105 CMR 460.000: LEAD POISONING PREVENTION AND CONTROL

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460.010: Purpose, Authority, Citation, Severability

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. 105 CMR 460.000 is adopted under the authority of M.G.L. c. 111, §§ 189A through 199B, and pursuant to the provisions of M.G.L. c. 30A, § 2. 105 CMR 460.000 shall be known, and may be cited as 105 CMR 460.000: *Lead Poisoning Prevention and Control*. 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.

460.020: Meaning of Terms

Terms shall have the meanings set forth in 105 CMR 460.020 when used in M.G.L. c. 111, §§ 189A through 199B and 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 are surfaces five feet or less from the floor, stair tread or ground that form a protruding corner or similar edge, or protrude ½ inch or more from a flat wall surface. Accessible, mouthable surfaces generally refer to woodwork, and include, but are not limited to, outside corners of walls, doors, doorjambs, door casings, window casings, chair rails, stairs and stair rails, balusters, treads and risers, etc. Latticework on a residential premises is considered to be composed of accessible, mouthable surfaces, regardless of the dimensions of the individual lattice strips. The following exterior surfaces are exempted from being considered accessible, mouthable surfaces: round support columns six inches or greater in diameter; all clapboards or shingles; cornerboards, dripboards or skirts; masonry surfaces, except masonry windowsills five feet or less from the ground; and asbestos insulation, whether interior or exterior.

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Approved Coverings are rigid or flexible materials approved by the Director to cover surfaces to contain lead violations. Approved coverings include, but are not limited to, wood, sheet metal, vinyl, Plexiglas, 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, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

A.S.T.M. Standard Method C 738 means the Standard Method of Test for Lead and Cadmium Extracted from Glazed Ceramic Surfaces designated C 738-81-(1988) as published in the Annual Book of A.S.T.M. Standards, Volume 15.02, as from time to time amended.

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 certificate or license, all in accordance with the requirements of 105 CMR 460.000, 454 CMR 22.00 and the training materials approved by the Director. See 105 CMR 460.110(C).

Blood Lead Level in Excess of the Level Considered Dangerous to a Child's Immediate Health means a concentration of lead in whole venous blood of 15 to 24 micrograms per deciliter, regardless of erythrocyte protoporphyrin level, in a child under six years of age. This definition shall be used for surveillance of children at immediate risk of lead poisoning. See 105 CMR 460.105(G)(2), 105 CMR 460.760(E)(2)(c) and M.G.L. c. 111, § 197C.

Certifying Organization means an organization with the expertise, experience and other qualifications necessary to operate a certification program under which an encapsulant can be certified as conforming to applicable standards or specifications. A certifying organization authorizes the use of a controlled certification seal or mark as evidence of conformity.

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 space between dwelling units, as well as exterior areas, that are shared by occupants of a multi-unit residential premises. Interior common areas extend from the basement, if applicable, to the floor on which the dwelling unit being inspected is located. 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.

(A) When present in paint or coatings offered for sale, a dangerous level of lead shall be deemed to be 600 parts per million or greater as measured by atomic absorption spectrophotometry.

(B) 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:

(1) a positive reaction with a 6% to 8% sodium sulfide solution, indicative of 0.5% or more lead by dry weight; or

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(2) equal to or more than 1.0 milligram of lead per square centimeter (mg/cm^2) of surface as measured on site by a mobile x-ray fluorescence analyzer; or

(3) 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.

(C) 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.

(D) Grandfather Provision. Surfaces identified pursuant to the provisions of 105 CMR 460.730 prior to August 30, 2002 to contain a level of lead between 1.0 milligram and 1.2 milligrams per square centimeter, inclusive, 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 family or household for living, sleeping, cooking and eating. "Dwelling unit" includes a condominium.

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. Paint is not an encapsulant. Only those encapsulants that are listed on the Register of Approved Encapsulants may be used to contain lead hazards in compliance with 105 CMR 460.000.

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 .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.

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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 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.

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.

Lead-based in regard to putties, paints, plaster, glazes and other surface coatings means that the material contains 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.

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 is a disease present in a child when the child has a concentration of lead in whole venous blood of 25 micrograms per deciliter or greater.

Lead Violation means a surface with dangerous levels of lead, which fails to meet the standards of 105 CMR 460.110.

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:

(A) Determined upon initial inspection to be in full compliance with M.G.L. c. 111, § 197 and 105 CMR 460.000; or

(B) 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.

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 in the case of deleaders and lead-safe renovators, the additional requirements of 454 CMR 22.00.

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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, in the case of lead-safe renovators and deleaders, the additional requirements of 454 CMR 22.00.

Moveable, Impact Surfaces are 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, windowsills, *etc.*

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

(a) has legal title to any premises;

(b) 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;

(c) an estate or trust of which such premises is a part, or the grantor or beneficiary of such an estate or trust; or

(d) 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 applicable law, shall be considered an owner. *See* 105 CMR 460.100(C).

Owner's Agent means an owner's employee or contractor, 18 years of age or older, who performs on the owner's property, the following types of activities:

(a) low-risk abatement and containment, in accordance with all the requirements of 105 CMR 460.175;

(b) structural repairs or lead dust cleaning that may be needed for interim control, in accordance with 105 CMR 460.105; or

(c) obligations with regard to the Short-Term Vacation or Recreational Rental Exemption pursuant to 105 CMR 460.100(D).

For purposes of performing moderate-risk abatement activities on the owner's property, an owner's agent is a person over whose work the owner exercises sufficient control and direction to be considered an agent under Massachusetts common law. This category of owner's agent includes, but is not limited to, an owner's compensated employee or property manager, or a person 18 years of age or older working for or with the owner without compensation. An owner's agent does not include a contractor hired by the owner for the purpose of performing moderate-risk abatement activities who works largely unsupervised by the owner and brings his own tools to the job. Contractors must be licensed in accordance with 454 CMR 22.00, 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.

Previously Reported Case of Lead Poisoning means an episode of lead poisoning in a child was identified or confirmed by the State Program based on a blood sample analyzed by the State Laboratory for Lead and Lead Poisoning Detection, or analyzed and reported by another laboratory that meets the requirements of the Clinical Laboratory Improvement Amendments of 1988, Public Law 100-578, to section 353 of the Public Health Service Act, 42 U.S.C. 263a, and the blood sample was accompanied by a completed laboratory form prescribed by the Director, called a bloodslip.

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.

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Register of Approved Encapsulants means the list of encapsulants, issued and from time to time revised by the Director, that are approved for use, in accordance with any restrictions indicated on the Register or in State Program training materials, to achieve compliance with 105 CMR 460.000.

NON-TEXT PAGE

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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 shall mean 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 this definition.

State Laboratory for Lead and Lead Poisoning Detection means the laboratory established by the Commissioner pursuant to M.G.L. c. 111, § 195, in the Childhood Lead Poisoning Prevention Program, Institute of Laboratories, Department of Public Health, 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 and at 950 CMR 71.03.

State Sanitary Code means the regulations adopted by the Department of Public Health pursuant to M.G.L. c. 111, § 127A. *See* 105 CMR 400.000 and 410.000.

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.

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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 means any mobile instrument which measures on site lead concentration in milligrams per square centimeter (mg/cm^2).

460.040: Mandatory Reporting of Cases of Lead Poisoning

Pursuant to M.G.L. c. 111, § 191, physicians, other health care providers, and private laboratories shall report all cases of childhood lead poisoning known to them to the Director within three working days of identification, unless previously reported. Should a child suffer multiple episodes of lead poisoning, each episode must be reported.

460.050: Mandatory Lead Poisoning 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 under six years of age, 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.

(C) Regular Screening of Children for Lead Poisoning.

(1) All children shall be screened once between the ages of nine months and 12 months, and again at ages two and three.

(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 age four.

(D) Screening of Children at High Risk for Lead Poisoning.

(1) Children shall be screened for lead poisoning more than once a year when they meet one of the high-risk criteria listed below, or whenever in the sound medical judgment of the health care provider they are at high risk of lead poisoning:

(a) Living in a pre-1978 home with deteriorated paint or plaster, unless it has been inspected by a lead inspector and found not to contain lead-based paint: At least every six months between the ages of six months and three years, and again at ages four and five.

(b) Having siblings or playmates who are lead poisoned: At least every six months between the ages of six months and three years, and again at ages four and five.

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(c) Living in a pre-1978 home undergoing renovation, unless it has been inspected by a lead inspector and found not to contain lead-based paint or plaster: Within four weeks of the start of the renovation project, once a month thereafter during its duration, and once after its completion.

(2) Children identified as having a blood lead level of 10 ug/dL or above 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.

(E) If children have never been screened for lead poisoning, they must be screened at entry to kindergarten, and present evidence of such screening. If they have previously been screened for lead poisoning, they need not be screened again to fulfill kindergarten entry requirements, but must present evidence of previous screening.

460.060: Reimbursement for Mandatory Screening Services

The following lead poisoning screening services shall constitute the "screening for lead poisoning" 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:

(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 section 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: Universal Reporting of Erythrocyte Protoporphyrin and Blood Lead Results

Laboratories and health care providers' practices that analyze blood specimens drawn pursuant to 105 CMR 460.050 for 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 waive the electronic reporting requirement for laboratories or health care providers' practices that report only a small volume of results.

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 under six years of age 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 delead pursuant to M.G.L. c. 111, § 194 because the premises is occupied by a child under six years of age at the time of the lead determination enforcement procedure or code enforcement lead inspection upon which the order is based, or a child under six years of age who is lead poisoned as defined at 105 CMR 460.020 occupied the premises within the past 12 months.

460.100: continued

(3) The owner(s) receive an order to delead pursuant to M.G.L. c. 111, § 194 because the premises is occupied by a child under six years of age 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.

(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 under six 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 under six years of age 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 ninety days after acquiring legal title to a residential premises in which a child under six years of age resides, either:

(a) obtain a Letter of Full Compliance, or obtain a Letter of Interim Control, except that if a child under six years of age 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 under six years of age 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 the procedures of the Protocol for Maintaining Intact Paint issued by the Director.

(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 under 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.

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(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 under six years of age 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 under six years of age occupies said dwelling unit.

460.105: Lead Violations: 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 as follows.

(1) Identification of Loose Lead Paint. The risk assessor shall conduct an initial lead inspection pursuant to 105 CMR 460.730. As the lead inspection is performed, the risk assessor shall carefully observe and record the condition of lead paint and shall record any loose lead paint, plaster or putty on the risk assessment report. If an initial lead inspection was previously performed by another lead inspector after July 1, 1990, the risk assessor may use that lead inspection report. The following interim control measures shall be identified.

(a) Any loose lead-based paint, other coating, plaster or putty must be made intact wherever it is found, except as provided under 105 CMR 460.105(A)(1)(b) and (c).

(b) Windows whose moveable impact surfaces contain dangerous levels of lead must be in good functioning condition. This may be determined by opening and closing the upper and lower sash several times. If any lead-based paint, other coating, plaster or putty chips, flakes, or otherwise falls from the sash, all the moveable impact surfaces of the window must be abated in their entirety.

(c) If there is any loose lead-based paint, other coating, plaster or putty on any moveable impact surface, all the moveable impact surfaces of the window must be abated. If there is any loose lead-based paint, other coating, plaster or putty on any windowsill, the sill must be abated or contained.

(d) In order to retard future deterioration of paint containing dangerous levels of lead, any architectural element that has had loose paint, plaster or putty abated by any means, or made intact by wet or dry scraping, must be repainted pursuant to the State Sanitary Code. See 105 CMR 460.110. Repainting shall be completed following the issuance of a Letter of Interim Control.

(2) Identification of Structural Defects. During the conduct of the risk assessment, the risk assessor shall look for indications of structural defects, such as roof or soffit leaks, or problems such as plumbing leaks that result in water infiltration causing paint deterioration. The risk assessor shall record in the risk assessment report any such structural defect. The apparent or probable location of the structural defect(s) must be recorded in the risk assessment report, but the risk assessor is not required or expected to examine a roof, soffit, or other potentially defective structural component that is not readily accessible without the use of a ladder. All structural defects must be repaired as a condition of the Emergency Lead Management Plan, 105 CMR 460.105(A).

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(3) Safeguards.

(a) If windows containing dangerous levels of lead do not function properly due to broken weight cords, or having been painted or otherwise fixed shut, or for any other reason, the risk assessor shall record on the risk assessment report that the windows must be repaired to good functioning condition.

(b) If the sash, or the interior or exterior stops, including the header stops, or the parting beads, or the bottom of the window well contain dangerous levels of lead, the bottom of the well must be covered with a well-fitted flashing made of metal or vinyl with each edge caulked so that the window well is readily cleanable, except that window wells with smooth, cleanable bottom surfaces do not have to be flashed. The licensed risk assessor shall record on the risk assessment report which window wells must be flashed.

(4) Dust Sampling. Dust samples shall be taken according to the lead dust monitoring protocol at least once as part of the risk assessment or risk assessment reinspection process. Dust samples shall be taken at the conclusion of the risk assessment if all lead paint is intact on sound substrates and no structural repair or replacement, containment or abatement of architectural elements is required. If any structural repair, replacement, abatement or containment is required, dust samples shall be taken during the risk assessment reinspection. Any room or interior area in which one or more surfaces does not meet acceptable dust lead levels required by 105 CMR 460.170(B) must be cleaned in its entirety. If the risk assessment reinspection is a reoccupancy reinspection, then the entire unit must be cleaned if one or more surfaces does not meet acceptable dust lead levels required by 105 CMR 460.170(B).

(B) Performance of Work. Any abatement or containment work necessary to meet the requirements of the Emergency Lead Management Plan for interim control, 105 CMR 460.105(A)(1) through (4), as well as the cleanup required by 105 CMR 460.160(D) after such work, must be performed by authorized persons, in accordance with 105 CMR 460.000 and 454 CMR 22.00. The following additional interim control activities may be performed by authorized persons, or owners or owners' agents who are not authorized persons: structural repairs, cleaning after such repairs and cleaning to achieve the dust lead levels required by 105 CMR 460.170 to eliminate the urgent lead hazard of excessive lead in household dust.

(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. Using the risk assessment report, the risk assessor shall visually inspect each indicated surface to determine that interim controls have been completed. 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 62.6.2: *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.

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(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 licensed lead-safe renovator with his or her license or certification 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. 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 fully completed, signed and 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. The Letter of Interim Control shall state a date of expiration that shall be one year from the date of issue.

(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.

(F) Recertification.

(1) Before the end of the one-year period of validity of a Letter of Interim Control, an owner must either promptly fully 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) Recertification Reinspection. 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) Notification. See 105 CMR 460.750(A)(4).

(4) 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) Repair or Revocation.

(1) Failure of Owner to Maintain Conditions of Letter of Interim Control. Upon the failure of the owner to maintain a dwelling unit or residential premises which has been issued a Letter of Interim Control in compliance with the standard of said Letter, the Letter of Interim Control may remain valid or be revoked in accordance with the following procedures:

(a) Within 14 days of being notified in writing by an occupant of the failure of the owner to maintain the unit or residential premises free of urgent lead hazards, the owner shall complete work to repair or restore the premises to the standard required by the Letter of Interim Control. The restoration or repair may be performed by the owner or owner's agent in accordance with educational materials issued by the Director.

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(b) If the owner has not completed the repair or restoration work necessary to maintain the standard of the Letter of Interim Control within 14 days of being notified in writing by the occupant, a licensed code enforcement risk assessor, or any risk assessor authorized to work as an agent of the State Program shall conduct a risk assessment pursuant to 105 CMR 460.105(A), except that the risk assessor need not perform another lead inspection, to find whether or not the dwelling unit or residential premises contains urgent lead hazards.

1. If the licensed code enforcement risk assessor, or risk assessor authorized to work as an agent of the State Program finds no urgent lead hazards, the Letter of Interim Control remains valid.

2. If the licensed code enforcement risk assessor, or risk assessor authorized to work as an agent of the State Program identifies urgent lead hazards in the dwelling unit or residential premises, the risk assessor shall issue a risk assessment report listing all the urgent lead hazards that must be corrected and shall also issue an Order to Restore Interim Control Measures. The owner shall have 30 days from receipt of the risk assessment report and the Order to Restore Interim Control Measures to complete the required repairs or restoration, or such greater time period as allowed in exceptional cases by the Director, or, in their own respective cases, by a local code enforcement agency or board of health, or by judicial order. The repair or restoration work shall be performed in accordance with 105 CMR 460.105(B).

(c) 30 days following the owner's receipt of the Order to Restore Interim Control Measures, or sooner if requested by the owner, or upon the expiration of such greater period of time as allowed in exceptional cases by the Director, or, in their own respective cases, by the local code enforcement agency or board of health, or by judicial order, on a case by case basis, for the owner to complete repairs or restoration, a licensed code enforcement risk assessor, or a risk assessor authorized to work as an agent of the State Program, shall conduct one or more risk assessment reinspection(s). If all urgent lead hazards identified in the reinspection report have been corrected by the 30th day, or upon the expiration of such greater period of time as allowed in exceptional cases by the Director, or, in their own respective cases, by the local code enforcement agency or board of health, or by judicial order, the Letter of Interim Control shall remain valid.

(d) If the owner fails to complete repairs or restoration as required by the Order to Restore Interim Control Measures within the required time period, the State Program or local code enforcement agency or board of health shall revoke the Letter of Interim Control for the dwelling unit or residential premises, and issue the owner an Order to Correct Violation(s) which shall require the owner to obtain a Letter of Full Compliance within the timelines of 105 CMR 460.751(C).

(e) During the period of time within which the owner must complete repairs or restoration, in accordance with 105 CMR 460.105(G)(1)(b) and (c), 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 the applicable deadlines set forth in 105 CMR 460.105(G)(1)(b) and (c).

(2) Identification of a Child with a Blood Lead Level in Excess of the Level Considered Dangerous to the Child's Immediate Health, or a Child Who is Lead Poisoned. 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 or as having a blood lead level in excess of the level considered dangerous to the child's immediate health, in accordance with M.G.L. c. 111, § 197C(b) and 105 CMR 460.020.

(a) If the licensed code enforcement risk assessor finds no urgent lead hazards in the dwelling unit or residential premises of a child with a blood lead level in excess of the level considered dangerous to the child's immediate health 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.

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(b) If the licensed code enforcement risk assessor identifies urgent lead hazards, or in any case involving a child who is lead poisoned, 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. In cases in which the only urgent lead hazards are dust lead levels in excess of those acceptable under 105 CMR 460.170, 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). If the successive deadlines of 105 CMR 460.751(A) or (B), as applicable, are not met, then the Letter of Interim Control shall be revoked.

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

(A) 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.

(B) Pursuant to M.G.L. c. 111, § 197, 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 made 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, 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. In the case of metal accessible, mouthable surfaces, only lead-based paint, other coating, plaster or putty on handrails and railing caps, including handrails and railing caps on fire escapes when the fire escapes are used as porches, must be abated or contained. Other accessible mouthable metal surfaces must be intact. Baseboards with an exposed horizontal edge may have quarter-round molding, or other molding approved by the Director, applied to the top edge. 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.

(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, including encapsulant use if their deleader training included encapsulant training, in accordance with the requirements of 105 CMR 460.000 and 454 CMR 22.00.

(2) Effective February 4, 2000, licensed lead-safe renovators 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)(4), in accordance with the requirements of 105 CMR 460.000 and 454 CMR 22.00.

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(3) Effective March 15, 1995, 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.

(4) 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.

(D) Violations of 105 CMR 460.000 constitute violations of the State Sanitary Code which requires that corrections be made in a workmanlike fashion, restoring all parts of the residential premises to the condition they were in before occurrence of any such violations. *See* 105 CMR 410.020, "Compliance". This includes repainting of formerly painted surfaces and the application of paint or a coating with a sealant value equivalent to that of paint to these surfaces.

460.115: Process for Approval of Encapsulants for the Containment of Lead-Based Paint

(A) An encapsulant must meet the following conditions for approval.

(1) The Director shall establish minimum encapsulation product performance properties, test methods and minimum performance standards, in consultation with the Department of Labor and Workforce Development and the Deleading Technology Task Force. An Encapsulation Product Performance Protocol issued and from time to time revised by the Director shall indicate the performance properties, test methods and minimum performance standards for encapsulation products.

(a) The certifying organization designated by the Director shall determine whether an encapsulation product meets the minimum standards for performance properties as indicated on the Encapsulation Product Performance Properties Protocol through specified laboratory testing methods.

(b) The laboratories in which encapsulant product performance testing is carried out may be owned and operated by the certifying organization or may be independent laboratories designated by the certifying organization, or may be laboratories owned and operated by the encapsulant manufacturer, subject to the approval of the Director. If the laboratory is owned and operated by the manufacturer, property performance testing must be conducted under the observation and surveillance of the certifying organization.

(2) The Director shall establish a toxicological assessment process to determine whether encapsulation products meet toxicological standards established by the Director in consultation with the Department of Labor and Workforce Development and the Deleading Technology Task Force. A Toxicological Assessment Protocol issued and from time to time revised by the Director shall establish the toxicological assessment process and minimum standards for encapsulation products.

The toxicological assessment shall be performed by a toxicologist certified by the American Board of Toxicology and be conducted either under the auspices of the certifying organization or as directly designated by the Director. The toxicologist shall determine whether an encapsulation product meets the minimum standards as specified in the Toxicological Assessment Protocol.

(3) Each encapsulation product must be certified by the certifying organization that it meets the minimum standards for performance properties as indicated on the Encapsulation Product Performance Protocol and the minimum standards of the Toxicological Assessment Protocol. The Director shall have the right of final approval of any encapsulant for use as a containment method in compliance with 105 CMR 460.000.

(a) The certifying organization shall ensure that each approved encapsulant bears the certifying organization's seal of approval on each product container or packaging, as specified by the Director.

(b) The certifying organization shall ensure that each encapsulant manufacturer establishes, maintains and uses a quality assurance system that will assure compliance with the minimum standards of the Encapsulation Product Performance Protocol and the Toxicological Assessment Protocol. The quality assurance program shall meet the conditions specified by the Director.

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(B) Approved encapsulants shall be entered on the Register of Approved Encapsulants. The Register shall indicate any encapsulant-specific restrictions. Use of approved encapsulants must conform to any restrictions indicated on the Register, and in State Program educational and training materials.

(1) The Director may repeal approval of any encapsulant and delete it from the Register of Approved Encapsulants due to product deficiencies including but not limited to product failure, toxicological hazards, or failure to maintain performance standards as determined by the Director, or upon revocation of certification by the certifying organization.

(2) An encapsulant manufacturer may initiate an appeal of the revocation of approval within 30 days of receipt of notice of revocation from the Director. The appeal shall be made to the Director, who shall arrange a hearing in conformance with M.G.L. c. 30A and the standard rules of adjudicatory practice and procedure pursuant to 801 CMR 1.00.

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

(A) Work performed to make intact loose lead-based paint, other coating, plaster or putty or work to remove intact lead-based paint, other coating, plaster or putty from moveable, impact surfaces and accessible, mouthable surfaces: Authorized persons shall perform such work in a workmanlike manner, and in accordance with the requirements of 105 CMR 460.000 and 454 CMR 22.00, and the safe work practices and procedures set out in training and educational materials approved by the Director or the Department of Labor and Workforce Development, pursuant to 454 CMR 22.00.

(B) 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.

(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.

(C) All methods not listed in 105 CMR 460.120 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(B)(6).

(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(B)(2).

(D) 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.

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(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.

(E) 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

(A) Work performed to contain with approved coverings lead-based paint, other coating, plaster or putty: Authorized persons shall perform such work in a workmanlike manner, and in accordance with the requirements of 105 CMR 460.000 and 454 CMR 22.00, and the safe work practices and procedures set out in training and educational materials approved by the Director or the Department of Labor and Workforce Development. Approved coverings must be used on appropriate surfaces, in accordance with State Program training materials.

(B) For properties listed on the State Register of Historic Places, covering of significant historic architectural features is not recommended. In special circumstances, surfaces may be covered with a transparent rigid material such as acrylic sheets, affixed in a non-damaging manner.

460.135: Containment Using Encapsulants

(A) Work performed to encapsulate intact interior surfaces: Authorized persons shall perform such work in a workmanlike manner, in accordance with the requirements of 105 CMR 460.000, the safe work practices and procedures set out in training and educational materials approved by the Director, and manufacturer's instructions. Any work to make intact a surface with loose lead-based paint, other coating, plaster or putty so that it may be encapsulated must be done by authorized persons, in accordance with educational materials approved by the Director or certified deleader training providers' instructions. Manufacturers' instructions for application of their encapsulants must be carefully followed.

(B) 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. In all cases, the determination of which surfaces may be encapsulated shall be made in accordance with the following additional criteria:
(1) Only those surfaces that are not specifically prohibited from encapsulation, have been initially inspected by a lead inspector and assessed to be appropriate for encapsulation may be considered for encapsulation.
(2) All loose surfaces containing dangerous levels of lead should be assessed as suitable for encapsulation while loose. If the initial surface assessment on such a surface fails, the surface may be made intact by an authorized person and reassessed. If the surface fails this subsequent surface assessment, an authorized person must abate or contain the surface using an alternate method, pursuant to 105 CMR 460.000.
(3) The following surfaces shall not be encapsulated: floors, stair treads, thresholds, any exterior surface, as well as the sashes, parting beads, exterior windowsills/window wells, exterior and header stops of moveable windows, and interior stops of moveable windows, except if there is a window replacement unit that is self-contained and removes any friction or impact from the interior stops. For other surfaces that are not specifically prohibited from encapsulation, follow encapsulant manufacturers' recommendations and restrictions.

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(4) Results of the surface assessments shall be documented using a form approved by the State Program.

(C) All leaded materials and/or lead residues generated through surface preparation for encapsulation, as well as all encapsulant debris generated through the application process and any unused encapsulant not suitable for application, shall be disposed of in accordance with the manufacturers' instructions, where applicable, and with applicable regulations of the Department of Environmental Protection, all 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.

460.140: Removing and Replacing Components and Fixtures

(A) Work performed to remove components and fixtures containing lead-based paint, other coating, plaster or putty: Authorized persons shall perform such work in a workmanlike manner, and in accordance with the requirements of 105 CMR 460.000 and 454 CMR 22.00, and the safe work practices and procedures set out in training and educational materials approved by the Director or the Department of Labor and Workforce Development.

(B) 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.

(C) 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).

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

(E) 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. See 105 CMR 460.150(B).

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

460.150: Notification of Abatement and/or Containment Activity

(A) On a form approved by the Director, the owner shall give a minimum ten calendar days advance notice of the date abatement and/or containment activities, whether taken for full compliance or as part of interim control, will begin at his property. 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 and Workforce Development.

(5) The Director.

(6) The Massachusetts Historical Commission, if the residence is listed on the *State Register of Historic Places.*

460.150: continued

(B) 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).

(C) 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:

(a) the application, by airless sprayer, of encapsulants, in their units or in common areas;

(b) 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 lead-safe renovators shall adhere to all health and safety requirements specified in 454 CMR 22.00.

(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 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.

460.160: continued

(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. Effective April 18, 1995, dust samples must be taken at each reoccupancy reinspection, or in cases in which there is no reoccupancy reinspection, at the deleading reinspection, in the case of full compliance, or the final risk assessment reinspection, in the case of interim control. Reoccupancy or initiation of a new occupancy may not occur until dust lead levels have been verified as satisfying the levels set out in 105 CMR 460.170(B). 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 ($\mu g/ft^2$).

(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) Should lead dust levels exceed these standards, the Director shall require the owner to have the last authorized person who performed abatement work that was not low-risk return to the dwelling unit and conduct a final clean-up, in accordance with 105 CMR 460.160(D)(1). If lead dust levels continue to exceed the standards of 105 CMR 460.170(B) after three required clean-ups by the authorized person, 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), in cases in which a licensed deleader was not responsible for the final clean-up.

(D) The lead inspector shall collect another set of dust samples as indicated in the lead dust monitoring protocol each time an authorized person is required to return to the dwelling unit to clean up.

(E) The Director may require the owner to have an authorized person seal the floors and/or other surfaces with a sealant such as polyurethane varnish, as specified in the lead dust monitoring protocol, should three clean-ups fail to result in dust lead levels that meet the standards of 105 CMR 460.170(B).

460.175: Low- and Moderate-Risk Abatement and Containment

(A) (1) Effective March 15, 1995, 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, pursuant to 105 CMR 460.135.

(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, pursuant to 105 CMR 460.130.

(d) Capping baseboards.

(e) Removing cabinet drawers and shelves which are not glued, nailed or otherwise affixed to supports.

(2) Timing: 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. 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) Effective February 4, 2000, 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.

2. Exterior of Residential Premises, Including Any Other Structures Within the Same Lot Line: Making intact up to ten 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 ten 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(1)(b)1. 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 Labor and Workforce Development.

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

460.175: continued

(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 owner's agents; encapsulation instruction for owners, owners' agents, lead-safe renovators 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 lead-safe renovators must be trained and licensed pursuant to, and adhere to the additional requirements of, 454 CMR 22.00.

(E) Certificate of Instruction. An owner or owner's agent's 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 a certificate 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 and 105 CMR 460.000 and subject to all the penalties thereof. Any abatement and/or containment activities performed by a licensed lead-safe renovator 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 as a lead-safe renovator, 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 under six years of age 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 under six years of age 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

(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 under six 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 under six years of age 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 under six years of age 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.

460.180: continued

(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 under six years of age 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 under six years of age 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/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/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 subsection, 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) and 105 CMR 460.310:

(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;

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

(9) through August 31, 1989, hobby-type glazes, enamels and frits.

(B) Effective September 1, 1989, lead-based glazes, enamels and frits are exempted by the Director from the provisions of M.G.L. c. 111, § 196(b) [105 CMR 460.200(C)], provided the following conditions are met:

(1) Lead-based glazes, enamels, and/or frits shall not be sold to individuals under 18 years of age.

(2) Lead-based glazes, enamels, and/or frits shall not be sold for use in settings where children under 18 years of age, 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.

460.300: continued

(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.

460.310: Terms and Conditions of Exemptions

The Director may exempt lead-based paints listed in 105 CMR 460.300(A) from the provisions of M.G.L. c. 111, § 196(b) [105 CMR 460.200(C)] under the following terms and conditions.

(A) The manufacturer or wholesaler shall submit to the Director an application before the product is offered for sale, indicating the amount of lead by dry weight in the product, the means by which this concentration has been verified, and the means he/she will exercise to assure the marketing of the product only in specified channels.

(B) In the case of exemptions in 105 CMR 460.300(A)(1) through (8), the paint is labeled as required by regulations of the U.S. Consumer Product Safety Commission, 16 CFR 1303.3(a), as from time to time amended.

460.320: Notification of Director if Formula of Exempted Product is Modified: New Exemption May Be Required

(A) Notification of Director. The manufacturer and wholesaler of a lead-based paint product exempted by the Director under 105 CMR 460.000 shall provide the Director with prior written notification of any modification in the formula affecting the lead content of the exempted paint product and any modifications in its manner of distribution.

(B) Director's Determination. If the Director determines that the modifications substantially change the conditions under which the original product was exempted, the product as modified, or under the new marketing circumstances, will not be exempt from the provisions of M.G.L. c. 111, § 196(b). A new application for exemption shall be required.

460.330: Refusal and Revocation of Exemptions

The Director may refuse to grant an exemption, or may revoke an exemption, if he determines that the manufacturer or wholesaler of the lead-based paint product has not demonstrated that the product falls within one of the categories in 105 CMR 460.300(A) or has not complied with 105 CMR 460.300(B), 460.310, or 460.320(A). Such refusal or revocation shall be in the form of a written notification with a statement of reasons therefor.

460.340: Administrative Appeal from Refusals and Revocations

The manufacturer or wholesaler affected shall have the right to appeal any refusal to grant an exemption, or revocation of an exemption.

(A) In order to exercise the right of an appeal, the manufacturer or wholesaler, within 20 days of receipt of the Director's written statement of reasons, shall file a written claim of appeal which sets forth with specificity his objections to the Director's action.

(B) Whenever there are genuine issues of material fact in dispute, the appeal shall include an evidentiary hearing conducted under the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00. The final decision in any appeal shall be made by the Director.

(C) The Director may revoke exemptions on an emergency basis prior to appeal.

460.400: Training and Licensure of Lead Inspectors and Risk Assessors

(A) Effective July 1, 1990, 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 lead inspection and risk assessment report forms 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. Should such surfaces determined to contain dangerous levels of lead subsequently be abated and/or contained, such work must be carried out in compliance with 105 CMR 460.000 and 454 CMR 22.00.

(D) (1) The Director shall establish and revise as necessary the content and requirements for lead inspector training. Training shall include a field apprenticeship and classroom instruction. The State Program shall charge a fee for lead inspector training, as established by the Commissioner of Administration, when the State Program conducts such training. 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. 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.

(2) The Director shall also establish and revise as necessary the content and requirements for additional training to be taken by those lead inspectors who wish to become risk assessors. In order to be eligible to become a risk assessor, lead inspectors shall have:

(a) completed a minimum of 75 inspections and reinspections, as a lead inspector within the two years prior to application as a risk assessor; or

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(b) have received a written waiver from the Director on the basis of other experience. Application for licensure as a risk assessor may be made following the successful completion of a training program conducted by the State Program or a certified risk assessor training provider, including attainment of an acceptable grade on an examination issued or approved by the State Program.

(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) For applicants who will be using an x-ray fluorescence analyzer, proof that the applicant has also completed training by the manufacturer of the instrument.

(4) Proof that the applicant has attained 18 years of age.

(5) For risk assessor applicants, proof that the applicant has also met the minimum experience requirements of 105 CMR 460.400(D)(2).

(6) 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.

(7) For obtaining licensure, a check in the amount of the entire annual fee as determined by the Commissioner of Administration. 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 Commissioner of Administration.

(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 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.

(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

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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.

(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 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.

A lead inspector may not conduct lead determinations, lead inspections, surface assessments, 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. M.G.L. c. 30A, § 13(3).

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(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 and the Public Health Council. Their 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 the Public Health Council, 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 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.

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(C) Training provider certification shall be valid for a period of two years. Application for renewal of certification shall be made at least 30 days prior to the expiration of a current certification and such application, if complete, shall have the effect of certification until the State Program acts upon the renewal application. The State Program shall have up to 60 days to approve the renewal application. Certified training providers shall pay a certification fee in an amount determined by the Commissioner of Administration.

(D) 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.

(E) 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. Penalties include but are not limited to letters of warning, probation, suspension or revocation of certification.

(F) 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.

(G) Certified training providers shall revise the course curriculum to include new or additional topics within reasonable timelines as specified by the Director.

460.420: Training and Licensure of Deleaders and Lead-Safe Renovators

(A) Only authorized persons may conduct abatement and containment work. See 105 CMR 460.110(C).

(B) Deleaders and lead-safe renovators shall conduct abatement and containment in compliance with 105 CMR 460.000, 454 CMR 22.00, and all other applicable Massachusetts and federal laws and regulations, including but not limited to M.G.L. c. 152, the Massachusetts Workers Compensation statute, 454 CMR 10.00 and 454 CMR 11.00, and the U.S. Department of Labor's Occupational Safety and Health Administration's Lead in Construction regulations, 29 CFR 1926.62.

460.430: Monitoring of Lead Inspectors, Risk Assessors, Deleaders and Lead-Safe Renovators

(A) The Director shall establish a program to monitor and audit the quality of work of lead inspectors, risk assessors, deleaders and lead-safe renovators. Discovery of improper work by deleaders or lead-safe renovators shall be referred to the Department of Labor and Workforce Development for appropriate action.

(B) A representative of the Director, the Department of Labor and Workforce Development 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, 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 lead-safe renovator 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 and Workforce Development 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.

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(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, 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 violations. 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 violations, 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 460.020 and 105 CMR 460.740. 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.

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(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.

NON-TEXT PAGE

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(B) Inspection Responsibility. A local code enforcement agency is obligated to inspect for lead paint whenever it conducts an inspection for violations of the State Sanitary Code pursuant to 105 CMR 410.822(B) in a dwelling unit or residential premises constructed before 1978, where a child under six years of age resides. If it is not clear to the inspector whether children reside in the premises or what their ages are, the inspector shall ask the owner and/or occupants of the premises for this information at the time of the inspection. 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 form approved by the Director shall be used to record test results. The lead determination enforcement procedure shall be performed in one of the two following ways:

(a) A code enforcement inspector shall perform the lead determination enforcement procedure on a minimum of five surfaces specified by the State Program. Should no violations be found, the inspector shall continue to perform the procedure on surfaces indicated in 105 CMR 460.110(B)(1) through (3) until at least one surface is found to have a lead violation or until a complete lead inspection is performed.

(b) A code enforcement lead determination inspector shall perform the lead determination enforcement procedure on a minimum of five surfaces specified by the State Program. Should no violations be found, the inspector shall continue to perform the procedure on up to 15 additional surfaces specified by the State Program until at least one surface is found to have a lead violation. Should no violations be found after these additional tests, the case shall be referred to a code enforcement inspector, who shall conduct the lead determination enforcement procedure within ten working days. Should there be no code enforcement inspector available, the code enforcement lead determination inspector shall refer the case to the Director in writing within two working days of the lead determination(s).

(3) 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, .751 and .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 dwelling units or residential premises in which a child under six years of age lives. If an identified lead poisoned child resides in a home built in or after 1978, the inspector shall conduct a home visit for the purpose of identifying potential lead hazards or other sources of lead exposure, and to counsel parents or guardians about lead hazard reduction. If the inspector is not certain whether or not the residential premises was constructed before 1978, the inspector shall check the relevant building

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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 violations. 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 priorities:

(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 lives whose blood lead level is determined to be elevated but below 25 micrograms per deciliter. The State Program's case management staff shall prioritize such inspections.

(C) Dwelling units in which a child under six years of age 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 105 CMR 460.760(D)(2), or 105 CMR 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 violations, or if there has been a risk assessment performed, copies of any lead inspection and risk 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 s/he 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

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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 .110, as applicable if a child under six years of age 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):

(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 documentation required in 105 CMR 460.725(A), 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) To satisfy 105 CMR 460.725(A)(1), 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 under six years of age occupies said dwelling unit, is exempt from the requirements of 105 CMR 460.725.

460.730: Procedures for Initial Inspection

The process of achieving compliance with 105 CMR: 460.000: *Lead Poisoning Prevention and Control* 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. A lead inspection or risk assessment is required as the first step in each respective compliance process. 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.

Inspectors shall observe the following procedures in any initial inspection to detect dangerous levels of lead.

(A) Pre-inspection Information. A lead inspector or risk assessor must explain to the property owner the options of low- and moderate-risk abatement and containment and interim control, and provide other information as required in training materials or policy statements approved by the Director, prior to beginning an inspection. If the owner or a representative of the owner is not present at the inspection, the lead inspector or risk assessor must promptly send to the owner State Program educational materials explaining these options.

(B) Identification of Surfaces Covered with Paint, Other Coating, Plaster or Putty. Begin the lead inspection by clearly identifying the location of surfaces covered with paint, other coating, plaster or putty, tested in accordance with training and educational materials and policy statements approved by the Director, on the lead inspection or risk assessment report form approved by the State Program.

(C) Loose Paint, Other Coating, Plaster or Putty. Test 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. For any loose areas of lead-based paint, other coating, plaster or putty that are apparently of greater dimension than two square feet in interior rooms, hallways or common areas, or ten square feet on the exterior, and which are not on surfaces that are moveable, impact surfaces, measure and rule out as ineligible for making intact as a moderate-risk abatement activity, in accordance with educational materials approved by the Director.

(D) Moveable Impact Surfaces and Accessible Mouthable Surfaces. Test paint, other coating, plaster or putty on all such surfaces. If a surface is inaccessible to the inspector, it is the owner's responsibility to either provide 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.

(E) Discovery 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 must observe the following general procedures, as well as the provisions of policies on post-compliance assessment issued and from time to time revised by the Director:

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(A) Visually Check all Surfaces Containing Dangerous Levels of Lead. Referring to the initial lead inspection and reinspection reports, look at all surfaces indicated as having dangerous levels of lead, to ensure that they remain intact. For those surfaces the reinspection report indicates were brought into compliance by covering or encapsulation, check to make sure that such coverings are intact and remain an effective barrier. For any flat woodwork that was reversed, check to make sure they remain reversed and securely in place.

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(B) Test Surfaces Not Identified on Previous Inspection Report. If loose paint, other coating, plaster or putty is observed, and the initial lead inspection report does not indicate it was tested, or if the initial inspection report does not indicate an accessible mouthable or moveable impact surface was tested, test to determine whether it contains dangerous levels of lead, unless it is inaccessible.

(C) Fill Out Post-Compliance Assessment Report Form. Document any existing lead violations in a post-compliance assessment report form approved by the Director. Label in accordance with the initial lead inspection report, and provide a description of the nature of the violation. If no existing lead violations are found in a particular room or area, this must also be indicated on the report.

460.740: 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 Six Percent to Eight Percent 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. The formation of a gray or black color indicates a dangerous level of lead. If no color change to gray or black occurs within 30 seconds, the test result is negative for dangerous levels of lead. This test shall not be performed directly on iron or copper pipes, railings or radiators, or other metal surfaces.

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 use the following reporting procedures after performing a lead inspection, risk assessment, reinspection, post-compliance assessment or lead determination enforcement procedure:

(1) No Violations upon Initial Inspection. Upon determination that there are no lead violations, 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, on a form approved by the Director. The lead inspector or risk assessor shall issue a Letter of Full Initial Inspection Compliance to the owner. Said letter shall be valid only as long as coverings over lead-based paint, other coating, plaster or putty remain in place and provide an effective barrier, and no loose lead-based paint, other coating, plaster or putty is present.

(2) Notice of Dangerous Levels of Lead. When dangerous levels of lead are found by initial inspection or risk assessment in the common areas and/or exterior of a residential premises, the lead inspector or risk assessor shall include a written notice of dangerous levels of lead and, in interim control cases, urgent lead hazards prepared by the Director for inclusion with the lead inspection or risk assessment report to the owner. The owner shall distribute a copy of the notice to all occupants of the residential premises.

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

(a) Whenever lead violations 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 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

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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.

(4) 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, on forms 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 violations, 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 under six years of age 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 the information required by post-compliance policies approved by the Director. In cases in which no child who is lead poisoned or has a blood lead level in excess of the level considered dangerous to the child's immediate health has been identified in the unit, information on how to properly repair violations as maintenance within 30 days of receipt of notice of violations shall be provided.

(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 under six years of age resides, or in which a child under six years of age 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

(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:

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(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. Examples of such documentation include, but are not limited to, a copy of a loan application submitted to a lending institution or a government agency which offers home improvement loans and/or loans for abatement and/or containment work for full compliance. The documentation need not include those portions of a loan application which disclose personal financial data. In addition, the code enforcement agency must be provided with 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 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:

(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. In addition, any doors that were abated must be in place, and any surfaces containing loose lead-based paint, other coating, plaster or putty at the initial inspection that were covered as a low-risk containment activity while still loose must be completely covered 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, 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 certificate of instruction 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. In addition, any doors that were abated must be in place, and any surfaces containing loose lead-based paint, other coating, plaster or putty at the initial inspection that were covered as a low-risk containment activity while still loose must be completely covered and documented by the code enforcement lead inspector to have been so completed.

(2) Within 90 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 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. In addition, any doors that were abated must be in place, and any surfaces containing loose lead-based paint, other coating, plaster or putty at the initial inspection that were covered as a low-risk containment activity while still loose must be completely covered and documented by the 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 in violation, 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 in violation, but in room(s) in which deleading has occurred and adjacent areas, shall be visually inspected to ensure that no dust is present.

(6) Effective April 18, 1995, 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.

460.760: continued

(7) In those cases in which all violations (including exterior, if applicable) are satisfactorily abated and/or contained at the time of the reoccupancy reinspection, this inspection shall constitute a deleading reinspection. See 105 CMR 460.760(B).

(B) Deleading Reinspection. The lead inspector shall determine if all relevant surfaces have been fully and properly encapsulated or contained with approved coverings, 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, or in cases in which low-risk abatement and/or containment work was performed after 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 violations 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 available pursuant to 830 CMR 62.6.3: *Lead Paint Removal 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 licensed lead-safe renovator 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 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 460.110 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 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 under six years of age 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. To meet this duty of reasonable care, property owners should on a periodic basis visually assess the dwelling unit and related common areas for which a Letter of Full Compliance has been issued, and also respond promptly to occupants' reports of lead hazards. The owner or his agent may perform the assessment, or the owner may hire a lead inspector to perform a post-compliance assessment.

460.760: continued

(1) Documenting a Post-Compliance Assessment by a Lead Inspector in Which No Violations 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.

(2) Documenting a Post-Compliance Assessment by a Lead Inspector in Which Violations 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. 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. If the dust lead standards have not been met, the owner must re-clean the unit, in accordance with 105 CMR 460.170(C), until the dust lead standards in 105 CMR 460.170(B) have been achieved, but this must be accomplished within the 30-day maintenance period. 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 violations 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 violations 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 in achieving compliance have been met. This document shall be an addendum to the previously issued Letter of Full Compliance.

(c) Identification of a Child in a Residence with a Letter of Full Compliance who is Lead Poisoned or has a Blood Lead Level in Excess of the Level Considered Dangerous to the Child's Immediate Health. 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 in excess of the level considered dangerous to the child's immediate health, 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), and the owner shall be required to use authorized persons as required by 105 CMR 460.000 to correct all violations and restore the unit to full compliance, in accordance with the applicable deadlines in 105 CMR 460.751.

460.770: Reports to Director of State Program

Each local code enforcement agency shall submit a quarterly report to the Director on a form provided 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 certificate of instruction 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 certificate of instruction 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 certificate of instruction 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.

460.800: continued

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

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.

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.