead inspector.

Inspector, Private means any lead inspector other than a code enforcement inspector.

Intact means that paint, other coating, plaster or putty on a surface is not loose.

Interim Control Period means the time period beginning with the issuance of a Letter of Interim Control for a particular dwelling unit or residential premises, and ending with the achievement of full compliance no later than two years from the date of the issuance of the Letter of Interim Control.

Interim Controls means all the temporary measures required by the risk assessment to be taken for a particular dwelling unit or residential premises to address urgent lead hazards until full compliance is achieved, in accordance with M.G.L. c. 111, § 197(b) and 105 CMR 460.105.

Lead-based means putties, paints, plaster, glazes and other surface coatings that contain a dangerous level of lead.

Lead Determination means a lead inspector's detection of the presence or absence of dangerous levels of lead on one or more selected surfaces in a dwelling unit or residential premises, but not on all surfaces which would require testing for a full lead inspection. *See* 105 CMR 460.400(C).

Lead Determination Enforcement Procedure means the procedure under which a code enforcement lead inspector, or a code enforcement lead determination inspector may issue an Order to Correct Violation(s) if one or more lead determinations identifying lead violations are made when testing a minimum of five surfaces, pursuant to 105 CMR 460.700.

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Lead Hazard means a surface with dangerous levels of lead that meets the definition of Loose, Accessible, Mouthable Surfaces, Moveable, Impact Surfaces, or Friction Surfaces.

Lead Inspection means the procedure used by lead inspectors for testing all applicable residential surfaces for dangerous levels of lead, using either an X-ray fluorescence analyzer and/or a 6% to 8% solution of sodium sulfide, in accordance with the requirements of 105 CMR 460.000 and policies and training materials approved by the Director.

Lead Inspector means a person trained and licensed to perform lead inspections and all associated responsibilities in accordance with 105 CMR 460.400, as well as policies and training materials approved by the Director.

Lead Poisoning means a medical condition present in a child younger than six years old in which the child has a concentration of lead in whole venous blood of ten micrograms per deciliter or greater.

Lead Violation means a surface that meets the definition of Lead Hazard in a residential premises of a child younger than six years old.

Letter of Full Compliance means a written statement, signed, dated and issued by a lead inspector certifying that as long as there continues to be no loose lead-based paint, other coating, plaster or putty and as long as coverings forming an effective barrier over lead-based paint, other coating, plaster or putty remain in place, a dwelling unit and common areas are:

- (1) Determined upon initial inspection to be in full compliance with M.G.L. c. 111, § 197 and 105 CMR 460.000; or
- (2) Determined through reinspection(s) to be in full compliance with M.G.L. c. 111, § 197(c) and 105 CMR 460.000 and 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations*.

Letter of Interim Control means a written statement, signed, dated and issued by a risk assessor, certifying that a dwelling unit and common areas are determined to be in compliance with for the limited time allowed, by M.G.L. c. 111, § 197(b) and 105 CMR 460.000, as long as the conditions of 105 CMR 460.105 continue to be met.

Loose means that paint, other coating, plaster or putty on a surface is peeling, flaking, chipping, crumbling, cracking, deteriorated or damaged in any manner.

Low-risk Abatement and/or Containment means the work allowed by 105 CMR 460.175(A) to be performed by authorized persons, provided such activities are performed in compliance with the requirements of 105 CMR 460.000, and 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations*.

Managing Agent means the person or entity designated by the owner of a residential premises or dwelling unit to whom rent is to be paid regularly.

Moderate-risk Abatement means the work allowed by 105 CMR 460.175(B) to be performed by authorized persons, as long as such activities are performed in compliance with the requirements of 105 CMR 460.000 and 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations*.

Moveable, Impact Surfaces means surfaces on windows with sills five feet or less from the floor, stair tread or ground, that either move or come in contact with window surfaces that move, and include, but are not limited to, window sashes, wells, parting beads, stops and windowsills.

Owner means any person who alone or jointly or severally with others:

- (1) has legal title to any premises;
- (2) has charge or control of any premises as an agent who has authority to expend money for compliance with the state sanitary code, executor, administrator, trustee or guardian of the estate of the holder of legal title;
- (3) an estate or trust of which such premises is a part, or the grantor or beneficiary of such an estate or trust; or

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(4) is the association of unit owners of a condominium or cooperative, which shall be considered an owner solely with respect to common areas and exterior surfaces and fixtures of such condominium or cooperative. No bank, lending institution, mortgage company or mortgagee, except where such mortgagee takes actual possession and acquires legal title of the residential premises pursuant to 105 CMR 460.100(C), shall be considered an owner.

Owner's Agent means a person who is 18 years of age or older working as an owner's employee, property manager, or other person performing the following types of activities:

- (1) low-risk and moderate-risk abatement and containment, in accordance with all the requirements of 105 CMR 460.000 and 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations*;
- (2) structural repairs or lead dust cleaning that may be needed for interim control, in accordance with 105 CMR 460.105; or
- (3) obligations with regard to the Short-term Vacation or Recreational Rental Exemption pursuant to 105 CMR 460.100(D).

An owner's agent does not include a contractor hired by the owner for the purpose of performing moderate-risk abatement activities. Contractors must be licensed in accordance with 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations*, and perform moderate-risk abatement activities in accordance with 105 CMR 460.000 and 454 CMR 22.00.

Post-compliance Assessment means the procedure used by lead inspectors, pursuant to 105 CMR 460.735, to determine whether a dwelling unit and common areas for which a Letter of Full Compliance or Letter of Interim Control has been issued, remains in compliance with the standards of that letter.

Prospective Tenant(s) means the person(s) who is about to enter into a written or oral agreement with an owner to rent, for the first time, a particular dwelling unit or residential premises.

Relocated means that the occupants of a dwelling unit have temporarily moved out of the unit only for the duration of certain abatement activities in the unit, as required by 105 CMR 460.160(A). Relocated occupants will return to the unit upon the determination of a lead inspector or risk assessor that the unit meets the conditions for reoccupancy pursuant to 105 CMR 460.760(A).

Residential Premises or Residential Property means every building or shelter constructed prior to 1978, used or intended for human habitation, including exterior surfaces and all common areas thereof, and all other property, including other structures located within the same lot line whose existence causes or is likely to affect noncompliance with the provisions of 105 CMR 460.000. Residential premises are comprised of one or more dwelling units.

Risk Assessment means the procedure for determining and reporting the existence, extent and location of urgent lead hazards in residential premises or dwelling units, and prescribing required measures to be taken for proper interim control. A risk assessment shall include a lead inspection; identification of urgent lead hazards; when appropriate, dust sampling; provision of a risk assessment report detailing the results of the risk assessment, and development of measures for correcting urgent lead hazards in the unit.

Risk Assessor means any lead inspector who has met the conditions specified in 105 CMR 460.400 and is licensed as a risk assessor to conduct risk assessments.

Rooming House means every dwelling or part thereof that contains one or more rooming units in which space is let or sublet for compensation by the owner or operator to four or more persons not within the second degree of kindred to the person compensated.

Rooming Unit means the room or group of rooms let to an individual or household for use as living and sleeping quarters. Boarding houses, hotels, inns, lodging houses, dormitories and other similar dwelling places shall be included under Rooming House.

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State Laboratory for Lead and Lead Poisoning Detection means the laboratory established by the Commissioner pursuant to M.G.L. c. 111, § 195, for the purpose of analyzing blood specimens from children for the presence of lead; and analyzing samples of paint, plaster, and other materials, within the laboratory or on site with mobile units, for dangerous levels of lead.

State Program means the Childhood Lead Poisoning Prevention Program established by the Department of Public Health pursuant to M.G.L. c. 111, § 190.

State Register of Historic Places means the list of historic and archaeological properties of the Commonwealth, as defined in M.G.L. c. 9, § 26C.

State Sanitary Code means the regulations adopted by the Department of Public Health pursuant to M.G.L. c. 111, § 127A.

Structural Defects means leaks, deteriorations or ruptures in structural components that permit the entry of water that causes the deterioration of lead paint, plaster or putty, or dry rot or insect damage that causes the deterioration of lead paint, plaster or putty. These include, but are not limited to, roof, soffit, plumbing, flashing and gutter leaks.

Structural Repairs means measures taken to correct structural defects that result in substrate and/or moisture problems that cause or contribute to the creation of urgent lead hazards including, but not limited to, roof repairs, plumbing repairs and repairs to flashing and gutters. Structural repairs also includes repairs to return windows to operable condition, but does not include abating or containing lead hazards on any window surface.

Surface means a wall, ceiling, floor or any architectural component or fixture on the interior or exterior of a dwelling unit or residential premises or on other structures within the lot line of a residential premises.

Training Provider means an entity certified pursuant to 105 CMR 460.410 to provide training for persons to become lead inspectors and risk assessors, and to provide the course of instruction to owners and owner's agents to become authorized to perform moderate-risk abatement.

Urgent Lead Hazards means loose paint, plaster or putty containing dangerous levels of lead; conditions requiring safeguards under 105 CMR 460.105(A)(3); dust with lead levels in excess of acceptable standards under 105 CMR 460.170, and structural defects.

Work Area means a room or interior or exterior common area within which abatement or containment or interim control work is taking place. When a door, door casing, doorjamb or threshold is being abated or contained, the work area shall include the adjoining room or hallway on each side of the door. When a common area hallway is being abated or contained, the work area shall include all the contiguous space of the hallway on that floor or at a maximum, ten feet in either direction beyond the surfaces being abated or contained. When exterior abatement and/or containment is taking place, the work area shall include ten feet in either direction beyond the area being abated or contained.

X-ray Fluorescence Analyzer (XRF) means any mobile instrument which measures on-site lead concentration in milligrams per square centimeter (mg/cm²).

460.040: Mandatory Reporting

(A) Physicians, other health care providers, and state and private laboratories shall report to the Director all cases known by them of childhood lead poisoning of Massachusetts residents within three working days of identification, unless previously reported. Should a child suffer multiple episodes of lead poisoning, each episode must be reported.

(B) Laboratories and health care provider practices that analyze blood specimens drawn pursuant to 105 CMR 460.050 for lead or lead and erythrocyte protoporphyrin shall report all results to the State Program in a secure electronic format approved by the Director. Such reports shall be made within one week of the analysis. The Director may temporarily waive the electronic reporting requirement for laboratories or health care provider practices that report only a small volume of results.

460.050: Mandatory Blood Lead Screening and Follow-up Schedule

- (A) Health Care Provider Applicability. Pursuant to M.G.L. c. 112, § 12BB:
- (1) Each physician duly registered under the provisions of M.G.L. c. 112, §§ 2, 2A, 9, 9A or 9B shall screen patients for lead poisoning at the intervals and using the methods specified in 105 CMR 460.050; and
 - (2) Each licensed, registered or approved health care facility serving children younger than six years old including, but not limited to, hospitals and clinics licensed under the provisions of M.G.L. c. 111, § 51 shall take appropriate steps to ensure that their patients receive such lead poisoning screening; and
 - (3) Each health maintenance organization licensed under the provisions of M.G.L. c. 176G shall take appropriate steps to ensure that its patients receive such lead poisoning screening.
- (B) A venous blood sample is recommended for screening. If a capillary sample is used, screening shall conform to the capillary blood sample protocol approved by the Director. If a capillary sample shows that the child has a concentration of five micrograms of lead per deciliter of blood or greater ($\geq 5 \mu\text{g/dL}$), a confirmatory venous blood sample is required in accordance with guidance issued by the Director.
- (C) Regular Screening of Children for Lead Poisoning.
- (1) All children shall be screened once between nine and 12 months of age, and again at two and three years of age.
 - (2) In addition, children who live in one of the cities and towns at high risk for childhood lead poisoning, as determined by the State Program and distributed to clinicians and the public, shall be screened at four years of age.
- (D) Screening of Children at High Risk for Lead Poisoning.
- (1) Children shall be screened for lead poisoning more than once a year whenever, in the sound medical judgment of the health care provider, they are at high risk of lead poisoning or when they meet one of the following high-risk criteria:
 - (a) They live in a home where siblings or other children in the same household are lead poisoned.
 - (b) They live in a pre-1978 home that is undergoing renovations, unless it has been inspected by a lead inspector and the surfaces to be disturbed do not contain dangerous levels of lead.
 - (c) They live in a pre-1978 home with deteriorated paint or plaster, unless it has been inspected by a lead inspector and does not contain a dangerous level of lead.
 - (2) Children who meet one of the high-risk criteria in 105 CMR 460.050(D)(1)(a) or (c) shall be screened at least every six months between six months and three years of age, and again at four and five years old. Children who meet the high risk criteria in 105 CMR 460.050(D)(1)(b), shall be screened within four weeks of the start of the renovation project, once a month thereafter during its duration, and once after its completion.
- (E) If children between one and six years of age have never been screened for lead poisoning, they must be screened at entry to daycare including group or family day care, or kindergarten or pre-kindergarten, and present evidence of such screening. If they have previously been screened for lead poisoning, they need not be screened again to fulfill daycare, pre-kindergarten, or kindergarten entry requirements, but must present evidence of previous screening.
- (F) Children younger than six years old identified as having a blood lead level of $5 \mu\text{g/dL}$ or greater shall be provided follow-up care, including repeat screening(s), in accordance with the current standards set forth by the American Academy of Pediatrics, or other qualified medical authority as determined by the Director.

460.060: Reimbursement for Mandatory Screening Services

The following blood lead screening services shall constitute the “Mandatory Blood Lead Screening” in accordance with 105 CMR 460.050 and is required to be covered under policies of insurance as provided by M.G.L. c. 175, § 47C, hospital service contracts as provided by M.G.L. c. 176A, § 8B, medical service contracts as provided by M.G.L. c. 176B, § 4C, and health maintenance contracts as provided by M.G.L. c. 176G, § 4, and shall be reimbursable:

460.060: continued

- (A) Assessment of the child for regular screening at age four, in accordance with 105 CMR 460.050(C), and assessment for high-risk screening, in accordance with 105 CMR 460.050(D).
- (B) Completion of the laboratory form known as a bloodslip.
- (C) Drawing of the blood specimen pursuant to 105 CMR 460.050(B).
- (D) Packaging and handling of the blood specimen including postage costs for mailing the specimen to the laboratory.
- (E) Analysis of the blood specimen for lead level by atomic absorption spectrophotometry or any other method approved by the Clinical Laboratory Improvement Amendments of 1988, Public Law 100-578, to § 353 of the Public Health Service Act, 42 U.S.C. 263a, and for erythrocyte protoporphyrin by fluorometry, either through the measurement of zinc protoporphyrin or by extraction.

460.070: Confidentiality of Lead Test Results

- (A) The Director shall maintain the confidentiality of lead test results and shall not disclose lead test results or other medical information which, because of name, identifying number, mark or description, can be readily associated with a particular individual or the individual's parents/guardians, or any information that could be used in combination with other information to identify an individual, except to:
 - (1) the individual's parents or guardians if a minor or to the individual if 18 years of age or older;
 - (2) the individual's health care provider;
 - (3) anyone authorized in writing by that individual or the individual's legal representative;
 - (4) authorized Department personnel or local health officials;
 - (5) authorized staff at another state health department if the individual is a resident of that state;
 - (6) anyone authorized to receive such information pursuant to a court order; or
 - (7) authorized staff from a Federal agency;
 - (8) any researcher approved by the Department to conduct a specific study pursuant to M.G.L. c. 111, § 24A, and when approved by an Institutional Review Board.
- (B) All individually identifiable lead testing results shall be considered confidential and shall not be available as a public record under M.G.L. c. 66.

460.100: Duty of Owner(s) of Residential Premises

- (A) Except as provided in 105 CMR 460.100(B) through (D), the owner(s) of a dwelling unit or residential premises containing dangerous levels of lead in any paint, plaster or other accessible structural material are required to obtain a Letter of Full Compliance or a Letter of Interim Control, in the following circumstances:
 - (1) A child younger than six years old resides therein, whether or not the residential premises have been inspected pursuant to M.G.L. c. 111, § 194 or otherwise; or
 - (2) The owner(s) receive an Order to Correct Violation(s) pursuant to M.G.L. c. 111, § 194 because the premises is occupied by a child younger than six years old at the time of the lead determination enforcement procedure or code enforcement lead inspection upon which the order is based, or a child younger than six years old who is lead poisoned as defined at 105 CMR 460.020 occupied the premises within the past 12 months.
 - (3) The owner(s) receive an Order to Correct Violation(s) pursuant to M.G.L. c. 111, § 194 because the premises is occupied by a child younger than six years old who is lead poisoned as defined at 105 CMR 460.020 at the time of the lead determination enforcement procedure or code enforcement lead inspection upon which the order was based. In this case, the owner(s) shall be required to obtain a Letter of Full Compliance, and shall not be eligible for interim control. The Director may grant exceptions to the ineligibility for a Letter of Interim Control pursuant to specified conditions established on a case-by-case basis.

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(B) Whenever any residential premises containing dangerous levels of lead in paint, plaster or other accessible structural material undergoes a change of ownership and as a result a child younger than six years old will become or will continue to be a resident therein, the new owner shall have 90 days after becoming the owner to obtain a Letter of Full Compliance or a Letter of Interim Control, except that if a child younger than six years old who is lead poisoned resides therein, the owner shall not be eligible for interim control, unless the Director grants a waiver pursuant to 105 CMR 460.100(A)(3).

(C) (1) A bank, lending institution, mortgage company or mortgagee shall be considered an owner for purposes of 105 CMR 460.000 whenever it takes actual physical possession and acquires legal title of the residential premises pursuant to applicable law.

(2) A bank, lending institution, mortgage company or mortgagee shall within 90 days after acquiring legal title to a residential premises in which a child younger than six years old resides, either:

(a) obtain a Letter of Full Compliance, or obtain a Letter of Interim Control, except that if a child younger than six years old who is lead poisoned resides therein, the owner shall not be eligible for interim control, unless the Director grants a waiver pursuant to 105 CMR 460.100(A)(3); or

(b) transfer the property in compliance with the Property Transfer Lead Notification and Disclosure Procedure at 105 CMR 460.720.

(D) Short Term Vacation or Recreational Rental Exemption from the Obligation to Abate and/or Contain Paint, Plaster or Other Accessible Structural Material Containing Dangerous Levels of Lead.

(1) The owner(s) of a dwelling unit including, but not limited to, a private residence, condominium, hotel, motel or bed and breakfast establishment that is leased, rented or occupied for vacation or recreational purposes for a period of 31 days or less shall not be required to obtain a Letter of Full Compliance or a Letter of Interim Control, when a child younger than six years old is an occupant, upon meeting and maintaining the following conditions:

(a) The owner or owner's agent shall visually inspect at least annually all of the interior surfaces and the exterior casing, sash and sill of all windows of the particular dwelling unit, but not interior common areas if present, to ensure that there is no cracked or otherwise deteriorated plaster or putty or peeling, chipping or flaking paint.

(b) Any peeling, chipping or flaking paint, deteriorated plaster or putty shall be made intact according to Department of Labor Standards regulations for maintenance work in 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations*.

(c) The owner or owner's agent shall fully complete and provide a copy of the Short Term Vacation Rental Notification issued by the Director to each tenant with a child younger than six years of age. The owner or owner's agent and the tenant shall sign copies of the Notification and each shall retain a copy. If the owner or owner's agent has provided the Notification, but the tenant refuses to sign it, the owner or owner's agent may attach a statement that the tenant received the Notification but refused to sign.

(d) If loose paint, plaster or putty is present on relevant surfaces of the dwelling unit, indicated at 105 CMR 460.100(D)(1)(a), or the owner fails to provide the Vacation Rental Notification in accordance with 105 CMR 460.100(D)(1)(c) through (g), the owner is not exempt from the requirements for abatement or containment at 105 CMR 460.110 or for interim control at 105 CMR 460.105 or liability for damages at 105 CMR 460.180.

(2) An owner who complies with 105 CMR 460.100(D)(1) may rent a dwelling unit for as many periods of 31 days or less as he or she chooses, provided that the same tenant with a child younger than six years old does not occupy the same dwelling unit for a period of more than 31 days in any 12-month period.

(3) An owner who complies with 105 CMR 460.100(D) is exempt from compliance with Tenant Lead Law Notification and Disclosure pursuant to 105 CMR 460.725.

(E) The owner of a dwelling unit having fewer than 250 square feet of floor space, calculated on the basis of total habitable room area, or which is used as a rooming house, is exempt from the requirements of M.G.L. c. 111, §§ 189A through 199B and 105 CMR 460.000, provided that no child younger than six years old occupies said dwelling unit.

460.105: Lead Hazards: The Emergency Lead Management Plan and Interim Control

Unless ineligible under 105 CMR 460.100, the owner of a dwelling unit may obtain a Letter of Interim Control and delay full compliance for the interim control period, provided the following conditions of the Emergency Lead Management Plan are met.

(A) Risk Assessment. A licensed risk assessor shall conduct a risk assessment of the dwelling unit and all relevant common areas upon the request of the owner, to identify urgent lead hazards and specify the measures necessary for interim control. The risk assessment shall be performed accordance with guidelines established by the Director and must include:

- (1) Identification of loose lead paint;
- (2) Identification of structural defects;
- (3) Assessment of window conditions; and
- (4) Dust sampling.

(B) Performance of Work. Any abatement or containment work necessary to meet the requirements of the Emergency Lead Management Plan for interim control must be performed by authorized persons, in accordance with 105 CMR 460.000 and 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations*.

(C) Risk Assessment Reinspection(s).

- (1) Risk assessment reinspection(s) shall be conducted to ensure that all interim controls recorded on the risk assessment report as necessary to meet the conditions of 105 CMR 460.105(A) have been completed in a workmanlike manner. Dust samples shall be taken in accordance with the lead dust monitoring protocol issued by the Director, and the dust monitoring standards of 105 CMR 460.170 must be met. The owner shall supply the risk assessor with a written statement that the owner or owner's agent has completed any required structural repair or lead dust cleanup, on a form approved by the Director.
- (2) If abatement work was done which required occupants to be relocated from the unit, pursuant to 105 CMR 460.160(A), the risk assessment reinspection shall constitute the reoccupancy reinspection, and any additional requirements of 105 CMR 460.760(A) not included in 105 CMR 460.105(C) shall also be met.
- (3) If abatement and/or containment activities or structural repairs were carried out after reoccupancy, the risk assessor shall conduct another risk assessment reinspection at the conclusion of the work.

(D) Issuance of a Letter of Interim Control. In order to obtain a Letter of Interim Control, the owner shall complete all interim controls necessary to meet the Emergency Lead Management Plan requirements, and must also meet the documentation requirements set forth in 105 CMR 460.105(D)(1). A Letter of Interim Control must be issued to qualify for that portion of the state income tax credit set aside for interim control under 830 CMR 62.6.3: *Lead Paint Removal Credit*.

(1) Requirements.

- (a) Documented use of risk assessors is required to obtain a Letter of Interim Control. If abatement or containment work was required to meet the standard of interim control, documentation of work by an authorized person is also required.
 - (b) Documentation of authorized risk assessment and reinspection shall consist of risk assessment reports and risk assessment reinspection reports completed by licensed risk assessors.
 - (c) Documentation of abatement and/or containment work by an authorized person shall consist of an invoice, on a form approved by the Director, bearing the professional letterhead of the licensed deleader or authorized person with his or her license number, including a signed statement that the authorized person has fully complied with the applicable requirements of 105 CMR 460.000 and 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations*. For authorized owners and owner's agents, documentation of authorized abatement and containment work shall be made on a form approved by the Director.
- (2) Letter of Interim Control. A Letter of Interim Control shall be issued by a risk assessor, on a form approved by the Director, when he or she determines that a dwelling unit and common areas are in compliance with, for the limited time period allowed by M.G.L. c. 111, § 197(b), the conditions of 105 CMR 460.000 and 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations*. The Letter of Interim Control shall state a date of expiration that shall be one year from the date of issue.

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(E) Maintenance and Monitoring. An owner of a dwelling unit or residential premises that has been issued a Letter of Interim Control shall take reasonable care to ensure that all required interim control measures remain in place and are effective. The owner shall also take reasonable care to promptly correct any failure of interim controls, or address any new urgent lead hazards. Failure to maintain the dwelling unit or residential premises under the conditions of Interim Control may invalidate the Letter of Interim Control.

(F) Recertification.

(1) Before the end of the one-year period of validity of a Letter of Interim Control, an owner must either abate and/or contain the dwelling unit or residential premises to achieve full compliance, or, no sooner than 30 days before the expiration date of the Letter of Interim Control, have the unit or premises reinspected by a licensed risk assessor, in accordance with M.G.L. c. 111, § 197(b) and 105 CMR 460.105(F).

(2) The risk assessor shall conduct a recertification reinspection in accordance with 105 CMR 460.105(C), to ensure that the interim controls required for the unit are still in place and are being properly maintained. The risk assessor shall conduct a visual inspection and record the type and location of any urgent lead hazards on the risk assessment recertification form. If any of the requirements of 105 CMR 460.105(C) are not met, or if additional urgent lead hazards are present, these conditions must be corrected, using authorized persons when required by 105 CMR 460.105(B). The risk assessor must return and perform another reinspection pursuant to 105 CMR 460.105(C), and the documentation requirements of 105 CMR 460.105(D)(1) must be met. If the dwelling unit meets the standard of reinspection, the risk assessor shall recertify the Letter of Interim Control for an additional period, which in no event shall be longer than one year from the initial expiration date of the Letter of Interim Control.

(3) An owner whose dwelling unit's or residential premises' Letter of Interim Control is recertified for another year under the procedures required in 105 CMR 460.105(F) shall take reasonable care to perform monitoring and maintenance during that second year as well, in accordance with 105 CMR 460.105(E).

(G) Identification of a Child Who is Lead Poisoned in a Premises under Interim Control.

(1) Required Post Compliance Assessment. A licensed code enforcement risk assessor shall conduct a post compliance assessment in any dwelling unit or residential premises with a Letter of Interim Control in which a child is identified as lead poisoned.

(a) If the licensed code enforcement risk assessor finds no urgent lead hazards as a result of the risk assessment, the Letter of Interim Control shall remain valid and the risk assessor shall investigate other potential sources of lead exposure as appropriate.

(b) If the licensed code enforcement risk assessor identifies urgent lead hazards, an Order to Correct Violation(s) shall be issued, and the owner of the unit shall be required to bring the unit into full compliance, in accordance with the deadlines in 105 CMR 460.751(A) or (B), as applicable. The Director may grant exceptions to the requirement to bring the unit into full compliance pursuant to specified conditions established on a case-by-case basis.

(c) During the period of time within which the owner must achieve full compliance under the Order to Correct Violation(s), the owner of the unit with a Letter of Interim Control shall not be held strictly liable for injury or damage caused by exposure to dangerous levels of lead, as long as the owner meets each successive deadline set forth in 105 CMR 460.751(A) or (B), as applicable, for complying with the Order to Correct Violation(s).

460.110: Lead Hazards: Abatement and Containment Requirements for Full Compliance

(A) Violations of 105 CMR 460.000 also constitute violations of the State Sanitary Code (M.G.L. c. 111, § 127A) which requires corrections to be made in a workmanlike fashion, including restoring all parts of the residential premises to the condition they were in before occurrence of any such violations. Authorized persons shall perform work in accordance with the requirements of 105 CMR 460.000 and 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations*, and the safe work practices and procedures set out in training, educational materials, or in additional guidance approved by the Director or the Department of Labor Standards. Repainting with non-lead-based paint without abatement or containment of the offending paint, plaster, or other material, does not constitute compliance with M.G.L. c. 111, § 197.

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(B) Abatement or containment of lead-based paint, other coating, plaster or putty must be performed as follows:

- (1) Loose lead-based paint, other coating, plaster or putty on surfaces that are neither moveable impact surfaces nor accessible mouthable surfaces must be abated intact or contained.
- (2) Lead-based paint, other coating, plaster or putty on moveable impact surfaces shall be abated, or, with the exception of window sashes that are part of an interior habitable area or which need to be useable to meet ventilation requirements under the state Building Code (780 CMR), contained with an approved covering. In the case of metal windows, only lead-based paint or other coating on the sills shall be abated or contained. Other moveable impact surfaces on metal windows must be intact or, if loose, made intact.
- (3) Lead-based paint, other coating, plaster or putty shall be abated on accessible, mouthable surfaces to a height of five feet, and four inches in from each edge, or such surfaces may be contained. Encapsulants applied to suitable accessible, mouthable surfaces must be applied to the entire surface, rather than only to a height of five feet and only four inches in from each edge.
- (4) Lead-based paint, other coating, plaster or putty shall be abated on friction surfaces at all points of potential friction where the components meet. Stair treads must be abated in their entirety to the wall or balusters, or such surfaces may be covered. Friction surfaces may not be encapsulated.

(C) Only authorized persons shall perform abatement or containment activities. The following authorized persons may perform the following categories of abatement and containment activities:

- (1) Licensed deleaders may perform all abatement and containment activities in accordance with the requirements of 105 CMR 460.000 and 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations*.
- (2) Authorized persons and owners and owners' agents authorized to perform moderate-risk abatement may perform all moderate- and low-risk abatement and/or containment activities, subject to the requirement of 105 CMR 460.110(C)(3), in accordance with the requirements of 105 CMR 460.000 and 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations*.
- (3) An owner or owner's agent authorized to perform only low-risk abatement and/or containment activities may perform only the activities set out at 105 CMR 460.175(A), subject to the requirements of 105 CMR 460.110(C)(4), and in compliance with all the requirements of 105 CMR 460.000.

460.115: Approval of Encapsulants for the Containment of Lead-based Paint

Only those encapsulant products that meet the standards set forth in American Society of Testing and Materials (ASTM) standards, E 1795-04 (*Standard Specification for Non-reinforced Liquid Coating Encapsulation Products for Leaded Paint in Buildings*), E 1796-03 (*Standard Guide for Selection and Use of Liquid Coating Encapsulation Products for Leaded Paint in Buildings*), or E 1797 (*Standard Specification for Reinforced Liquid Coating Encapsulation Products for Leaded Paint in Buildings*) are approved. Use of approved encapsulants must conform to the State Program educational and training materials and in accordance with the manufacturer's directions.

460.120: Removing and Making Intact Lead-based Paint and Other Coatings

(A) Only the following methods are permissible for removal of lead-based paint, other coating, plaster or putty.

- (1) Wire brushing or wet scraping alone or with the aid of a non-flammable solvent or abrasive compound not containing methylene chloride. Dry scraping, while permitted, is generally not recommended because of its dust-generating character.
- (2) Hand sanding or machine sanding using a sander equipped with a HEPA filter vacuum to feather edges and prepare substrate for repainting or sealing.
- (3) Controlled, low-level heating element which produces a temperature not exceeding 1,000°F.

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- (4) Needle gun.
- (5) Dip-tank solvent (off-site).
- (6) For exterior use only: abrasive blasting using a wet-misting technique or simultaneous vacuuming system.
- (7) Any other method approved by the Director.

(B) All methods not listed in 105 CMR 460.120 or otherwise approved by the Director are prohibited for use in lead paint removal including, but not limited to:

- (1) Torch or flame burning.
- (2) Dry abrasive blasting using sand, grit or any particulate except as indicated in 105 CMR 460.120(A).
- (3) On-site use of methylene chloride or solutions containing methylene chloride.
- (4) Use of potassium or sodium hydroxide-based solutions, except in paste forms on interior surfaces.
- (5) Machine sanding, except as indicated in 105 CMR 460.120(A).

(C) For properties listed on the State Register of Historic Places, the following methods for removing lead-based paint, other coating, plaster or putty on site, usually in combination, may be appropriate depending on the substrate and its condition. Any method can cause damage to the substrate if used improperly. Testing of products and strict controls on workmanship are recommended. For removing lead-based paint, other coating, plaster or putty from a component or fixture which has been removed and taken off site, *see* 105 CMR 460.140.

- (1) Softening paint with heat guns, heat plates, or steam.
- (2) Stripping with solvent-based, non-caustic chemical solutions.
- (3) Scraping, without gouging woodwork.
- (4) Sanding, by hand, to finish.
- (5) Mechanical sanding with orbital sander with HEPA filter attachment, only as a finishing or smoothing tool.
- (6) Mechanical sanding with belt sander with HEPA filter attachment, only on a flat surface and by a skilled operator.
- (7) Abrasive blasting with sand or other gritty substances, when used with a wet misting technique or simultaneous vacuuming system, only in the following situations:
 - (a) Industrial interior masonry or wood surfaces without significant design, detailing, tooling, or finish.
 - (b) Cast and wrought iron and steel.
 - (c) Concrete.
 - (d) Delicate abrasive cleaning supervised by an architectural conservator.
- (8) Any other method approved by the Director to be used in properties listed on the *State Register of Historic Places*.

(D) All leaded materials and/or lead residues shall be disposed of in accordance with applicable regulations of the Department of Environmental Protection, all applicable federal regulations including, but not limited to, those of the Department of Housing and Urban Development and the Environmental Protection Agency, and all applicable local regulations and ordinances.

460.130: Containment Using Approved Coverings

Approved coverings used to contain lead-based paint, other coating, plaster or putty must be used on appropriate surfaces, have long term durability, and weather resistance when used on exterior surfaces, in accordance with State Program training materials.

460.135: Containment Using Encapsulants

(A) Before encapsulants may be applied, surfaces must be assessed to determine their suitability for encapsulation. The initial assessment may be done by an authorized person or a lead inspector, in accordance with procedures in training materials approved by the Director. However, the authorized person who will be applying the encapsulant must do an additional assessment, in accordance with State Program training materials.

(B) All authorized persons trained and authorized in encapsulant use in accordance with 105 CMR 460.175 may use encapsulants in accordance with 105 CMR 460.135.

460.140: Removing and Replacing Components and Fixtures

(A) Removed components shall be replaced with new components, components that have been stripped off-site by a licensed deleader, or components whose lead-based paint, other coating, plaster or putty has been removed offsite in a chemical diptank. Replacement components shall be installed unfinished. If finished components are installed, the lead inspector must retest them and record results on the reinspection report form approved by the Director. Replacement components which are determined upon retesting to contain dangerous levels of lead shall be abated or contained.

(B) Any debris that comes off components in the process of their removal must be cleaned up by the authorized person doing the removal work, in accordance with 105 CMR 460.160(D).

(C) Spaces once occupied by doors of egress from residential premises or dwelling units that have been removed for deleading purposes must be secured immediately.

(D) For properties listed on the *State Register of Historic Places*, removal of components by an authorized person for stripping offsite and then reinstallation, in accordance with 105 CMR 460.140(B) and 460.175, is recommended. Permanent removal and destruction of historic architectural features is not advised.

460.150: Notification of Abatement and/or Containment Activity

(A) Prior to starting deleading work for occupied rental units, the owner, owner's agent or authorized person notifying on behalf of the owner shall give a minimum of ten calendar days advance notice of the date abatement and/or containment activities, whether for full compliance or as part of interim control, will begin at his or her property. Notice shall be given on a form approved by the Director. If abatement and/or containment activities are not completed in a single continuous operation, notice must be given each time such activities are commenced. Notice must be given to the following individuals and agencies:

- (1) The occupants of the dwelling unit in which abatement and/or containment activities are to be performed.
- (2) All other occupants of the residential premises if abatement and/or containment activities will take place in interior common areas and/or the exterior of the residential premises.
- (3) The local board of health or code enforcement agency.
- (4) The Department of Labor Standards.
- (5) The Director.
- (6) The Massachusetts Historical Commission, if the residence is listed on the *State Register of Historic Places*.

(B) Prior to starting deleading work for vacant or owner-occupied single family homes or for work inside the unit of a vacant or owner-occupied unit of a multi-family, individuals licensed by the Department of Labor Standards must follow notification requirements set forth in 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations*. Authorized owners and owner's agents must submit the notification form, but do not need to wait before beginning the abatement or containment work. Notice must be given to the following individuals and agencies:

- (1) The local board of health or code enforcement agency.
- (2) The Department of Labor Standards.
- (3) The Director.
- (4) The Massachusetts Historical Commission, if the residence is listed on the *State Register of Historic Places*.

(C) Owners of property listed in the *State Register of Historic Places* shall notify the Massachusetts Historical Commission and, if applicable, their local historical commission, immediately upon receipt of an Order to Correct Violation(s) (*see* 105 CMR 460.750(B)(2)) or at least 30 days prior to initiating abatement and/or containment activities, whether taken for full compliance or as part of interim control, in situations where there is no Order to Correct Violation(s).

(D) If a private inspector or risk assessor performed the inspection and, if applicable, risk assessment, he or she shall be notified by the deleading contractor as far in advance as possible of the date for the reoccupancy reinspection, if applicable.

460.160: Safety Precautions and Cleanup Procedures in Areas Undergoing Deleading and Interim Control Work

(A) Occupancy.

(1) All occupants must be relocated from a dwelling unit while any abatement work that is not low-risk is taking place inside their unit, whether for full compliance or interim control. Household pets shall not be allowed to remain in the dwelling unit.

(2) Occupants may remain in a dwelling unit during:

(a) low-risk abatement and containment activities, with the exception of situations covered by 105 CMR 460.160(A)(3);

(b) exterior abatement activities;

(c) interior common area abatement and containment work, with the exception of situations covered by 105 CMR 460.160(A)(3); and

(d) any structural repair work and lead dust cleaning necessary for interim control.

However, occupants in these situations must stay out of the work area until those activities are completed, and the authorized person performing them has cleaned up at the end of each workday, in accordance with 105 CMR 460.160(D).

(3) Occupants must be out of the dwelling unit for the workday, but need not be relocated, during abatement and containment work in interior common areas in situations in which the occupants of the unit undergoing abatement and/or containment have no second standard means of egress into and out of the residential premises.

(4) Exceptions to 105 CMR 460.160(A)(1) through (3) may be granted pursuant to specified conditions established on a case-by-case basis by the State Program or code enforcement agency, upon a finding that such occupancy will not endanger or materially impair the health of residents.

(B) Deleaders and authorized persons shall adhere to all health and safety requirements specified in 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations*.

(C) Worksite Preparation.

(1) Abatement Worksite Preparation. Authorized persons performing abatement work other than low-risk abatement activities shall prepare the worksite in accordance with the requirements of 105 CMR 460.000, 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations* and procedures set out in training materials approved by the Director.

(2) Low-risk Abatement/Containment Worksite Preparation. Authorized persons who will be performing low-risk abatement and/or containment activities shall follow the procedures for protecting the dwelling unit and all belongings from lead contamination, described in training materials approved by the Director for low-risk abatement and containment.

(D) Clean-up.

(1) Final Clean-up. A final clean-up shall be performed by each authorized person doing abatement work that is not low-risk at the end of all his or her abatement work. Authorized persons shall wait at least two hours after completion of all their abatement work to perform final clean-up. Any low-risk abatement and/or containment activities, or structural repairs for interim control planned to take place after other abatement work shall begin only after the last final clean-up. Final clean-up shall at minimum consist of a HEPA-filtered vacuuming, followed by a wet mopping/sponging, and a second HEPA-filtered vacuuming, performed in accordance with training materials approved by the Director.

(2) Low-risk Abatement/Containment Clean-up. Authorized persons performing low-risk abatement and/or containment activities are responsible for clean-up of all work areas in which they worked, in accordance with training approved by the Director. Owners or owners' agents performing structural repairs for interim control must clean up all work areas in which they work, in accordance with educational materials for interim control approved by the Director.

(E) Relocated occupants of a dwelling unit or residential premises undergoing abatement for full compliance or interim control may resume occupancy, and new occupants may begin occupancy of a vacant dwelling unit or residential premises undergoing abatement for full compliance or interim control, upon the determination of a lead inspector or risk assessor that the dwelling unit has successfully met the conditions of a reoccupancy reinspection in compliance with 105 CMR 460.760(A).

460.170: Lead Dust Monitoring

(A) Lead inspectors and code enforcement lead determination inspectors shall take dust samples in accordance with a lead dust monitoring protocol issued by the Director. Dust lead levels must be measured by a laboratory with appropriate National Lead Laboratory Accreditation Program (NLLAP) certification or which at minimum participates in the appropriate Environmental Lead Proficiency Analytical Testing (ELPAT) program.

(B) The lead dust monitoring protocol shall be deemed to have been satisfied if:

- (1) Floor lead dust levels are below 40 micrograms per square foot ($\mu\text{g}/\text{ft}^2$).
- (2) Windowsill lead dust levels are below 250 micrograms per square foot.
- (3) Exterior windowsill/window well lead dust levels are below 400 micrograms per square foot.

(C) If, after deleading and three cleanings, dust levels exceed the standards of 105 CMR 460.170(B), the Director may require the owner to hire a licensed deleader to perform a final clean-up in accordance with 105 CMR 460.160(D)(1), if a licensed deleader was not responsible for the final clean-up.

(D) The Director may require the owner to have an authorized person seal the floors and/or other surfaces with a sealant, as specified in the lead dust monitoring protocol, if dust lead levels exceed the standards of 105 CMR 460.170(B).

460.175: Low- and Moderate-risk Abatement and Containment

(A) (1) Following inspection of a premises by a lead inspector, the following low-risk abatement and/or containment activities may be performed on the owner's property by authorized persons:

- (a) Applying encapsulants over suitable surfaces;
- (b) Removing doors, cabinet doors, windows on hinges (such as wooden storms) and shutters by disengaging hinge pins or removing hinges;
- (c) Covering surfaces with approved coverings;
- (d) Capping baseboards; and
- (e) Removing cabinet drawers and shelves which are not glued, nailed or otherwise affixed to supports.

(2) Most low-risk abatement and containment activities may be performed before non-low-risk abatement work begins, or after such work is complete, including final clean-up. Replacement of doors must be completed before reoccupancy reinspection. Surfaces identified with loose lead-based paint, other coating, plaster or putty at initial inspection that will be contained with approved coverings must either be:

- (a) completely covered prior to reoccupancy reinspection; or
- (b) made intact by an authorized person prior to reoccupancy reinspection, in which case covering may occur after reoccupancy reinspection.

(3) Encapsulants may be applied only after a reoccupancy reinspection, or, if only low-risk abatement and containment activities will be performed, after all other low-risk abatement and containment work is completed.

(B) (1) Following inspection of a premises by a lead inspector, the following moderate-risk abatement activities may be performed by authorized persons:

- (a) Removing surfaces containing dangerous levels of lead, with the exception of walls and ceilings, and provided such removal is not accomplished by demolition.
- (b) Making small amounts of loose lead-based paint, other coating, plaster or putty intact, as defined in the following manner:

1. Interior Rooms, Hallways or Common Areas. Making intact up to two square feet, but no more, of loose lead-based paint, other coating, plaster or putty on surfaces that are not moveable impact surfaces per room, hallway or common area. Any small areas of loose lead-based paint, other coating, plaster or putty on such eligible surfaces, which the inspector has not ruled out as being of greater dimension than two square feet, in accordance with 105 CMR 460.730(C), must be measured by the authorized person who wishes to make these areas intact. Such measurements shall be taken in accordance with the procedure set out in instructional materials approved by the Director.

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2. Exterior of Residential Premises, Including Any Other Structures Within the Same Lot Line. Making intact up to 20 square feet, but no more, of exterior loose lead-based paint, other coating, plaster or putty on surfaces that are not moveable impact surfaces. Any areas of loose lead-based paint, other coating, plaster or putty on such eligible surfaces, which the inspector has not ruled out as being of greater dimension than 20 square feet, in accordance with 105 CMR 460.730(C), must be measured by the authorized person who wishes to make these areas intact. Such measurements shall be taken in accordance with the procedure set out in instructional materials approved by the Director.

(2) Timing. While a deleader is performing work, no one other than those authorized by 454 CMR 22.12(2)(a)5.: *Restriction of Access* shall be permitted on the worksite until the deleader completes final clean-up in accordance with 105 CMR 460.160(D)(1), except as permitted in policies approved by the Director or the Department of Standards.

(C) Licensed deleaders must perform all abatement and containment activities not listed in 105 CMR 460.175(A) or (B).

(D) All authorized persons who will be performing low- or moderate-risk abatement and/or containment activities, shall do such work in compliance with the provisions of 105 CMR 460.000, shall undergo training, and in the case of owners and owners' agents, take a course of instruction. The Director shall establish and revise as necessary the respective content and requirements for the following: low-risk abatement and/or containment instruction for owners and owners' agents; encapsulation instruction for owners, owners' agents, authorized persons and deleaders who did not receive encapsulation training as part of their deleader training; and moderate-risk abatement instruction for owners and owners' agents. All required instruction for owners and owners' agents shall include passing an examination issued or approved by the State Program. Deleaders and authorized persons must be trained and licensed pursuant to, and adhere to the additional requirements of, 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations*.

(E) Authorization to Perform Low-and-moderate-risk Abatement or Containment. An owner or owner's agent must submit to the State Program proof that he or she has successfully completed the instruction required by the Director pursuant to 105 CMR 460.175(D), and in the case of an owner's agent, has attained 18 years of age. The State Program shall then issue an authorization to the owner or owner's agent documenting that he or she has met these requirements and is thereby authorized to perform low- and/or moderate-risk abatement or containment, as applicable.

(F) Any abatement and/or containment activities performed by an authorized owner and/or owner's agent that exceed the scope of activities he or she is authorized to perform by 105 CMR 460.175, or which are undertaken by an owner and/or owner's agent who has not been authorized as required by 105 CMR 460.175(E), shall be considered unauthorized deleading under 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations* and 105 CMR 460.000 and subject to all the penalties thereof. Any abatement and/or containment activities performed by a licensed authorized person that exceed the scope of activities authorized by 105 CMR 460.175 and 454 CMR 22.00, or which are undertaken by a renovator who is not licensed to perform moderate risk deleading, shall be considered unauthorized deleading under 454 CMR 22.00 and 105 CMR 460.000 and subject to all the penalties thereof.

460.180: Owners in Violation Subject to Damages

(A) Compensatory Damages. Pursuant to M.G.L. c. 111, § 199, the owner of any dwelling unit or residential premises shall be liable for all damages to a child younger than six years old who is lead poisoned as defined at 105 CMR 460.020 caused by his or her failure to comply with M.G.L. c. 111, §§ 194, 196(a) or 197 provided that:

(1) an owner shall not be liable for a period of 90 days after acquiring legal title to a dwelling unit or residential premises in which a child younger than six years old resides if the owner complies with M.G.L. c. 111, § 197(b) or § 197(c) within 90 days after acquiring legal title to the dwelling unit or residential premises; and

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(2) a bank, lending institution, mortgage company or mortgagee shall not be liable for a period of 90 days after taking actual possession and acquiring legal title to a dwelling unit or residential premises in which a child younger than six years old resides if the mortgagee either brings the dwelling unit or residential premises into compliance with M.G.L. c. 111, § 197(b) or § 197(c) or transfers the residential premises in accordance with 105 CMR 460.720 within 90 days of acquiring legal title; and

(3) an owner of a dwelling unit or residential premises in which a child younger than six years old resides shall not be strictly liable for lead poisoning damages during the period a Letter of Full Compliance or a Letter of Interim Control is in effect for said dwelling unit or residential premises, including any period during which a Letter of Interim Control is in effect that the owner has been notified, pursuant to 105 CMR 460.105(G) to take certain measures to restore the premises or unit to the standard of the Letter of Interim Control; and

(4) an owner of a dwelling unit or residential premises in which a child younger than six years old resides and for which a Letter of Full Compliance or a Letter of Interim Control is in effect takes reasonable care to ensure that the dwelling unit or residential premises remains in compliance with M.G.L. c. 111, § 197(b) or § 197(c), as applicable. An owner shall be liable for all damages caused by his or her breach of that duty of reasonable care.

(B) Punitive Damages. Pursuant to M.G.L. c. 111, § 199, the owner of any dwelling unit or residential premises who is notified of or receives an order to correct a dangerous level of lead in paint, plaster, or other structural material upon his or her premises pursuant to M.G.L. c. 111, § 194, and who willfully fails to satisfactorily correct or remove said dangerous conditions, shall in addition to compensatory damages to a lead poisoned child as defined at 105 CMR 460.020, be subject to punitive damages, which shall be treble the actual damages found, provided that:

(1) an owner of a dwelling unit or residential premises in which a child younger than six years old resides shall not be subject to punitive damages for a period of 90 days after acquiring legal title to the dwelling unit or residential premises if the owner complies with M.G.L. c. 111, § 197(b) or § 197(c) within 90 days after acquiring legal title to the dwelling unit or residential premises;

(2) a bank, lending institution, mortgage company or mortgagee shall not be subject to punitive damages for a period of 90 days after acquiring legal title to a dwelling unit or residential premises in which a child younger than six years old resides if the mortgagee either brings the dwelling unit or residential premises into compliance with M.G.L. c. 111, § 197(b) or § 197(c) or transfers the residential premises in accordance with 105 CMR 460.720 within 90 days of acquiring legal title.

460.190: Punishable Violations

(A) The Director and code enforcement agencies may, pursuant to M.G.L. c. 111, § 198, treat violations of M.G.L. c. 111, §§ 196 or 197 as State Sanitary Code violations to which the State Sanitary Code applies including, but not limited to, the following provisions:

(1) Any person who shall fail to comply with any order shall upon conviction be fined not less than ten nor more than \$500.00. Each day's failure to comply with an order shall constitute a separate violation.

(2) Any person who shall violate any provision for which penalty is not otherwise provided in any of the General Laws or in any other provision of the Sanitary Code shall upon conviction be fined not less than ten nor more than \$500.00.

(B) Landlords who threaten or take reprisals against a tenant for exercising his or her rights under M.G.L. c. 111, §§ 189A through 199B are liable for damages under M.G.L. c. 186, § 18 and M.G.L. c. 93A.

(C) Landlords refusing to rent to, or renew the lease of, or evicting persons or families with children younger than six years old because a residential premises or dwelling unit does or may contain dangerous levels of lead in violation of M.G.L. c. 111, §§ 189A through 199B or because the families have exercised any rights under M.G.L. c. 111, §§ 189A through 199B, or 105 CMR 460.000, are in violation of M.G.L. c. 111, § 199A and c. 151B, § 4. Such evictions also constitute violations of M.G.L. c. 93A, § 2 and c. 186, § 18.

460.200: Acts Made Illegal under M.G.L. c. 111, § 196

Pursuant to M.G.L. c. 111, § 196:

(A) No person shall apply or cause to be applied any lead-based paint, glaze or other substance to any toy, furniture, cooking, drinking, or eating utensil, or interior or exterior surface or fixture of any dwelling.

(B) No person shall sell, expose for sale, deliver, give away or possess with intent to sell, deliver or give away any toy, furniture, cooking, drinking or eating utensil to which any lead-based paint, glaze or other substance has been applied.

(C) No person shall sell, expose for sale, deliver, give away or possess with intent to sell, deliver or give away, any lead-based paint, glaze or other surface covering, except as exempted by the Director, pursuant to 105 CMR 460.300.

460.210: M.G.L. c. 111, § 196(a) Offenses

Pursuant to M.G.L. c. 111, § 196(a), any person who violates the provisions of 105 CMR 460.200(A) or (B) shall be punished by a fine of not less than \$100.00 nor more than \$500.00 for each violation. Each article, fixture or surface to which a lead-based substance is applied shall constitute a separate violation. Any person who willfully violates the provisions of 105 CMR 460.200(A) or (B) shall be punished by imprisonment for not more than three months for each violation.

460.220: M.G.L. c. 111, § 196(b) Offenses

Pursuant to M.G.L. c. 111, § 196(b), any person who violates the provisions of 105 CMR 460.200(C) shall be punished by a fine of not less than \$200.00 nor more than \$500.00 for each violation. Each can, bottle or other container of any prohibited substance shall constitute a separate violation. Any person who willfully violates the provisions of 105 CMR 460.200(C) shall be punished by imprisonment for not more than six months for each violation.

460.230: Civil Damages under M.G.L. c. 111, § 196(a)

In addition to the penalties set forth in 105 CMR 460.210 and 460.220, the owner of any residential property shall be liable for all damages caused by his or her violation of M.G.L. c. 111, § 196(a).

460.240: Embargo of Lead-based Articles and Substances

Pursuant to M.G.L. c. 111, §§ 196(a) and (b), the Director may embargo any article or substance in violation of either M.G.L. c. 111, §§ 196(a) or (b), in the manner provided by M.G.L. c. 94, § 189A.

460.300: Exemptions Available for Certain Applications and Products

(A) The following lead-based paints shall be exempted by the Director from the provisions of M.G.L. c. 111, § 196(b) [105 CMR 460.200(C)], upon compliance with the terms and conditions set forth in M.G.L. c. 111, § 196(b):

- (1) lead-based paints for application to artists' canvases;
- (2) touch-up paints for metal machinery, appliances, vehicles, or water craft, when sold in containers small enough to preclude any reasonable risk of use in buildings or on furniture;
- (3) lead primers for applications to small craft hulls, when sold at retail only through boat yards, marinas, ship chandleries and businesses dealing in marine sales;
- (4) finish paints intended for factory application upon manufactured products not intended for use in homes or in other structures, such as schools or day care centers, where children commonly spend periods of over ½ hour;
- (5) lead primers for structural metals not exposed to occupant contact, vehicles, and watercraft;
- (6) refinishing paints for automotive, agricultural, and industrial equipment;
- (7) paints for industrial and commercial building maintenance, including traffic and safety marking paints;

460.300: continued

(8) graphic art paints marketed for application to billboards, road signs, and other similar uses.

(B) Lead-based glazes, enamels and frits are exempted by the Director from the provisions of M.G.L. c. 111, § 196(b) provided the following conditions are met:

- (1) Lead-based glazes, enamels, and/or frits shall not be sold to individuals younger than 18 years old.
- (2) Lead-based glazes, enamels, and/or frits shall not be sold for use in settings where children younger than 18 years old, or mentally handicapped or impaired individuals may use them or be exposed to their use. Such settings include, but are not limited to, schools, nursing homes, camps, recreational centers, churches, *etc.*
- (3) Lead-based glazes, enamels, and/or frits shall not be sold to institutions or organizations working with or serving the mentally handicapped.
- (4) Labeling of lead-based glazes, enamels, and frits shall meet the specifications of the Director.
- (5) Manufacturers and distributors shall develop and distribute educational materials for the safe use of lead-based glazes, enamels, and frits as specified by the Director.

460.400: Training and Licensure of Lead Inspectors and Risk Assessors

(A) Only those individuals duly licensed pursuant to 105 CMR 460.000 may conduct lead inspections or lead determinations, issue Letters of Full Compliance or engage in any other activity required by 105 CMR 460.000 to be performed by a lead inspector. Only those licensed inspectors duly licensed as risk assessors pursuant to 105 CMR 460.000 may perform risk assessments, issue Letters of Interim Control or engage in any other activity required by 105 CMR 460.000 to be performed by a risk assessor.

(B) All lead inspectors, master inspectors, and risk assessors shall comply with the following conditions, as applicable:

- (1) Performance of all lead inspections, determinations, risk assessments, reinspections, lead dust sampling, post-compliance assessments and surface assessments, in compliance with M.G.L. c. 111, §§ 189A through 199B, 105 CMR 460.000 and policies established by the Director.
- (2) Use of a lead inspection and risk assessment report format approved by the State Program.
- (3) Maintenance of a file of all documentation pertaining to the performance of lead inspections, determinations, risk assessments, reinspections, lead dust sampling, post-compliance assessments and surface assessments conducted, with copies of the reports and results thereof, required to be kept by the Director. Such files must be maintained indefinitely and disposed of only upon approval of, and under conditions stipulated by, the Director. The Director shall be afforded access to the files or information contained therein upon request.
- (4) Compilation, maintenance and submission to the Director of such statistical information as required by the Director.
- (5) Distribution to clients of such informational or educational material as may be prescribed by the Director.
- (6) If sodium sulfide is used as the method for detecting lead paint, only sodium sulfide obtained from or approved by the State Program may be used.
- (7) Master inspectors shall be responsible for supervising the field apprenticeship required by 105 CMR 460.400(D) for provisional lead inspectors. When performing this role, they shall be responsible for ensuring that all requirements of 105 CMR 460.000 are met, and for correcting any errors or omissions made during the lead inspection or reinspection conducted as part of the field apprenticeship.

(C) Lead Determinations. Lead inspectors may make determinations of the presence or absence of dangerous levels of lead on a limited number of selected surfaces in a dwelling unit or residential premises, provided that the results of such determinations are not represented as a lead inspection and are accompanied by an explicit written disclaimer that such determinations do not constitute a lead inspection. A comprehensive initial inspection must be performed prior to surfaces being abated or contained.

460.400: continued

(D) The Director shall establish and revise as necessary the content and requirements for lead inspector and risk assessor training.

(1) Training shall include a field apprenticeship and classroom instruction. The State Program shall charge a fee for lead inspector training, as established by the Secretary of Administration and Finance, when the State Program conducts such training.

(2) Any lead inspector operating an X-ray fluorescence analyzer must also receive training from the manufacturer of the instrument and hold the appropriate license from the Department of Public Health's Radiation Control Program.

(3) Application for licensure as a lead inspector may be made following the successful completion of a training program conducted by the State Program or a certified lead inspector training provider, including attainment of an acceptable grade on an examination issued or approved by the State Program, and the field apprenticeship.

(4) In order to be eligible to become a risk assessor, lead inspectors shall have completed a minimum of 25 inspections and reinspections, as a lead inspector within the two years prior to application as a risk assessor or have received a written waiver from the Director on the basis of other experience.

(E) Procedure for Obtaining a License or Master Inspector Status. An applicant for licensure as a lead inspector or risk assessor, or to hold master inspector status, must submit to the State Program the following:

(1) A completed application form prescribed by the Director;

(2) Proof that the applicant has successfully completed the appropriate training required by 105 CMR 460.400(D);

(3) Proof that the applicant using an X-ray fluorescence analyzer has received training from the manufacturer of the instrument and holds the appropriate license from the Department of Public Health's Radiation Control Program;

(4) Proof that the applicant is 18 years of age or older;

(5) For applicants to hold master inspector status, proof that the inspector has also performed a minimum of 75 lead inspections and reinspections, at least 50 of which must be inspections, as a licensed lead inspector, and that the inspector has access to an X-ray fluorescence analyzer;

(6) For obtaining licensure, a check in the amount of the entire annual fee as determined by the Secretary of Administration and Finance. The fee payment is not refundable should the Director deny the license for reasons specified in 105 CMR 460.400(H).

(F)(1) Lead inspector and risk assessor licenses shall be valid for one year. Application for renewal shall be made at least 30 days prior to the expiration of a current license and such application, if complete, shall have the effect of a license until the State Program acts upon the renewal application. The Director may require annual continuing education as a condition for licensure. Applicants for licensure shall pay a fee in an amount determined annually by the Secretary of Administration and Finance.

(2) Former lead inspectors and risk assessors who have allowed their licenses to lapse for one year or less and who wish to be relicensed must take any mandatory refresher trainings they missed during the period they were not licensed. If such refresher trainings are no longer available, they must take the full training course for lead inspectors or risk assessors, as appropriate. Former lead inspectors and risk assessors who have allowed their licenses to lapse for a period of more than one year and who wish to be relicensed must take the full lead inspector or risk assessor training course, as appropriate, and complete an abbreviated field apprenticeship, in accordance with policies approved by the Director.

(G) The Director shall investigate all complaints regarding, and periodically monitor the quality of, lead determinations, lead inspections or risk assessments, reinspections or post compliance assessments of residential premises, dwelling units and common areas, day care facilities or schools. Investigations of complaints may lead to imposition of penalties on an inspector or risk assessor, including but not limited to, letters of warning, probationary period, required training, or suspension, revocation, denial of or refusal to renew a license or master lead inspector status.

460.400: continued

(H) Denial, Refusal to Renew, Suspension or Revocation of a License or of Master Inspector Status. The Director may deny, refuse to renew, suspend or revoke a license or status as a master inspector sought or issued under 105 CMR 460.000 upon a finding of sufficient cause. Applicants for licensure or master inspector status shall be advised by the Director in writing of the denial and reasons therefor. Applicants shall have the right to appeal the Director's determination in accordance with M.G.L. c. 30A by submitting a written request for such hearing with 21 days of receiving notice of such denial. License holders and holders of master inspector status shall be advised by the Director in writing of the proposed suspension, revocation or refusal to renew the license or master inspector status and the reasons therefor. In the case of suspension, license holders and holders of master inspector status shall also be advised of the intended duration of suspension and any conditions that must be met before license or master inspector status reinstatement. License holders or holders of master inspector status shall have the right to a hearing in accordance with M.G.L. c. 30A on such proposed suspension, revocation or refusal to renew the license or master inspector status by submitting a written request to the Director within 21 days of receiving notification of the intended suspension, revocation or refusal to renew. Any one of the following reasons shall be sufficient cause:

- (1) Failure to submit the information or documentation required for licensure under 105 CMR 460.000.
- (2) Failure to pay licensure fees.
- (3) Submission of an application containing incorrect, false or misleading information.
- (4) Violation of any provision of M.G.L. c. 111, §§ 189A through 199B, 105 CMR 460.000 or 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations*.
- (5) Engaging in fraudulent or deceptive practice.
- (6) Failure to successfully complete required training, retraining or continuing education.
- (7) For master inspectors, improperly supervising the field apprenticeship of provisional lead inspectors, including supervising such field apprenticeships while their master status has been suspended.
- (8) Knowingly aiding or abetting a person in performing lead inspection, abatement or containment activities requiring a particular licensure, certification or authorization they do not hold.
- (9) The license holder has been convicted of, pleaded guilty to, or has, in a judicial proceeding, admitted facts sufficient for a finding that he or she is guilty of, any criminal violation in connection with his or her activity as a lead inspector.
- (10) The applicant or license holder has been disciplined in another jurisdiction in any way by the applicable licensing authority for acts or conduct relating directly to his or her fitness to be licensed as a lead inspector.
- (11) Any other cause which the Director determines to be of such serious and compelling nature as to warrant suspension of, revocation of, or refusal to renew a license.

(I) Suspension Prior to Hearing. The Director may summarily suspend the license of an inspector or a risk assessor if he determines that the license holder is an immediate threat to the public health or safety. Upon summary suspension of a license, the Director shall give the license holder written notice thereof, stating the reason(s) for the suspension. The summary suspension shall take effect immediately upon issuance of the notice. The Director shall provide an opportunity for a prompt hearing pursuant to the provisions of M.G.L. c. 30A after the issuance of a notice of summary suspension. The Director may also summarily suspend the license of an inspector or risk assessor for failure to complete required retraining or continuing education, and such summary suspension shall remain in effect until the license holder successfully complete such retraining or continuing education.

(J) Refusal to Renew Based on Expiration of a License. If a lead inspector or risk assessor has allowed his or her license to expire and/or has failed to renew his or her license in accordance with the requirements of 105 CMR 460.000, the Director may, at his or her discretion:

- (1) Inform the applicant or license holder that his or her license has expired;
- (2) Offer the applicant or license holder an opportunity to submit a complete and current application within two weeks, or within such other time period as the Director may designate; and
- (3) Refuse to renew the license of the applicant or license holder without a hearing, unless the applicant or license holder submits a current and complete application within the time allowed.

460.400: continued

A lead inspector may not conduct lead determinations, lead inspections, issue letters of compliance or perform any other activities requiring a lead inspector's license under 105 CMR 460.000 after his or her license has expired until a new license has been issued. A risk assessor may not conduct risk assessments, or any of the functions of a risk assessor, after his or her risk assessor license has expired until a new license has been issued.

(K) Denial, Revocation, Suspension or Refusal to Renew a License Based on Failure to File Reports or Pay Fines. No hearing shall be afforded where denial, revocation, suspension or refusal to renew a license is based solely upon the failure of the applicant or license holder to file timely reports or applications, or to pay lawfully prescribed fees, pursuant to M.G.L. c. 30A, § 13(3).

(L) Administrative and Judicial Review. The recommended decision of a Hearing Officer in any adjudicatory proceeding conducted under 105 CMR 460.400 shall be reviewed by the Commissioner. The Commissioner's decision upon this review shall constitute a final agency decision in an adjudicatory proceeding subject to judicial review pursuant to M.G.L. c. 30A, § 14. Any applicant or license holder who fails to exercise his or her right to an adjudicatory proceeding under 105 CMR 460.400 waives both his or her right to administrative review by the Commissioner and his or her right to judicial review pursuant to M.G.L. c. 30A, § 14.

(M) Only code enforcement inspectors who are employees of the State Program, its designated representatives, local boards of health or code enforcement agencies are authorized to conduct lead inspections, risk assessments, and post-compliance assessments of dwelling units of lead poisoned children, and reinspections of dwelling units in which a lead poisoned child resided at the time of the initial lead inspection or post-compliance assessment. The Director may grant exceptions to this requirement on a case-by-case basis.

(N) All inspectors are required to provide notice of inspection, reinspection, determination and post-compliance assessment results, and Letters of Full Compliance as specified in 105 CMR 460.750. All risk assessors are required to provide notice of risk assessment and reinspection results, and Letters of Interim Control, as specified in 105 CMR 460.750.

(O) As a condition of licensure, inspectors and risk assessors shall agree to testify in enforcement proceedings initiated on the basis of the results of inspections and/or reinspections or risk assessments they perform.

(P) Inspectors and risk assessors shall not conduct lead inspections, reinspections, determinations, risk assessments or post-compliance assessments, or assess surfaces for encapsulation purposes in any circumstance in which they have a financial or other conflict of interest. A conflict of interest shall include, but not be limited to the following:

- (1) any situation in which an inspector or risk assessor or any member of the inspector's or risk assessor's family has any beneficial interest in the property or expects or intends to acquire a beneficial interest in the property including, but not limited to, an ownership interest or a commission on the sale of the property;
- (2) any situation in which the inspector, the risk assessor or the business entity for which he or she works performs or has contracted to perform in whole or in part the deleading work on the residential premises or dwelling unit;
- (3) any situation in which any member of the inspector's or risk assessor's family or a business entity owned by or employing the family member of the inspector or risk assessor performs or has contracted to perform the deleading work on the residential premises or dwelling unit; and
- (4) any situation in which the inspector or risk assessor has been paid or promised payment, or has received or promised any other form of compensation, by a deleading contractor.

(Q) Lead inspectors and risk assessors who are certified training providers shall not conduct reinspections in situations in which they have trained the owner or owner's agent who performed the abatement and/or containment work.

460.410: Certification of Training Providers

- (A) Applicants for certification as training providers shall meet the application requirements and accreditation standards and criteria established by the Director.
- (B) Applications shall include submission of resumes of faculty, course curricula and agenda, training materials, manuals, inventories of equipment, examination materials and methodology, student/teacher ratios, and such other information or materials as may be required by the Director. Applicants shall identify and describe facilities for both classroom and field practicum training.
- (C) The Director shall periodically monitor the quality of instruction offered by certified training providers and shall be afforded the opportunity to do so upon request.
- (D) The Director shall investigate all complaints concerning the quality of instruction offered by certified training providers. The Director may impose penalties on certified training providers who fail to meet or maintain a level of instruction adequate to fully train students in the requirements of M.G.L. c. 111, §§189A through 199B, 105 CMR 460.000 and 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations*. Penalties include, but are not limited to, letters of warning, probation, suspension or revocation of certification.
- (E) Certified training providers shall maintain records of all material required as part of the application process, student applications, course attendance, examinations and grades for a period of six years. Upon the conclusion of each course, the certified training provider shall send a list of all successful graduates, with attendance records, to the Director within 30 days of the conclusion of the course.
- (F) Certified training providers shall revise the course curriculum to include new or additional topics within reasonable timelines as specified by the Director.

460.430: Monitoring of Lead Inspectors, Risk Assessors, Deleaders and Authorized Persons

- (A) The Director shall establish a program to monitor and audit the quality of work of lead inspectors, risk assessors, deleaders and authorized persons. Discovery of improper work by deleaders or authorized persons shall be referred to the Department of Labor Standards for appropriate action.
- (B) A representative of the Director, the Department of Labor Standards or a board of health or local code enforcement agency may issue an immediate cease-work order to any authorized person who violates the terms or conditions of his or her license or certification, of M.G.L. c. 111, §§ 197 or 197B, or 105 CMR 460.000 or 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations*, if such violation will endanger or materially impair the health or well-being of any occupant of a residential premises, any lead inspector, risk assessor, or authorized person, or any person employed in performing renovations in a manner that disturbs lead-based paint, other coating, plaster or putty.
- (C) Any lead inspector, risk assessor, deleader or authorized person who violates the terms or conditions of his or her license or certification, or any law or regulation of the Commonwealth concerning such license or certification shall be subject to a fine of not less than \$500 nor more than \$1,500 for each offense. The Director, the Department of Labor Standards or a local code enforcement agency may file a written complaint with the district court in the jurisdiction in which the violation occurred. Punishment by fine may be in addition to the suspension or revocation of such license or certification.
- (D) The names of persons conducting lead inspections, risk assessments or abatement and containment work who are not licensed or certified pursuant to 105 CMR 460.400 or 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations*, with the exception of an authorized owner or owner's agent performing low- or moderate-risk abatement and/or containment activities pursuant to 105 CMR 460.175, shall be referred to the appropriate enforcement agencies.

460.500: Issuance of Official Reports

Code enforcement inspectors may conduct inspections, tests, sampling and measurements and issue official reports for the purpose of recording the presence or absence of lead hazards or other violations of 105 CMR 460.000. Code enforcement lead determination inspectors may conduct tests, sampling and measurements and issue official reports for the purpose of recording the presence or absence of lead violations as part of the lead determination enforcement procedure. Risk assessors may conduct inspections, tests, sampling, measurements and risk assessments, and issue official reports for the purpose of identifying the presence or absence of lead hazards or other violations of 105 CMR 460.000, as well as identifying and evaluating the urgent lead hazards in a dwelling unit or residential premises, and determining the interim controls necessary to address those hazards. In addition, laboratories with appropriate National Lead Laboratory Accreditation Program (NLLAP) certification, or which at minimum participate in the appropriate Environmental Lead Proficiency Analytical Testing (ELPAT) program may issue official reports recording the levels of lead in dust and paint, other coating, plaster or putty samples.

460.510: Approved Testing Methodology

When used to determine compliance with M.G.L. c. 111, §§ 196(a) or (b) or 197, official reports under 105 CMR 460.500 shall be based upon methods of measurement specified in 105 CMR 460.000. However, in no case shall a lead inspector, risk assessor or code enforcement lead determination inspector use the atomic absorption spectrophotometry test, except with prior approval of the Director.

460.520: Authorized Test Personnel

Tests and measurements under 105 CMR 460.500 shall be performed by lead inspectors, code enforcement lead determination inspectors, risk assessors or employees of laboratories with appropriate National Lead Laboratory Accreditation Program (NLLAP) certification, or which at minimum participate in the appropriate Environmental Lead Proficiency Analytical Testing (ELPAT) program.

460.530: Reports of the State Laboratory, Boards of Health, Code Enforcement Agencies or Housing Inspection Agencies as *Prima Facie* Evidence

When certified as a true copy by the custodian of such records, a copy of any report of the State Laboratory or State Program or any division thereof, or of any local board of health, code enforcement agency, or housing inspection agency duly trained and authorized by the Director to implement the provisions of M.G.L. c. 111, §§ 189A through 199B and to conduct inspections for the presence of dangerous levels of lead or lead determinations or risk assessments shall be admissible in any judicial proceeding without further authentication by either the laboratory or by the agency for which said report was made and shall be *prima facie* evidence of the facts stated therein.

460.600: Concurrent Enforcement Authority, Application of the State Sanitary Code and Emergency Matters, Pursuant to M.G.L. c. 111, § 198

(A) The Director and local boards of health or other code enforcement agencies have concurrent authority to enforce M.G.L. c. 111, §§ 196 and 197.

(B) These enforcement authorities may utilize all powers and authority provided to local boards of health by M.G.L. c. 111, §§ 127A through 127K to enforce M.G.L. c. 111, §§ 196 and 197.

(C) Any violation of M.G.L. c. 111, §§ 196 and 197 may be treated as a violation of the State Sanitary Code. All procedures and remedies applicable to Sanitary Code violations shall be available to correct, deter or punish violation of said sections.

(D) Violations of M.G.L. c. 111, §§ 196 and 197 are emergency matters and shall be given preference by enforcing agencies and speedy hearings by housing, district and superior courts.

460.700: Enforcement by Code Enforcement Agencies

(A) Responsibilities Generally. Pursuant to M.G.L. c. 111, §§ 194 and 198, local code enforcement agencies have the responsibility for making inspections of residential premises and other buildings which children utilize, and for enforcing the lead poisoning prevention laws, consistent with their sanitary code inspection and enforcement responsibilities under M.G.L. c. 111, §§ 127A through 127K.

(B) Inspection Responsibility. A local code enforcement agency must inspect for lead paint whenever it receives a signed parental request for a lead inspection from an occupant or conducts an inspection for violations of the State Sanitary Code in a dwelling unit or residential premises constructed before 1978, where a child younger than six years old resides. If the inspector is not certain whether or not a residence was constructed before 1978, the inspector shall check the relevant building permit at the city or town building department. If the inspector verifies that the dwelling was constructed in 1978 or later, the inspector shall nevertheless determine whether any other structures within the same lot line were constructed before 1978, and if so, inspect them for lead paint. The obligation to inspect for lead paint must be fulfilled in one of the following two ways:

(1) A lead inspection shall be conducted at the time of the Sanitary Code inspection, or the person conducting the Sanitary Code inspection shall ensure that a separate lead inspection by a code enforcement lead inspector is conducted within the timelines specified in the Sanitary Code; or

(2) In *lieu* of a complete lead inspection by a code enforcement inspector, the lead determination enforcement procedure may be followed at the time of the Sanitary Code inspection and in all circumstances covered by 105 CMR 460.710, except 105 CMR 460.710(A). A lead determination report format approved by the Director shall be used to record test results. The lead determination enforcement procedure shall be performed in accordance with guidance approved by the Director. If the lead determination enforcement procedure identifies at least one surface with a lead violation, the code enforcement agency shall issue an Order to Correct Violation(s) in accordance with the procedures set out in 105 CMR 460.750(B), stating the enforcement deadlines set out in 105 CMR 460.751(C), or in post-compliance cases, the deadlines set out in 105 CMR 460.760(E). Said Order to Correct Violation(s) shall be enforced through judicial proceedings, in accordance with 105 CMR 460.800.

(C) Emergency Matters. Violations of M.G.L. c. 111, §§ 196 and 197 produce immediate danger of lead poisoning and constitute emergency matters pursuant to M.G.L. c. 111, § 198 and the State Sanitary Code. Local code enforcement agencies shall treat them as emergency matters, giving such violations preference over all other violations, except other emergency matters, and shall follow the time limitations in 105 CMR 460.750, 460.751 and 460.800.

460.710: Scope of Inspection Responsibility and Inspection Priorities

The State Program, its agents, and agents of local boards of health and other code enforcement agencies are obligated to inspect for lead violations in a dwelling unit, residential premises, and structures within the same lot line that were constructed before 1978, in which a child younger than six years old lives.

The State Program, its agents, and agents of local boards of health and other code enforcement agencies may use the lead determination enforcement procedure, in *lieu* of a lead inspection, in all cases except those that fall under 105 CMR 460.710(A). All inspections or lead determination enforcement procedures shall be carried out according to the following:

(A) Dwelling units in which a child lives who is determined to be lead poisoned. Such dwelling units shall be inspected as soon as possible by code enforcement inspectors from the State Program, a local lead poisoning prevention program or board of health. The State Program's case management staff shall prioritize such inspections.

(B) Dwelling units in which a child with a blood lead level of concern resides. The State Program's case management staff shall prioritize such inspections.

(C) Dwelling units in which a child younger than six years old lives for which an inspection is requested by the occupant.

460.720: Property Transfer Lead Notification and Disclosure

(A) Prior to the signing of a purchase and sale agreement or lease with an option to purchase, all persons selling or leasing with an option to purchase any residential premises constructed prior to 1978 shall provide a copy of the property transfer notification issued by the Director to the prospective purchaser or lessee-prospective purchaser. In addition, at this time, the seller or lessor-prospective seller shall provide to the prospective purchaser or lessee-prospective purchaser all information and documentation about lead hazards known to the seller, lessor-prospective seller or real estate agent, including but not limited to:

- (1) Whether or not the residential premises or any dwelling units therein have been certified in compliance with 105 CMR 460.750(A)(1) and 460.760(D)(2), or 460.105(D)(2), and a copy of any Letter of Full Compliance or Letter of Interim Control which was issued.
- (2) If the residential premises or dwelling units therein have been inspected for lead hazards or other violations of 105 CMR 460.000, or if there has been a risk assessment performed, copies of any lead determination, inspection, risk assessment, or post compliance assessment reports concerning the residential premises or any dwelling units therein; and
- (3) Incidents of any past or present reported cases of lead poisoning in occupants, but without disclosure of the individual's name.

(B) The prospective purchaser or lessee-prospective purchaser shall be informed by the seller or lessor-prospective seller of residential premises constructed prior to 1978 and any real estate agent involved in such sale about the availability of inspections for dangerous levels of lead.

- (1) Should the prospective purchaser or lessee-prospective purchaser choose to have an inspection performed, the seller or lessor-prospective seller shall afford the prospective purchaser or lessee-prospective purchaser a period of ten days or such longer time as the seller and the prospective purchaser or lessor-prospective seller and lessee-prospective purchaser may agree to have such inspection performed, either through a lead inspection contingency clause in the purchase and sale agreement or otherwise. If a lead inspection is performed, the prospective purchaser or lessee-prospective purchaser shall provide a copy of the inspection report to the seller.
- (2) In circumstances where the sale will occur as a result of a foreclosure proceeding, the seller shall provide each potential purchaser with notification as required in 105 CMR 460.720(A) and shall obtain from each prospective purchaser a signed, written acknowledgment that the potential purchaser understands that he or she will not have the opportunity to have a lead inspection conducted prior to the sale.

(C) If any real estate agent involved in the sale or lease with an option to purchase has provided the prospective purchaser or lessee-prospective purchaser with the required information and materials, said agent shall verbally inform the prospective purchaser or lessee-prospective purchaser of the possible presence of dangerous levels of lead and the provisions of the lead law and regulations, including the purchaser's responsibility to bring the property into compliance with M.G.L. c. 111, § 197, and 105 CMR 460.105 and 460.110, as applicable if a child younger than six years old resides or will reside therein. In addition, said agent shall obtain the prospective purchaser's or lessee-prospective purchaser's certification in the form of a signed, written acknowledgement by the prospective purchaser or lessee-prospective purchaser that he or she has been so notified prior to the signing of the purchase and sale agreement or lease with an option to purchase. If a real estate agent has provided the prospective purchaser or lessee-prospective purchaser with the required information and materials, but the prospective purchaser or lessee-prospective purchaser refuses to sign a written acknowledgement, the agent may attach to the purchase and sale agreement or lease with an option to purchase a statement that the agent has duly notified the prospective purchaser or lessee-prospective purchaser, but the prospective purchaser or lessee-prospective purchaser refused to sign a written acknowledgement.

460.725: Tenant Lead Law Notification and Disclosure

(A) Effective September 1, 1995, prior to entering into a tenancy agreement, the owner or managing agent of a residential premises or dwelling unit built prior to 1978 shall disclose to the prospective tenant of that residential premises or dwelling unit any information and documentation about lead hazards known to the owner, including the location of paint, plaster or other accessible structural materials containing dangerous levels of lead, and such locations that have been covered or encapsulated. The documentation to be provided the prospective tenant in this regard shall consist of the following, pursuant to M.G.L. c. 111, § 197A(d):

460.725: continued

- (1) Two copies of the Tenant Lead Law Notification/Tenant Certification form issued by the Director, with the Tenant Certification form to be completed and signed by both the prospective tenant and the owner or managing agent. One copy of this form is to be retained by the prospective tenant and the other copy is to be retained by the owner or managing agent;
- (2) A copy of any Letter of Full Compliance or Letter of Interim Control issued for the dwelling unit;
- (3) A copy of the most recent lead inspection report or risk assessment report for the dwelling unit and the common areas or exterior surfaces of the residential premises in which the dwelling unit is located, if an inspection or risk assessment has been performed.

(B) If the owner or managing agent has provided the prospective tenant with the required documentation, but the prospective tenant refuses to sign the Tenant Certification form, the owner or managing agent may check off the statement in the Tenant Certification form stating that he or she has provided the required documentation, but the prospective tenant refused to sign the Tenant Certification form.

(C) The owner or managing agent may voluntarily incorporate in a written lease agreement, or use a preprinted written lease incorporating, the Tenant Lead Law Notification/Tenant Certification form issued by the Director. When incorporated as a provision of the lease, the contents of the Tenant Lead Law Notification/Tenant Certification form must be reproduced, in unaltered form, in their entirety. In no case may the words be amended, the information rearranged or reordered, or the type size reduced from that which appears in the Tenant Lead Law Notification/Tenant Certification form issued by the Director.

(D) An owner or managing agent of elderly housing, including retirement communities or similar types of housing reserved for persons 62 years of age or older may modify the manner in which notification, disclosure and certification are conducted pursuant to 105 CMR 460.725(A), upon approval of the Director.

(E) An owner who complies with the Short-Term Vacation or Recreational Rental Exemption pursuant to 105 CMR 460.100(D) is exempt from the requirements of 105 CMR 460.725. An owner of a dwelling unit having fewer than 250 square feet of floor space, calculated on the basis of total habitable room area, or which is used as a rooming house; provided that no child younger than six years old occupies said dwelling unit, is exempt from the requirements of 105 CMR 460.725.

460.730: Procedures for Initial Inspection

Compliance with 105 CMR 460.000 must begin with a lead inspection in all circumstances in which a Letter of Full Compliance is the goal, or with a risk assessment, whenever a Letter of Interim Control is the goal. There may be reasons for having a lead inspection or risk assessment performed other than to initiate the compliance process, such as for informational purposes. This is the case when a prospective purchaser exercises his or her right to have an inspection performed at the time of property transfer. Having an inspection performed does not in itself trigger any obligation to achieve compliance. Lead inspectors and risk assessors shall follow procedures outlined in inspector training and refresher training and in policies and procedures as determined by the Director, including:

- (A) Providing pre-inspection information to the owner;
- (B) Identifying surfaces covered with paint, other coating, plaster or putty;
- (C) Testing surfaces with loose paint, other coating, plaster or putty at any height. If the surface is inaccessible to the inspector, it is the owner's responsibility to either provide, in the presence of the inspector, a sample of the paint, other coating, plaster or putty, or bring the surface in question into compliance with the requirements of 105 CMR 460.110. Inspectors must also indicate if loose surfaces are eligible to be made intact under 105 CMR 460.175(B)(1)(b) or for encapsulation in accordance with 105 CMR 460.135(A).

460.730: continued

- (D) Testing moveable impact surfaces, accessible mouthable surfaces, and friction surfaces.
- (E) Discovering of evidence of unauthorized deleading. Inspectors shall be observant for evidence of unauthorized deleading while conducting initial inspections, the lead determination enforcement procedure, lead determinations, reinspections or post-compliance assessments. Consult policies and inspector training materials approved by the Director for evidence to be considered. Upon discovery of such evidence, the inspector shall take the following basic steps, as well as follow the requirements of policies and educational materials issued by the Director:
- (1) Refuse to issue any Letter of Compliance or a Certification of Maintained Compliance or Restored Compliance.
 - (2) Attempt to find out if there are any lead inspection reports, deleaders' invoices or letters of compliance for the property.
 - (3) Report evidence of unauthorized deleading to the State Program for investigation.
 - (4) Complete the lead inspection report form, reinspection report form or post-compliance assessment report form, as applicable, and record signs of unauthorized deleading.

460.735: Procedures for Post-compliance Assessment

Any lead inspector performing a post-compliance assessment shall follow procedures outlined in inspector training and refresher training and in policies and procedures as determined by the Director, including:

- (A) Visually checking all surfaces containing dangerous levels of lead or that were inaccessible for testing.
- (B) Testing surfaces not identified on previous inspection report.
- (C) Completing post-compliance assessment report form.

460.740: Testing Methods

The following are approved testing methods:

- (A) Testing with X-Ray Fluorescence Analyzer. Lead inspectors shall operate the instrument in conformity with the manufacturer's instructions and training and educational materials approved by the Director. The instrument's standardization must be verified at least once a day when the instrument is being operated, or more often if so specified by the manufacturer, and a logbook must be maintained of all readings made during standardization verification.
- (B) Testing with 6% to 8% Sodium Sulfide Solution. Lead inspectors and code enforcement lead determination inspectors shall use sodium sulfide solution in conformity with instructions in training and educational materials approved by the Director. This test shall not be performed directly on iron or copper pipes, railings or radiators, or other metal surfaces.
- (C) Any other method approved in writing by the Director.

460.750: Notice of Results of Inspections, Risk Assessments, Reinspections, Post-compliance Assessments and Lead Determination Enforcement Procedures

- (A) Lead inspectors and risk assessors shall follow procedures after performing a lead inspection, risk assessment, reinspection, post-compliance assessment or lead determination enforcement procedure as outlined in inspector training and refresher training and in policies and procedures as determined by the Director, including:
 - (1) No Lead Hazards upon Initial Inspection. Upon determination that there are no lead hazards, and there is no evidence of unauthorized deleading, the lead inspector or risk assessor shall report this to the owner, the occupants of the dwelling unit and to the Director, in a format approved by the Director. The lead inspector or risk assessor shall issue a Letter of Full Initial Inspection Compliance to the owner.

460.750: continued

(2) Report of Inspection, Risk Assessment or Lead Determination Enforcement Procedure.

(a) Whenever lead hazards or other violations of 105 CMR 460.000 are found by initial inspection or when urgent lead hazards are identified by a risk assessment, the lead inspector or risk assessor shall report this to the owner, to the occupants of the dwelling unit, and to the Director, on properly completed lead inspection or risk assessment report forms and in a format approved by the Director. These reports shall be accompanied by such information as required in policies and training materials approved by the Director.

(b) These reports shall be sent by the following deadlines:

1. the end of the third working day after the inspection or risk assessment, if the inspection or risk assessment discloses a situation listed in 105 CMR 460.750(B)(2); unless;
2. the inspection or risk assessment was conducted as part of a Sanitary Code inspection, in which case the reports shall be sent within seven working days after the inspection or risk assessment; or
3. within ten working days after the inspection or risk assessment for all other inspections and risk assessments.

(c) The owner shall send a copy of the inspection report or risk assessment report to all mortgagees and lienholders of record.

(3) Report of Reinspection and Post-compliance Assessment. The lead inspector or risk assessor shall report the results of all reinspections, dust lead monitoring results and post-compliance assessments to the owner, the occupants of the dwelling unit and the Director, in a format approved by the Director, in accordance with the timelines in 105 CMR 460.750(A)(3)(b). If no lead violations are identified by a post-compliance assessment, the inspector shall issue the owner a Certification of Maintained Compliance, in accordance with 105 CMR 460.760(E)(1). If the post-compliance assessment reveals lead hazards or other violations of 105 CMR 460.000, results shall be accompanied by the notification information required by the policies on post-compliance assessment issued by the Director. *See* 105 CMR 460.760(E)(2).

(B) Code enforcement inspectors shall use the following additional procedures after performing an inspection, the lead determination enforcement procedure, or a post-compliance assessment, and code enforcement lead determination inspectors shall use the following procedures after performing the lead determination enforcement procedure:

(1) Notice to Owner. If the initial lead inspection, or lead determination enforcement procedure reveals lead violations in a dwelling unit or residential premises in which a child younger than six years old lives, the code enforcement inspector or code enforcement lead determination inspector shall provide a notice to the owner explaining that this constitutes a violation of the Lead Law, M.G.L. c. 111, § 197, and the State Sanitary Code, and that such lead violations may endanger or materially impair the health of occupants, especially children. The code enforcement inspector or code enforcement lead determination inspector shall provide the owner with all the information required by policies approved by the Director on methods of correcting violations to achieve full compliance or interim control. For post-compliance cases, the code enforcement inspector shall provide the owner with all information required by post-compliance policies approved by the Director.

(2) Order to Correct Violation(s). The code enforcement agency shall issue an Order to Correct Violation(s) when lead violations are identified upon initial inspection, by the lead determination enforcement procedure or by post-compliance assessment in cases covered by 105 CMR 460.760(E)(2)(c), in the dwelling unit in which a child younger than six years old resides, or in which a child younger than six years old who is lead poisoned has resided within the last 12 months. The agency shall also issue such an Order in post-compliance cases in which the 30-day repair period applies, or the owner was issued an Order to Repair Post-Compliance Violations, and failed to complete repairs and clean-up in accordance with 105 CMR 460.760(E)(2)(a). The Order to Correct Violation(s) shall state the enforcement deadlines that are applicable pursuant to 105 CMR 460.751 and shall also state:

(a) The owner may become liable for civil punitive damages equal to treble any actual damages for willful failure to comply with the Order; and

460.750: continued

(b) If within the stipulated time periods the property is not brought into full compliance, full compliance is not restored, or interim controls are not completed, the code enforcement agency may contract with an authorized person or persons to correct the violations and obtain either a Letter of Full Compliance, a Certification of Restored Compliance, or, in the case of a child who is not lead poisoned, a Letter of Interim Control, and bill the owner, or initiate court action to reimburse itself.

460.751: Enforcement Deadlines According to Type of Case

Code enforcement agencies shall apply the following deadlines to the following types of cases:

(A) A case involving a lead poisoned child in which the owner is in need of financial assistance to accomplish abatement and/or containment for full compliance:

(1) Within 30 days of the owner's receipt of the Order to Correct Violation(s), the owner must provide to the code enforcement agency written documentation of the owner's effort to secure financing including a written acknowledgment from the lending institution or governmental agency that verifies the owner's effort to secure financing for abatement and/or containment work for full compliance. The need for financial assistance does not relieve the owner of the obligation to obey the Order to Correct Violation(s).

(2) Within 60 days of the owner's receipt of the Order to Correct Violation(s), the owner must provide the code enforcement agency a copy or copies of a signed written contract(s) with an authorized person(s). If an authorized owner or owner's agent will be performing any low- or moderate-risk abatement and/or containment, a copy of the owner's or owner's agent's authorization shall also be provided within 60 days. Any contract shall specify, and any authorized owner or owner's agent who has not contracted in writing shall attest in writing, that the work will be completed according to the following schedule:

(a) Within 90 days of the owner's receipt of the Order to Correct Violation(s), abatement work on interior dwelling unit lead violations must be completed, and documented by a code enforcement lead inspector to have been so completed.

(b) Within 120 days of the owner's receipt of the Order to Correct Violation(s), any interior common area and exterior abatement and/or containment work, and any remaining interior dwelling unit low-risk abatement and/or containment activities must be completed and documented by a code enforcement lead inspector to have been so completed.

(B) A case involving a lead poisoned child in which the owner is not in need of financial assistance to accomplish abatement and/or containment for full compliance: Within 30 days of the owner's receipt of the Order to Correct Violation(s), the owner must provide the code enforcement agency a copy or copies of a signed contract(s) with an authorized person(s). If an authorized owner or owner's agent will be performing any low- or moderate-risk abatement and/or containment activities, a copy of the owner's or owner's agent's authorization shall also be provided within 30 days. Any contract shall specify, and any authorized owner or owner's agent who has not contracted in writing shall attest in writing, that the work will be completed according to the following schedule:

(1) Within 60 days of the owner's receipt of the Order to Correct Violation(s), abatement work on interior dwelling unit lead violations must be completed, and documented by a code enforcement lead inspector to have been so completed.

(2) Within 90 days of the owner's receipt of the Order to Correct Violation(s), any interior common area and exterior abatement and/or containment work, and any remaining interior dwelling unit low-risk abatement and/or containment activities must be completed and documented by a code enforcement lead inspector to have been so completed.

(C) A case in which no lead poisoned child resides in the premises:

(1) Within 60 days of the owner's receipt of the Order to Correct Violation(s), the owner must provide the code enforcement agency a copy or copies of a signed contract(s) with an authorized person(s). If an authorized owner or owner's agent will be performing any low- or moderate-risk abatement and/or containment, a copy of the owner's or owner's agent's certificate of instruction shall also be provided within 60 days. Any contract shall specify, and any authorized owner or owner's agent who has not contracted in writing shall attest in writing, that the work will be completed according to the following schedule:

460.751: continued

- (a) Within 90 days of the owner's receipt of the Order to Correct Violation(s), abatement work on interior dwelling unit lead violations, and any interior structural repairs for interim control must be completed, and documented by a code enforcement lead inspector or risk assessor to have been so completed.
 - (b) Within 120 days of the owner's receipt of the Order, any interior common area and exterior abatement and/or containment work, and any remaining interior dwelling unit low-risk abatement and/or containment activities or interim control work must be completed and documented by the code enforcement lead inspector or risk assessor to have been so completed.
- (D) A case involving a lead poisoned child in which the owner has received a waiver from the Director, pursuant to 105 CMR 460.100(A)(3), to perform interim controls, shall proceed in accordance with the requirements and timelines of 105 CMR 460.751(C).

460.760: Reinspection and Full Compliance

- (A) Reoccupancy Reinspection. Occupants of a dwelling unit or residential premises undergoing deleading may not resume occupancy until the dwelling unit successfully meets the conditions of a reoccupancy reinspection. All lead inspectors shall conduct reoccupancy reinspections and if applicable, all subsequent reinspections, using a copy of the initial inspection report. The conditions of a reoccupancy inspection are as follows:
- (1) The reoccupancy reinspection should be conducted as soon as possible following the last final clean-up pursuant to 105 CMR 460.160(D)(1). No other interior dwelling unit abatement or containment activities may occur following a reoccupancy reinspection, with the exception of certain low-risk abatement and/or containment activities, as set out in 105 CMR 460.175(A).
 - (2) All replacement, abated or contained doors must be in place at the time of the reoccupancy reinspection.
 - (3) Surfaces from which lead-based paint, other coating, plaster or putty has been completely removed, and new replacement surfaces, cannot have been painted or received a sealant coating equivalent to paint at the time of the reinspection unless:
 - (a) in the case of surfaces from which lead paint has been removed, the surface was previously inspected and approved while the substrate was bare; or
 - (b) in the case of new replacement surfaces which have been refinished or abated surfaces which have been repainted, the surface is retested by a lead inspector, and if determined to contain dangerous levels of lead, the surface is abated or contained.
 - (4) The lead inspector shall visually examine every interior surface previously found to be a lead hazard, to ascertain the following:
 - (a) Surfaces that have been abated have either been removed or the paint, other coating, plaster or putty on the surfaces has been completely removed to bare substrate. The lead inspector shall also ensure that all abated surfaces have been finish-sanded or prepared to be repainted or to receive a comparable coating.
 - (b) No film or visible dust is present on any surface from which lead-based paint, other coating, plaster or putty was removed.
 - (c) Surfaces that have been prepared for containment or encapsulation have been properly prepared. The lead inspector shall examine all surfaces that were first made intact by an authorized person.
 - (d) All surfaces contained with approved coverings have been contained in a workmanlike manner.
 - (5) Interior surfaces previously not found to be a lead hazard, but in room(s) in which deleading has occurred and adjacent areas, shall be visually inspected to ensure that no dust is present.
 - (6) Dust samples must be taken at the time of the reoccupancy reinspection, and the dust monitoring standards of 105 CMR 460.170 must be met before reoccupancy or initiation of a new occupancy may occur. The lead inspector shall wait at least one hour following the last final clean-up required by 105 CMR 460.160(D)(1) before taking dust samples.
 - (7) In those cases in which all lead hazards (including exterior, if applicable) are satisfactorily abated and/or contained at the time of the reoccupancy reinspection, this inspection shall constitute a deleading reinspection.

460.760: continued

(B) Deleading Reinspection. The lead inspector shall determine if all relevant surfaces have been fully and properly encapsulated or contained with approved coverings, all interior or exterior surfaces that were abated using chemical strippers were first reinspected and met the conditions of 105 CMR 460.760(A)(4)(a) and (b) and since have been repainted, all exterior violations were satisfactorily abated or contained, and that all such work was performed in a workmanlike manner. In all cases in which there had been no preceding reoccupancy reinspection, the dust lead monitoring requirements of 105 CMR 460.760(A)(6) must be met.

(C) Court Appearance, Safety Check and Other Reinspections. Code enforcement inspectors shall make reinspections of dwelling units and residential premises found in violation of 105 CMR 460.000 as necessary for show cause and other court hearings, checks on deleading safety, and other related purposes as necessary.

(D) Full Compliance. In order for a Letter of Full Deleading Compliance to be issued, all lead hazards cited by the lead inspector must be corrected, and the documentation requirements of 105 CMR 460.760(D)(1) must be met. A Letter of Full Deleading Compliance must be issued in order for the owner to be eligible for the full amount of the state income tax credit, and/or the deleading loan program authorized under the Department of Housing and Community Development.

(1) Requirements.

(a) Documented use of lead inspectors is required to obtain a Letter of Full Compliance. If abatement or containment work was required, documentation of work by an authorized person is also required to obtain a Letter of Full Deleading Compliance.

1. Documentation of authorized inspection and reinspection shall consist of initial inspection reports and all reinspection reports completed by lead inspectors.

2. Documentation of authorized abatement and containment work by an authorized person shall consist of an invoice, on a form approved by the Director, bearing the professional letterhead of a licensed deleader, or authorized persons with his or her license or certification number, including a signed statement that the authorized person has performed all work in compliance with 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations* and 105 CMR 460.000. For authorized owner's and owner's agents, documentation of authorized abatement and containment work shall be made on a form approved by the Director.

(2) Letters of Full Compliance.

(a) A Letter of Full Initial Inspection Compliance shall be fully completed, signed and issued by a lead inspector, on a form approved by the Director, when he or she determines that a dwelling unit and common areas are in compliance with M.G.L. c. 111, § 197(c) and 105 CMR 460.000 upon initial inspection.

(b) A Letter of Full Deleading Compliance shall be fully completed, signed and issued by a lead inspector, on a form approved by the Director, when he or she determines that a dwelling unit and common areas are in compliance with M.G.L. c. 111, § 197(c) and the conditions of 105 CMR 460.000 and 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations* have been met.

(E) Post-compliance Maintenance and Monitoring. An owner of a dwelling unit and related common areas that has been issued a Letter of Full Compliance and in which a child younger than six years old resides shall take reasonable care to make sure that the standards of the Letter of Full Compliance are maintained. The owner shall take reasonable care to promptly correct any failure of measures taken to achieve full compliance, or address any new lead violations, in accordance with safety procedures set out in policies and protocols approved by the Director and distributed to the owner with the Letter of Full Compliance. Owners hiring contractors to maintain their property or owners doing their own maintenance work on their rental property must be sure to follow the requirements set forth in 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations* for safe renovation and repair work.

(1) Documenting a Post-compliance Assessment by a Lead Inspector in Which No Lead Hazards Are Found. If a lead inspector performs a post-compliance assessment and determines that the dwelling unit and related common areas remain in compliance with M.G.L. c. 111, § 197(c) and 105 CMR 460.000, the lead inspector shall fully complete, sign and issue a Certification of Maintained Compliance. This Certification, on a form approved by the Director, shall be an addendum to the previously issued Letter of Full Compliance.

460.760: continued

(2) Documenting a Post-compliance Assessment by a Lead Inspector in Which Lead Hazards Are Found.

(a) The owner shall have 30 days from the date of a lead inspector's or risk assessor's post-compliance assessment, to complete the repair and clean up the unit to the standards required by the Letter of Full Compliance. In cases in which a code enforcement lead inspector or lead determination inspector is involved, the owner shall have 30 days from receipt of an Order to Repair Post-compliance Violations, or any immediately preceding Order to Correct Violation(s) to complete the repair and clean up the unit to the standards required by the Letter of Full Compliance. The repair may be performed by the owner or any other person 18 years of age or older during this period as maintenance, in accordance with safety procedures set out in policies and protocols approved by the Director and distributed to the owner with the Letter of Full Compliance as well as 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations*. If the lead inspector reinspects and confirms that the owner has completed this work and cleanup, and has met the dust lead standards of 105 CMR 460.170(B) within 30 days, the lead inspector shall issue a Certification of Maintained Compliance. The Letter of Full Compliance remains valid for this period. It is the owner's responsibility to make sure a lead inspector returns to document that the standards of the Letter of Full Compliance have been maintained within this 30-day period. If such an owner fails to have the lead inspector return to document that the standards of the Letter of Full Compliance have been maintained within this time period, the Letter of Full Compliance is no longer valid.

(b) If the owner has not completed the repair and cleanup work necessary to maintain the standards of the Letter of Full Compliance in accordance with 105 CMR 460.760(E)(2)(a), all lead hazards cited by the lead inspector must be corrected by authorized persons, and the reinspection and documentation requirements of 105 CMR 460.760 must be met. Once a lead inspector returns and determines that all lead hazards have been corrected by authorized persons in accordance with 105 CMR 460.000, and the reinspection and documentation requirements of 105 CMR 460.760 have been met, the lead inspector shall issue the owner a Certification of Restored Compliance. A Certification of Restored Compliance shall be fully completed, signed and issued by a lead inspector, on a form approved by the Director, when he or she determines that a dwelling unit and common areas are again in compliance with M.G.L. c. 111, § 197(c), and all the conditions of 105 CMR 460.000 and 454 CMR 22.00: *Deleading and Lead-safe Renovation Regulations* in achieving compliance have been met. This document shall be an addendum to the previously issued Letter of Full Compliance.

(c) A post-compliance assessment shall be performed by a State Program lead inspector, or may be performed by any code enforcement lead inspector authorized to perform lead inspections in the homes of lead-poisoned children, in any dwelling unit with a Letter of Full Compliance in which resides a child who has been identified as being lead poisoned. Upon request, a post-compliance assessment shall be performed by such a code enforcement lead inspector in any dwelling unit in which resides a child who has been identified as having a blood lead level of concern in accordance with M.G.L. c. 111, § 197C(a) and 105 CMR 460.020. When lead violations are found in such units, the code enforcement lead inspector shall issue the owner an Order to Correct Violation(s), pursuant to 105 CMR 460.750(B)(2).

460.770: Reports to Director of State Program

Each local code enforcement agency shall submit a quarterly report to the Director in a form and manner determined by the Director, by the fifth working day of the following quarter. The report shall be signed by the head of such agency, and shall list the status of all uncorrected lead violations at the end of the previous quarter, all violations corrected during such quarter, legal action taken regarding each uncorrected violation and the procedural history and current status of such legal action.

460.800: Judicial Proceedings

(A) Initiation. A State Program, local lead poisoning prevention program or local code enforcement inspector shall within seven working days initiate judicial proceedings which may be either criminal proceedings seeking enforcement of penalties provided under M.G.L. c. 111, §§ 194 through 199A and the sanitary code, 105 CMR 400.700; or a civil action for injunctive relief, brought pursuant to M.G.L. c. 111, §§ 127A through 127C, or c. 186, § 14, or c. 93A, against the owner, and any other person who may be joined pursuant to M.G.L. c. 111, § 127N, if:

(1) In a case involving a lead poisoned child:

(a) If any of the following are not received by the code enforcement agency within 30 days of the owner's receipt of the Order to Correct Violation(s) as specified at 105 CMR 460.751(A)(1) and (B)(1): a copy or copies of a signed contract(s) with an authorized person(s), as specified at 105 CMR 460.751(B)(1); written documentation of an effort to secure financing for abatement and/or containment, as specified at 105 CMR 460.751(A)(1); and if an authorized owner or owner's agent is going to perform low- and/or moderate-risk abatement and containment work, a copy of the owner's or owner's agent's authorization and a written statement of timelines for completion of the work; or

(b) the owner submitted documentation of an effort to secure financing for abatement and/or containment for full compliance, as specified at 105 CMR 460.751(A)(1), but either of the following are not received by the code enforcement agency within 60 days of the owner's receipt of the Order to Correct Violation(s) as specified at 105 CMR 460.751(A)(2): a copy or copies of a signed contract(s) with an authorized person(s), and if an authorized owner or owner's agent is going to perform low- and/or moderate-risk abatement and/or containment, a copy of the owner's or owner's agent's authorization and a written statement of timelines for completion of the work; or

(c) interior and/or exterior abatement and/or containment for full compliance is not completed within the time periods specified in 105 CMR 460.751(A)(2) or (B)(1). This may be determined by the code enforcement agency's failure to receive notification of abatement and/or containment pursuant to 105 CMR 460.150.

(2) In a case in which no lead poisoned child resides in the premises:

(a) Either of the following are not received by the code enforcement agency within 60 days of the owner's receipt of the Order to Correct Violation(s) as specified at 105 CMR 460.751(C)(1): a copy or copies of a signed contract(s) with an authorized person(s), and if an authorized owner or owner's agent is going to perform low- and/or moderate-risk abatement and/or containment work, a copy of the owner's or owner's agent's authorization and a written statement of timelines for completion of the work; or

(b) interior abatement and/or containment for full compliance, or as required for interim control, is not completed and documented within the time periods specified in 105 CMR 460.751(C)(1); or

(c) a Letter of Full Compliance, Letter of Interim Control or Certification of Restored Compliance is not issued within 120 days of the owner's receipt of the Order to Correct Violation(s).

(B) Repair by Code Enforcement Agency. If within the time period specified in the Order to Correct Violation(s) the property is not brought into full compliance, restored to full compliance, or interim controls are not completed, the code enforcement agency may contract with an authorized person or persons to correct the violations and obtain either a Letter of Full Compliance, a Certification of Restored Compliance, or, in the case of a child who is not lead poisoned, a Letter of Interim Control, and bill the owner, or initiate court action to reimburse itself.

(C) Prosecution of Judicial Proceedings. The code enforcement agency shall diligently prosecute all judicial proceedings without substantial delay.

105 CMR: DEPARTMENT OF PUBLIC HEALTH

460.900: Hearings

If a hearing is requested under the sanitary code, 105 CMR 400.200(B), and if the owner has complied with the Order to Correct Violation(s) as required by 105 CMR 460.000, the hearing shall be provided within ten days of request for the hearing. The code enforcement agency shall issue a written decision within seven days after the hearing. Because violations of M.G.L. c. 111, §§ 196 and 197 are considered emergency matters pursuant to M.G.L. c. 111, § 198, no administrative hearing shall be held in connection with any violation of M.G.L. c. 111, § 197, except pursuant to 105 CMR 460.000.

460.990: Severability

If any provision of 105 CMR 460.000 is held to be invalid for any reason whatsoever, that decision shall not affect any of the remaining provisions of 105 CMR 460.000, which shall remain in full force and effect.

REGULATORY AUTHORITY

105 CMR 460.000: M.G.L. c. 111, §§ 5, 6, 189A through 199B; c. 112, § 12BB; c. 175, § 47c; c. 176A, § 8B and c. 176B, § 4C.

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