MICHIGAN DEPARTMENT OF COMMUNITY HEALTH
HEALTHY HOMES SECTION
www.michigan.gov/leadsafe

LEAD HAZARD CONTROL REGULATIONS
Interpretive Guidance *(August 2007 revision)*

The following interpretive guidances are issued by the department to clarify areas of law for which the department receives numerous questions. The answers provided here apply generally to the subject of the question. Specific scenarios involving often unforeseen or special circumstances may incur a different interpretation than those presented here. If there is doubt about how a regulation should be interpreted or applied, contact an individual knowledgeable in the area of law in question. Some good places to start are:

State Lead Hazard Control Regulations, Lead Abatement and Identification Activities:
Healthy Homes Section, Daniel Lince: 866-691-5323
24 CFR Part 35, HUD regulations governing publicly funded housing agencies:
HUD Regional contact, Paul Diegelman: (216) 522-4058 x. 7232
Michigan State Housing Development Authority, many state CDBG grants:
Bill Parker, Single-family residential housing: (517) 373-1462
Bruce Jeffries Multi-family residential housing: (517) 335-0183

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.

1

What is the required instructor-to-student ratio for lead training courses?

To maintain the high standard of lead training excellence that we have set here in Michigan, HHS 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

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

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

When is the use of a certified lead abatement firm required?

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

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

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

Can a non-certified subcontractor be used to install windows following window removal?

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)*

6

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

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

May activities that are abatement by their nature (eg. window replacement) be called renovation, and therefore performed by non-certified persons?

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. Component replacement is either a rehabilitation activity or, when the windows are being done to address lead hazards, an abatement activity; it is never a hybrid of the two and called 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

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?

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

May non-certified persons be used to install exterior siding?

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

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

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

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?

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

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?

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

13

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

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

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

HHS 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). However, it is not HHS's intent to infringe on enforcement of HUD regulations. HUD Part 35 regulations will to be used as a compliance tool, but not as a targeting measure for compliance investigations. *(03/01/2005, amended 08/03/2007)*

15

Sampling requirements for a risk assessment in a child-occupied facility 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?

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, amended 08/03/2007)*

16

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?

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

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

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

Does the Occupant Protection Plan (OPP) have to be maintained on-site at all times during lead hazard control work?

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, amended 08/03/2007)*

19

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 plastic sheeting be kept over windows for clearance sampling?

The materials defining the containment area, usually the pieces hung vertically, 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 plastic 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, a*

20

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

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

What about visual clearances during winter with snow cover?

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. *(03/01/2005, amended 08/03/2007)*

22

Is exterior plastic groundcover required in deep snowcover and ice?

Plastic sheeting over ice or packed snowcover is a dangerous slip and fall hazard. The necessity for capturing loose debris and paint chips during lead hazard control work must be balanced against the need for worker safety. In heavy snowcover or icy conditions, contractors may use, at a minimum, 1 ½ to 2 foot wide catch strip of plastic sheeting, maintained from the foundation during exterior work and a very thorough cleanup performed. *(03/01/08, amended 08/15/07)*

23

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

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)*

24

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)?

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)*

25

May occupants re-occupy a dwelling before final clearance has been achieved?

Documented methodologies (specifically HUD guidelines and 24 CFR Part 35) and rule R325.99407(4)(d) prohibit occupants from re-occupying dwelling areas until after clearance has been achieved. *(03/01/2005)*

26

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

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)*

27

Is a Supervisor required for all hazard control projects, even interim controls?

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)*

Pending promulgation, recent proposed changes to the administrative rules limits the scope of projects for which rule 325.99406(4) would apply. In the revised set, a certified supervisor would be required for the setup and cleanup of only those non-abatement lead hazard control projects mandated by order of local municipality, government, or court (pending). *(08/15/2007)*

28

Is a firm required to be certified (licensed) as a lead abatement contractor to perform interim control work? (ref: 325.99406(5))

No. Only the Supervisor is required to be certified for non-abatement lead hazard (interim) control projects (see no.26 above). A firm performing lead abatement work must be certified (licensed), as well as ALL the people performing the abatement. *(03/01/2005)*

29

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

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 HHS to local health departments. *(03/01/2005)*

30

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

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)*

31

Can an abatement contractor pay directly for a clearance?

No. The prohibition against any kind of influence of the hazard control firm over the clearance professionals is repeated and reinforced in both federal and state regulations and guidances.

1. Michigan's Lead Hazard Control Administrative Rules, R325.99407(3), clearly states that the clearance professional must be "completely independent" of the lead hazard control firm performing the work.

2. 1995 HUD Guidelines for the Evaluation and Control of Lead Based Paint Hazards in Housing, Chapter 15, "Clearance": "The clearance examiner must not be paid or employed, or otherwise compensated by the lead hazard control contractor and should have no vested interest in seeing that the job is completed on schedule."

3. HUD 24 CFR Part 35, Sec. 1340(3)(f), "Independence": "Clearance examinations shall be performed by persons or entities independent of those performing hazard reduction or maintenance activities…"

Federal and state regulations are in close agreement on the principle of complete independence of the clearance person or firm. These repeated prohibitions extend to the hazard control firm having any influence on the selectior

32

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?

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)*

33

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

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)*

34

Must an individual be certified to perform a clearance on an interim control project?

Yes. Effective December 23, 2002, legislation was enacted requiring certification for the discipline of Clearance Technician (MCL 333.5454 (2)). Clearance Technicians may conduct clearance tests following interim controls only. *(03/01/2005)*

35

Are dust clearance samples required to be collected on all types of interior lead hazard reduction activities?

Yes. All interior lead hazard control projects in target housing or child-occupied facilities must be followed by a clearance examination as stated in R325.99407(1). Exterior lead hazard control projects require a visual clearance by a certified clearance professional (R325.99407(6)). *(03/01)2005)*

36

If the residents remain during an abatement project, is it acceptable to remove all protective sheeting prior to securing a final clearance?

No. There must be a barrier between the work area and the residents until the area has been cleaned and passed visual and dust clearance, as stated in the accepted documented methodology, the HUD Guidelines for the Evaluation and Control of Lead Based Paint Hazards in Housing, Chapter 8: Resident Protection and Worksite Preparation. This methodology is adopted by reference in Michigan Rule No. 325.99401(2). Additional guidance concerning occupant protection measures on interim control and rehabilitation projects where lead is disturbed may be found in 24 CFR Part 35.1345. *(03/01/2005)*

37

If the occupants of a dwelling have been relocated before abatement begins, would this be considered unoccupied for the purpose of notification?

No. The department interprets unoccupied to mean vacant. If someone lives at the dwelling it should be considered occupied and an occupant protection plan must be prepared prior to beginning the abatement. The occupant protection plan in this case may be limited to a simple statement that the occupants will be relocated during the abatement and will not return until clearance has been achieved. *(03/01/2005)*

38

Does Michigan require a minimum number of dust samples during a risk assessment?

Yes. R325.99404(5) of the Lead Hazard Control Administrative Rules states:
In residential dwellings, the risk assessor shall collect the following dust samples in not less than 6 representative rooms, hallways, stairwells, or room equivalents:
(a) One dust sample from the floor of each selected room, hallway, or stairwell.
(b) One dust sample from a window sill or trough, if available, in each selected room, hallway or stairwell. Dust samples from windows shall be collected by alternating the sill and trough in each room to the extent possible.
(c) If there are less than 6 rooms, hallways, stairwells, or room equivalents in the dwelling, then the risk assessor shall sample all rooms, hallways, and stairwells. (03/01/2005)

39

Is a floor and a window dust sample always required?

Yes, whenever feasible. If a window sample is collected in a room, a floor sample must be collected from that room as well (325.99404(5)(a)). If lead is identified on a surface showing friction or impact, an assessor must test the nearest horizontal surface for dust. This would imply that any window with a component showing signs of deterioration would require testing of the nearest horizontal surface. *(03/01/2005)*

40

Is Dust sampling still necessary if no positives are found with XRF instrumentation?

Yes. Regardless of whether lead-based paint is identified on the property, dust sampling must be performed in order to rule out contamination by other routes such as tracking from the exterior, hobby-related contamination, adjacent property contamination and other possible sources. *(03/01/2005)*

41

Do window troughs have to be sampled during a risk assessment?

Yes. R325.99404(5)(b) requires the risk assessor to alternate sampling windows and troughs to the extent possible. *(03/01/2005)*

42

Can a risk assessor modify their recommendations to accommodate the planning needs of a housing agency?

No. In accordance with Rule 325.99404(10)(r), the risk assessor must provide interim control and abatement options related to the hazards identified at the dwelling. The assessor may not limit or exclude recommendations based on rehabilitation planning. The risk assessment and/or inspection report is first a report to the homeowner describing hazards in their home and second a document required to fulfill procedure and policy needs of housing agencies. *(03/01/2005)*

43

Can a limited or "partial" risk assessment be performed?

A certified lead identification professional may apply to the Healthy Homes Section in writing for a waiver of normal rules to conduct a limited scope risk assessment of a dwelling to accommodate the individual needs of a client. The smallest unit of a dwelling for which an application may be made is one room. The applicant must provide information deemed necessary by the department when making the application and must justify the circumstances necessitating a limited scope identification activity.

Even limited in scope, a risk assessment must meet the objectives identified in its definition. A risk assessment is defined at MCL 333.5459(9) as:

(a) An on site investigation in target housing or a child-occupied facility to determine the existence, nature, severity, and location of lead based paint hazards.

(b) The provision of a report by the person conducting the risk assessment explaining the results of the investigation and options for reducing the lead based paint hazard.

As limited scope risk assessments are inherently inferior as an assessment of lead risk than full assessments, and are often used as the basis for addressing lead hazards to protect children, they will be approved only in very special circumstances. Further, soil sampling is a requirement of all risk assessments, even those approved for limited scope. The limitations of the assessment must be made clear in the resulting report and the homeowner urged not to generalize any information contained therein past the specific areas tested. *(08/15/2007)*

44

Can a limited or "partial" Inspection be performed?

A certified lead identification professional may apply to the section in writing for a waiver of normal rules to conduct a limited scope inspection of a dwelling to accommodate the individual needs of a client. The smallest unit of a dwelling for which an application may be made is one room. The applicant must provide information deemed necessary by the department when making the application and must justify the circumstances necessitating a limited scope identification activity.

Even limited in scope, an inspection must meet the objectives identified in its definition. An inspection is defined at MCL 333.5457(2) as:

"A surface-by-surface investigation to determine the presence of lead-based paint in target housing or child-occupied facilities and the provision of a report explaining the results of the investigation".

The limitations of the inspection must be made clear in the resulting report and the homeowner urged not to generalize any information contained therein past the specific areas tested. *(08/15/2007)*

45

Is a risk assessor required to provide a re-evaluation schedule if a housing agency plans to eliminate all hazards?

Yes. Hazards may arise at some time in the future. A schedule for re-evaluation must be included in the risk assessment, based on the method of hazard control to be implemented, the condition and maintenance of the building and the degree of dust contamination. Rule 325.99401(2)(a) adopts the HUD standard by reference, which details the criteria and timelines associated with re-evaluation and provides a table (HUD Table 6.1) for use in determining the standard re-evaluation schedule. *(03/01/2005)*

46

Can carpeted floors be omitted from risk assessments or clearances?

No. Carpeted floors are not excluded from testing during a risk assessment or clearance. It is acknowledged by the EPA in 40CFR 745 Subpart D that a statistical relationship has not yet been established between carpet dust levels and child blood-lead concentrations. However, until the EPA and/or HHS have such statistical data upon which a new standard can be based, the clearance and hazard level for carpeted floors remains at 40μg/ft2. *(03/01/2005)*

47

Is a risk assessor required to sample soil when it is unfeasible due to weather conditions (snowcover, rain, etc.)?

Yes. Soil assessment is a required component of a risk assessment. When weather conditions do not permit sampling the assessor must arrange to return at another time, sample, and include results of analyses in final report or by addendum. *(03/01/2005)*

48

Is a risk assessor or inspector responsible if the client denies access to a room or space during the investigation?

No. A client or homeowner may restrict access to a room or area. This information must be included in the report. The section may verify such information independently with the homeowner. *(03/01/2005)*

49

How many sides of a house exterior must be tested?

A minimum of four exterior walls must be tested per construction history. Walls comprising additions should be addressed separately. *(03/01/2005)*

50

Getting a passing clearance on a basement floor can be very difficult even when standard cleaning practices are used, does the normal 40μg/ft2 clearance standard apply?

HHS may not pass any law that is less protective than the federal equivalent. That said, HHS may not alter the existing dust hazard standards set forth for floors in 40 CFR 745 Sec. 227(h). The best practice for a lead hazard control firm wishing to avoid a possible clearance of a basement floor is to contain off the basement from the rest of the work area, if no basement work has been done, and to maintain that defining containment until after a successful clearance examination. Containment that defines the work area must be left up until after clearance is achieved.

However, in practical consideration of the difficulty of obtaining a successful clearance off concrete, HHS will allow a visual-only clearance to be conducted. To qualify for the modified clearance for unfinished basement, the space must meet all of the following:

1. The basement is unfinished.

2. The basement is used primarily for storage or utilities with no evidence that occupants use the space for living or recreation.

3. The basement is essentially inaccessible to children residing in the home.

In instances where the basement fails to meet any one of these criteria (i.e., a finished basement or a basement with play areas), normal clearance procedures and standards apply.

This modified clearance for unfinished basements with no play areas is optional for clearance professionals. It is for the clearance professional to make the final determination of whether or not the basement applies for this modified clearance or whether to apply normal clearance standards. If uncertain, the clearance professional may seek the advice of the section in this determination. *(08/15/2007)*

51

How should a risk assessor treat like components with identical painting histories in their report so that the specification writer understands how to address them?

When testing all components with deteriorated paint, a risk assessor may group like components with identical painting histories. For example, a risk assessor may test the deteriorated paint on only one of three living room windows and generalize the result to the remaining two windows because, in their professional judgement, the windows have identical construction and painting histories. The risk assessor must then be clear in the report that the two untested windows share the result of the tested ones, either positive (hazard) or negative (non hazard). This will help to avoid confusion with the specification writer, who may only prescribe lead hazard reduction activities for the tested window only, not understanding the generalization. *(08/15/2007)*