

MICHIGAN DEPARTMENT OF COMMUNITY HEALTH
LEAD HAZARD REMEDIATION PROGRAM
www.michigan.gov/leadsafe

LEAD HAZARD REMEDIATION REGULATIONS
Interpretive Guidance

1. Question: What is the required instructor-to-student ratio for lead training courses?

Response - In an effort to maintain the high standard of lead training excellence that we have set here in Michigan, LHRP has studied training models and recommended practices for adult instruction. Based on those studies, the following maximum student-to-instructor ratios have been instituted:

- no more than 25 students for each instructor during lecture and classroom instruction,
- no more than 8 students for each instructor during hands-on work practice activities and skills evaluation

Approved guest lecturers and hands-on instructors should be used to achieve these levels.
(02/22/2000)

2. Question: Does the Lead Abatement Act require a homeowner or rental property owner to make their property lead-safe?

Response - Only in the case of a child identified with an elevated blood lead level residing therein, or when ordered by a local government agency or the Michigan Department of Community Health. Section MCL 333.5460(a)(3) states, "*This part does not require the owner or occupant to undertake any lead-based paint activities*", except MCL 333.2455 (1) states, "*a local health department or the department may issue an order to avoid, correct or remove, at the owners expense, a building or condition which violates health laws or which the local health officer reasonably believes to be a nuisance, unsanitary condition, or cause illness.*"
(09/19/2000)

3. Question: When is the use of a certified lead abatement firm required?

Response – Anytime renovation or remodeling work is performed that fits the definition of abatement (from MCL 333.5453(1)), the work must be performed by a certified lead hazard control firm, using certified employees. Interim control work must be performed by those meeting the requirements of rule 325.99406(1), having a minimum of 8 hours of lead training.
(09/19/2000)

4. Question: Can a non-certified subcontractor be used to install siding and wrap exterior components?

Response - Technically, yes, with consideration of all of the following:

- All surface preparation must be completed by certified abatement personnel. This would include removal of nails, fixtures and appurtenances, substrate repair and replacement, warning markings on painted surfaces and installation of starter strips and fan-fold insulation. This would be considered 'enclosure', and abatement method by definition.
- Visual clearance must be achieved prior to any work being performed by the non-certified subcontractor.
- All abatement-related equipment and waste must be removed from the site prior to any work being performed by the non-certified subcontractor.
- The abatement contractor will be responsible for any repairs to leaded surfaces caused by the subcontractor as a result of installation.

(08/23/2001)

5. Question: Can a non-certified subcontractor be used to install windows following window removal?

Response - Technically, yes, with consideration to the following:

- All surface preparation of window penetrations must be completed by certified personnel. This would include scraping, encapsulating and repair of the substrate as necessary to ensure that the window installation may be performed without disturbing the remaining painted surface.
- Clearance must be achieved prior to any work being performed by the non-certified subcontractor.
- Other interior work must be finished and cleared or be contained and inaccessible to the subcontractor.
- All abatement-related equipment and waste must be removed from the site prior to any work being performed by the non-certified subcontractor .
- The subcontractor must be informed of the presence of lead based paint and the nature of the abatement contractor's work.
- The abatement contractor will be responsible for any repairs to leaded surfaces caused by the subcontractor as a result of installation.

(08/23/2001)

The establishment of regulations by the U.S. Department of Housing and Urban Development (HUD), being 24 CFR 35 subpart J, regarding the treatment of lead-based painted components during renovation and rehabilitation of target housing units has brought about several key issues with respect to the Michigan Lead Abatement Act and associated rules. The revisions to Michigan administrative rule R325.99401(2)(b) (February 2005) cites 24 CFR 35 as a documented methodology, and therefore, subject to compliance in Michigan.

6. Question: May non-certified persons be used to perform general component replacement tasks during abatement activities?

Response - Non-certified persons may not remove LBP-coated building components within the scope of an abatement project

(ref: MCL 333.5468(4). Replacement of components has been addressed above.

(09/04/2001, amended 03/01/2005)

7. Question: May activities that are abatement by their nature (eg. window replacement) be called renovation, and therefore performed by non-certified persons? (amended guidance question, March 2005)

Response- Yes. According to HUD and EPA, if an activity such as window replacement is performed as a renovation activity, and not as a lead-related activity, it is exempt from LBP regulatory requirements. It is NOT an interim control.

Treatment of windows comes about in three ways:

1. The removal and replacement of windows designed only to upgrade the window integrity or cosmetics during a federally-funded renovation or rehabilitation project (eg. CDBG) may be performed by non-certified persons as RENOVATION, according to HUD and EPA.
2. Non-certified, but adequately trained, workers may be used to renovate or repair windows as INTERIM CONTROL activities.
3. Replacement of windows performed as any part of an ABATEMENT project must be done by certified persons. However, when all aspects of abatement work have been completed (including cleanup and clearance by a certified inspector or risk assessor), and no additional lead-based paint will be disturbed during installation, replacement windows may be installed by non-certified persons.

(09/04/2001, amended 03/01/2005)

8. Question: May non-certified people (i.e. professional cleaning services) perform cleaning of work areas after abatement work has been completed, and prior to final clearance?

Response - Rule 406 (R325.99406(2)) of the Lead Hazard Remediation rules states that, “only an individual certified by the department ...shall conduct lead abatement activities”. Abatement activities are defined in the Lead Abatement Act of 1998 (MCL 333.5453(1)(a)) as, “the removal of lead-based paint and lead-contaminated dust,..., and all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.”

Therefore, cleaning of **abatement** sites prior to final clearance sampling is considered part of an abatement activity by the above definition, and only persons certified as lead abatement workers or supervisors may perform this activity. Third-party cleaning firms may perform cleaning functions at an abatement project, but the persons doing so must be certified by the department.

Conversely, “supercleaning” of homes where lead-containing dust is to be cleaned up, but not as part of an abatement project, may be done by adequately trained persons. This activity is defined as an *interim control*, and is subject to the requirements of rule 325.99406(1).

(09/04/2001, amended 03/01/2005)

9. Question: May non-certified persons be used to install exterior siding?

Response - Installation of [permanent] siding over existing exterior lead-based painted surfaces is, by definition, *enclosure* of a LBP hazard, and must be performed by certified persons (MCL 333.5456(9)). However, if the LBP surface has been abated by another method (encapsulated or enclosed with a rigid covering material) by certified persons and successful post-abatement clearances have been performed, then the abatement portion of the project has been completed, and siding may be installed by anyone. Non-certified subcontractors may not install siding as part of an abatement project over surfaces which have only been stabilized or wrapped in non-durable construction materials (eg. Tyvek).

(09/04/2001, amended 03/01/2005)

10. Question: The new rules require that a required report be prepared within 20 business days. Can this be extended for large multi-family projects?

Response - The report should be prepared within 20 business days from completion of the entire activity (ref: R325.99103(2)), including all laboratory results and collection of data. Individual extensions may be granted by the Department, upon request, for projects with special considerations.

(03/01/2005)

11. Question: Should a copy of a required report be given to the person paying for the activity (eg. City of Detroit) and the owner, or will the person paying for the activity give the owner a copy, if appropriate?

Response - As required in R325.99103(2), the person preparing the report is to give a copy of the report to BOTH the person who paid for the service and the building owner, if they are different. Examples:

1. A rental property owner or private homeowner contracts for a risk assessment to be performed on one of their buildings. The resulting report will be given to the homeowner/property owner only.
2. A tenant contracts for a risk assessment to be performed in their rented dwelling unit. The resulting report will be given to both the tenant (person who contracted the service) and the rental property owner. This eliminates the possibility of a rental property owner claiming to have no knowledge of lead-related hazards for a unit in which a LBP investigation had been performed.

Further specific contract situations, and those involving third party requests for reports should be referred to legal counsel.

(03/01/2005)

12. Question: The Clearance Technician course is required to be 8 training hours, and the Core Lead Basics course is 8 training hours. Does that mean that for a person to be originally certified as a Clearance Technician that they will have to take a total of 16 hours of training?

Response – Yes (ref:R325.99302(5)).
(03/01/2005)

13. Question: Do persons who are currently certified have to take the Core Lead Basics course the next time they renew their certification?

Response – No, the curriculum topics required in the Core Lead Basics course has already been addressed in previously approved curricula (R325.99304), and do not need to be repeated. The Core Lead Basics course does NOT have to be taken at any renewal period. People who are already certified in any discipline will NOT need to take a separate Core Lead Basics course.
(03/01/2005)

14. Question: HUD Part 35 regulations are reference in the revised Michigan rules as documented methodologies. Does this mean that they must be used to perform lead hazard control work?

Response – The [Michigan] Lead Hazard Remediation Program (LHRP) may enforce the provisions of 24 CFR 35, if necessary, to protect the health and safety of Michigan residents, in accordance with the “documented methodologies” requirement of Michigan rule R325.99401(2). It is not LHRP’s intention to infringe on HUD’s responsibilities. HUD Part 35 regulations will to be used as a compliance tool, but not as a targeting measure for compliance investigations.
(03/01/2005)

15. Question: Sampling requirements for a risk assessment were changed from areas “likely” and “most likely” to be where children 6 years of age and under may be exposed to areas “reasonably be expected” to be where they may be exposed. Why?

Response - This wording change was made to make sure that areas of a building where no children were currently residing, but who could be in the future, were not exempted from sampling.
(03/01/2005)

16. Question: If a yard has multiple bare soil areas which exceed 9 square feet, does the Risk Assessor have to take samples of the soil in each one?

Response - The more detailed the sampling, the more complete the recommendations of the risk assessment. Professional judgment is needed by the Risk Assessor to define which areas should be included in composite soil sampling. The 9 square foot rule was taken from the HUD guidelines to establish a minimum area of bare soil for sampling consideration (i.e. soil samples need not be taken from bare soil areas of less than 9 square feet) (ref:R325.99404(8)).
(03/01/2005)

17. Question: Can anyone obtain an endorsement for EBL Investigator, or is that to be restricted to local health department staff members?

Response - Endorsement is based on certification as a Risk Assessor, review of the standard protocol manual, and successful completion of the proficiency [open-book] exam (ref:R325.99302(7)). This rule does not preclude a private Risk Assessor from becoming endorsed as an EBL Investigator.
(03/01/2005)

18. Question: Does the Occupant Protection Plan (OPP) have to be accessible on-site at all times during lead hazard control work?

Response – Yes, Rule 325.99406(6) requires that the site-specific Occupant Protection Plan be kept at the site during all hazard control work.
(03/01/2005)

19. Question: Rule 406(8) requires that containment materials remain in place until after clearance. Does all containment have to stay up until clearance is complete? Should polyethylene sheeting be kept over windows for clearance sampling?

Response – The materials defining the containment area need to stay up (boundaries) until clearance is complete. It will be the Supervisor’s responsibility to determine where the containment areas exist for any given project. There may be less clearance liability for the project by organizing several smaller containment areas into a larger area and defining the resultant area with containment materials.

Example: A large Victorian home has a living room with 8 windows to be replaced. The method of abatement is to cover the inside of each window with polyethylene sheeting and replace the window from the outside. These would represent 8 containments areas, and subject to a minimum of 16 clearance dust wipe samples. The Supervisor may elect to re-define the containment area at the completion of replacements to include the entire living room; thus subjecting them to only three clearance dust wipe samples. If containment-defining materials are not found intact by the clearance professional, then the entire building will be subject to clearance sampling.

(03/01/2005)

20. Question: Does the certified Supervisor conduct a visual inspection for clearance of exterior lead hazard control work as well as the clearance professional?

Response – The certified Supervisor must first conduct a visual inspection of the exterior surfaces (R325.99406(11)), then the clearance professional must perform the final visual inspection for verification (R325.99407(6)). This will help to prevent failure of project clearance procedures based simply on visible debris found by the clearance professional. This would require extra work on the part of the contractor and clearance professional and project expense.

(03/01/2005)

21. Question: What about visual clearances during winter with snow cover?

Response - The Department’s position regarding snow or other covering of the soil during clearance procedures is to perform what can be done at the time of project completion, and to complete the visual clearance inspection at a time when the soil can be examined. Since the purpose of a visual clearance inspection is to prevent tracking of contaminated soil into the dwelling, the snow covering will effectively do the same thing until it can be evaluated at a later time. A 1 ½ to 2 foot wide catch strip of polyethylene sheeting should be maintained from the foundation, and a good cleanup performed.

(03/01/2005)

22. Question: Do all items addressed in a risk assessment have to be checked by the clearance professional as part of the clearance procedure?

Response - It is the job of the clearance professional to make sure that all work in the specified scope of lead hazard control work (R325.99407(3)(a)) has been performed satisfactorily. It is not expected that the clearance professional define or audit the specs from the risk assessment. If the work is HUD-related, and all hazards were required to be addressed by the scope of work (per Part 35 requirements), that is the spec writer’s job, not that of the clearance professional. However, a prudent Risk Assessor may find it appropriate to note additional hazards found during clearance procedures or review of the original risk assessment.

(03/01/2005)

23. Question: How could a clearance professional use random selection of units for clearance in less than 10 units (rule 407(7) indicates greater than 4 units)?

Response - In the Michigan definition of *abatement*, buildings which are to have LBP-related activities performed as multi-family are defined as those of more than 4 units (consistent with HUD guidelines). Rule 407 says that “multi-family” dwellings can be cleared by using the ‘random’ selection method according to documented methodologies. Those methodologies do, indeed, begin random selection at buildings greater than 10 units (from HUD guidelines, Table 7.3). Therefore, multi-family random selection cannot begin at less than 10 units. The mention of 4 units in rule R325.99407(7)) was to establish the prohibition of Clearance Technicians doing clearance procedures in multi-family dwellings.

(03/01/2005)

24. Question: May occupants re-occupy a dwelling before final clearance has been achieved?

Response – Documented methodologies (specifically HUD guidelines) and rule R325.99407(4)(d) prohibit occupants from re-occupying dwelling areas until after clearance has been achieved.

(03/01/2005)

25. Question: Does the EPA pamphlet have to be given out every 60 days prior to commencing lead hazard control work?

Response – The purpose of this rule (R325.99408(6)) is to alert dwelling occupants that work being performed in their building may result in disturbance of lead-containing coatings, and therefore, create hazards. If it can be determined that the occupants have received a copy of the pamphlet, it does not have to be given again, even if it has been more than 60 days. It is recommended that an adult occupant of the dwelling provide a written acknowledgement that the pamphlet had been received, to document compliance with the rule.

(03/01/2005)

26. Question: Is a Supervisor required for all hazard control projects, even interim controls?

Response – A certified lead Supervisor is required to be on-site at ALL times that abatement work is being performed (no change). Revisions regarding Supervisor requirements for interim control work are currently under review by MDCH and MSHDA. Until a final resolution is reached, no enforcement activities will be undertaken with regard to this rule (R325.99406(4))

(03/01/2005)

27. Question: Is a firm required to be certified (licensed) as a lead abatement contractor to perform any lead hazard control work, even interim controls?

(ref: 325.99406(5))

Response – No. Only the Supervisor is required to be certified for non-abatement lead hazard (interim) control projects (see no.25 above). A firm performing lead abatement work must be certified (licensed), as well as ALL the people performing the abatement.

(03/01/2005)

28. Question: What training is required for a person to be endorsed as an EBL Environmental Investigator?

Response – The only training required to be eligible for the proficiency exam is a self-directed study of the EBL Environmental Investigation protocol (R325.99302(7)). Optional training is initially going to be offered by LHRP to local health departments.

(03/01/2005)

29. Question: What does “completely independent” mean when dealing with clearance professionals and lead hazard control firms? (ref: 325.99407(3))

Response – The clearance professional may NOT have a reasonable interest in the outcome of the clearance samples. For example, the clearance professional may not be employed by the lead hazard control firm. In the same way, the clearance professional, or any principal of the company employing the clearance professional, may not be related to any person involved in performing the lead hazard control work. Further interpretation of this provision will be done on a case-by-case basis, as the necessity arises.

(03/01/2005)

30. Question: Why have the rules been changed in 2005?

Response – Revisions to the administrative lead hazard control rules were necessary to:

- ✓ Comply with regulatory changes implemented by the U.S. Environmental Protection Agency to maintain authorization of the Michigan Lead Hazard Remediation Program.
- ✓ Standardize the protocol and qualifications for those conducting EBL environmental investigations.
- ✓ Provide specific work practice standards and qualifications for non-abatement lead hazard control work. Interim control activities account for a large number of potential childhood lead exposures; and original rules did not address work practice standards for these activities.

(03/01/2005)

31. Question: The ASTM standard E1728, which is required to be used for collection of lead dust wipe samples (R325.99401(2)(d)), calls for 3 blanks to be submitted per batch. Do we have to submit 3 blanks for each project where dust wipes are taken?

Response – According to ASTM, the standard practice of submitting a single blank with each group of samples for a lead-based paint activity fulfills the E1728 standard requirement.

If more than one manufacturer’s lot of wipes is used for the activity, then one wipe should be submitted for each lot number used. Example: To perform a risk assessment, 18 dust wipe samples have been collected. Ten of the samples were collected using wipes from the manufacturer’s lot number 105, and 8 wipes used from the manufacturer’s lot number 106. In this case, two blanks would need to be submitted for analysis with the 18 dust wipe samples.

(03/01/2005)

32. Question: Will a person who successfully completes the Core Lead Basics training course be qualified to perform interim control activities, according to R325.99406(1)?

Response – The Core Lead Basics course is intended to be a one-time background training course for all other disciplines. It does NOT provide adequate training for a person to perform interim control activities, as required by Rule 406(1).

(04/01/2005)

33. Question: Does the firm which employs a certified Supervisor for non-abatement lead hazard control work (i.e. interim controls) have to be certified as a lead abatement firm, as it seems to indicate in R325.99406(5)?

Response – Rule 406(5) states that “the certified supervisor and the certified firm employing the supervisor shall ensure that all lead hazard control activities are conducted according to this rule..”. Since this rule applies to both abatement and non-abatement activities, the statement regarding certification of the firm applies only when appropriate (i.e. during abatement activities). It does NOT require a firm to be certified (licensed) as a lead abatement firm when performing interim controls.

(03/01/2005)