

## **IC 16-41-39.8**

### **Chapter 39.8. Lead-Based Paint Activities**

#### **IC 16-41-39.8-1**

##### **Applicability**

Sec. 1. (a) This chapter does not apply to the following:

- (1) A person making an inspection under the authority of IC 22-8-1.1.
- (2) A person who performs lead-based paint activities within a residential dwelling that the person owns, unless the residential dwelling is occupied by:
  - (A) a person, other than the owner or the owner's immediate family, while these activities are being performed; or
  - (B) a child who:
    - (i) is not more than six (6) years of age or an age specified in rules adopted under section 6 of this chapter; and
    - (ii) resides in the building and has been identified as having an elevated blood lead level.

(b) This chapter may not be construed as requiring the abatement of lead-based paint hazards in a child occupied facility or target housing.

*As added by P.L.57-2009, SEC.17.*

#### **IC 16-41-39.8-2**

##### **Establishment of lead-based paint activities program; investigation**

Sec. 2. (a) The lead-based paint activities program is established. The purpose of the program is to ensure that a person conducting lead-based paint activities in target housing, child occupied facilities, and any other type of building specified in rules adopted under section 6 of this chapter does so in a manner that safeguards the environment and protects the health of the building's occupants, especially children who are not more than six (6) years of age.

(b) The state department may investigate lead-based paint abatement activities in target housing and child-occupied facilities under the following circumstances:

- (1) The state department has received a written complaint about abatement activities.
- (2) The state department has been informed of a child who:
  - (A) is:
    - (i) not more than six (6) years of age; or
    - (ii) an age specified in rules adopted under section 6 of this chapter;
  - (B) has been identified as having an elevated blood lead level; and
  - (C) has visited the site to be investigated.
- (3) The state department is ensuring regulatory compliance with licensure and abatement activities.

*As added by P.L.57-2009, SEC.17.*

### **IC 16-41-39.8-3**

#### **License for engaging in lead-based paint activities; clearance examiner license; contractor's license; training; examination; issuance**

Sec. 3. (a) A person who engages in lead-based paint activities must obtain a license under this chapter and under rules adopted under section 6 of this chapter. Lead-based paint activities licenses issued under IC 13-17-14 (before its repeal) or under this chapter expire as follows:

- (1) On June 30, 2004, if issued before July 1, 2002.
- (2) Three (3) years after the date of issuance, if issued after June 30, 2002.

(b) A person may receive a lead-based paint activities license under this chapter for the following disciplines:

- (1) Inspector.
- (2) Risk assessor.
- (3) Project designer.
- (4) Supervisor.
- (5) Abatement worker.
- (6) Contractor.

(c) A person may receive a clearance examiner license under this chapter. A person who engages in the clearance of nonabatement activities under 24 CFR 35.1340(b)(1)(iv), as in effect July 1, 2002, must obtain a clearance examiner license under this chapter and under rules adopted under section 6 of this chapter. A clearance examiner license expires three (3) years after the date of issuance.

(d) A person who enters into a contract requiring the person to execute for compensation lead-based paint activities must hold a lead-based paint activities contractor's license.

(e) A person must:

- (1) take required training and pass an examination provided in a lead-based paint training course or clearance examiner training course, as appropriate, approved by the state department;
- (2) for a license in the discipline of:
  - (A) inspector;
  - (B) risk assessor;
  - (C) project designer; or
  - (D) supervisor;

pass an examination provided by the state department or a third party as required by rules adopted under section 6 of this chapter; and

- (3) meet any requirements established by rules adopted under section 6 of this chapter;

before the person may receive a lead-based paint activities license or clearance examiner license.

(f) The state department may issue a license for a position listed under subsection (b) or (c) if the applicant submits proof to the state department that the applicant satisfies the training, examination, and other requirements for the license under this chapter.

(g) A:

- (1) lead-based paint activities license; or
- (2) clearance examiner license;

issued under IC 13-17-14 (before its repeal) or this chapter may be renewed for a period of three (3) years. To renew a license, a person who holds a license for a position listed in subsection (b) or (c) must complete refresher training and pass any reexamination required by rules adopted under section 6 of this chapter.

(h) A lead-based paint activities contractor licensed under this chapter may not allow an agent or employee of the contractor to:

- (1) exercise control over a lead-based paint activities project;
- (2) come into contact with lead-based paint; or
- (3) engage in lead-based paint activities;

unless the agent or employee is licensed under this chapter.

(i) A person engaging in lead-based paint activities shall comply with the work practice standards established in rules adopted under section 6 of this chapter and the applicable work practice standards established in section 13 of this chapter for performing the appropriate lead-based paint activities.

*As added by P.L.57-2009, SEC.17.*

#### **IC 16-41-39.8-4**

##### **Lead-based paint activities training program requirements**

Sec. 4. (a) A lead-based paint activities training program must meet requirements specified in rules adopted under section 6 of this chapter before providing initial or refresher training to a person seeking a license listed in section 3(b) of this chapter.

(b) The state department may approve a lead-based paint activities training course offered by a person who satisfies the requirements of subsection (a).

(c) A lead-based paint activities training course must be conducted by an instructor approved by the state department as provided in the rules adopted under section 6 of this chapter.

*As added by P.L.57-2009, SEC.17.*

#### **IC 16-41-39.8-5**

##### **Clearance examiner training program requirements**

Sec. 5. (a) A clearance examiner training program must meet requirements specified in rules adopted under section 6 of this chapter before providing initial or refresher training to a person seeking a license under section 3(c) of this chapter.

(b) The state department may approve a clearance examiner training course offered as part of a program that satisfies the requirements of subsection (a).

(c) A clearance examiner training course must be conducted by an instructor approved by the state department as provided in the rules adopted under section 6 of this chapter.

*As added by P.L.57-2009, SEC.17.*

## **IC 16-41-39.8-6**

### **Rules; establishment of fees**

Sec. 6. (a) Rules adopted by the air pollution control board before July 1, 2009, under IC 13-17-14-5 (repealed) are considered rules of the state department after December 31, 2009.

(b) The state department shall adopt rules under IC 4-22-2 to replace the rules of the air pollution control board described in subsection (a) and to implement this chapter. The rules adopted by the state department must contain at least the elements required to receive program authorization under 40 CFR 745, Subpart L, as in effect July 1, 2002, and must do the following:

(1) Establish minimum requirements for the issuance of a license for:

(A) lead-based paint activities inspectors, risk assessors, project designers, supervisors, abatement workers, and contractors; and

(B) clearance examiners.

(2) Establish minimum requirements for approval of the providers of:

(A) lead-based paint activities training courses; and

(B) clearance examiner training courses.

(3) Establish minimum qualifications for:

(A) lead-based paint activities training course instructors; and

(B) clearance examiner training course instructors.

(4) Extend the applicability of the licensing requirements to other facilities as determined necessary by the board.

(5) Establish work practice standards.

(6) Establish a state department or third party examination process.

(7) Identify activities, if any, that are exempted from licensing requirements.

(8) Establish a reasonable fee based on current market value per person, per license, for the period the license is in effect for a person seeking a license under section 3 of this chapter. However, the following may not be required to pay a fee established under this subdivision:

(A) A state.

(B) A municipal corporation (as defined in IC 36-1-2-10).

(C) A unit (as defined in IC 36-1-2-23).

(9) Establish a reasonable fee based on current market value per course, per year, for a lead-based paint activities training program seeking approval of a lead-based paint activities training course under section 4 of this chapter. However, the following may not be required to pay a fee established under this subdivision:

(A) A state.

(B) A municipal corporation (as defined in IC 36-1-2-10).

(C) A unit (as defined in IC 36-1-2-23).

(D) An organization exempt from income taxation under 26 U.S.C. 501(a).

(10) Establish a reasonable fee based on current market value per course, per year, for a clearance examiner training program seeking approval of a clearance examiner training course under section 5 of this chapter. However, the following may not be required to pay a fee established under this subdivision:

(A) A state.

(B) A municipal corporation (as defined in IC 36-1-2-10).

(C) A unit (as defined in IC 36-1-2-23).

(D) An organization exempt from income taxation under 26 U.S.C. 501(a).

(c) The amount of the fees under subsection (b) may not be more than is necessary to recover the cost of administering this chapter.

(d) The proceeds of the fees under subsection (b) must be deposited in the lead trust fund established by section 7 of this chapter.

(e) The minimum requirements established under subsection (b)(1) must be sufficient to allow the clearance examiner to perform clearance examinations without the approval of a certified risk assessor or inspector as provided in 24 CFR 35.1340(b)(1)(iv), as in effect July 1, 2002.

*As added by P.L. 57-2009, SEC.17. Amended by P.L. 1-2010, SEC.73.*

#### **IC 16-41-39.8-7**

##### **Lead trust fund; use of money in fund**

Sec. 7. (a) The lead trust fund established by IC 13-17-14-6 (repealed) is reestablished to provide a source of money for the purposes set forth in subsection (f).

(b) The expenses of administering the fund shall be paid from the money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(e) The sources of money for the fund are the following:

(1) License fees established under section 6 of this chapter.

(2) Appropriations made by the general assembly, gifts, and donations intended for deposit in the fund.

(3) Penalties imposed under sections 14 and 15 of this chapter for violations of this chapter and rules adopted under this chapter concerning lead-based paint activities.

(4) Any gifts and grants to the fund.

(f) The state department may use money in the fund to do the following:

(1) Pay the expenses of administering this chapter.

(2) Cover other costs related to implementation of 40 CFR 745

for lead-based paint activities in target housing and child occupied facilities.

*As added by P.L.57-2009, SEC.17. Amended by P.L.156-2011, SEC.38.*

#### **IC 16-41-39.8-8**

##### **Record keeping by lead-based paint activities contractor**

Sec. 8. (a) A lead-based paint activities contractor licensed under this chapter shall compile records concerning each lead-based paint activities project performed by the lead-based paint activities contractor. The records must include the following information on each lead-based paint activities project:

- (1) The name, address, and proof of license of the following:
    - (A) The person who supervised the lead-based paint activities project for the lead-based paint activities contractor.
    - (B) Each employee or agent of the lead-based paint activities contractor that worked on the project.
  - (2) The name, address, and signature of each certified risk assessor or inspector conducting clearance sampling and the date of clearance testing.
  - (3) The site of the lead-based paint activities project.
  - (4) A description of the lead-based paint activities project.
  - (5) The date on which the lead-based paint activities project was started and the date on which the lead-based paint activities project was completed.
  - (6) A summary of procedures that were used in the lead-based paint activities project to comply with applicable federal and state standards for lead-based paint activities projects.
  - (7) A detailed written description of the lead-based paint activities, including methods used, locations of rooms or components where lead-based paint activities occurred, reasons for selecting particular lead-based paint activities methods for each component, and any suggested monitoring of encapsulants or enclosures.
  - (8) The occupant protection plan.
  - (9) The results of clearance testing and all soil analysis (if applicable) and the name of each federally approved laboratory that conducted the analysis.
  - (10) The amount of material containing lead-based paint that was removed from the site of the project.
  - (11) The name and address of each disposal site used for the disposal of lead-based paint containing material that was disposed of as a result of the lead-based paint activities project.
- (b) A copy of each receipt issued by a disposal site identified under subsection (a)(11) must be included in the records concerning the lead-based paint activities project that are compiled under this section.
- (c) A lead-based paint activities contractor shall retain the records

compiled under this section concerning a particular lead-based paint activities project for at least three (3) years after the lead-based paint activities project is concluded.

(d) A lead-based paint activities contractor shall make records kept under this section available to the state department upon request.

*As added by P.L.57-2009, SEC.17.*

#### **IC 16-41-39.8-9**

##### **Bidding for political subdivision or state agency for lead-based paint activities project**

Sec. 9. A political subdivision or a state agency may not accept a bid for a lead-based paint activities project from a person who does not hold a lead-based paint activities license.

*As added by P.L.57-2009, SEC.17.*

#### **IC 16-41-39.8-10**

##### **Authority of state department to inspect and investigate**

Sec. 10. Without limiting the authority to inspect under IC 16-41-5-1, the state department may do the following:

- (1) Inspect the site of a lead-based paint activities project:
  - (A) during the project; or
  - (B) after the project is completed.
- (2) Conduct an investigation of a lead-based paint activities project upon:
  - (A) the state department's own initiation; or
  - (B) the receipt of a complaint by a person.
- (3) Conduct an investigation of the provider of a lead-based paint activities training course upon:
  - (A) the state department's own initiation; or
  - (B) the receipt of a complaint by a person.

*As added by P.L.57-2009, SEC.17.*

#### **IC 16-41-39.8-11**

##### **Enjoinment and notice; determination and review**

Sec. 11. (a) If the state department finds that a lead-based paint activities project is not being performed in accordance with applicable laws or rules, the state department may enjoin further work on the lead-based paint activities project without prior notice or hearing by delivering a notice to:

- (1) the lead-based paint activities contractor engaged in the lead-based paint activities project; or
- (2) an agent or representative of the lead-based paint activities contractor.

(b) A notice issued under this section must:

- (1) specify the violations of laws or rules that are occurring on the lead-based paint activities project; and
- (2) prohibit further work on the lead-based paint activities project until the violations specified under subdivision (1) cease and the notice is rescinded by the state department.

(c) Not later than ten (10) days after receiving written notification from a contractor that violations specified in a notice issued under this section have been corrected, the state department shall issue a determination regarding rescission of the notice.

(d) A lead-based paint activities contractor or any other person aggrieved or adversely affected by the issuance of a notice under subsection (a) may obtain a review of the state department's action under IC 4-21.5.

*As added by P.L.57-2009, SEC.17.*

### **IC 16-41-39.8-12**

#### **Reprimand, suspension, or revocation of license**

Sec. 12. (a) The state department may under IC 4-21.5 reprimand, or suspend or revoke the license of, a clearance examiner or a lead-based paint activities inspector, risk assessor, project designer, supervisor, worker, or contractor for any of the following reasons:

- (1) Violating any requirements of this chapter or rules adopted under section 6 of this chapter.
- (2) Fraudulently or deceptively obtaining or attempting to obtain a license under this chapter.
- (3) Failing to meet the qualifications for a license or failing to comply with the requirements of applicable laws or rules.
- (4) Failing to meet an applicable federal or state standard for lead-based paint activities.

(b) The state department may under IC 4-21.5 reprimand a lead-based paint activities contractor or suspend or revoke the license of a lead-based paint activities contractor that employs a person who is not licensed under this chapter for a purpose that requires the person to hold a license issued under this chapter.

(c) The state department may under IC 4-21.5 revoke the approval of a clearance examiner training course or a lead-based paint activities training course for any of the following reasons:

- (1) Violating any requirement of this chapter.
- (2) Falsifying information on an application for approval.
- (3) Misrepresenting the extent of a training course's approval.
- (4) Failing to submit required information or notifications in a timely manner.
- (5) Failing to maintain required records.
- (6) Falsifying approval records, instructor qualifications, or other approval information.

*As added by P.L.57-2009, SEC.17.*

### **IC 16-41-39.8-13**

#### **Applicability of section; methods for removal of lead-based paint and prohibition**

Sec. 13. (a) This section applies to:

- (1) remodeling, renovation, and maintenance activities at target housing and child occupied facilities built before 1960; and
- (2) lead-based paint activities.



(b) This section does not apply to an individual who performs remodeling, renovation, or maintenance activities within a residential dwelling that the individual owns, unless the residential dwelling is occupied:

(1) while the activities are being performed, by an individual other than the owner or a member of the owner's immediate family; or

(2) by a child who:

(A) is less than seven (7) years of age or an age specified in rules adopted under section 6 of this chapter; and

(B) resides in the building and has been identified as having an elevated blood lead level.

(c) A person not exempted under subsection (b) from the application of this section who performs an activity under subsection (a) that disturbs:

(1) exterior painted surfaces of more than twenty (20) square feet;

(2) interior painted surfaces of more than two (2) square feet in any one (1) room or space; or

(3) more than ten percent (10%) of the combined interior and exterior painted surface area of components of the building;

shall meet the requirements of subsections (e), (f), and (g).

(d) For purposes of this section, paint is considered to be lead-based paint unless the absence of lead in the paint has been determined by a lead-based paint inspection conducted under this chapter.

(e) A person may not use any of the following methods to remove lead-based paint:

(1) Open flame burning or torching.

(2) Machine sanding or grinding without high efficiency particulate air local exhaust control.

(3) Abrasive blasting or sandblasting without high efficiency particulate air local exhaust control.

(4) A heat gun that:

(A) operates above one thousand one hundred (1,100) degrees Fahrenheit; or

(B) chars the paint.

(5) Dry scraping, except:

(A) in conjunction with a heat gun; or

(B) within one (1) foot of an electrical outlet.

(6) Dry sanding, except within one (1) foot of an electrical outlet.

(f) In a space that is not ventilated by the circulation of outside air, a person may not strip lead-based paint using a volatile stripper that is a hazardous chemical under 29 CFR 1910.1200, as in effect July 1, 2002.

(g) A person conducting activities under subsection (a) on painted exterior surfaces may not allow visible paint chips or painted debris that contains lead-based paint to remain on the soil, pavement, or

other exterior horizontal surface for more than forty-eight (48) hours after the surface activities are complete.

*As added by P.L.57-2009, SEC.17.*

#### **IC 16-41-39.8-14**

##### **Violation penalty; recovery and enjoinder**

Sec. 14. (a) A person who violates:

- (1) any provision of this chapter; or
- (2) a rule or standard adopted by the state department under section 6 of this chapter;

is liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per day for any violation.

(b) The state department may:

- (1) recover the civil penalty described in subsection (a) in a civil action commenced in any court with jurisdiction; and
- (2) request in the action that the person be enjoined from continuing the violation.

*As added by P.L.57-2009, SEC.17.*

#### **IC 16-41-39.8-15**

##### **Class C infraction for obstruction, delay, resistance, prevention, or interference with an inspection or investigation**

Sec. 15. A person who obstructs, delays, resists, prevents, or interferes with:

- (1) the state department; or
- (2) the state department's personnel or designated agent;

in the performance of an inspection or investigation performed under IC 16-41-5-1 commits a Class C infraction. Each day of violation of this section constitutes a separate infraction.

*As added by P.L.57-2009, SEC.17.*