

Readopt with amendment He-P 1601-1605, effective 9-1-11 (Document #9986), cited and to read as follows:

CHAPTER He-P 1600 LEAD POISONING PREVENTION AND CONTROL

PART He-P 1601 PURPOSE AND SCOPE

He-P 1601.01 Purpose.

(a) The lead paint poisoning prevention and control rules are adopted to implement the requirements of the New Hampshire Lead Paint Poisoning Prevention and Control Act, RSA 130-A.

(b) The lead paint poisoning prevention and control rules set forth standards and requirements for lead hazard reduction and inspection, licensing of lead inspectors, risk assessors, lead abatement contractors, and owner-contractors, certification of lead abatement workers and lead abatement supervisors, and for blood lead reporting by laboratories, as required by RSA 130-A, 15 USC 2681-2692, 40 CFR 745.226 and 42 USC 4821-4856.

He-P 1601.02 Scope.

(a) The lead paint poisoning prevention and control rules shall apply after an investigation by the commissioner identifies lead exposure hazards, or to persons engaged in lead hazard reduction as defined in He-P 1602.01(ax), or to any person subject to the provisions of RSA 130-A.

(b) Pursuant to Part 1, Article 28-a of the Constitution of New Hampshire, political subdivisions shall be exempt from the provisions of RSA 130-A and He-P 1600, except for the licensing and certification of lead educational programs and lead professionals as detailed in He-P 1611 and He-P 1612, unless:

- (1) The programs and responsibilities imposed under RSA 130-A and the rules are fully funded by the State; or
- (2) The subdivisions voluntarily and at their own expense comply.

PART He-P 1602 DEFINITIONS

He-P 1602.01 Definitions.

(a) “Abatement” means measure(s) designed to permanently eliminate lead-based paint hazards as defined in 40 CFR Part 745.223 including:

- (1) Activities resulting in the permanent elimination of lead-based paint hazards, including all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures conducted by individuals certified or licensed in accordance with He-P 1612;
- (2) Activities resulting in the permanent elimination of lead-based paint hazards that are conducted in response to an investigation, an order of lead hazard reduction or other enforcement action undertaken by the commissioner pursuant to RSA 130-A:5 or RSA 130-A:7, or by a local health department pursuant to RSA-130-A:11, II; or
- (3) Any other measures or set of measures conducted in, or to, a residential dwelling, dwelling unit, or child-care facility designed to permanently eliminate lead-based paint hazards.

(b) “Abrasive blasting” means the procedure of removing paint from a surface by using a mechanical force to apply an abrasive material, including sand, grit, or other abrasive material, to a painted surface.

(c) “Bare soil” as used in the definition of “lead exposure hazard” in RSA 130-A:1, XVI, means soil or sand that is accessible to children or pets and is not covered with grass, sod, other vegetation, asphalt, concrete, decking, or other substantive covering, and includes soil or sand in a sandbox or play area.

(d) “Blood lead level” means a blood lead measurement obtained by a diagnostic blood lead test conducted by a laboratory certified pursuant to 42 CFR Part 493 Medicare, Medicaid and Clinical Laboratory Improvement Amendments (CLIA) Program and, if applicable, licensed pursuant to He-P 808.

(e) “Business entity” means a partnership, firm, association, corporation, sole proprietorship, or other business concern.

(f) “Certificate of lead safe” means a certificate issued by a licensed risk assessor following a risk assessment or clearance inspection when no lead exposure hazards are identified or remain at the time of the inspection or assessment.

(g) “Certification” means the process of being certified.

(h) “Certified” means that an individual has a current valid certificate from the commissioner and has complied with all certification requirements set forth in this chapter.

(i) “Chewable” means a horizontal accessible surface that protrudes more than a ½ inch and is located more than 6 inches but less than 4 feet from the ground or floor.

(j) “Child” or “children” means “child” or “children” as defined in RSA 130-A:1, I.

(k) “Child care facility” means “child care facility” as defined in RSA 130-A:1, II.

(l) “Clearance inspection” means a visual assessment and collection and analysis of environmental samples following lead hazard reduction activities to determine that the lead hazard reduction activities are complete and no lead exposure hazards remain in the dwelling, dwelling unit, or child care facility.

(m) “Commissioner” means “commissioner” as defined by RSA 130-A:1, III, or his or her designee.

(n) “Common areas” means a portion of a building that is generally accessed by occupants and users including areas on the interior of the dwelling or exterior of the property such as hallways, stairways, laundry areas, attics, recreational rooms, yards, parking areas, play areas and the building’s exterior, garages, and boundary fences.

(o) “Component” means specific design or structural elements or fixtures in the interior or on the exterior of the dwelling, dwelling unit, or child care facility that are distinguished from each other by form, function, or location onto which paint, stain, varnish, shellac, or other similar coating has been applied and which have a common substrate.

(p) “Containment” means the physical measures taken to ensure that dust and debris created or released during lead hazard reduction are not spread, blown, or tracked from inside to outside the worksite.

(q) “Damage” means failure of a paint film or the underlying substrate that results in the paint becoming detached or is at risk of becoming detached from the substrate, including:

- (1) Peeling, chipping, flaking, or chalking paint;
 - (2) Plaster which is crumbling;
 - (3) Paint that can be removed with a fingernail; or
 - (4) Other paint film or underlying substrate failure.
- (r) “Department” means “department” as defined by RSA 130-A:1, IV.
- (s) “Deteriorated” means any condition of reduced structural or surface integrity.
- (t) “Dwelling” means “dwelling” as defined in RSA 130-A:1, V.
- (u) “Dwelling unit” means “dwelling unit” as defined in RSA 130-A:1, VI.
- (v) “Encapsulation” means “encapsulation” as defined in RSA 130-A:1, VII.
- (w) “Enclosure” means the use of rigid durable construction materials that are fastened to the substrate in order to act as a barrier between lead-based paint and the living space, and does not include encapsulants as defined in (aa) above.
- (x) “Environmental inspection” means an inspection, conducted by the department, of the dwelling, dwelling unit, or child care facility of a child with an elevated blood lead level for the purpose of determining if lead exposure hazards exist.
- (y) “Environmental investigation” means the collection of documentation and evidence, used to determine potential sources of a child’s elevated blood lead level.
- (z) “Environmental lead testing laboratory” means a laboratory recognized by the EPA National Lead Laboratory Accreditation Program (NLLAP) to accurately analyze paint chips, dust, or soil samples for lead.
- (aa) “Friction surface” means a surface, such as a door, floor, stair, or window, which is subject to abrasion, damage, or deterioration with normal repeated use.
- (ab) “Good cause” means any circumstances beyond a person’s control, that prevents that person from complying with an order of lead hazard reduction or taking some required action, including:
- (1) A death in the person’s immediate family;
 - (2) Personal injury or serious illness of the person or an immediate family member; or
 - (3) Another compelling reason or justification.
- (ac) “Hazardous waste” means “hazardous waste” as defined in the New Hampshire Hazardous Waste Management Act, RSA 147-A:2, VII.
- (ad) “Health authority” means “health authority” as defined in RSA 130-A:1, VIII.

(ae) “HEPA vacuum” means a vacuum cleaner equipped with a high-efficiency particulate air (HEPA) filter capable of capturing particles of 0.3 microns or greater from a body of air, with 99.97 percent efficiency, and is designed so that all air drawn into the machine is expelled through the HEPA filter.

(af) “Impact surface” means a point of contact such as a door, floor, stair, or window where the component is subject to repeated impact through normal use, sufficient to cause damage or deterioration of lead-based paint.

(ag) “In-place management” means “in-place management” as defined in RSA 130-A:1, XII.

(ah) “Interim controls” means “interim controls” as defined in RSA 130-A:1, IX.

(ai) “Laboratory” means any site that tests blood lead levels on individuals residing in New Hampshire.

(aj) “Lead abatement contractor” means “lead abatement contractor” as defined in RSA 130-A:1, XIV.

(ak) “Lead abatement worker” means “lead abatement worker” as defined in RSA 130-A:1, X.

(al) “Lead-based paint” means paint or other surface coating that contains lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

(am) “Lead-based paint inspection” means a surface by surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

(an) “Lead-based substance” means “lead-base substance” as defined in RSA 130-A:1, XI.

(ao) “Lead-based substance inspection” means a surface by surface investigation to determine the presence of lead-based paint, collection and analysis of environmental samples including dust and soil samples, and the provision of a report explaining the results of the investigation.

(ap) “Lead-containing waste material” means any waste, debris, dust, or material intended for disposal, including items such as disposable equipment and clothing that contains lead that was generated by lead hazard reduction work regulated under this chapter.

(aq) “Lead education program” means any persons or entities offering or providing lead educational programs to individuals or entities to be licensed or certified as lead inspectors, lead risk assessors, lead abatement supervisors, or lead abatement workers by the state of New Hampshire in accordance with RSA 130-A and He-P 1611.

(ar) “Lead exposure hazard” means “lead exposure hazard” as defined in RSA 130-A:1, XVI.

(as) “Lead hazard reduction” means measures used to control lead exposure hazards through abatement, interim controls, or a combination of the 2 measures.

(at) “Lead inspection” means an examination to determine the presence of a lead-based substance, which can be used to evaluate an existing or potential lead exposure hazard, or to determine compliance with RSA 130-A or He-P 1600, and includes:

- (1) Clearance inspections, both preliminary and final;

- (2) Compliance inspections;
- (3) Environmental inspections, as part of investigations;
- (4) Lead-based paint inspections;
- (5) Lead-based substances inspections;
- (6) Inspections as part of a risk assessment; and
- (7) Any other examination to determine the presence of a lead-based substance, which can be used to evaluate an existing or potential lead exposure hazard, or to determine compliance with RSA 130-A or He-P 1600.

(au) “Lead inspector” means “lead inspector” as defined in RSA 130-A:1, XV.

(av) “Lead investigation survey report” means a report, prepared by the department, documenting an environmental investigation of a dwelling, dwelling unit, or child-care facility where a child with an elevated blood lead level resides or spends time in.

(aw) “Lead professional” means an individual who performs lead-based paint activities for remuneration, including individuals licensed or certified in accordance with He-P 1612 such as a lead abatement worker, a lead abatement supervisor, a lead inspector, or a risk assessor.

(ax) “Lead risk assessor” means “lead risk assessor” as defined in RSA 130-A:1, XVI-b.

(ay) “Lead safe” means a designation made after a risk assessment or a clearance inspection has been completed and the dwelling, dwelling unit, or childcare facility does not have lead exposure hazards at the time of the assessment or inspection.

(az) “Letter of recommendation” means a letter issued to an owner explaining steps he or she is recommended to take to identify and eliminate lead exposure hazards.

(ba) “Licensed” means that a person has a currently valid license from the commissioner and has complied with all licensing requirements set forth in this chapter.

(bb) “Licensure” means the process of obtaining a valid license.

(bc) “Mini-containment area” means the construction of a temporary walled area to isolate a specific space requiring lead hazard reduction work in order to ensure that no dust or debris leaves the space while work is being performed.

(bd) “Multi-family dwelling” means a dwelling consisting of 2 or more dwelling units on a single lot including:

- (1) Apartment buildings;
- (2) Townhouses;
- (3) Condominiums;

- (4) Shared housing;
- (5) Rooming units;
- (6) Rooming houses; and
- (7) Other dwellings consisting of 2 or more dwelling units on a single lot.

(be) “Occupant” means “occupant” as defined in RSA 130-A:1, XVII.

(bf) “Occupant protection plan” means the measures and management procedures that will be taken during the lead hazard reduction activities to protect the building occupants.

(bg) “Occupied” means a dwelling, dwelling unit, or child care facility where a person resides in or uses.

(bh) “Opt-out” means the procedure that parent(s) or guardian(s) follow to elect not to have their child(ren) tested for elevated blood lead levels, pursuant to RSA 130-A:5-c.

(bi) “Order of lead hazard reduction” means an order issued by the commissioner requiring all lead exposure hazards be reduced or eliminated from a given dwelling, dwelling unit, or child care facility.

(bj) “Owner” means “owner” as defined in RSA 130-A:1, XVIII.

(bk) “Owner-contractor” means an individual who:

- (1) Owns 7 or fewer dwelling units;
- (2) Meets the lead abatement supervisor education and licensing requirements for an initial or renewed license but is not required to have 2 years’ work experience;
- (3) Complies with the functions and responsibilities of a licensed lead abatement contractor and lead abatement supervisor; and
- (4) Performs lead hazard reduction work only on dwellings and dwelling units owned by the individual.

(bl) “Owner occupied” means a dwelling or dwelling unit is in use and occupied by the owner as defined in RSA 130-A:1, XVIII.

(bm) “Participating” or “participate” “in the management of a dwelling, dwelling unit, or child care facility” means “participating” or “participate” “in the management of a dwelling, dwelling unit, or child care facility” as defined in RSA 130-A:1, XIX.

(bn) “Permanently” as used in the definition of “lead base substance abatement” in RSA 130-A:1, XIII, means that the duration of the method of abatement can reasonably be depended upon to last for a minimum of 20 years.

(bo) “Person” means “person” as defined in RSA 130-A:1, XX.

(bp) "Play area" means an area of bare soil contact by children as indicated by the following:

- (1) The presence of play equipment such as sandboxes, swing sets, and sliding boards;
- (2) Toys or other children's possessions;
- (3) Observations of play patterns or wear;
- (4) Information provided by parents, residents, care givers, or owners; or
- (5) Any other evidence given or observed indicating a child uses the area for play.

(bq) "Risk assessment" means an on-site inspection conducted by a New Hampshire licensed risk assessor, to determine the existence, nature, severity, and location of lead exposure hazards, and the provision of a written report explaining the results of the inspection and options for reducing lead exposure hazards.

(br) "Rooming house" means a dwelling with multiple rooms rented out individually in which tenants share bathroom and kitchen facilities.

(bs) "Rooming unit" means any room or group of rooms forming a single habitable unit intended for living and sleeping, but not for cooking or eating.

(bt) "Substrate" means the material underneath paint and includes materials such as brick, concrete, drywall, metal, plasters, and wood.

(bu) "Window well" means, for a typical double-hung window, the portion of the exterior window sill between the interior window sill or stool and the frame of the storm window, or when there is no storm window, the area that receives both the upper and lower window sashes when they are both lowered. The term includes "window trough".

(bv) "Work scope" means a written document detailing all lead hazard reduction activities including identification and location of each component as well as abatement or interim control methods planned for use for each component.

(bw) "Work site" means an interior or exterior area where lead hazard reduction activity takes place. There might be more than one work site within a residential dwelling, dwelling unit, child care facility, or within individual rooms. When used, a mini containment system might constitute the work site.

PART He-P 1603 LABORATORY STANDARDS AND REPORTING

He-P 1603.01 Laboratory Certification. All laboratories performing blood lead testing on adults or children residing in New Hampshire shall comply with 42 CFR Part 493 Medicare, Medicaid and Clinical Laboratory Improvement Amendments (CLIA) Program Laboratory Requirements Relating to Quality Systems and Certain Personnel Qualifications, and, if applicable, He-P 808.

He-P 1603.02 Reporting.

(a) In accordance with RSA 141-A, every person or entity operating under a CLIA waiver, that tests a person's blood lead level shall report the information required by (g) electronically to the department by an encrypted electronic transmission at leadtest@dhhs.nh.gov or a secure file transfer protocol.

(b) In accordance with RSA 141-A, every laboratory operating under a CLIA license that analyzes a person's blood lead level shall report the information required by (g) below to the department via a secure electronic transmission using one of the following formats:

- (1) American Standard Code for Information Interchange (ASCII) format;
- (2) Health Language 7 (HL7) format or similar formats as developed by a national coalition on electronic laboratory reporting;
- (3) Microsoft Excel; or
- (4) Other formats which are compatible with those of the department.

(c) Laboratories shall report all blood lead test results in micrograms per deciliter.

(d) Any laboratory receiving a blood sample for lead analysis from a health care provider, referring laboratory, collecting station, or other source shall require that the requisition includes all the information required in (f) below.

(e) Laboratories shall follow up with health care providers, referring laboratories, collecting stations, or other sources to collect required information in (f) below if information is incomplete.

(f) Laboratories shall supply the following information to the department for each blood lead analysis report:

- (1) Specimen identification number;
- (2) The name of the individual;
- (3) The individual's date of birth;
- (4) The individual's street address, including the town or city of residence, state of residence and postal code;
- (5) The first and last name of the clinical provider ordering the test;
- (6) The name and address of the health care institution where the clinical provider works;
- (7) The submitting laboratory's name, address, and telephone number;
- (8) The name of the referring laboratory, if applicable;
- (9) Whether the specimen is a venous or capillary sample;
- (10) The date of the sample collection;
- (11) The date of the sample analysis;
- (12) The blood lead analysis results;

- (13) The individual's race;
- (14) The individual's ethnicity;
- (15) The individual's gender;
- (16) The name of the individual's parent or guardian if the individual is aged 15 years or younger;
- (17) The occupation of individuals aged 16 years or older;
- (18) The name of the individual's employer at the time that the blood lead test is performed when testing is a requirement of the individual's occupation;
- (19) The method of analysis; and
- (20) The results of erythrocyte protoporphyrin analysis and zinc protoporphyrin analysis used to identify anemia and elevated blood lead levels, if conducted.

(g) Laboratories shall report blood lead test results to the department and ordering health care provider as follows:

- (1) Within one business day of the analysis when the blood lead level is 45 micrograms per deciliter or higher;
- (2) Within 3 business days of the analysis when the blood lead level is 10 micrograms per deciliter but less than 45 micrograms per deciliter; and
- (3) Within 5 business days of the analysis when the blood lead level is zero micrograms per deciliter but less than 10 micrograms per deciliter.

(h) A blood lead specimen report of greater than or equal to 5 micrograms per deciliter on a child shall include a recommendation to the ordering health care provider that the child receive follow-up testing in accordance with the department's "Childhood Medical Management Quick Guide for Lead Testing and Treatment" located at <https://www.dhhs.nh.gov/dphs/bchs/clpp/documents/medmgmt-child.pdf>.

(i) When a laboratory refers a blood lead sample to another laboratory for analysis, the laboratories shall agree, in writing, on which laboratory:

- (1) Is responsible for ensuring that the information required by (g) above is collected; and
- (2) Will file the report in compliance with this section.

(j) Such an agreement shall not alter the legal responsibility of both laboratories to ensure that a report is made in compliance with (g) above.

He-P 1603.03 Effect on Other Reporting Requirements. Nothing in He-P 1603 shall be construed as relieving any laboratory from reporting results of any blood lead analysis to the health care provider that ordered the test, or to any other entity as required by state, federal or local statutes, rules, or regulations.

He-P 1603.04 Election Not to Participate in Blood Lead Level Testing.

(a) A child shall be exempt from the participation in blood lead level testing as required by RSA 130-A:5-c, if:

(1) A parent or legal guardian objects to such testing and completes an “Opt Out Form-Elevated Blood Lead Level Testing” (May 2020) certifying the following:

“I understand that by not testing my child’s blood, neither I, nor my physician, will know if my child has an elevated blood lead level. I understand that young children exposed to lead often look and act healthy, demonstrating no outward signs or symptoms to illness. I understand that young children are especially vulnerable to lead exposure due to their normal developmental behaviors (for example, orally ingesting lead paint and dust) and lead can accumulate in their bodies over time. I understand that an elevated blood lead level can negatively affect my child’s neurological and behavioral development, including speech and language development, memory and learning, hearing, self-regulation and control, muscle motor skills, and coordination, and can result in increased impulsivity and aggressions. If high enough, lead exposure could lead to convulsions, coma, and even death”;

“My physician has reviewed the risks associated with my child having an elevated blood lead level with me”; and

“I understand that I may reverse my decision at any time and have my child tested for elevated blood lead levels through a simple test.”; or

(2) A physician licensed under RSA 329, or a physician exempted under RSA 329:21, III completes an “Opt Out Form-Elevated Blood Lead Level Testing” (May 2020) certifying the following:

“As the attending physician, I hereby certify that blood lead level testing may be detrimental to this patient’s health. I acknowledge that this exemption shall only exist for the length of time that I believe testing would be detrimental to the child.”

(b) “Opt Out” forms shall be available:

(1) On the medical care providers landing page at <https://www.dhhs.nh.gov/dphs/bchs/clpp/medical-providers.htm>; or

(2) By contacting the healthy homes and lead poisoning prevention program at (603) 271-4507.

(c) Executed forms shall be held by the physician in the child’s medical record.

(d) Notwithstanding (a)(1) above, parents or guardians may reverse their decision at any time and choose to consent to blood lead level testing for their child(ren).

PART He-P 1604 INVESTIGATIVE PROCESS

He-P 1604.01 Purpose. The commissioner shall investigate cases of lead poisoning in children with elevated blood lead levels as defined in RSA 130-A:5.

He-P 1604.02 Requests for Information. In accordance with RSA 130-A:5, I(a), the commissioner shall require information and periodic reports for the purposes of medical and environmental case management and investigation including:

- (a) From a child's health care provider:
 - (1) Child's full name;
 - (2) Child's date of birth;
 - (3) Child's race and ethnicity;
 - (4) Child's physical addresses;
 - (5) Names of child's parents or guardians;
 - (6) Child's blood lead analysis results;
 - (7) Plans for medical management of the child;
 - (8) Names of child's siblings;
 - (9) Siblings' dates of birth;
 - (10) Results of siblings' blood lead analysis;
 - (11) Any information available about the child's sources of lead exposure;
 - (12) Child's Medicaid number, if enrolled in Medicaid; and
 - (13) Any other information pertinent to the management of the child's elevated blood lead level;
- (b) From an owner or owner's agent of a dwelling or dwelling unit:
 - (1) Dates of occupancy by the child;
 - (2) Whether the child continues to occupy the dwelling or dwelling unit at the time of the request;
 - (3) New address of family, if known, when the family has moved or is relocated under RSA 130-A:8-a;
 - (4) The lead hazard reduction activities that will be used at the dwelling or dwelling unit;
 - (5) A progress report on what lead hazard reduction activities have been completed;
 - (6) Measures taken to protect the child from further exposure to lead;
 - (7) A completed "Tenant Roster Form" (May 2020); and

- (8) Any other information pertinent to the environmental investigation;
- (c) From an owner or operator of a child care facility:
 - (1) Dates of attendance by the child;
 - (2) Number of hours per week that the child attends the facility;
 - (3) Whether the child is attending the child care facility at the time of the request;
 - (4) Names and ages of other children attending the facility;
 - (5) The lead hazard reduction activities that will be used at the child care facility;
 - (6) A progress report on what lead hazard reduction activities have been completed;
 - (7) Measures taken to protect the child and other children in the facility from further exposure to lead; and
 - (8) Any other information pertinent to the environmental investigation; and
 - (d) From an owner, owner's agent, or lead abatement contractor involved in lead inspection or hazard reduction activities at a child's dwelling, dwelling unit, or child care facility:
 - (1) A completed "Notification of Work Form" (May 2020) pursuant to He-P 1608.06;
 - (2) An occupant protection plan, written in accordance with He-P 1608.05, outlining measures taken to protect the child and other persons in the dwelling, dwelling unit, or child care facility from further exposure to lead before and during lead hazard reduction activities;
 - (3) A written work scope detailing all lead hazard reduction activities including identification and location of each component as well as abatement or interim control methods planned for use for each component; and
 - (4) The results of any inspections conducted at a child's dwelling, dwelling unit, child care facility, or at any other building associated with an investigation.

He-P 1604.03 Environmental Inspections.

- (a) In accordance with RSA 130-A:5, I, investigations shall include environmental inspections of dwellings, dwelling units, or of any child care facility, and testing environmental samples.
- (b) Once the commissioner has notified an owner that an environmental inspection is to be conducted, the owner or owner's agent shall:
 - (1) Not re-rent any dwelling or dwelling unit included in the notification that is vacant or becomes vacant until such time as the inspection(s), as detailed in (c) through (e) below, have been:
 - a. Conducted;

- b. The owner receives a written report from the commissioner; and
- c. Has satisfied any order(s) issued on the dwelling or dwelling unit;

(2) Not perform any remodeling, renovating, maintenance, lead hazard reduction work, or any other dust- generating activity until such time as the inspection(s), as detailed in (c) through (e) below, have been:

- a. Conducted;
- b. The owner receives a written report from the commissioner; and
- c. The activity follows any order(s) issued on the dwelling or dwelling unit ; and

(3) Complete and submit to the department a “Tenant Roster Form” (May 2020) at least 24 hours prior to the environmental inspection.

(c) In addition to the procedures set forth in RSA 130-A:6, the commissioner shall carry out the following procedures when conducting environmental inspections of dwellings or dwelling units where children have elevated blood lead levels as defined in RSA 130-A:5:

- (1) Contact the child’s parent or guardian to schedule the investigation;
- (2) Arrange access for an environmental inspection with the owner or owner’s agent;
- (3) Collect the “Tenant Roster Form” (May 2020) from the owner or owner’s agent;
- (4) Test representative painted or varnished interior or exterior building surfaces, and collect water, soil, and dust samples, if applicable, corresponding with the dwelling that the child occupies or occupied when he or she was tested for lead exposure;
- (5) Record all test results and note whether each identified lead-based substance constitutes a lead exposure hazard;
- (6) Record the presence of chewed woodwork, including toys and furniture;
- (7) Take representative photographs, if applicable, of areas where there is visual presence of chipping, peeling, or flaking paint; and
- (8) Request assistance from a parent or guardian in identifying a child’s potential lead exposure, that shall include, but not be limited to, the following information:
 - a. A description of the child’s habits that might increase risk of lead exposure;
 - b. Possible exposure to other sources of lead, such as lead in pottery and parental occupations and hobbies;
 - c. Previous addresses and length of residence;
 - d. A description of other dwellings, dwelling units and child care facilities in which the child spends time;

- e. Recent renovations which might have disturbed lead-painted surfaces; and
- f. Any other information that may help identify potential sources of a child's lead exposure; and

(9) Obtain relevant information in accordance with this section.

(d) If a lead exposure hazard is determined to exist during the environmental inspection in (c) above, the commissioner shall conduct inspections of all other dwelling units of the dwelling, as applicable, as part of the investigation to include the following:

- (1) All dwelling units disclosed on the "Tenant Roster Form" (May 2020) occupied by a child;
- (2) All dwelling units disclosed on the "Tenant Roster Form" (May 2020) occupied by a pregnant woman;
- (3) All dwelling units for which a "Tenant Roster Form" (May 2020) was not received by the department at least 24 hours prior to the inspection, as required by He-P 1604.03(b)(3), and assumed to be occupied by a child or pregnant woman;
- (4) All dwelling units for which the occupancy status is unknown at the time of the inspection and assumed to be occupied by a child or pregnant woman;
- (5) All dwelling units where evidence of being occupied by a child or pregnant woman is discovered during the inspection including discussions with tenants, presence of toys, and other visual or hearing cues; and
- (6) All other dwelling units which the property owner has expressly requested to be inspected.

(e) Inspections conducted, as part of the investigation, in accordance with (d) above shall include the following:

- (1) Arrange access for environmental inspections with the owner or owner's agent;
- (2) Record the resident names and contact information;
- (3) Test representative painted or varnished surfaces for the presence of lead-based substances;
- (4) Record all test results and note whether each identified lead-based substance constitutes a lead exposure hazard;
- (5) Record the presence of chewed woodwork, including toys and furniture;
- (6) Record recent renovations, which might have disturbed lead-painted surfaces;
- (7) Take representative photographs, if applicable, of areas where there is visual presence of chipping, peeling, or flaking paint; and
- (8) Other activities conducted and documented to determine the presence of a lead-exposure hazard.

He-P 1604.04 Investigation Records.

(a) The department shall prepare documentation after conducting an investigation that contains:

- (1) Date(s) of the environmental inspection(s);
- (2) The names, ages, and blood lead levels, if applicable, of all children who reside at or are cared for at the dwelling unit being investigated, as provided by the child's parent or guardian;
- (3) The names, physical addresses, including dwelling unit designations and mailing addresses, of all adults and children residing in the dwelling or dwelling unit(s) as provided by the owner on a "Tenant Roster Form" (May 2020);
- (4) Findings by the department regarding the existence of lead exposure hazards, including a description of all locations tested or sampled, which surfaces meet the definition of a lead-based substance, and which surfaces meet the definition of a lead exposure hazard;
- (5) The results of any environmental sampling conducted by the department including water, dust, and soil if applicable;
- (6) The manufacturer, model number, serial number, and calibration verification readings of all x-ray fluorescence (XRF) machines used to sample building components;
- (7) The name, signature, and license number of the individual performing the environmental inspection(s);
- (8) The need for additional testing, and recommended steps to minimize potential lead exposure hazards; and
- (9) Any other relevant information collected during the investigation.

(b) The commissioner shall:

- (1) Maintain these records on file for the period of at least 4 years;
- (2) Provide copies of the documents listed below:
 - a. Lead investigation survey report to all persons designated in RSA 130-A:6, I, II, III, and IV;
 - b. Order of Lead Hazard Reduction to all persons designated in RSA 130-A:6, I and II and
 - c. Letter of Recommendation to all persons designated in RSA 130-A:6, III and IV;
- (3) Remove all blood lead test results and other confidential information from all documents provided to the owner or owner's agent of a dwelling, dwelling unit, child care facility, or to the operator of a child care facility;
- (4) In accordance with RSA 130-A:5-7, issue an order of lead hazard reduction or other action when a lead exposure hazard determination has been made; and

(5) Record all orders of lead hazard reduction with the registry of deeds for the county in which the property is situated.

He-P 1604.05 Role of Health Authorities in Investigations.

(a) Health authorities may assist in conducting investigations under He-P 1600 in accordance with RSA 130-A:5, III, by providing the following types of assistance:

- (1) Contacting owners or occupants to schedule an environmental inspection;
- (2) Gathering information as described in He-P 1604.02; and
- (3) Any other assistance requested by the commissioner to aid in conducting an investigation.

(b) In accordance with RSA 130-A:11, III, the commissioner shall approve a health authority to carry out investigations upon submission of the following to the department:

- (1) A request in writing to the commissioner for approval to conduct investigations;
- (2) Documentation of the health authority's attendance and successful completion of one of the following:
 - a. An educational program for lead inspectors that is certified in accordance with He-P 1611; or
 - b. An educational program for risk assessors that is certified in accordance with He-P 1611;
- (3) Documentation that the health authority meets all of the criteria for field use of a XRF in accordance with He-P 1608.04(d); and
- (4) Written assurance that the health authority will:
 - a. Conduct investigations in accordance with RSA 130-A:5 and 6, and this chapter; and
 - b. Submit copies of all investigation related documents, such as environmental inspection results, to the department.

(c) Approval for a health authority to conduct investigations and inspections shall be valid for a period of 12 months.

(d) The commissioner shall renew the approval upon submission of the following by the health authority to the department:

- (1) A request in writing to the commissioner for renewal of approval to conduct investigations;
- (2) When applicable, documentation of attendance and successful completion by the health authority of an approved lead inspector or risk assessor refresher training program as described in He-P 1611 and He-P 1612;

- (3) Documentation that the health authority meets all of the criteria for field use of a XRF in accordance with He-P 1608.04(d); and
- (4) A written assurance that the health authority will conduct investigations in accordance with RSA 130-A:5 and 6, and this chapter.
- (e) The commissioner shall deny or revoke such approval in accordance with He-P 1606.03.

PART He-P 1605 ORDERS OF LEAD HAZARD REDUCTION

He-P 1605.01 Issuance of Orders of Lead Hazard Reduction

(a) In accordance with RSA 130-A:6 and RSA 130-A:7, the commissioner shall issue an order of lead hazard reduction to an owner when an investigation performed in accordance with He-P 1604 determines that:

- (1) A lead exposure hazard as defined in RSA 130-A:1, XVI(a), (b), or (c), exists at a dwelling, dwelling unit, or child care facility; or
 - (2) A lead exposure hazard as defined in RSA 130-A:1, XVI(d), exists in:
 - a. Bare soil in a child's play area; or
 - b. Any areas where the following combination of soil conditions exists:
 - 1. The total surface area of the bare soil, as defined in He-P 1602.01(c), is equal to or greater than one square yard or 9 square feet; and
 - 2. The soil is located in one or more of the following areas:
 - (i) Drip line/foundation area;
 - (ii) Bare pathways; or
 - (iii) Pet areas.
- (b) When an investigation performed in accordance with He-P 1604 does not include testing of any or all of the bare soil, an order of lead hazard reduction shall assume that a lead exposure hazard, as defined in RSA 130-A:1, XVI(d), exists unless analysis in accordance with He-P 1608.04(b) proves otherwise.
- (c) Orders of lead hazard reduction issued by the commissioner shall:
- (1) Include all information as set forth in RSA 130-A:7, II(a)–(e);
 - (2) Be sent to the owner by certified mail or another form of delivery that provides confirmation that the order was delivered;
 - (3) Be accompanied by a copy of relevant portions of RSA 130-A and He-P 1600, as applicable;

(4) Set forth corrective action; and

(5) Be sent by mail to the occupant(s) of the dwelling or dwelling unit via the United States Postal Services (USPS).

(d) If requested by an occupant of the dwelling or the guardian of a child attending the child care facility, the owner shall provide a copy of any order of lead hazard reduction issued on the property to the occupant or guardian within 10 business days of the request.

(e) The owner shall disclose, in writing, the existence of an order of lead hazard reduction prior to the sale, lease, rental, or transfer of interest in the dwelling, dwelling unit, or child care facility.

(f) In accordance with RSA 130-A:6, I and II, the commissioner shall notify all occupants of the dwelling, dwelling unit, or child care facility of lead exposure hazard findings in common areas.

(g) The owner shall notify the commissioner of any address change and any change of mailing address of the owner.

(h) It is the responsibility of the owner to notify the commissioner of any change in ownership.

He-P 1605.02 Extension Requests.

(a) Any owner who has received an order of lead hazard reduction pursuant to RSA 130-A:7, II, may request an extension of the time period for lead hazard reduction as stated in the order by completing and submitting to the department at least 5 business days prior to the expiration of the time frame of the order an "Extension Request Form" (May 2020) certifying the following:

"I certify that I have read, understand, and agree to comply with the New Hampshire Lead Poisoning Prevention Rules (He-P 1600) and the Lead Poisoning Prevention Statute (RSA 130-A). I further certify that all information contained herein, including any supplements attached, is true and correct to the best of my knowledge and belief."

(b) Upon submission and review of the "Extension Request Form" the commissioner shall extend the time period for lead hazard reduction in accordance with RSA 130-A:7, II(c), upon making the determination that the owner or owner's agent has:

(1) Provided the department with a completed "Extension Request Form" at least 5 business days prior to the expiration of the order;

(2) Good cause, as defined in He-P 1602.01(ae), for not completing lead hazard reduction work within the time frame ordered;

(3) No outstanding administrative fines or court sanctions issued pursuant to RSA 130-A or He-P 1600; and

(4) Provided the department with evidence of forward progress toward bringing the property into compliance such as:

a. A risk assessment conducted by a licensed risk assessor;

b. A work scope and occupant protection plan developed by a licensed risk assessor or

lead abatement supervisor;

c. A “Notification of Work Form” (May 2020) indicating abatement work start and end dates; or

d. Proof of enrollment in a HUD grant program with timeline for completion of a risk assessment and abatement;

(c) Extensions of time for lead hazard reduction granted by the commissioner in accordance with this section shall be in writing and set forth the department’s findings and conditions for granting the extension.

(d) If, upon completion of the time period stated in the order, or an extended time period approved by the commissioner, the owner has not complied with the order, the department shall impose an administrative fine in accordance with He-P 1606 or seek injunctive relief in accordance with RSA 130-A:17.

(e) The commissioner shall deny a request for extension or revoke an extension already granted when it is found that:

(1) The owner is in violation of or noncompliant with one or more provisions of RSA 130-A or He-P 1600;

(2) The request for extension does not meet the criteria in (b) above; or

(3) The order for abatement is the result of the owner’s failure to maintain a current certificate of lead safe– interim controls in accordance with He-P 1610.06.

(f) If an extension request is denied or revoked by the commissioner, the denial or revocation shall be:

(1) In writing and set forth the department’s reasons for denying or revoking the extension based on this section; and

(2) Sent by certified mail or another form of delivery that provides confirmation that the denial or revocation was delivered.

(g) If, upon completion of the extension of time, the owner or owner’s agent requires additional time to comply with the order, a new request shall be submitted and reviewed in accordance with this section.

He-P 1605.03 Variance Requests.

(a) Any owner, owner-contractor, licensed lead abatement contractor, licensed lead inspector, or licensed risk assessor may request a variance from compliance with one or more provisions of RSA 130-A or He-P 1600 pursuant to RSA 130-A:10, XV.

(b) A request for variance shall be made by completing and submitting to the department at least 5 days prior to initiating the work or activity that requires a variance, a “Request for a Variance Form” (May 2020), certifying the following:

“I certify that I have read, understand, and agree to comply with the New Hampshire Lead Poisoning Prevention rules (He-P 1600) and the Lead Poisoning Prevention Statute (RSA 130-A). I further certify that all information contained herein, including any supplements attached, is true and correct to the best of my knowledge and belief.”

(c) If applicable, a copy of the occupant protection plan and work scope shall be included with the request for variance.

(d) Prior to submission, the person making the request shall notify all residents and other persons affected by the variance request by:

- (1) Providing a copy of the request, and
- (2) Notifying them of their right to contact the department with any questions or concerns.

(e) Only a request for a variance from RSA 130-A or He-P 1600 shall be accepted by the department.

(f) The department shall approve a request for a variance when:

- (1) The person making the request is not in violation of any of the provisions of RSA 130-A or He-P 1600;
- (2) The department finds that approval of the request will not jeopardize the health and safety of others;
- (3) The department finds that the variance request, occupant protection plan, and work scope satisfy the intent of the rules as an alternative to complying with the statute or rule(s); and
- (4) The person making the request or the owner does not have any outstanding administrative fines or court sanctions issued pursuant to RSA 130-A or He-P 1600.

(g) When approving a request for a variance the department shall specify what, if any, conditions are being placed on the approval of the request.

(h) If a variance request is approved, compliance with the approved variance shall ensure that the objective or intent of the statute and rules from which the variance is sought will be accomplished.

(i) Lead hazard reduction activities that require a variance shall not be conducted until written approval, including any requirements specified by the department, is received from the department.

(j) The department shall deny a request for a variance if the request does not meet the criteria in (e) above.

(k) The department shall revoke a variance when it is found that:

- (1) The person who has been granted the variance has violated or is noncompliant with one or more provisions of RSA 130-A or He-P 1600; or
- (2) The work is not done in accordance with the occupant protection plan or work scope submitted to the department.

(l) If during a compliance inspection conducted in accordance with He-P 1605.04 the department determines that any of the requirements placed on the variance are not being complied with, the department shall verbally notify the person in charge of the work site during the compliance inspection and the owner to immediately:

- (1) Rectify the deficiencies; or
- (2) Cease all lead hazard reduction work, if applicable.

(m) If a variance request is denied or revoked by the department, the denial or revocation shall be:

- (1) In writing and set forth the reasons for denying or revoking the variance; and
- (2) Sent by certified mail or another form of delivery that provides confirmation that the denial was delivered.

He-P 1605.04 Compliance Inspections.

(a) The commissioner shall conduct compliance inspections to verify compliance with the requirements of RSA 130-A and He-P 1600.

(b) When conducting compliance inspections, the commissioner shall use the following procedures:

- (1) Obtain written permission from the property owner or agent by the property owner of agent's submission of the "Notification of Work Form" (May 2020);
- (2) Upon request, present credentials indicating the authority to conduct such inspections;
- (3) Inspect the dwelling, dwelling unit, or child care facility to determine compliance with He-P 1600;
- (4) Obtain representative samples of surface coatings, fixtures, soils, or other materials when it is necessary to determine the presence of lead-based substances or a lead exposure hazard;
- (5) Take photographs, if necessary, to document the inspection or lead hazard reduction work; and
- (6) Inspect and, if necessary, obtain a copy of any lead inspection reports, records of employee licensure or certification, or other documents required under RSA 130-A or He-P 1600.

(c) After completing a compliance inspection, the commissioner shall:

- (1) Prepare a written report detailing the findings of the inspection that contains the following information:
 - a. The date of the compliance inspection;
 - b. The name of the owner, agent, tenant, lead abatement contractor, lead abatement supervisor, lead inspector, lead risk assessor, or person(s) conducting the lead hazard

reduction work to whom credentials were presented, educational program manager, or laboratory director;

c. The name of the department staff conducting the compliance inspection;

d. Findings of the compliance inspection;

e. Results of any testing or analysis conducted on collected samples; and

f. Any other pertinent findings related to the inspection;

(2) Maintain the report on file for a period of 4 years;

(3) Provide copies of the report, upon request, to relevant parties including:

a. The owner or owner's agent;

b. The dwelling manager;

c. The operator of the child care facility;

d. The occupant;

e. The lead risk assessor or lead inspector;

f. The lead abatement contractor;

g. The laboratory director;

h. The training manager; or

i. Any other relevant party; and

(4) If necessary, pursue enforcement actions as authorized under RSA 130-A and He-P 1600.

PART He-P 1606 ENFORCEMENT ACTIONS

Readopt with amendment and renumber He-P 1606.02, effective 12-23-15 (Document # 11007), as He-P 1606.01 to read as follows:

He-P 1606.01 Administrative Fines.

(a) The department shall impose an administrative fine upon an owner, applicant, licensee, certificate holder, or an unlicensed or uncertified individual for violations of RSA 130-A, "Lead Paint Poisoning Prevention" or He-P 1600, "Lead Poisoning Prevention and Control Rules."

(b) When the department imposes an administrative fine, it shall provide written notice, pursuant to RSA 130-A:7 and RSA 130-A:14, as applicable, which:

(1) Identifies the specific statute or rule that has been violated;

(2) Identifies the specific sanction(s) that has been imposed; and

(3) Provides the following information:

a. The right to a hearing in accordance with RSA 541-A and He-C 200; and

b. The reduction of the imposed administrative fine by 25% if fine payment is received by the department within 10 business days of receipt of the notice of the violation, basis and amount of the administrative fine, and the owner, applicant, licensee, certificate holder, or unlicensed or uncertified individual waives the right to appeal the administrative fine.

(c) Payment of any imposed administrative fine to the department shall meet the following requirements:

(1) Payment shall be received by the department within 10 business days of receiving the fine notice if a person does not appeal the imposed fine as described in He-P 1607.01;

(2) Payment shall be made in the form of personal check or money order made payable to "Treasurer, State of New Hampshire"; and

(3) Money order or certified bank check shall be required when any past payment to the department by personal check has been returned for insufficient funds.

(d) A person may appeal the notice of administrative fine within 10 business days as set forth in He-P 1607.01.

(e) A person may waive the right of appeal of the notice of administrative fine and pay the administrative fine within 10 business days of the date of receipt of notice.

(f) Any hearing held on an appeal under this section shall be conducted in accordance with RSA 541-A and He-C 200.

(g) An administrative fine, which is appealed and upheld, shall be paid in full within 10 business days of the date of the decision of the administrative appeals unit (AAU).

(h) The department shall impose administrative fines as follows:

(1) For renting a residential dwelling or dwelling unit under a written order by the commissioner or health authority for lead hazard reduction, without a valid and current certificate of lead safe-abatement or certificate of lead safe-interim controls, in violation of RSA 130-A:8-a, III and IV, the fine shall be \$5,000.00;

(2) For re-renting a residential dwelling or dwelling unit subject to an investigation, after being notified of an impending inspection in violation of He-P 1604.03(b)(1), the fine shall be \$5,000.00;

(3) For the failure to disclose, in writing, the existence of an order of lead hazard reduction prior to the sale, lease, rental, or transfer of interest of the property in violation of RSA 130-A:8-a, V, the administrative fine shall be \$2,000.00;

(4) For conducting blood lead analysis without a valid New Hampshire laboratory license, CLIA Certification, or both, whichever is applicable, in violation of He-P 1603.01, the administrative fine shall be \$1,000.00;

(5) For the failure of a laboratory to report all the information required by He-P 1603.02(g)(1)–(20) to the department, the administrative fine shall be \$250.00 for each missing item and each incorrect item provided from the information in a blood lead analysis;

(6) For failure of any laboratory to report all the information electronically as required in He-P 1603.02(b)(1)-(4) to the department, the administrative fine shall be \$250.00 for each submission;

(7) For failure by a laboratory to report results of blood lead analysis within the timelines required in violation of He-P 1603.02 (h), the administrative fine shall be \$200.00 for each submission;

(8) For failure to provide the commissioner with all requested information as required by He-P 1604.02, the administrative fine shall be \$250.00. Each day the requested information is not provided to the department shall be considered a separate offense and subject to an additional \$250.00 fine;

(9) For initiating or performing any remodeling, renovating, maintenance, lead hazard reduction work, or any other dust generating activities after being notified that an environmental inspection shall occur, in violation of He-P 1604.03(b)(2), the administrative fine shall be \$5,000.00;

(10) For initiating or performing any remodeling, renovating, maintenance, lead hazard reduction work, or any other dust generating activities prior to the receipt of a written report from the commissioner or in violation of any order(s) issued on the dwelling or dwelling unit, in violation of He-P 1604.03(b), the administrative fine shall be \$5,000.00

(11) For failure by an owner or owner’s agent to allow access, or to arrange access, to a dwelling, dwelling unit, child care facility, or units within a multi-family dwelling for purposes of investigation, in violation of He-P 1604.03(c)(3) and (e)(1), the administrative fine shall be \$500.00;

(12) For failure by an owner or owner’s agent to submit a “Tenant Roster Form” (May 2020) to the department at least 24 hours prior to an environmental investigation as required by He-P 1604.03(b)(3), the administrative fine shall be \$250.00;

(13) For failure to comply with an order of lead hazard reduction issued in accordance with He-P 1605.01, the administrative fine shall be \$1,000.00. Each day the order remains in noncompliance shall be considered a separate offense subject to an additional \$1,000.00 fine;

(14) For conducting lead hazard reduction work that requires a written variance from the department prior to receiving the department’s written decision, in violation of He-P 1605.03(h), the administrative fine shall be \$1,000.00;

(15) For failure to pay an administrative fine within 10 business days, in violation of He-P 1606.01(c), the fine shall be \$250.00;

(16) For performing the duties of a lead professional without a current license, certificate, or a variance from the department, in violation of He-P 1612, licensure and certification criteria for lead professionals, the administrative fine shall be \$750.00 per person per instance;

(17) For failure to submit a "Notification of Work Form" including copies of the occupant protection plan and work scope for the project as required by He-P 1608.06, the administrative fine shall be \$250.00. Each day abatement activities are being performed and the "Notification of Work Form" and attachments are not provided to the department shall be considered a separate offense and subject to an additional \$250.00 fine;

(18) For failure to prepare the work area in a manner which prevents the escape of lead contaminated materials, in violation of He-P 1608.07 and He-P 1608.08, the administrative fine shall be \$500.00 per occurrence;

(19) For failure to contain lead-based substances or lead contaminated material in the work area in violation of He-P 1608.09(a), the administrative fine shall be \$1,000.00;

(20) For failure to comply with worker safety requirements, in violation of He-P 1608.09(b) – (d), the administrative fine shall be \$500.00;

(21) For failure to provide for the safety of the building's occupants during lead hazard reduction work, in violation of He-P 1608.10(a) and (e), the administrative fine shall be \$1,000.00;

(22) For failure to ensure the maintenance of an accurate record of individuals entering and exiting a hazard reduction work area, as required by of He-P 1608.10(b) – (c), the administrative fine shall be \$200.00;

(23) For failure to clean up and dispose of waste in accordance with He-P 1608.11(a) – (f), the administrative fine shall be \$1,000.00;

(24) For issuing a certificate as described in He-P 1608.14 without complying with all of the requirements of a clearance inspection or issuance of a certificate, in violation of He-P 1608.12 or He-P 1608.14 the administrative fine shall be \$2,000.00;

(25) For failure to have a preliminary clearance inspection conducted, if required, in accordance with He-P 1608.12(b), the administrative fine shall be \$500.00;

(26) For failure to submit to the department results of notification of a passing preliminary clearance inspection prior to allowing unlicensed workers on site as required by He-P 1608.12(d) the administrative fine shall be \$250.00;

(27) For failure of a risk assessor to submit a copy of a full written clearance inspection report to the department as required by He-P 1608.12(t)(3)(c), the administrative fine shall be \$250.00;

(28) For failure of a risk assessor to submit a copy of the risk assessment report within 10 calendar days of the risk assessment and receipt of the results of any samples analyzed by an environmental laboratory as required by He-P 1608.03(d) the administrative fine shall be \$250.00;

- (29) For beginning lead hazard reduction work without an occupant protection plan written in accordance with He-P 1608.05 the administrative fine shall be \$500.00;
- (30) For failure to follow the occupant protection plan specific to the dwelling, dwelling unit, or child care facility as approved and submitted to the department in accordance with He-P 1608.05, the administrative fine shall be \$1,000.00;
- (31) For failure of the risk assessor to submit all the information required by He-P 1608.12(u) with the certificate of lead safe, the administrative fine shall be \$250.00;
- (32) For failure to maintain at the work site while lead hazard reduction work is taking place all documentation required by He-P 1608.15(a), the administrative fine shall be \$200.00;
- (33) For failure of a lead abatement contractor, lead inspector, or risk assessor to keep all business and personnel records of all lead projects for a minimum of 5 years after the completion of the project, and make available to the department upon request in violation of He-P 1608.15(b) and (c), the administrative fine shall be \$200.00;
- (34) For utilizing or employing uncertified or unlicensed persons to perform lead hazard reduction work or an owner performing lead hazard reduction work without the written permission of the department, in violation of He-P 1605.03, the administrative fine shall be \$2,000.00 per uncertified or unlicensed person, or owner;
- (35) For failure of a lead abatement supervisor or owner-contractor to remain on site when lead hazard reduction work is being carried out, in violation of He-P 1609.01(f), the administrative fine shall be \$300.00;
- (36) For failure of a contractor or owner-contractor to be available to a lead abatement supervisor when lead hazard reduction work is being carried out, in violation of He-P 1609.01(e), the administrative fine shall be \$300.00;
- (37) For performing lead hazard reduction work utilizing any of the prohibited practices listed in He-P 1609.02(c), the administrative fine shall be \$1,000.00;
- (38) For certifying that a dwelling or dwelling unit is either owner occupied or off the rental market as required by He-P 1609.05 when the dwelling or dwelling unit is not, the administrative fine shall be \$5,000.00;
- (39) For teaching classes without authorization by the department, in violation of He-P 1611.01(a), the administrative fine shall be \$2,000.00;
- (40) For utilizing faculty who do not meet the requirements as described in He-P 1611.01(c) or (d) in a training program, the administrative fine shall be \$500.00;
- (41) For failure to notify the department within 30 business days of changes in the names and addresses of the responsible corporate department of the licensed educational company, as required by He-P 1611.01(e), the administrative fine shall be \$250.00;
- (42) For failure to notify the department before the start of an educational program in violation of He-P 1611.01(f), the administrative fine shall be \$500.00;

(43) For failure of a program manager to maintain required educational records pursuant to He-P 1611.01(h) for a period of 5 years, the administrative fine shall be \$500.00;

(44) For submitting false or fraudulent information on or with any documentation submitted to the department the administrative fine shall be \$5,000.00. Each piece of fraudulent information shall be considered a separate offense and subject to an additional \$2,000.00 fine; and

(45) For falsifying a lead professional license or certification, the administrative fine shall be \$1,000.00;

(i) If an administrative fine has been issued, and the same violation is subsequently cited or the violation has not been remedied within 30 days, a second administrative fine in the amount of twice the amount of the first fine, per violation shall be issued.

(j) For the third and all subsequent repeat violations to those cited in (j) above, or for violations that have not been remedied after 90 days, the administrative fine per violation shall be 3 times the amount of the first fine.

Readopt with amendment and renumber He-P 1606.03, effective 9-1-11 (Document #9986), as He-P 1606.02 to read as follows:

He-P 1606.02 Denial, Suspension or Revocation of a License or Certificate.

(a) The department shall deny a license or certificate of an applicant, a certificate holder, or licensee if he or she:

(1) Is in violation of any of the provisions of RSA 130-A or He-P 1600;

(2) Fails to submit a completed application that meets the requirements of He-P 1600 within 30 days after being notified of and given an opportunity to supply missing information;

(3) Has failed to meet the requirements set forth in He-P 1611 or He-P 1612 for receiving a license or certificate for which the applicant is applying;

(4) Has submitted false, misleading, or fraudulent information whether by action or omission;

(5) Has failed to comply with a decision of the department, AAU, a settlement or consent agreement, or court issued decision;

(6) Has failed to pay an administrative fine imposed by the department or the courts;

(7) Has had enforcement action taken by another state or the EPA for lead regulation violations resulting in a current license or certificate being revoked or suspended;

(8) Or any of their representatives or employees:

a. Provides false or misleading information to the department;

b. Prevents, interferes, or fails to cooperate with any inspection or investigation conducted by the department; or

c. Fails to provide requested files or documents to the department; or

(9) Has knowingly committed or participated in fraud or misrepresentation in obtaining, using, or maintaining licensure or certification such as:

a. Performing work requiring licensure or certification at a job site without having current and valid licenses or certificates available at the job site for inspection;

b. Permitting the duplication or use of his or her license or certificate by another;

c. Performing lead hazard reduction work or inspections before receiving the appropriate license or certificate from the department; and

d. Obtaining a license or certificate through fraud or misrepresentation of educational documents, examination documents, professional registration, or experience requirements.

(b) The department shall suspend a license or certificate of a certificate holder, or licensee if he or she:

(1) Is in violation of any of the provisions of RSA 130-A or He-P 1600;

(2) Has failed to pay an administrative fine imposed by the department or the courts;

(3) Has had a check returned to the department for insufficient funds and has not re-submitted the outstanding fee in the form of money order or certified check within 5 business days of notification; or

(4) Or any of their representatives or employees:

a. Provides false or misleading information to the department;

b. Prevents, interferes, or fails to cooperate with any inspection or investigation conducted by the department; or

c. Fails to provide requested files or documents to the department.

(c) The department shall revoke a license or certificate of a certificate holder or licensee if he or she:

(1) Has failed to or is unable to comply with the conditions set forth in a decision for suspension, in accordance with (b) above;

(2) Has submitted false, misleading, or fraudulent information whether by action or omission;

(3) Has failed to comply with a decision of the department, AAU, a settlement or consent agreement, or court issued decision;

(4) Has issued a lead educational program completion certificate to an individual who did not

meet all of the educational requirements for that completion certificate as defined by He-P 1611;

(5) Has had enforcement action taken by another state or the EPA for lead regulation violations resulting in a current license or certificate being revoked or suspended;

(6) Has knowingly committed or participated in fraud or misrepresentation in obtaining, using, or maintaining licensure or certification such as:

- a. Performing work requiring licensure or certification at a job site without having current and valid licenses or certificates available at the job site for inspection;
- b. Permitting the duplication or use of his or her license or certificate by another;
- c. Performing lead hazard reduction work or inspections before receiving the appropriate license or certificate from the department; and
- d. Obtaining a license or certificate through fraud or misrepresentation of educational documents, examination documents, professional registration, or experience requirements; or

(7) Is cited a third time under RSA 130-A or He-P 1600 for the same violation within the last 3 inspections.

(d) When the department denies, suspends, or revokes a license or certificate, it shall provide written notice, which:

- (1) Identifies the specific statute or rule that has been violated, if applicable;
- (2) Identifies the specific sanction(s) that has been imposed, if applicable; and
- (3) Contains information on the right to a hearing in accordance with RSA 541-A and He-C 200.

(e) If the department finds that the public health, safety, or welfare requires emergency action and incorporates such a finding in its order, the department shall order an immediate suspension of a license or certificate pending an adjudicative proceeding to be conducted in accordance with RSA 541-A:30, III and He-C 200.

(f) When a license or certificate is revoked by the department, the individual or educational program shall not be eligible to reapply for a license or certificate for 2 years.

(g) The 2 year period referenced in (d) above shall begin on:

- (1) The date of the department's decision to revoke the license or certificate if an administrative hearing has not been requested; or
- (2) The date a decision is issued by the AAU or court if a hearing is requested.

(h) A decision by the department to deny or revoke a license or certificate shall not preclude any other enforcement action authorized under RSA 130-A, 15 USC 2681-2692, and 42 USC 4821-4856.

(i) If the individual or educational program reapplies for a license or certificate after the 2 year period as referenced in (e) above, the individual or educational program shall submit, in writing to the department, steps taken to address the violations(s) that led to the revocation.

Readopt with amendment He-P 1607- He-P 1612, effective 9-1-11 (Document #9986), to read as follows:

PART He-P 1607 APPEALS

He-P 1607.01 Appeals Procedures.

(a) Any person who wishes to appeal an enforcement action issued by the department pursuant to RSA 130-A and He-P 1600 shall make a request for a hearing in compliance with the following:

(1) The request for a hearing shall be received by the department within 10 business days of the date of receipt of the following:

- a. An order of lead hazard reduction;
- b. A notice of administrative fine(s);
- c. A decision to deny an initial or renewal license application; or
- d. A decision to suspend or revoke a license or certificate; and

(2) The request shall be in writing, signed by the person(s) named in the order, notice or decision, or their legal representative, and shall list specific information as to why the order, notice of fine or decision was unlawful or unwarranted.

(b) The appeal shall be sent to:

Department of Health and Human Services
Division of Public Health Services
Healthy Homes and Lead Poisoning Prevention Program
29 Hazen Drive
Concord, NH 03301

(c) The department shall be responsible for ensuring that a request for a hearing is delivered to the AAU.

(d) The hearing shall be conducted in accordance with the provisions of RSA 541-A and He-C 200.

(e) The order, notice, or decision issued by the department shall become final if the person(s) named in the order, notice, or decision fails to request a hearing within 10 business days as described in (a) above.

(f) Requesting a hearing relative to the imposition of a fine does not relieve the person(s) named in the order from the responsibility of complying with the order.

PART He-P 1608 LEAD HAZARD REDUCTION REQUIREMENTS

He-P 1608.01 Inspection Requirements.

1612. (a) All lead inspection activities shall be performed by persons licensed in accordance with He-P

(b) No person performing lead inspections, or risk assessments shall:

(1) Perform the lead hazard reduction work on the dwelling, dwelling unit, or child care facility being inspected or assessed;

(2) Be paid, employed, have an interest in, financial or otherwise, direct or indirect, or otherwise be compensated by the lead abatement contractor, the company for which the lead abatement contractor is affiliated, or owner-contractor, unless the owner is acting as an owner-contractor; or

(3) Be the owner of, an employee of the owner, or have an interest, financial or otherwise, direct or indirect, in the dwelling, dwelling unit, or child care facility.

(c) All persons conducting risk assessment and lead inspection work shall comply with:

(1) Standards and requirements set forth in this part; and

(2) Standards and requirements set forth in the OSHA Lead in Construction Standard, 29 CFR 1926.62.

(d) A licensed risk assessor or lead inspector shall develop written inspection procedures containing the following elements and submit the procedures with an initial application for licensure:

(1) A general description of sampling protocols including the selection process of components to be sampled;

(2) Testing methods to be used to inspect for the presence of lead-based substances according to type of surface and substrate;

(3) Procedures to be followed when weather conditions prohibit sampling of soil at the time of inspection;

(4) Procedures as described in (3) above shall include soil sampling within 14 calendar days after soil conditions allow for such testing; and

(5) Quality control procedures for all field measurement and sample collection methods.

(e) A lead inspector or risk assessor who is conducting an inspection for lead-based substances shall include the following in the inspection report:

(1) Date of inspection;

(2) Address of dwelling, dwelling unit(s), or child care facility;

- (3) Date of construction of dwelling, dwelling unit(s), or child care facility;
- (4) Unit number(s), if applicable;
- (5) A description of the current use of the dwelling, dwelling unit(s), or child care facility;
- (6) Name, address, and telephone number of all dwelling, dwelling unit(s), or child care facility owners;
- (7) Name, legal and business address, signature, and license number(s) of each licensed inspector(s) or risk assessor(s) conducting the inspection;
- (8) Name, address, and telephone number of any company or other person employing the lead inspector(s) or risk assessor(s) in that capacity;
- (9) A schematic site plan of the area inspected, showing rooms within the dwelling, dwelling unit, or child care facility and their use, common areas, exterior surfaces and areas, play areas, and any other relevant structures on the property, including the locations or written description of any bare soil and dust collection points;
- (10) Specific locations of each painted component tested for the presence of lead-based paint and each soil sample collected including a clear designation of whether or not the soil sample collected was from a child's play area;
- (11) Each testing method and device and/or sampling procedure employed for paint, soil and dust analysis, including quality control data and, if used, the manufacturer, model number, and serial number of any X-ray fluorescent lead analyzer (XRF) device;
- (12) If more than one XRF is used to conduct an inspection, the results of each surface and representative area tested to be annotated on the report to indicate the specific XRF used for testing;
- (13) The results of the inspection expressed in terms appropriate to the sampling method used and identification of all components with coating which meets the definition of lead based paint;
- (14) The location and condition of any damaged or deteriorated substrate or component; that compromises the effectiveness of the lead hazard reduction technique;
- (15) All data collected using on-site testing devices including calibration check readings;
- (16) Name, address, and telephone number of all laboratories conducting analysis of collected samples;
- (17) All results of laboratory analysis on collected samples including paint, surface coatings, soil, and dust samples;
- (18) When the report is part of a risk assessment, recommendations regarding the need for additional testing;
- (19) A signed certification stating, "I hereby certify that sampling and analyses have been

conducted pursuant to He-P 1608.04 and accurately represents the conditions in the areas tested on this date”;

(20) The written inspection procedures as required in (d) above; and

(21) A statement regarding the owner’s requirement to disclose lead hazards in accordance with 40 CFR Part 745.107.

(f) If an inspector or risk assessor becomes aware that lead hazard reduction work has not been done in accordance with RSA 130-A or He-P 1600, the inspector or risk assessor shall provide notice to the department within 24 hours of the discovery via telephone at (603) 271-4507, fax at (603) 271-3991, e-mail at nhleadprogram@dhhs.nh.gov, or in writing.

(g) A notice made to the department in accordance with (f) above, shall include the following information:

(1) The date the violation occurred, if known;

(2) The address where the violation took place;

(3) The nature of the violation;

(4) The date the violation was discovered by the person submitting the notice; and

(5) The name of the individual that conducted the work, if known.

He-P 1608.02 Requirements for Lead-Based Paint Inspections and Lead-Based Substance Inspections.

(a) A lead-based paint inspection shall:

(1) Be conducted by either a lead inspector or risk assessor licensed in accordance with He-P 1612;

(2) Identify all components within a dwelling, dwelling unit, or child-care facility with coating which meets the definition of lead-based paint;

(3) Consist of testing all components for lead-based paint including sampling and analysis methods as listed in He-P 1608.04 on all surfaces of each painted, varnished, or otherwise coated component of the dwelling, dwelling unit, or child care facility.

(b) A lead-based substance inspection shall consist of all the requirements for conducting a lead-based inspection in accordance with He-P 1608.02 and the following:

(1) Collecting soil samples for analysis in accordance with He-P 1608.04 if bare soil is located in any of the following areas:

a. In a child’s play area;

b. Within 5 feet of the foundation area; or

c. Within 100 feet of the foundation when the total surface area of the bare soil is equal to or greater than one square yard or 9 square feet; and

(2) Collecting single surface or composite dust samples and submitting the samples to a certified laboratory for analysis in accordance with procedures set forth in He-P 1608.04(b) and (c) from the following areas:

a. In single family dwellings the samples shall be collected from the floor and a window well, or a windowsill when a well is not accessible, in each living area, hallway, and stairwell where a child is likely to come in contact with dust; or

b. In a multi-family dwelling or child care facility the samples shall be collected from the floor and a window well, or a windowsill when a well is not accessible, in living and common areas to the dwelling unit or child care facility where a child is likely to come in contact with dust.

(c) The licensed individual conducting the lead-based paint or lead-based substance inspection shall issue a report to the owner and department, as applicable, that complies with the requirements of He-P 1608.01(e).

He-P 1608.03 Requirements for a Risk Assessment.

(a) Upon receipt of an order of lead hazard reduction, the owner shall have a risk assessment of the dwelling, dwelling unit, or child care facility conducted by a risk assessor licensed in accordance with He-P 1612 to identify all lead-based substances and lead exposure hazards.

(b) A risk assessment shall include:

(1) All requirements of a lead-based substance inspection as set forth in He-P 1608.02(b) ;

(2) Collection of background information regarding the physical characteristics of the dwelling, dwelling unit(s), or child care facility, and occupant use patterns that might cause lead-based paint exposure;

(3) Conducting a visual inspection to locate the existence of potential lead exposure hazards including paint which is located on chewable, friction, or impact surfaces or is in a damaged or deteriorated condition, and to assess the extent and causes of damages or deteriorated paint or lead exposure hazards; and

(4) Testing each surface identified to be a potential lead exposure hazard by the visual inspection described in (3) above and having a distinct paint history for the presence of lead in accordance with He-P 1608.04.

(c) The risk assessor shall prepare a written risk assessment report, which includes the following information:

(1) All information required by He-P 1608.01(e);

(2) Identification of all lead-based substances and lead exposure hazards as defined by RSA 130-A:1, XI and XVI including a description of the location, type, and condition;

- (3) Results of the visual inspection;
- (4) Any background information collected pursuant to He-P 1608.03(b)(2);
- (5) To the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other lead exposure hazards;
- (6) A schematic site plan of the area or a written description of all dust and soil collection points;
- (7) Any observed conditions that could potentially create a lead exposure hazard or compromise the effectiveness of the lead hazard reduction technique such as water leaks, moisture, or mold;
- (8) Recommendations, if warranted, for a follow-up risk assessment, and as appropriate, any further action;
- (9) A description of interim controls or abatement options for each lead exposure hazard identified; and
- (10) If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(d) Risk assessment reports prepared in (c) above on properties under order of lead hazard reduction shall be submitted to the department by the risk assessor within 10 calendar days of the risk assessment and receipt of all results of any samples analyzed from the environmental laboratory.

He-P 1608.04 Sampling and Analysis Methods.

(a) Testing for the presence of lead in paint shall be conducted by one or more of the following methods:

- (1) Field measurement by XRF using standards set forth in the U.S. Department of Housing and Urban Development (HUD) "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing" (2012 Edition), available as noted in Appendix A;
- (2) Laboratory analysis of paint chips by atomic absorption spectrometry using standards set forth in Appendix 14.1 of the HUD "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing" (2012 Edition), available as noted in Appendix A; or
- (3) Any testing method using recognized published procedures or methods developed and validated by the laboratory using assayed materials, inter-lab comparisons, or proficiency test samples.

(b) All collection and analysis of samples from paint chips, dust, soil, or other media shall comply with standards set forth in Appendix 13.1 through Appendix 13.3 and Appendix 14.1 through Appendix 14.3 of the HUD "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing", (2012 Edition), available as noted in Appendix A.

(c) Laboratories performing lead analyses on environmental samples shall be recognized by the

EPA National Lead Laboratory Accreditation Program (NLLAP).

- (d) The following requirements shall apply if field measurements by XRF are used:
- (1) The user shall have a currently valid license or registration for the XRF instrument used, issued by the department's radiological health section in accordance with He-P 4000;
 - (2) The calibration of each XRF unit shall be checked as follows:
 - a. The calibration of XRF instruments shall be checked against the manufacturer's standards for that instrument in accordance with the manufacturer's specifications for that instrument;
 - b. The calibration check of each XRF instrument used shall be conducted at the beginning and end of each inspection and at intervals throughout the inspection in accordance with manufacturer's specifications for the instrument;
 - c. If the XRF instrument does not produce a reading within the manufacturer's specified tolerance for each standard, the instrument shall be removed from use until such time as the unit is again operating within the manufacturer's specified tolerance for each standard; and
 - d. The results of all calibration checks shall be recorded on the inspection report;
 - (3) Except as provided in (4) below, XRF measurements shall be adjusted to compensate for substrate interference utilizing substrate correction protocols set forth in the HUD "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing" (2012 Edition), available as noted in Appendix A;
 - (4) Adjustment of XRF measurements to compensate for substrate interference shall not be required when the manufacturer's "XRF Performance Characteristics Sheet", a document based on methodology developed jointly by the EPA and HUD, indicates that substrate corrections are not necessary; and
 - (5) Surfaces shall not be considered to contain lead-based paint when the XRF reading is less than 1.0 mg/cm² and the manufacturer's recommended tolerance of the machine is factored into the calculation of the reading.
- (e) When conducting full inspections in multifamily housing that has more than one dwelling unit or child care facility in the same building, complex, or development, the inspection shall be conducted in accordance with the HUD "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing", (2012 Edition), available as noted in Appendix A.

He-P 1608.05 Occupant Protection Plan.

- (a) An occupant protection plan shall describe the measures and management procedures that will be taken during the lead hazard reduction activities to protect the building occupants from exposure to any lead hazards including compliance with requirements of He-P 1608.07 and 1608.08.
- (b) An occupant protection plan shall be:

- (1) Required before any lead hazard reduction work is performed;
 - (2) Based on the performance and review of a lead inspection or risk assessment conducted in accordance with He-P 1608.02 and He-P 1608.03;
 - (3) Unique to each residential dwelling, dwelling unit, or child occupied facility; and
 - (4) Developed by a lead risk assessor, a lead abatement contractor, or an owner-contractor licensed or certified in accordance with He-P 1612, or an owner or any other person who has been granted a variance by the commissioner in accordance with He-P 1605.03.
- (c) If an occupant protection plan is developed by an owner or any other person who has been granted a variance by the commissioner, the occupant protection plan shall be approved by a lead risk assessor, or a lead abatement contractor, licensed in accordance with He-P 1612, prior to being implemented.
- (d) Whenever a lead abatement activity is being conducted in a common area of a residential dwelling containing 2 or more dwelling units, the occupant protection plan shall:
- (1) Indicate alternative entrances and exits that do not require passing through the common area(s) where lead abatement activity is being conducted; or
 - (2) Identify the containment that shall be utilized to create a passageway through the common area(s) for use as an entry into uncontaminated residential dwellings, dwelling units, or child-occupied facilities.

He-P 1608.06 Notification of Work.

- (a) The property owner, agent, or person granted a variance in accordance with He-P 1605.03, shall notify the department in writing using a “Notification of Work Form” (May 2020) of the intended schedule of work at least 5 days before work begins when:
- (1) An order of lead hazard reduction has been issued by the commissioner pursuant to RSA 130-A:5 or RSA 130-A:7;
 - (2) An order of lead hazard reduction has been issued by a local health department pursuant to RSA 130-A:11, II; or
 - (3) The lead hazard reduction work is being completed with a loan issued pursuant to RSA 130-A:15-a .
- (b) A complete “Notification of Work Form” (May 2020) shall be submitted to the department and the owner or owner’s agent at least 5 days prior to the abatement project beginning, certifying the following:
- (1) “I certify that I have read, understand, and agree to comply with the New Hampshire Lead Poisoning Prevention Rules (He-P 1600) and the Lead Poisoning Prevention Statute (RSA 130-A). I understand a licensed lead abatement supervisor must be on site at all times while abatement activities are in progress and if unlicensed individuals will be working on the project. I understand they are only allowed on-site once preliminary clearance has been achieved. I further certify that all information contained herein, including any supplements attached, is true and correct to the best of my knowledge and belief.”; and

- (2) “I hereby certify that I have provided written notification to the occupants with access to common areas affected by the lead hazard reduction work at least 5 days in advance of the proposed lead hazard reduction work, which includes the following information:
- a. Scheduled dates and work hours for the lead hazard reduction work;
 - b. Identification of work site(s); and
 - c. Information on the alternative entrance or exit to be used during the work.”
- (c) The “Notification of Work Form” shall be accompanied by:
- (1) A copy of the work scope, detailing actions to be taken to abate or manage by interim controls all lead-based substances; and
 - (2) A copy of the occupant protection plan prepared in accordance with He-P 1608.05.
- (d) Notification of changes to the start or end date(s) documented on the “Notification of Work Form” shall be made by the lead abatement contractor or person granted a variance as follows:
- (1) By contacting the department by telephone or email at least 48 hours before the new start or end date, and resubmitting to the department another “Notification of Work Form” within 48 hours of the telephone notification; or
 - (2) By resubmitting to the department by facsimile or e-mail another “Notification of Work Form” that meets the requirements set forth in this section at least 48 hours before the new start or end date.
- (e) The owner or owner’s agent of a leased or rented dwelling or dwelling unit shall provide written notification to the occupants with access to common areas affected by the lead hazard reduction work at least 5 days in advance of the proposed lead hazard reduction work, which includes:
- (1) Scheduled dates and work hours for the lead hazard reduction work;
 - (2) Identification of work site(s); and
 - (3) Information on the alternative entrance or exit to be used during the work.

He-P 1608.07 Preparation of Interior Work Areas.

- (a) Prior to beginning any lead hazard control activity on the interior of any dwelling, dwelling unit, or child care facility, all interior lead hazard reduction work areas shall be prepared in accordance with Table 8.1 of the HUD “Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing”, (2012 Edition) available as noted in Appendix A, to ensure that the work area is isolated and no dust or debris leaves the work area while the work is being performed, in addition to the following requirements:
- (1) All sheeting used in containment and barrier systems and sealant materials shall:
 - a. Be polyethylene sheeting at least 6-mils thick or an equivalent material intended to contain leaded dust and debris;

- b. Be secured in place with waterproof tape;
- c. Be maintained to prevent the release of lead or lead-contaminated materials from the work areas;
- d. Remain in place and intact until clean-up for the preliminary inspection when at least one layer shall remain in place;
- e. Be removed before the final clearance inspection;
- f. Be stored, managed, and disposed of in accordance with He-P 1608.11;
- g. Follow the details outlined in the occupant protection plan written for the lead hazard reduction project in accordance with He-P 1608.05; and
- h. Follow the worker protection requirements of He-P 1608.09;

(2) All furniture and related movable and non-movable objects such as refrigerators, stoves, rugs, furniture, window coverings, and food preparation counters in the work area shall be removed from the work area or covered with sheeting used in containment and barrier systems and taped securely at all seams and at all junctures to the floor with waterproof tape;

(3) When heating, ventilation, or air conditioning (HVAC) intake or exhaust vents are located in a lead hazard reduction work area, the HVAC system shall be shut down in the work area and vents sealed with sheeting, used in barrier and containment systems, and waterproof tape;

(4) If a break or tear occurs in any sheeting used in barrier and containment systems to seal the HVAC system:

- a. The HVAC system at the site of the break shall be visually inspected by the person conducting the lead hazard reduction work; and
- b. Any visible lead contamination shall be cleaned by a cycle of vacuuming with a HEPA vacuum, wet washing with a general all-purpose or lead-specific cleaner, and a repeat HEPA vacuuming;

(5) Floor sheeting shall comply with the following:

- a. Sheeting shall be sized to minimize seams;
- b. A minimum of 2 layers of 6-mil polyethylene sheeting, or an equivalent material intended to contain leaded dust and debris, and sealant materials shall be maintained to prevent the contamination of flooring with lead or lead-contaminated materials;
- c. If a break or tear occurs in the bottom sheet of any sheeting used in a barrier and containment system that is covering carpeting, the carpet shall be cleaned prior to the clearance inspection by:

- 1. A thorough vacuuming with a HEPA vacuum;

2. Shampoo or steam cleaning using a general all-purpose or lead-specific cleaner; and

3. A second vacuuming with a HEPA vacuum when the carpet is dry; and

d. If abatement is needed on the flooring, work shall be conducted in phases and sheeting shall meet the requirements above and be utilized in such a manner to prevent lead dust contamination from other abatement work on the existing flooring, underlayment, and new flooring;

(6) A mini-containment area may be built by surrounding the work area with temporary walls to allow small areas to be addressed or windows to be replaced;

(7) The area in (6) above shall comply with:

a. The requirements of (1) through (5) above; and

b. The following:

1. The mini-containment area shall be constructed of wood or other rigid framing and 6-mil polyethylene sheeting or an equivalent material in order to define the area with sides, a ceiling and a floor;

2. An air-flap shall be constructed at the entryway to the mini-containment;

3. The mini-containment shall be affixed securely to the wall such that there are no gaps between the mini-containment and the wall;

4. The mini-containment area shall be subject to daily and final cleaning, as well as clearance sampling requirements;

5. Passageways used by workers going to and from the mini-containment area and other areas used for storage of tools or debris shall be covered with 2 layers of 6-mil polyethylene sheeting or an equivalent material;

6. The mini-containment area shall remain in place until final clean up; and

7. Access to the room where any mini-containment area has been constructed shall be restricted in accordance with the HUD "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing" (2012 Edition) until clearances have been achieved.

(b) Prior to removing lead-based substances or beginning any other lead hazard reduction work, warning signs shall be posted in accordance with the following:

(1) Signs shall be posted at all entrances and exits of the dwelling, dwelling unit, or child care facility clearly defining the work area and warning occupants and other persons not involved in the abatement activities to remain outside the work area;

(2) All signs shall be at least 8.5 inches by 11 inches, and include the phrase "Lead Hazard, Keep Out," or similar wording in bold lettering at least 3/4 inches high;

(3) In common areas that are to be abated in dwellings occupied by 2 or more households or a child care facility, the signs shall be posted at all entrances and exits of the dwelling or child care facility and include the phrase, "Caution Lead Hazard, Do Not Remain in Work Area Unless Authorized," or similar wording, in bold lettering at least 3/4 inches high;

(4) Signs shall remain in place and be readable until abatement is completed and clearance achieved; and

(5) Signs shall include a 24 hour contact phone number and name of person responsible for the work area.

(c) In addition to all of the requirements under (a) and (b) above, when dust generating activities are utilized on the work site during the lead exposure hazard reduction project, a worker changing area shall be:

(1) Set up adjacent to the abatement work area; and

(2) Constructed in accordance with Chapter 9 of the HUD "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing", (2012 Edition), available as noted in Appendix A.

(d) No person shall exit the abatement work area without removing his or her abatement work clothes, gloves, boot or shoe covers, and respirator in the designated changing area.

(e) All tools and other items shall be wiped free of dust and debris before leaving the work area.

He-P 1608.08 Preparation of Exterior Work Areas.

(a) Prior to beginning any lead hazard control activity on the exterior of any structure or dwelling, the area shall be prepared in accordance with Chapter 8 of the HUD "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing", (2012 Edition), available as noted in Appendix A, and the following requirements:

(1) All sheeting materials used in containment and barrier systems shall be:

a. Polyethylene sheeting at least 6-mils thick, or an equivalent material intended to contain leaded dust and debris;

b. Secured with a minimum of waterproof tape;

c. Maintained to prevent the release of lead or lead-contaminated materials from the work areas;

d. Used and constructed following the details outlined in the occupant protection plan written for the lead hazard reduction project in accordance with He-P 1608.05; and

e. Used and constructed to follow the worker protection requirements of He-P 1608.09 and OSHA.

(2) Clean drop cloths shall be used to cover grass, shrubbery, and other vegetation that might

otherwise be damaged if polyethylene sheeting is used;

(3) All lead substances and lead dust shall be contained in the work area by the following measures:

a. All doors, windows, or other openings on the side of a building as well as any windows and doors within 20 feet of where any wet sanding, component removal, or other dust-generating exterior activity is planned shall be closed and sealed with sheeting on the outside;

b. The ground or floor surface under all work areas shall be covered with sheeting or drop cloths as described in (1) and (2) above as follows:

1. When sheeting or a drop cloth is placed on the ground, it shall be raised at its edges at least 3 inches and shall extend out from the foundation at least 3 feet per story, with a minimum of 5 feet and a maximum of 20 feet to contain all waste;

2. The sheeting or a drop cloth shall be securely fastened to the foundation or exterior wall and sealed with waterproof tape;

3. The sheeting or a drop cloth shall be sealed at all seams with waterproof tape; and

4. When sheeting is placed on an exterior floor, it shall be raised at its edges at least 3 inches to contain all waste and shall cover the entire floor;

c. If the constant wind speed is over 20 miles per hour, exterior abatement producing dry wastes or lead-containing dust shall not be performed unless vertical shrouds are constructed which contain all lead dust within an area where there is no public access; and

d. If the requirements of He-P 1608.08(a)(3)(b)(1) above cannot be met, ground covering shall not be used and vertical containment or equivalent extra precautions in containing the work area are necessary in order to prevent contamination of other buildings or areas.

(4) All exterior work areas shall be posted with the warning signs required under He-P 1608.07(b).

He-P 1608.09 Worker Protection.

(a) All work areas where employees perform lead hazard reduction work shall be arranged, equipped, operated, and conducted in a manner which will prevent lead-based substances or lead contaminated materials from escaping from the work areas, in accordance with the requirements set forth in He-P 1608, He-P 1609, He-P 1610, and OSHA 29 CFR 1926.62 Lead in Construction.

(b) No employee shall be permitted to eat, drink, chew gum, use tobacco products, vape, or apply cosmetics in any lead hazard reduction work area.

(c) All individuals and employees who enter into an area where lead hazard reduction work is occurring shall comply with all applicable worker safety and respiratory protection requirements in accordance with 29 CFR 1910.134.

(d) All personal protective equipment required in (c) above shall be provided to the employees by their employer free of charge.

He-P 1608.10 Control of Access.

(a) Until a clearance inspection has been completed and the dwelling, dwelling unit, or child care facility has been found to meet the criteria set forth in He-P 1608.12, the lead abatement contractor, owner-contractor, lead abatement supervisor, or any person(s) granted a variance by the commissioner shall:

(1) Make certain that all occupants have been relocated outside the work area in accordance with the occupant protection plan and the United States Department of Housing and Urban Development (HUD) "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing", (2012 Edition) available as noted in Appendix A; and

(2) Limit access and entry into any lead containment area to the following:

a. The owner of the property where the lead hazard reduction work is occurring, or the owner's designee;

b. Licensed or certified lead professionals;

c. Any federal, state, or local official with jurisdiction over one or more of the activities within the work area; and

d. Non-licensed or non-certified workers only after a preliminary clearance inspection has been obtained as described in He-P 1608.12(a)-(e).

(b) The lead abatement contractor, owner-contractor, lead abatement supervisor, or any person(s) granted a variance by the commissioner shall maintain an access control log for persons who have entered any lead hazard reduction work area as allowed in (a)(2) above.

(c) All individuals entering and exiting the lead hazard reduction work area shall provide the following information on the access log:

(1) Date of entry;

(2) Printed name and signature of person entering the lead hazard reduction work area;

(3) Employer of person entering the lead hazard reduction work area; and

(4) Time of entry and exit.

(d) The lead abatement contractor, owner-contractor, lead abatement supervisor, or any person(s) granted a variance by the commissioner shall ensure that the lead hazard reduction work does not violate state laws, rules, or local ordinances for health, building and fire safety for access to the dwelling, dwelling unit, or child care facility.

(e) Whenever lead hazard reduction work is being performed in any common or shared area of an occupied dwelling or child care facility, the following shall apply:

(1) The lead abatement contractor, owner-contractor, lead abatement supervisor, or any

person(s) granted a variance by the commissioner shall conduct work in phases, or shall ensure that an uncontaminated passage that is in compliance with all state laws, rules, or local ordinances for health, building, and fire safety exists for entry and egress from the dwelling, dwelling unit(s), or child care facility for all occupants to use; and

(2) When it is not possible to preserve an uncontaminated passage for entrance and exit of all occupants from the dwelling in compliance with all state laws, rules, or local ordinances for health, building, and fire safety:

a. Lead hazard reduction work shall only be conducted in any common area when all occupants whose access is affected by the lead hazard reduction work are out of the building during all work periods provided that:

1. The work area shall be cleaned with a HEPA vacuum at the end of each work period;

2. The HEPA vacuuming shall be followed by a wet washing using a general all-purpose or lead-specific cleaner; and

3. After the work area is completely dry, a repeat HEPA vacuuming shall be done until all surfaces are free of visible dust and debris; or

b. The owner shall comply with the provisions of RSA 130-A:8-a regarding the relocation of building occupants whose access is affected by the lead hazard reduction activities for the duration of the work, which hinders access.

He-P 1608.11 Clean-up Requirements.

(a) The lead abatement contractor, owner-contractor, lead abatement supervisor, or the person(s) granted a variance by the commissioner to perform lead hazard reduction work shall be responsible for the following:

(1) All lead debris and lead contaminated materials shall be stored, managed, and disposed of in compliance with this section; and

(2) At the end of each workday, daily clean-up of the work area and all other areas where lead dust or lead contaminated materials are present shall consist of:

a. Removing all waste materials and debris generated by lead hazard reduction activities and securing in a designated storage area that is inaccessible to the public;

b. Cleaning all horizontal surfaces with a HEPA vacuum;

c. Inspecting sheeting used in barrier and containment systems, and patching and repairing the sheeting, if necessary; and

d. Securing the area to ensure that unauthorized persons do not have access.

(b) Daily clean-up of the interior shall not be required when all occupants, furnishings, and belongings have been removed from the dwelling, dwelling unit, or child care facility.

(c) Prior to any preliminary clearance inspection, the lead abatement contractor, owner-contractor,

lead abatement supervisor, or the person(s) granted a variance by the commissioner to perform lead hazard reduction work shall be responsible for the work areas being cleaned as follows:

- (1) All equipment used in lead hazard reduction work shall be cleaned with a general all-purpose or lead-specific cleaner or vacuumed with a HEPA vacuum prior to removal from the work area;
 - (2) All sheeting used in barrier and containment systems and coverings shall be wet misted;
 - (3) With the exception of the bottom layer of sheeting covering the floor, all misted sheeting shall be removed with the sheeting used as a barrier to separate the contaminated area from uncontaminated areas being removed last;
 - (4) The misted sheeting used in barrier and containment systems shall be folded in upon itself, dirty side inward, to capture the dust, placed in a double 4-mil, single 6-mil, or equivalent plastic bag and removed from the lead hazard reduction work area in compliance with this section;
 - (5) All lead-containing waste materials including debris, used sealing tape, sheeting used in containment and barrier systems, disposable cleaning materials, air and vacuum filters, and disposable clothing, shall be placed in a double 4-mil, single 6-mil, or equivalent container and disposed of in compliance with this section;
 - (6) All surfaces and objects including walls, floors, windows, doors, and fixtures in the lead hazard reduction work area, containment area, or within 2 feet of the work area shall be cleaned, from higher to lower, by a cycle of HEPA vacuuming and wet washing with a general all-purpose or lead-specific cleaner and a repeat HEPA vacuuming; and
 - (7) The sequence of vacuuming, wet cleaning, and vacuuming laid out in (6) above shall be repeated until no visible dust or residue is left in the containment area.
- (d) Upon completion of lead hazard reduction work in the interior areas of a dwelling, dwelling unit, or child care facility, the area shall be cleaned as follows:
- (1) A final clean-up shall be conducted no sooner than one hour after the completion of lead hazard reduction work or surface preparation for repainting or sealing of lead-based substances;
 - (2) The final clean-up shall be performed in accordance with (c) above;
 - (3) All containment sheeting covering the floor shall be completely removed; and
 - (4) All rugs, carpets, or other fabric surfaces shall be vacuumed with a HEPA vacuum equipped with a beater bar followed by shampooing or steam cleaning.
- (e) All wastes generated by lead hazard reduction work, including wastes generated during clean-up and preparation, shall be tested, stored, transported, managed, and disposed of in compliance with federal requirements under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 et seq. (1976), RSA 147-A, Env-Hw 400, and Env-Hw 600
- (f) In addition to the requirements of (e) above, each owner-contractor, lead abatement supervisor, or lead abatement contractor engaged in a lead hazard reduction project shall remove all lead-containing

waste material from the site not later than 48 hours after completion of the final clean-up required above.

He-P 1608.12 Clearance Inspections.

(a) Preliminary and final clearance inspections shall be conducted by a licensed lead inspector or risk assessor who:

- (1) Has not performed the lead hazard reduction work;
- (2) Has not been paid, employed, or otherwise compensated by anyone performing or involved in the lead hazard reduction work or the company for which the person is affiliated, unless the owner or their agent is acting as the owner-contractor;
- (3) Is not an employee of the owner, or the owner of the dwelling, dwelling unit, or child care facility at which the clearance inspection is being conducted; and
- (4) Does not have a financial or other interest, direct or indirect, in the dwelling, dwelling unit, or child care facility at which the clearance inspection is being conducted.

(b) A preliminary clearance inspection shall be conducted when removal of the component(s) or removal of the surface coatings is completed but before the painting, encapsulation, or enclosure of the component(s).

(c) A preliminary clearance inspection shall consist of a documented visual inspection to confirm that:

- (1) All components to be replaced have been removed or replaced;
- (2) All lead hazard coatings requiring removal have been removed to the bare substrate and surfaces prepared for repainting or sealing;
- (3) At least one layer of sheeting remains on the floor;
- (4) Areas within the work area are visibly free of dust and debris; and
- (5) All dust generating activities have been concluded; and
- (6) All surfaces to be encapsulated have been properly prepared and have documented passing results of field testing requirements.

(d) For properties under order of lead hazard reduction passage of the preliminary clearance inspection shall:

- (1) Be documented and received by the lead abatement contractor within 48 hours of completion;
- (2) Include the name and license number of the person performing the preliminary clearance inspection;
- (3) Include the date of the inspection;

- (4) Identify the rooms, areas, or components that were inspected;
 - (5) Include a statement from the risk assessor verifying all requirements for the passing of a preliminary clearance inspection in (c) above have been met; and
 - (6) Be received by the department from the lead abatement contractor prior to allowing unlicensed workers on-site.
- (e) Upon passing a preliminary clearance inspection, non-licensed workers shall be permitted to encapsulate, repaint, or cover the old components or replace the removed components with new components.
- (f) A final clearance inspection shall be conducted after completion of lead hazard reduction work on the interior or exterior of a dwelling, dwelling unit, or child care facility, including:
- (1) A visual assessment, described in (g)–(k) below;
 - (2) Surface dust sample collection and analysis, described in (m), (n), and (q) below; and
 - (3) If lead hazard reduction work has occurred on lead-contaminated soil, soil inspection, and soil sample collection and analysis, described in (p) and (q) below.
- (g) When conducting a final clearance inspection, the lead inspector or risk assessor shall:
- (1) Visually examine all surfaces within the work site, dwelling, dwelling unit, or child care facility identified as a lead-based substance or a lead exposure hazard in any lead inspection report, or presumed to be a lead-based substance or lead exposure hazard, to determine if:
 - a. All lead exposure hazards have been abated in accordance with He-P 1608 and He-P 1609 or managed through interim controls in accordance with He-P 1608 and He-P 1610;
 - b. All surfaces that had been stripped to the bare substrate have been recoated in accordance He-P 1610.02(e)(5)–(7) and (f)(4);
 - c. There has not been a change in condition or function that would create a lead exposure hazard; and
 - d. All visible dust and debris have been removed;
 - (2) Visually examine all other surfaces in the work areas and areas within 5 feet of the designated work area to ensure that no visible dust or debris is present;
 - (3) Visually examine the grounds around the dwelling, dwelling unit, or child care facility to ensure that all waste and debris have been removed, and that leaded dust or paint chips were not transferred outside; and
 - (4) Obtain a copy of the results of the “Pull-Off Tape Test for Adhesion” or the “Assessment of Painted Surfaces for Adhesion” (American Society for Testing and Materials (ASTM) E 1796-03), available as noted in Appendix A, and as described in He-P 1609.03(c)–(g), to verify that the proper number of tests were performed and all surfaces encapsulated were tested and passed if an encapsulant product was used.

(h) If dust was not contained to the rooms or common areas in which work is conducted, the clearance area shall cover the entire space including the work site and all the rooms in the dwelling unit and the common areas that are associated with the work area in accordance with Ch. 15 of the HUD “Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing” (2012 edition), available as noted in Appendix A.

(i) If dust has been contained to the work site, the clearance area shall cover at least the area within the containment, the floor outside the containment area to make sure contamination has not spread, and passageways used by workers walking to and from the work site in accordance with Ch. 15 of the HUD “Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing” (2012 edition), available as noted in Appendix A.

(j) To determine if the clearance area meets the requirements of (i) above, the lead inspector or risk assessor shall know exactly where the containment was located and what passageways were used by workers, otherwise clearance must follow (h) above.

(k) If the lead inspector or risk assessor determines through the visual assessment required in (g) above that lead exposure hazards, visible dust, or debris remain in the work area or adjacent areas:

(1) The clearance inspection procedure shall halt;

(2) The work site, dwelling, dwelling unit, or child care facility shall fail the clearance inspection;

(3) The lead inspector or lead risk assessor shall immediately notify the lead abatement contractor and the owner or owner’s agent verbally or in writing, within 24 hours of the inspection, of the failure and the reasons for the failure; and

(4) After the dwelling, dwelling unit, or child care facility has been re-cleaned, another final clearance inspection, conducted in accordance with (f) above, shall be performed.

(l) If, during a second or subsequent final clearance inspection, the lead inspector or risk assessor determines through the visual assessment required in (g) above, that lead exposure hazards, visible dust, or debris remain in the work area or adjacent areas and finds that a lead exposure hazard still exists:

(1) The lead inspector or lead risk assessor shall immediately notify the department, the lead abatement contractor, and the owner or owner’s agent verbally or in writing within 24 hours of the inspection, of the failure and the reasons for the failure; and

(2) The lead abatement contractor or the person performing the lead hazard reduction work shall reimburse the owner for the cost of all future clearance inspections and sample testing.

(m) If the lead inspector or risk assessor determines through the visual assessment required in (g) above that all lead exposure hazards have been controlled and there is no visible dust or debris remaining in the work area or adjacent areas, the lead inspector or risk assessor shall:

(1) Allow at least 24 hours after the completion of repainting or varnishing before collecting surface dust wipe samples; and

(2) Allow at least one hour after final clean-up activities have been completed before collecting

surface dust wipe samples.

(n) Dust wipe samples shall be collected as follows:

(1) When lead hazard reduction work has occurred and there were no designated non-work areas, dust wipe samples shall be collected from at least one windowsill, one window well, and the floor as follows:

- a. In at least 4 rooms of the dwelling unit if there are 4 or more rooms; and
- b. In all rooms of the dwelling unit if there are less than 4 rooms;

(2) When lead hazard reduction work has occurred where there was designated work and non-work areas, dust wipe samples shall be collected as follows:

- a. From a windowsill, a window well, and a floor, in at least 4 treated rooms where lead hazard reduction work has occurred or in all treated rooms if there are less than 4 treated rooms;
- b. One floor sample in the main traffic pathway outside the containment area, but within 10 feet of the airlock, to determine the effectiveness of the containment system for each containment area; and
- c. One floor sample along each passageway used by workers walking to and from the work area;

(3) In addition to (1), the following samples shall be taken in the common areas:

- a. One dust wipe sample from the floor for every 2,000 square feet;
- b. One dust wipe sample from outside the containment area; and
- c. Dust wipe samples as requested by the department based on findings of a compliance inspection conducted in accordance with He-P 1605.04;

(4) When lead hazard reduction work has occurred on an exterior surface(s), a dust wipe sample shall be taken from:

- a. An exterior window sill on each floor where exterior work was performed, plus an additional window well from a lower floor; and
- b. An adjacent horizontal surface in the outdoor living area, such as a porch floor, railing, exterior sill, or stoop; and

(5) When lead hazard reduction work has occurred in a multi-family dwelling with similarly constructed and maintained dwelling units, if random sampling is utilized it shall be conducted in accordance with 40 CFR Part 745.227(e)(9)(i)-(iii) or any subsequent amendments thereto.

(o) When the purpose of the final clearance inspection is to issue a subsequent certificate of lead safe – interim controls for the interior and interior common areas in accordance with He-P 1610.06(a), and when renovation, remodeling, or other dust generating activities have:

- (1) Occurred, dust wipe samples shall be collected in accordance with (k) above as well as one dust wipe sample from the floor for every 2,000 square feet in the common areas; or
 - (2) Not occurred, dust wipe samples shall be collected from a windowsill, window well, and a floor in at least 3 areas where a child would likely spend time.
- (p) A final clearance inspection on lead-contaminated soil shall include:
- (1) Visual examination of exterior horizontal and accessible surfaces adjacent to the areas in which soil lead hazard reduction activities were conducted to ensure that no visible dust or debris are present; and
 - (2) Collection of random samples from the area in accordance with He-P 1608.04(b).
- (q) Analysis of all dust wipe and soil samples shall be conducted pursuant to He-P 1608.04(b) and (c).
- (r) The results of the dust wipe and soil sample analysis shall meet the following standards:
- (1) Clearance lead levels in interior dust for a single dust wipe shall be:
 - a. Less than 10 micrograms per square foot on floors;
 - b. Less than 100 micrograms per square foot on interior window sills; and
 - c. Less than 100 micrograms per square foot on window wells;
 - (2) Clearance lead levels in interior dust for a composite dust wipe sample shall be calculated by dividing the clearance level as described in (1) above by half of the number of subsamples in the composite sample;
 - (3) The number calculated in (2) above shall be the clearance standard to be met for the composite sample on the floors, interior window sills, or window wells sampled;
 - (4) Lead levels in exterior dust shall be less than 800 micrograms per square foot;
 - (5) Lead levels in replacement soil shall be tested and shall be confirmed to be less than 200 parts per million (ppm) pursuant to He-P 1609.02(e); and
- (s) When any residual dust level exceeds the clearance standards set forth in (r) above:
- (1) The lead inspector or lead risk assessor shall immediately notify the lead abatement contractor and the owner or owner's agent verbally or in writing, within 24 hours of the receipt of sample results;
 - (2) The lead inspector or risk assessor shall require that all the components represented by the failed sample that were not previously sampled or that failed the dust test shall be cleaned again as described in He-P 1608.11(c)(6) and (7);
 - (3) After completing the cleaning described in (2) above, the lead inspector or risk assessor

shall collect dust wipe samples from:

- a. All components which failed the previous dust test; and
- b. At least one component not previously tested for each component type that failed, except in the case of a floor where the sample shall be taken from a previously un-sampled floor area;

(4) The lead inspector or risk assessor shall have dust wipe and soil samples analyzed in accordance with He-P 1608.04(b) and (c); and

(5) If, during a second and subsequent final clearance inspection, the lead inspector or risk assessor determines through the analysis of the dust wipe samples that the level exceeds the clearance limits in (r) above, the lead abatement contractor or the person performing the lead hazard reduction work shall reimburse the owner for the cost of all future clearance inspections and sample testing.

(t) When a lead inspector or risk assessor conducts a final clearance inspection and finds that no lead exposure hazards remain and that all dust wipe and soil sample results are below the clearance levels set forth in (r) above, he or she shall:

(1) Notify the lead abatement contractor and the owner of such findings verbally within 24 hours of the receipt of all dust wipe and soil sample results;

(2) Document a written clearance inspection report detailing the results of the inspection within 14 business days of receipt of all dust wipe and soil sample results; and

(3) Submit a copy of the written clearance inspection report to the following, within 14 business days of receipt of all dust wipe and soil sample results:

- a. The owner of the dwelling, dwelling unit, or child care facility;
- b. The lead abatement contractor; and
- c. The department for any dwelling, dwelling unit, or child care facility under an order of lead hazard reduction or other enforcement action pursuant to RSA 130-A or He-P 1600 or when the abatement work was completed utilizing a lead hazard remediation loan.

(u) The written clearance inspection report in (t)(2) above shall include the following:

(1) The date of the clearance inspection;

(2) A copy of the certificate, issued in accordance with He-P 1608.14;

(3) The printed name and license number of the person that performed the final clearance inspection;

(4) Name, address, and telephone number of any company or other person employing the inspector or risk assessor in that capacity;

- (5) Name, license number, and address of all lead abatement contractors who worked at the dwelling, dwelling unit, or child care facility;
 - (6) A schematic site plan of the area inspected, showing rooms within the dwelling, dwelling unit, or child care facility and their use, common areas, exterior surfaces, and exterior areas including the locations of soil collection points;
 - (7) A schematic site plan of the area or a written description of the locations of dust sampling collection points;
 - (8) If not previously submitted to the department, a copy of the original risk assessment report and the date that the lead inspector or risk assessor verified that each surface or component requiring lead hazard reduction has been addressed;
 - (9) The specific testing device(s) used in the initial inspection or clearance inspection, their serial number, and sampling procedures employed;
 - (10) Name, address, and telephone number of all laboratories conducting analysis of collected samples;
 - (11) Copies of the results of all laboratory analyses and testing of all samples taken during the inspection;
 - (12) A description of all in-place management measures necessary to ensure the continued control of potential lead exposure hazards in the inspected dwelling pursuant to He-P 1608.16; and
 - (13) A copy of the work scope detailing the lead hazard control method employed for each hazard identified on the risk assessment report.
- (v) The owner shall provide a copy of the written clearance inspection report required by (t)(2) above to occupants affected by the lead hazard reduction work within 5 days of receipt of the report by:
- (1) Posting the report in a common area or entry for at least 5 days; or
 - (2) Hand delivering of a copy of the report to an adult occupant of each occupied dwelling unit in the dwelling.

He-P 1608.13 Standards for Re-occupancy.

- (a) When lead hazard reduction work has been performed and the dwelling, dwelling unit, or child-care facility is vacant or occupants have been relocated for the duration of the work, the dwelling, dwelling unit, or child care facility shall not be re-occupied by existing or new occupants until:
- (1) A clearance inspection conducted pursuant to He-P 1608.12 determines that no lead exposure hazards remain in the dwelling unit of a multi-family home or the interior of a dwelling of a single family home or child-care facility;
 - (2) A certificate described in He-P 1608.14(a) has been issued by a licensed risk assessor for the interior, as well as, at a minimum, dust clearance of all the interior common areas associated with dwelling unit and work site;

- (3) The owner has provided the prospective or existing residents with proper disclosure including any known information concerning the existence of lead based substances and any known lead exposure hazards and available records per 40 CFR 745, Lead-Based Paint Poisoning Prevention in Certain Residential Structures ; and
 - (5) If the certificate issued in accordance with He-P 1608.14 is issued on the interior of a dwelling, dwelling unit, or child-care facility and not the entire dwelling, including all common areas, exterior, and soils, the owner shall make the occupants aware of any known remaining hazards and future planned lead hazard reduction work and have an occupant protection plan in place including continued safe passage in and out of the dwelling, dwelling unit, or child care facility for the duration of the remaining lead hazard reduction work.
- (b) When an order of lead hazard reduction has been issued, in addition to the requirements of He-P 1608.13(a) above:
- (1) The department shall receive from a licensed risk assessor a certificate lead safe-abatement for the interior of the dwelling, dwelling unit, or child care facility as applicable, including, for a multi-family home, dust clearance of any common areas associated with the dwelling unit and work site prior to the dwelling unit being occupied by residents; and
 - (2) The owner shall have all remaining lead hazard reduction work completed and obtain a certificate of lead safe-abatement on the remaining areas including interior common areas and exteriors indicated in the order of lead hazard reduction under the existing work scope and occupant protection plan for the project within the time frame determined by the commissioner.

He-P 1608.14 Certificates.

- (a) After a risk assessment or clearance inspection has been completed and it has been determined that no lead-based paint hazards or lead exposure hazards, including but not limited to paint, dust, and soil are present, the licensed risk assessor shall issue a certificate of lead safe.
- (b) After a lead-based paint or lead-based substances inspection has been completed and it has been determined that no lead-based paint or substances exist in the dwelling, dwelling unit, or child care facility, the licensed risk assessor or lead inspector shall issue one of the following:
- (1) Certificate of no lead detected, if no lead including paint, dust, and soil is identified; or
 - (2) Certificate of no lead-based paint detected, if no lead-based paint is identified.
- (c) Any certificate issued pursuant to (a) and (b) above shall contain:
- (1) The dwelling, dwelling unit, or child care facility address, including unit number, if applicable;
 - (2) The order number, if applicable;
 - (3) The risk assessor's printed name and license number;
 - (4) The risk assessor's signature;
 - (5) The date the certificate was issued;

(6) Specific identification of the scope of the certificate, including the dwelling, dwelling unit, child care facility, common area(s), exteriors, or component(s) the certificate is being issued for;

(7) Specific identification of the lead hazard reduction methods employed, if any, including a designation of whether abatement, interim controls, or a combination of the two were utilized to achieve the certificate; and

(8) One of the following certification statements:

a. When no lead exposure hazards are observed at the time of the inspection or remain following lead hazard reduction activities:

“I hereby certify that sampling and analyses was performed in accordance with He-P 1608.04 and He-P 1608.12 and accurately represents the conditions in the areas tested on this date. I further certify that no lead exposure hazards were detected during the inspection, and dust wipe and soil sample analyses complied with 1608.12(r). This certificate of lead safe for this dwelling, dwelling unit, or child care facility shall remain in effect for one year or as long as there continues to be no lead exposure hazards present, all encapsulants or enclosures remain in place and undamaged, and all required records regarding in place management practices are completed and maintained.”;

b. For a certificate of no lead based substances detected:

“I hereby certify that sampling and analyses was performed in accordance with He-P 1608.04 and He-P 1608.12 and accurately represent the conditions in the areas tested on this date. I further certify that no lead was detected during the inspection, and dust wipe and soil sample analyses complied with 1608.12(r). This certificate of no lead detected for this dwelling, dwelling unit, or child care facility shall remain in effect as long as there continues to be no lead present.”

c. For a certificate of no lead-based paint detected:

“I hereby certify that sampling and analyses was performed in accordance with He-P 1608.04 and He-P 1608.12 and accurately represent the conditions in the areas tested on this date. I further certify that no lead-based paint was detected during the inspection. Soil and dust sampling was not conducted during the inspection and the owner and residents should presume that any bare soil and settled dust may potentially contain lead. This certificate of no lead-based paint detected for this dwelling, dwelling unit, or child care facility shall remain in effect as long as there continues to be no lead-based paint present.”

(d) A certificate of lead safe for the interior of a multi-family dwelling shall not be issued until all interior work areas associated with the dwelling units where lead hazard reduction activities have occurred, has passed a clearance inspection, including, when applicable, interior common areas associated with the dwelling units.

(e) Certificates issued in accordance with (d) above shall:

(1) Clearly exclude any dwelling unit(s), including unit designations and common areas in

- the multi-family dwelling, where no lead hazard reduction work has taken place; and
- (2) Recommend further testing and lead hazard reduction work in any excluded dwelling unit(s) prior to re-renting.
- (f) A certificate of lead safe for the exterior shall not be issued until the exterior, exterior common areas, and bare soil for the dwelling or child care facility have passed a clearance inspection.
- (g) When the commissioner finds, through a compliance inspection or review of in-place management documentation, that the interior, common areas, exterior, or soils of a dwelling, dwelling unit, or child care facility fails to meet the standards for maintenance of the certificate of lead safe, the commissioner shall invalidate the certificate of lead safe and enforce the order of lead hazard reduction.
- (h) A licensed risk assessor shall issue a certificate of lead safe to the owner of a dwelling, dwelling unit, or child care facility, when a risk assessment is performed in accordance with Appendix 13.1 through 13.3 and Appendix 14.1 through 14.3 of the HUD “Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing”, (2012 Edition), available as noted in Appendix A, and it has been determined that all lead-based substances are being controlled and are in a condition and location that do not pose a lead exposure hazard;
- (i) A licensed risk assessor or lead inspector shall issue a certificate of no lead detected or no lead-based paint detected to the owner of a dwelling, dwelling unit, or child care facility when lead-based paints or similar coatings, lead contaminated dust, or lead contaminated soils are not found as a result of:
- (1) A lead inspection performed in accordance with Appendix 13.1 through 13.3 and Appendix 14.1 through 14.3 of the HUD “Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing”, (2012 Edition), available as noted in Appendix A7;
 - (2) Dust sampling performed in accordance with Appendix 13.1 of the HUD “Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing”, (2012 Edition), available as noted in Appendix ; and
 - (3) Soil sampling performed in accordance with Appendix 13.3 of the HUD “Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing”, (2012 Edition), available as noted in Appendix A.

He-P 1608.15 Record-Keeping Requirements.

- (a) The following shall be maintained by the lead abatement contractor at the project site for the duration of the lead hazard reduction project:
- (1) A current copy of He-P 1600 and RSA 130-A;
 - (2) A copy of the work scope and occupant protection plan, developed specifically for the lead reduction work of the project;
 - (3) Copies of currently valid certificates and licenses for the lead abatement contractor and all individuals engaged in the lead hazard reduction work;
 - (4) Documentation of all substrate assessments and encapsulant application such as the “Pull-Off Tape Test for Adhesion” or the “Assessment of Painted Surfaces for Adhesion” (ASTM E

1796-03), showing satisfactory results, if encapsulants are utilized;

(5) Copies of any letters from the department relative to the use of encapsulant products, interim controls, or variance requests;

(6) A 24-hour contact number for the person in charge of conducting the lead hazard reduction work, which shall be posted at all entrances to the work site at all times;

(7) A written description of procedures to be followed during medical emergencies, including the name, phone number, and location of the nearest hospital or emergency medical service unit;

(8) Copies of any written respiratory programs, if subject to 29 CFR 1926.62'

(9) An access control log for persons who have entered any lead hazard reduction work area in accordance with He-P 1608.10; and

(10) Documentation of the results of the passing of a preliminary clearance inspection from a licensed lead inspector or risk assessor prior to unlicensed individuals working on-site.

(b) The following shall be maintained by a licensed lead inspector or risk assessor and made available to the department upon request:

(1) Reports prepared by a licensed lead inspector or risk assessor in accordance with He-P 1608.02, He-P 1608.03, and He-P 1608.12;

(2) The issuance of any certificates in accordance with He-P 1608.14;

(3) A copy of the work scope and occupant protection plan for the abatement project; and

(4) Documentation of the passing of a preliminary clearance inspection in accordance with He-P 1608.12(d).

(c) Written records as described in (a) and (b) above shall be maintained by the lead abatement contractor, licensed lead inspector, or lead risk assessor for each lead hazard reduction project and shall be retained for a minimum of 5 years after the completion of the project.

(d) When an order has been issued in accordance with He-P 1605.01, the owner of the dwelling, dwelling unit, or child care facility shall retain written documentation for the duration of ownership and all documentation shall be given at the time of sale, lease, rental, or transfer of interest in the dwelling, dwelling unit, or child care facility to the subsequent owners.

(e) Written records required by (d) above shall, at a minimum, include the following:

(1) A risk assessment report prepared by a licensed lead risk assessor in accordance with He-P 1608.03(c);

(2) A copy of the written work scope and occupant protection plan prepared for the project in accordance with He-P 1608.05;

(3) A copy of the written final clearance report as detailed in He-P 1608.12(u);

- (4) Copies of all variances, permission to use interim controls or other communications with the department; and
- (5) Copies of any orders of lead hazard reduction, notices of violation or administrative fines, or consent agreements issued in regard to the lead hazard reduction project.

He-P 1608.16 In-Place Management Standards.

- (a) In-place management shall be implemented when :
 - (1) Lead hazard reduction work has been completed and a certificate has been issued in accordance with He-P 1608.14; and
 - (2) Lead-based substances remain in the dwelling, dwelling unit, or child care facility.
- (b) In-place management may be used by an owner or owner's agent as a means of preventing lead-based substances from becoming lead exposure hazards.
- (c) When practicing in-place management of lead-based substances, an owner or owner's agent shall:
 - (1) Provide a written notice to the tenants of the dwelling, dwelling unit, or child care facility requesting them to notify the owner or agent of any damaged or deteriorating painted surface;
 - (2) Respond to the notification of deteriorating or damaged paint in writing with a plan as to how and when the issues will be rectified within 10 business days.
 - (3) Conduct visual inspections of each dwelling, dwelling unit, or child care facility to detect any change in condition of components, surfaces, or areas which may result in the creation of a lead exposure hazard:
 - a. At least once every 6 months;
 - b. Prior to re-occupancy after unit is vacated by previous occupant;
 - c. Upon request of an occupant of a dwelling, dwelling unit, or child care facility; and
 - d. In accordance with He-P 1609.03(h) if encapsulation products are used;
 - (4) Document in writing the findings of the visual inspection with the following information:
 - a. The date of the visual inspection;
 - b. A written description of all observations made pursuant to (3) above; and
 - c. The signature of the owner or person conducting the visual inspection;
 - (5) Maintain the written documentation of the visual inspection for a period of 5 years;
 - (6) Provide a copy of the written documentation of the visual inspection to the commissioner

upon request;

(7) Clean all horizontal surfaces in common areas that are accessible to children by a cycle of vacuuming with HEPA vacuum, wet washing with a general all-purpose or lead-specific cleaner, and a repeat HEPA vacuuming; and

(8) Conduct cleaning prior to re-occupancy after unit is vacated by previous occupant.

(d) When in-place management practices are implemented and an annual clearance inspection is conducted as required by He-P 1610.06 for the renewal of a certificate of lead hazard control – interim controls, that inspection may count as one of the inspections required by (c)(3)a. above.

(e) When renovations or repairs are needed and involve less than 6 square feet of surface area, they shall be considered in-place management, and shall be remedied with interim controls in accordance with He-P 1610.02 through He-P 1610.05.

(f) When conducting renovations or repairs described in (e) above, the owner or owner's agent shall not engage in any lead-based substance abatement as prohibited under RSA 130-A:9,VI. Any abatement activities shall follow standards set forth in He-P 1609.

(g) When renovations or repairs are needed and involve more than 6 square feet of surface area, the owner or owner's agent shall:

(1) Address the needed renovations and repairs in accordance with either He-P 1609 or He-P 1610, utilizing persons licensed and certified in accordance with EPA's Renovation, Repair, and Painting Rule 40 CFR 745, Subpart E; and

(2) Maintain documentation of the repair work and make the documentation available to the department upon request.

(h) When lead exposure hazards are found to exist, they shall be addressed by following the requirements of He-P 1600, and utilizing persons licensed and certified in accordance with He-P 1612.

He-P 1608.17 Review and Validation of Certificates.

(a) The department shall:

(1) Conduct a document review to validate all certificates of lead hazard control have been submitted to the department; and

(2) Conduct compliance inspections to validate the issuance of any certificate of lead hazard control; and

(3) Such compliance inspections shall:

a. Be conducted whenever the validity of the certificate of lead hazard control is unclear through the document review conducted in (1) above;

b. Be conducted, at least once annually, for each licensed risk assessor submitting certificates of lead hazard control to the department;

- c. Be conducted within 30 days of receipt of the certificate by the department; and
- d. Be arranged with the property owner to grant access to the dwelling, dwelling unit, or child-care facility.

(b) Any person may request the department to review and validate any certificate issued pursuant to He-P 1608.14, in accordance with RSA 130-A:10, III, by filing a written request with the department including:

- (1) The name and address of the requester;
- (2) The address and location of the dwelling, dwelling unit, or child care facility that is the subject of the request;
- (3) The name and address of the owner, if known; and
- (4) The name and address of the licensed lead inspector or licensed risk assessor who performed the inspection, if known.

(c) Within 60 days after receiving a request for review of a certificate, the department shall contact the requester, the owner, and the risk assessor who prepared the certificate and conduct a site visit and inspection, as necessary, to determine the existence of any lead exposure hazard, in accordance with the procedures set forth in He-P 1605.04.

(d) If a lead exposure hazard is discovered during a compliance inspection, the commissioner shall:

- (1) Contact the owner or owner's agent, lead risk assessor, and lead abatement contractor, or person granted a variance by the department to address the hazards; and
- (2) Invalidate the certificate of lead hazard control and enforce the order of lead hazard reduction if after 10 business days the lead exposure hazard still exists.

(e) The department shall not conduct a review and validation for the following:

- (1) Buildings which do not meet the definition of a dwelling, dwelling unit, or child care facility; or
- (2) Dwellings, dwelling units, or child care facilities built after 1978.

PART He-P 1609 STANDARDS FOR LEAD ABATEMENT

He-P 1609.01 Abatement Requirements.

(a) Abatement activities shall not include:

- (1) Activities that fall under the with EPA's Renovation, Repair, and Painting Rule 40 CFR 745, Subpart E, including renovation, remodeling, landscaping, or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but are designed to repair, restore, or remodel a given structure or dwelling, even though these activities might incidentally result in a reduction or elimination of lead-based paint hazards; or

- (2) Interim controls done in accordance with He-P 1610, operations and maintenance activities, or other measure and activities designed to temporarily, but not permanently, reduce human exposure or likely exposure to lead-based paint hazards.
- (b) All abatement activities shall be conducted in accordance with RSA 130-A and He-P 1600.
 - (c) Abatement activities shall only be performed by persons licensed or certified in accordance with He-P 1612.
 - (d) Activities conducted at an active abatement work site that do not disturb lead-based paint or generate dust may be performed by any person provided:
 - (1) A licensed lead abatement supervisor is present at all times in accordance with He-P 1609.01(f);
 - (2) The work scope is reviewed and approved by a NH licensed lead abatement contractor or supervisor in accordance with RSA 130-A:9, VI;
 - (3) The individual does not engage directly in lead based substance abatement in accordance with RSA 130-A:9, VI;
 - (4) All other requirements of He-P 1600 are followed;
 - (5) The work is being conducted in an area free of dust and debris where all dust generating activities have been completed; and
 - (6) The passing of a preliminary clearance as described in He-P 1608.12(d) has been achieved.
 - (e) Examples of activities allowed to be performed by any person in accordance with (d) above include:
 - (1) Installation of exterior siding;
 - (2) Installation of interior carpeting or other floor covering where paint is not disturbed;
 - (3) Enclosure of bare soil using asphalt or concrete;
 - (4) Removal of a door from hinge pins;
 - (5) Non-dust generating preparation to surfaces that are intact prior to the application of encapsulants per He-P 1609.03;
 - (6) Application of encapsulants per He-P 1609.03; and
 - (7) Other activities that do not disturb lead-based paint or cause dust generation with prior department approval following the submission of a "Request for a Variance" (May 2020).
 - (f) Abatement activities, including those activities conducted under He-P 1609.01(d), shall only be performed when either a certified lead abatement supervisor or certified owner-contractor is present at the site.

(g) During any abatement activity where there is a lead abatement supervisor present on the site, a licensed lead abatement contractor or certified owner-contractor shall be available to the supervisor, at a minimum, by telephone.

He-P 1609.02 Abatement Methods.

(a) One or more of the following lead hazard reduction techniques shall be used on lead-based substances to meet abatement standards:

(1) Removal of lead-based substances by:

- a. Removal and replacement of any component with a component that is free of lead-based substances; or
- b. Removal of the surface coating down to the substrate by:
 1. Wet sanding;
 2. Utilizing of non-flammable chemical strippers, which do not contain methylene chloride;
 3. Removing the lead containing component for off-site stripping and then reinstalling;
 4. Scraping with the aid of a chemical stripper not containing methylene chloride;
 5. Misting the surface with water and wet scraping;
 6. Controlled low-level heating element, which produces a temperature no greater than 700 degrees Fahrenheit;
 7. Machine sanding, planing, or abrasive blasting using a tool equipped with a HEPA local vacuum exhaust sized to match the tool so that no visible dust or release of air occurs outside the shroud or containment system;
 8. Dry scraping within 6 inches of an area that would present an electrical hazard if other methods were used; or
 9. Any other method approved by the department through a variance in accordance with He-P 1605.03;

(2) Application of an encapsulant product that is:

- a. Approved in accordance with He-P 1609.03(a);
- b. Used only on those surfaces specified by the manufacturer; and
- c. Applied in accordance with the manufacturer's instructions;

(3) Enclosure of the surface to ensure that no lead containing surface remains by:

- a. First labeling the surface to be enclosed with a warning, "Danger: Lead-Based Paint"

written in permanent ink with lettering no less than one inch high horizontally and vertically approximately every 16 square feet on large components, such as walls and floors, and every 4 linear feet on smaller components, such as baseboards;

b. Securely fastening and affixing all junctions of floors, walls, ceilings, and other joined surfaces by fastening with nails, screws, or an adhesive recommended by the manufacturer for the covering so that the covering remains in place and the physical integrity of the covering remains intact to prevent removal, and then caulking and sealing all seams;

c. Covering floor surfaces with ceramic tile, wood, stone, or similar durable material intended for use as flooring;

d. Covering floor surfaces with a rigid, durable material intended for use as an underlayment prior to the installation of wall to wall carpeting, vinyl flooring, or similar material intended for use as flooring;

e. Covering all other interior surfaces with wood, vinyl, aluminum, plastic, or similar durable materials, except that vinyl wallpaper and plastic sheeting shall not be allowed;

f. Covering walls or ceiling surfaces with gypsum board, fiberglass mats, vinyl wall coverings, formica, tile, paneling, or other material that does not tear, chip, or peel;

g. Enclosing exterior surfaces with aluminum, vinyl siding, wood, concrete, or similar durable material after covering with breathable building wrap; and

h. Enclosing exterior trim with aluminum or vinyl coil stock; and

(4) Permanent fastening of window sashes to eliminate friction surfaces if not otherwise prohibited by any state laws, rules, or local ordinances for health, building and fire safety.

(b) The materials used in (a)(3) above shall:

(1) Comply with all state laws, rules, or local ordinances for health, building and fire safety; and

(2) Only be used in places that the manufacturer intended them to be used.

(c) The following methods shall be prohibited when performing lead-based substance abatement:

(1) Dry scraping or sanding except as allowed by He-P 1609.02(a)(1)b.9. above;

(2) Dry sweeping of lead contaminated areas or surfaces;

(3) Dry abrasive blasting using sand, grit, or any other particulate without a HEPA local vacuum exhaust tool;

(4) Utilizing mechanical sanding, planing, grinding, or other removal equipment without a HEPA local vacuum exhaust tool;

(5) Torch or open-flame burning;

- (6) Propane-fueled heat grids;
- (7) Heating elements operating above 700 degrees Fahrenheit;
- (8) Uncontained hydroblasting or high-pressure wash;
- (9) Use of methylene chloride or solutions containing methylene chloride in interior work areas; and
- (10) Encapsulants that have not been approved under He-P 1609.03(a).

(d) The following precautions shall be used when conducting lead-based substance removal on properties listed in or determined eligible for the National Register of Historic Places and the New Hampshire State Register of Historic Places found at www.nh.gov/nhdhr/programs/state_register.html:

- (1) When an orbital sander with a HEPA local vacuum exhaust sized to match the tool is used, such device shall be used only as a finishing or smoothing tool;
- (2) When a belt sander with a HEPA local vacuum exhaust sized to match the tool is used, such device shall be used only on flat surfaces; and
- (3) When abrasive blasting with a HEPA local vacuum exhaust sized to match the tool is performed, such method shall only be used on cast and wrought iron, steel, or concrete substrates under the supervision of a professionally qualified art or architectural conservator.

(e) Soil abatement shall occur as follows:

- (1) For children's play areas, the contaminated soil shall be completely excavated to a depth of at least 6 inches and replaced with soil containing less than 200 ppm lead, or completely enclosed with asphalt or concrete;
- (2) For areas of contaminated bare soil other than children's play areas lead soil abatement shall occur as follows:
 - a. The contaminated soil shall be completely excavated to a depth of at least 6 inches and replaced with 6 inches of soil containing less than 200 ppm lead;
 - b. When the soil below 2 inches from the surface has been found to contain lead below 1,200 ppm, the contaminated soil shall be excavated to a depth of at least 2 inches, and the excavated soil replaced with 2 inches of soil containing less than 200 ppm lead;
 - c. When the soil below 4 inches from the surface has been found to contain lead below 1,200 ppm, the contaminated soil shall be excavated to a depth of at least 4 inches, and the excavated soil replaced with 4 inches of soil containing less than 200 ppm lead; or
 - d. The contaminated soil shall be completely enclosed with asphalt or concrete.
- (3) As an alternative to replacement soil, the excavated soils may be replaced at the same depth with crushed stone, gravel, or similar material intended for landscaping uses.

(f) During soil abatement:

- (1) Surface run-off and the windblown spread of lead-contaminated soil shall be prevented by either:
 - a. Keeping bare soil wet during the entire period of abatement; or
 - b. Temporarily covering exposed sites with sheeting used in barrier and containment systems and secured in place at all edges and seams;
 - (2) Soil removal activities shall not be conducted when:
 - a. The constant wind speed exceeds 20 miles per hour; or
 - b. It is raining in such a manner as to create surface run-off of contaminated soil; and
 - (3) All contaminated soil shall be disposed of in accordance with He-P 1608.11(e) and (f).
- (g) When soil lead levels are equal to or greater than 5,000 ppm, interim controls shall not be used and abatement shall occur following (e) and (f) above.

He-P 1609.03 Encapsulant Products and Their Use.

(a) Encapsulant products shall be approved in accordance with RSA 130-A:1, VII, or (p) and (q) below prior to their use.

(b) Except for a licensed lead abatement supervisor, lead abatement worker, or owner-contractor, any person who wishes to use an encapsulant product shall request permission from the department by completing and submitting to the department a “Request for Use of Encapsulant Paint”, form (May 2020) prior to initiating the work or activity certifying the following:

“I certify that I have read, understand, and agree to comply with the New Hampshire Lead Poisoning Prevention Rules (He-P 1600) and the Lead Poisoning Prevention Statute (RSA 130-A). I agree to follow all rules in He-P 1600 regarding encapsulant products and their use as well as any manufacturer recommendations. I further certify that all information contained herein, including any supplements attached, is true and correct to the best of my knowledge and belief.”; and

“I understand that any violation of the law will result in this approval being revoked and could result in administrative fines.”

(c) The following shall be submitted with the “Request for Use of Encapsulant Paint” form:

(1) A copy of the work scope describing the components on which encapsulant products are requested to be used on; and

(2) A copy of the occupant protection plan.

(d) Encapsulant products shall be applied:

(1) After passing substrate assessment testing using the “Pull-Off Tape Test for Adhesion” or

- the “Assessment of Painted Surfaces for Adhesion” (ASTM E 1796-03), for each architectural system, element, or building component where an encapsulant product is to be used;
- (2) Only after surface preparation, and all other dust generating phases of lead hazard reduction work including component removal is complete;
 - (3) In accordance with the manufacturer’s criteria;
 - (4) In accordance with ASTM International’s (ASTM E1796-03) “Standard Guide for Selection and Use of Liquid Coating Encapsulation Products for Leaded Paint in Buildings” (2016 edition), available as noted in Appendix A; and
 - (5) After passing one patch test in each room where encapsulant product is to be used.
- (e) Encapsulant products shall not be used on any surface(s) that:
- (1) Fails the substrate assessment test such as the “Pull-Off Tape Test for Adhesion” or the “Assessment of Painted Surfaces for Adhesion” (ASTM E 1796-03); or
 - (2) Is not recommended for encapsulation or restricted by the product manufacturer.
- (f) Surface preparation as described in (c)(2) shall include:
- (1) Cleaning and deglossing with a strong detergent or similar deglossing agent or by wet sanding, if necessary;
 - (2) Making minor repairs such as filling holes with plaster or spackling; and
 - (3) Paint stabilization of the interior, exterior, or both, as described in He-P 1610.02, as required.
- (g) All encapsulant debris generated through the application process and any unused encapsulant not suitable for application shall be disposed of in accordance with the encapsulant manufacturer’s instructions.
- (h) When encapsulant products have been used and the dwelling, dwelling unit, or child care facility has no documentation of passing the substrate assessment or the substrate assessment test has been failed for any architectural system, element, or building component, the risk assessor shall not issue a certificate of lead hazard control – abatement.
- (i) The owner shall perform a visual inspection of the encapsulated surfaces as recommended by the manufacturer and as follows:
- (1) Thirty days after application;
 - (2) Six months after application;
 - (3) Annually thereafter; and
 - (4) Whenever there is a change in tenant occupancy.

(j) The visual inspection required by (h) above shall determine whether the encapsulant has maintained its integrity and is not:

- (1) Cracked;
- (2) Peeling;
- (3) Sagging;
- (4) Bubbling;
- (5) Water damaged or evidencing other moisture related problems;
- (6) Blistering;
- (7) Open to the environment in a manner that could damage the encapsulated area; or
- (8) Otherwise altered in a manner which jeopardizes its protective qualities.

(k) If signs of wear or deterioration, as described in (i) above, are found during the visual inspection, the owner shall visually inspect the encapsulated surfaces at least every 3 months for the next 6 months, then annually thereafter.

(l) If the encapsulation fails to maintain its integrity or if repairs are needed and the affected area involves less than 6 square feet of surface, the repair shall be considered in-place management and shall be remedied in accordance with the encapsulant manufacturer's recommendations, He-P 1608, and He-P 1610.02 through He-P 1610.05.

(m) When repairing a surface as described in (k) above, the owner or owner's agent shall not engage in any practice prohibited under He-P 1609.02(c).

(n) When a repair of the affected area involves more than 6 square feet of surface area, the owner or owner's agent shall remedy the affected area in accordance with lead hazard reductions pursuant to He-P 1608 and as it applies to abatement pursuant to He-P 1609 or interim controls pursuant to He-P 1610, including the requirement for a clearance inspection with dust wipes for the area where work occurred.

(o) In addition to the record keeping requirements of He-P 1608.15, the owner shall maintain the following records for the life of the encapsulant product:

- (1) Documentation of:
 - a. The name of the encapsulant product applied;
 - b. The results of the "Pull-Off Tape Test for Adhesion" or the "Assessment of Painted Surfaces for Adhesion" test (ASTM E 1796-03);
 - c. The location of the encapsulant application; and
 - d. The date of encapsulant application; and
- (2) Written documentation of the visual inspections required by (h) through (j) above.

(p) The owner shall make all records required by (n) above available to:

- (1) The commissioner upon request; and
- (2) An owner or entity upon the sale, lease, rental, or transfer of interest in the dwelling, dwelling unit, or child care facility.

(q) The commissioner shall approve encapsulant products for lead hazard reduction work that have been tested and meet or exceed:

- (1) ASTM International's ASTM E 1795-17, "Standard Specification for Non-Reinforced Liquid Coating Encapsulation Products for Leaded Paint in Buildings" (2016 edition) available as noted in Appendix A; or
- (2) ASTM International's ASTM E 1797-12, "Standard Specification for Reinforced Liquid Coating Encapsulation Products for Leaded Paint in Buildings" (2017 edition), available as noted in Appendix A.

(r) Manufacturers shall submit the following documentation to the commissioner prior to the encapsulation product being approved:

- (1) Documentation in the form of a performance testing report showing:
 - a. Compliance with the applicable ASTM standard;
 - b. That all testing was conducted by an independent and National Voluntary Laboratory Accreditation Program (NVLAP) certified testing laboratory; and
 - c. The minimum dry film thickness at which the lead encapsulant product meets or exceeds the requirements of the applicable ASTM standard in (p) above for interior and/or exterior use; and
- (2) Documentation showing that the encapsulation product:
 - a. Is warranted by the product manufacturer to perform for at least 20 years as a durable barrier between the lead-based paint and the environment in locations or conditions similar to those of the planned application; and
 - b. Is formulated with an FDA-approved anti-ingestant ingredient which deters oral contact with the cured film and which discourages ingestion of delaminated coatings.

He-P 1609.04 Abatement Alternatives.

(a) When an order of lead hazard reduction has been issued pursuant to He-P 1605.01, the owner(s) or owner's agent may request to use abatement alternatives by completing and submitting to the department a "Request for Use of Abatement Alternatives" (May 2020) certifying the following:

"In accordance with RSA 130-A:8-a and He-P 1609.04, I, do hereby certify that I am the owner of the property identified below as defined by RSA 130-A:1, XVIII.";

I further certify that the dwelling identified above is currently:

Vacant and will remain vacant until the Order(s) has been satisfied;

Converted to non-residential use (explain and provide documentation);

Destroyed (explain and provide documentation to indicate abatement of soils, any other outbuildings, or other structures under Order).”;

“I hereby certify as:

Owner;

Co-Owner; or

Owner’s Agent

That the information is true and accurate, on this day.”;

“I further certify that I have read, understand, and agree to comply with the New Hampshire Lead Poisoning Prevention Rules (He-P 1600) and the Lead Poisoning Prevention Statute (RSA 130-A).”

(b) The following abatement alternatives shall be allowed:

(1) Certifying that the dwelling is vacant and will remain vacant until the order(s) has been satisfied;

(2) The use of interim controls in accordance with He-P 1610;

(3) Destruction of the dwelling or child care facility;

(4) The property no longer houses a child care facility and remains off the residential rental market; or

(5) Other abatement alternatives approved by the commissioner in accordance with (d) below.

(c) When the dwelling or child care facility has been completely destroyed, in accordance with (3) above, the owner shall submit to the department:

(1) A signed statement from a representative of the city or town certifying that the property has been completely destroyed; and

(2) A certificate of lead hazard control – abatement for the soils and any remaining structures which remain under the order of lead hazard reduction, such as an outbuilding.

(d) If the owner wishes to use alternative abatement methods not provided by He-P 1600, the owner shall:

(1) Submit a written variance request to the commissioner in accordance with He-P 1605.03

describing in detail what alternative methods he or she would like to use and describe how the proposed procedures will provide the same level of protection as that which is provided by abatement or interim controls; and

(2) Receive written approval from the commissioner prior to using alternative abatement methods.

He-P 1609.05 Request to Remove the Dwelling or Dwelling Unit(s) from the Rental Market.

(a) When an order of lead hazard reduction has been issued pursuant to He-P 1605.01, the owner(s) or owner's agent may request to remove the dwelling or dwelling unit(s) from the rental market, pursuant to RSA 130-A:8-a, III in accordance with the following:

(1) To certify that the dwelling or dwelling unit(s) are removed from the residential rental market, and/or that the dwelling or the dwelling unit is owner-occupied, the owner shall complete and submit to the department an "Annual Request to Remove from the Residential Rental Market" (May 2020) certifying the following:

"I hereby certify as owner(s) or owner's agent that the dwelling and dwelling unit(s) indicated above have been removed from the residential rental market and the information provided on this form is true and accurate to the best of my knowledge. I further certify that I have read, understand, and agree to comply with the New Hampshire Lead Poisoning Prevention Rules (He-P 1600) and the Lead Poisoning Prevention Statute (RSA 130-A) and acknowledge that any dwelling or dwelling unit(s) under an Order of Lead Hazard Reduction cannot be returned to the residential rental market until such time as the Order of Lead Hazard Reduction has been satisfied.";

(2) The certification statement in (a)(1) shall be valid for one year from the date of signature; and

(3) If the dwelling unit(s) is to remain off of the residential rental market, an "Annual Request to Remove from the Residential Rental Market" (May 2020) shall be completed and submitted to the department annually.

(b) The department shall approve a request to remove a dwelling or dwelling unit(s) under order of lead hazard reduction from the residential rental market when the following criteria are met:

(1) If there are multiple dwelling units at the dwelling, all lead exposure hazards associated with the components located in the interior common areas, exterior, bare soils, and components on the exterior of buildings on the same lot shall be reduced;

(2) The owner(s) are not in violation of the provisions of RSA 130-A or He-P 1600 on any property they own together or individually that is under an order of lead hazard reduction; and

(3) The owner(s) making the request do not have any outstanding administrative fines or court sanctions on any property they own together or individually that is under an order of lead hazard reduction.

(c) Provided the property owner is in compliance with (a) and (b) above, the department shall notify the property owner in writing if a request to remove the property from the residential rental market is approved.

(d) If the property owner is not in compliance with (a) and (b) above, the department shall deny the request to remove the property from the residential rental market.

(e) The department shall revoke a removal from the residential rental market when it is found that there are any violations of the provisions of RSA 130-A or He-P 1600.

(f) If a request to remove from the residential rental market is denied or revoked by the department, the denial or revocation shall be:

(1) In writing setting forth the reasons for denying or revoking the request to remove from the residential rental market; and

(2) Sent by certified mail or another form of delivery that provides confirmation that the denial or revocation was delivered.

PART He-P 1610 STANDARDS FOR INTERIM CONTROLS

He-P 1610.01 Interim Control Standards.

(a) He-P 1610 shall apply to any persons engaged in lead hazard reduction as defined in He-P 1602.01(aw) and who has chosen to utilize interim controls as a means of temporarily reducing lead exposure hazards on a dwelling, dwelling unit, or child care facility.

(b) All interim control activities shall be conducted in accordance with RSA 130-A and He-P 1600.

(c) When a property is under an order of lead hazard reduction, the owner shall request permission in writing from the commissioner to use interim controls as an alternative to abatement by completing and submitting a to the department, at least 5 business days prior to the anticipated start date of the lead hazard reduction work, a "Request for Interim Control Use Form" (May 2020) certifying the following:

"I certify that I have read, understand, and agree to comply with the New Hampshire Lead Poisoning Prevention Rules (He-P 1600) and the Lead Poisoning Prevention Statute (RSA 130-A). I further certify that all information contained herein, including any supplements attached, is true and correct to the best of my knowledge and belief."

(d) In addition to the "Request for Interim Control Use Form" (May 2020), the owner shall submit:

(1) A copy of the work scope as described in He-P 1608.05; and

(2) A copy of the occupant protection plan as described in He-P 1608.05.

(e) Interim control work shall not be conducted on properties under an order of lead hazard reduction until written approval is received from the department.

(f) The period of time to use interim controls on properties under an order of lead hazard reduction shall not exceed 5 years from the date of approval. After 5 years the property shall be abated and have a valid certificate of lead safe-abatement issued by a licensed risk assessor.

(g) The commissioner shall deny a request to use interim controls when it is found that:

- (1) The person making the request is in violation of one or more provisions of RSA 130-A and He-P 1600;
 - (2) The person making the request has outstanding administrative fines; or
 - (3) The requested plan does not satisfy the intent of the rules as an alternative to complying with the rules.
- (h) The commissioner shall revoke permission for the use of interim controls and order the owner to abate all lead exposure hazards when it is found that:
- (1) The owner has failed to maintain a current certificate of lead hazard control – interim controls; or
 - (2) When a compliance inspection conducted in accordance with He-P 1605.04 reveals that the property with a certificate of lead hazard control – interim controls no longer meets the requirements of He-P 1600.

He-P 1610.02 Lead-Based Paint Stabilization.

- (a) Lead-based paint stabilization or work being performed pre-stabilization where those activities disturb lead based paint, shall be conducted in accordance with He-P 1608.07 through He-P 1608.1,1 and only when the substrates of the surfaces to be treated are dry, clean, and in good repair, prior to the application of new paint or other coating.
- (b) The following substrate defects shall be repaired prior to lead-based paint stabilization:
- (1) Dry, rotted, or rusty structural, siding, window, door, or railing components;
 - (2) Moist or moldy components including, but not limited to, structural, siding, window, door, or railing components;
 - (3) Wall and ceiling plaster that is unkeyed from the underlying lath;
 - (4) Loose siding or trim; and
 - (5) Any other substrate condition that would compromise the effectiveness of the interim control measures.
- (c) Prior to lead-based paint stabilization the following interior conditions that might jeopardize the effectiveness of the lead-based paint stabilization shall be repaired in rooms undergoing lead-based paint stabilization as well as those above or adjacent to rooms undergoing lead-based paint stabilization:
- (1) Visual leaks in waste lines, traps, supply lines, or fixtures;
 - (2) Undirected or clogged condensate drip lines for air conditioners;
 - (3) Water heaters, dishwashers, and washing machines without drip pans or an overflow mechanism;
 - (4) Inadequately ventilated attic spaces, bathrooms, kitchens, or laundry areas as defined by

either:

- a. The International Building Code pursuant to RSA 155-A;
- b. The International Residential Code pursuant to RSA 155-A; or
- c. A local building code adopted by a municipality under RSA 48-A;

(5) Clogged plumbing fixtures or drains;

(6) Interior windows that are loose or do not close completely;

(7) Missing or broken window panes;

(8) Absent, incomplete, or deteriorated caulking around sinks and tubs in the bathroom or kitchen; and

(9) Any other deterioration or damage to interior components that would compromise the effectiveness of the interim control measures.

(d) Prior to lead-based paint stabilization the following exterior conditions that might jeopardize the effectiveness of the lead-based paint stabilization on the interior or exterior of the dwelling or dwelling unit shall be repaired:

(1) Damaged or missing flashing on a door, window, roof, or other visual roof leaks;

(2) Siding in contact with soil;

(3) Water-damaged siding or clapboards;

(4) Missing or deteriorated trim on a door or window opening;

(5) Missing or broken window panes;

(6) Missing, damaged, or deteriorated window caulking or glazing; and

(7) Any other deterioration or damage to building components that would compromise the effectiveness of the interim control measures.

(e) Lead-based paint stabilization of interior surfaces shall be conducted in the following manner and in accordance with He-P 1608.07, He-P 1608.11, and 40 CFR 745, if applicable:

(1) Loose and flaking paint shall be scraped away from surfaces after misting the surfaces with water;

(2) After drying, all surfaces shall be vacuumed with a HEPA vacuum until no visible dust or debris remains;

(3) All surfaces shall be cleaned using a general all-purpose or lead-specific cleaner and water solution and rinsed with clean water;

- (4) After drying, all surfaces shall be HEPA vacuumed again;
 - (5) All surfaces shall be primed with primer;
 - (6) Except as allowed by (7) below, all surfaces shall be covered with at least 2 coats of paint or other coating; and
 - (7) When the surface is a wall, a single layer of vinyl wallpaper may be used in place of the 2 coats of paint or other coating.
- (f) Lead-based paint stabilization of exterior surfaces shall be conducted in the following manner and in accordance with He-P 1608.08, He-P 1608.11, and 40 CFR 745, if applicable:
- (1) Loose and flaking paint shall only be removed by:
 - a. Scraping after first misting the surface with water; or
 - b. Dry scraping within 6 inches if an area that would present an electrical hazard if other methods were used;
 - (2) All surfaces shall be cleaned using a general all-purpose or lead-specific cleaner and water solution and rinsed with clean water;
 - (3) All adjacent horizontal surfaces shall be vacuumed with a HEPA vacuum, cleaned with a general all-purpose or lead-specific cleaner and water solution, and rinsed with clean water; and
 - (4) Recoating of surfaces shall be done by:
 - a. Priming all surfaces with primer; and
 - b. Covering all surfaces with at least 2 coats of paint or other coating.

He-P 1610.03 Abrasion, Friction, and Impact Surfaces.

- (a) When interim controls are implemented on the friction and impact surfaces of windows, the following measures shall occur:
- (1) The window stop holding the lower sash in place shall either:
 - a. Be misted with water and removed; or
 - b. Have aluminum, vinyl, or polyvinyl chloride window channel or slides installed;
 - (2) The lower window sash, and when necessary, the upper window sash and parting bead, shall be misted with water and removed to access other surfaces requiring paint stabilization;
 - (3) Repairs shall be made to bring all window components into compliance with He-P 1610.02(b) through (f);
 - (4) The window well shall be capped with vinyl, aluminum coil stock, sheet metal flashing, or

other impervious material securely affixed to the well with edges sealed and caulked; and

(5) The original window sash(es), window stop, and parting bead shall be installed.

(b) As an alternative to (a) above, friction and impact surfaces may be eliminated by permanently fastening window sashes shut, when not otherwise prohibited by any other state laws, rules, or local health, building, or fire safety ordinances.

(c) When interim controls are implemented for doors, the following measures shall take place in the order listed:

(1) Doorstops shall:

- a. Be misted with water, removed, and replaced with new doorstops;
- b. Be wrapped with vinyl or aluminum coil stock securely affixed to the door frame; or
- c. Have unpainted rubber bumpers securely affixed on the surface of the doorstop to protect the door and doorstop from impacting against one another;

(2) The door shall be corrected to reduce rubbing against the doorjamb by:

- a. Removing the door from its hinges or replacing it;
- b. Planing the edges of the door to eliminate any friction points by either using a HEPA local vacuum exhaust sized to match the tool used or hand planing a wetted surface;
- c. Conducting lead-based paint stabilization in accordance with He-P 1610.02; and
- d. One of the following:
 1. Rehanging and checking the door to verify that all friction points have been eliminated; or
 2. Making the surface intact in accordance with He-P 1610.02 when no friction or impact points exist;

(3) Lead-based paint stabilization shall be conducted on all door components in accordance with He-P 1610.02; and

(4) When applicable, a stop shall be installed to prevent a door from striking a wall or baseboard.

(d) When interim controls are implemented for stair systems, which shall include the treads, risers, balusters, newel posts, handrails, baseboards, and stringers, the following measures shall take place in the order listed:

(1) Lead-based paint stabilization shall be conducted on all surfaces of the stair system in accordance with He-P 1610.02; and

(2) After first labeling in accordance with He-P 1609.02(a)(3)a., the entire width of the stair

- tread between the stair baseboard and balusters, including any chewable edges of the stair tread, shall be covered by securely affixing a carpet or a hard, durable, and cleanable covering such as rubber tread guards on treads.
- (e) When interim controls are implemented for baseboards, the following measures shall take place:
- (1) Lead-based paint stabilization shall be conducted for all surfaces in accordance with He-P 1610.02;
 - (2) A rubber bumper shall be installed to prevent impact from nearby doors; and
 - (3) Any shoe or quarter round moldings found or assumed to contain lead shall be misted with water, removed, and replaced.
- (f) When interim controls are implemented for outside wall corners, wooden, or plastic corner bead shall be installed.
- (g) When interim controls are implemented for drawers and cabinets, the following measures shall take place:
- (1) Impact points of doors and drawer covers shall be:
 - a. Wet planed or planed with a HEPA local vacuum exhaust tool; or
 - b. Fitted with unpainted rubber bumpers installed to reduce impact; and
 - (2) Lead-based paint stabilization shall be conducted on all surfaces in accordance with He-P 1610.02.
- (h) When interim controls are implemented for any floor, including the floors of a porch or deck, lead-based paint stabilization shall be conducted, in accordance with He-P 1610.02, for all surfaces, using a paint or coating that is intended for use on flooring.

He-P 1610.04 Chewable Surfaces.

- (a) When implementing interim controls for lead exposure hazards, an owner shall implement procedures for lead-based paint stabilization in accordance with He-P 1610.02.
- (b) When interim controls are implemented for baseboards that meet the definition of a lead exposure hazard, quarter round or similar molding shall be applied to the top to remove the chewable edge.
- (c) When interim controls are implemented for interior and exterior windowsills, plastic wallpaper corner guards, or a similar material, shall be securely affixed to the top and bottom of the edge to prevent a child from mouthing the sill.

He-P 1610.05 Contaminated Bare Soil.

- (a) Interim control measures may be utilized as an alternative to abatement of lead-contaminated bare soil if the lead level of the soil is found to be less than 5,000 ppm.

(b) For bare soil found to be equal to or greater than 400 ppm in children's play areas or 1,200 ppm average in the rest of the yard, one or more of the following methods shall be utilized:

- (1) Coverage of the contaminated soil with one of the following:
 - a. Soil that contains less than 200 ppm of lead to a depth of at least 6 inches, covered by grass or sod;
 - b. Stone, crushed rock, or gravel to a depth of at least 6 inches;
 - c. Artificial turf;
 - d. Thorny or dense shrubbery, sufficient to deter access to the soil by children; or
 - e. Bark mulch or wooden nuggets to a depth of at least 6 inches; or
- (2) Implementation of land use controls, which may include one or more of the following:
 - a. Fencing;
 - b. Decks; or
 - c. Other forms of land use controls against access to bare soil.

He-P 1610.06 Maintaining a Certificate of Lead Safe for Interim Controls.

(a) When interim controls have been implemented on a dwelling, dwelling unit, or child-care facility in response to an order of lead hazard reduction, the owner shall maintain a current certificate of lead hazard control – interim controls until:

- (1) All lead hazards have been abated from the dwelling, dwelling unit, or child-care facility;
- (2) The dwelling, dwelling unit, or child-care facility has been completely destroyed and any remaining lead exposure hazards have been abated;
- (3) The entire dwelling or dwelling unit is removed from the rental market and all lead hazards within the common areas, exterior, outbuildings, and soils have been abated;
- (4) The dwelling or dwelling unit is not used for residential purposes; or
- (5) The property no longer houses a child care facility and is not used for residential purposes.

(b) A certificate of lead safe – interim controls issued in accordance with He-P 1608.14 shall expire one year from the date of its issuance.

(c) The owner shall have the certificate of lead safe – interim controls renewed annually as follows:

- (1) A licensed risk assessor or lead inspector shall conduct a clearance inspection in accordance with He-P 1608.12(f); and
- (2) A licensed risk assessor shall issue a new certificate of lead safe – interim controls when it

is determined that no lead exposure hazards exist and dust samples meet the standards in He-P 1608.12(r).

(d) The owner shall submit the new certificate of lead safe – interim controls to the commissioner prior to the expiration of the current certificate.

(e) Failure to submit a new certificate of lead safe – interim controls prior to the expiration of the current certificate shall result in the commissioner revoking approval for the use of interim controls and ordering the owner to abate all lead exposure hazards.

(f) When a compliance inspection conducted in accordance with He-P 1605.04 reveals that a property with a certificate of lead safe – interim controls no longer meets the requirements of He-P 1600, the commissioner shall revoke the certificate of lead safe – interim controls and order the owner to abate all lead exposure hazards.

(g) If an owner is ordered to abate all lead exposure hazards pursuant to (e) or (f) above, the owner shall have 90 days to submit a certificate of lead safe – abatement to the commissioner.

(h) An owner shall be granted permission to utilize interim controls on a property under order of lead hazard reduction only for a period not to exceed 5 years from approval by the department.

PART He-P 1611 LEAD EDUCATIONAL PROGRAMS AND STANDARDS

He-P 1611.01 Lead Educational Programs.

(a) Lead educational programs for licensure or certification of lead professionals under He-P 1612 shall be certified and approved in accordance with this part.

(b) Lead education programs shall have, at a minimum, the following program staff:

- (1) A program manager;
- (2) A principal instructor; and
- (3) Guest instructor(s), as applicable.

(c) The program manager shall:

(1) Have the following education and experience requirements:

a. One of the following:

1. A minimum of a bachelor's degree in building construction technology, engineering, industrial hygiene, occupational safety, public health, education, business administration, or program management;
2. A minimum of 2 years of experience, education or training, in teaching workers or adults; or
3. A minimum of 2 years of experience in managing a program specializing in environmental hazards; and

- b. Demonstrated experience, education, or training in the construction industry including, but not limited to, lead or asbestos abatement, painting, carpentry, renovation, or remodeling;
- (2) Have a minimum of 24 hours of classroom experience teaching adults;
 - (3) Implement and monitor the program's compliance with all of the requirements of He-P 1611;
 - (4) Ensure that individuals serving as principal and guest instructors have met the requirements set forth in He-P 1611.01(c)(6)(a) and He-P 1611.01(d);
 - (5) Provide facilities for hands-on skill development that demonstrate current work practices and actual field conditions;
 - (6) Appoint guest instructors to provide information specific to the lecture, hands-on skill development, or work practice components of a program, provided that:
 - a. Guest instructors have at least one year of experience in the specific aspects of the subject matter being presented; and
 - b. Guest instructors shall not provide more than 30 percent of a program's total hours;
 - (7) Develop a final written examination and hands-on skills assessment that meet the requirements of this section and which assesses knowledge of all required content areas; and
 - (8) Develop and implement a quality control program for each type of program offered, in order to maximize quality by preventing or correcting identified problems, which contains, at a minimum, the procedures for:
 - a. Annual review of principal and guest instructor(s)' competency;
 - b. Annual review and revision, as needed, of all course materials, course written examinations, and hands-on skill assessments to reflect innovations in the field and meet the requirements of He-P 1611.03 and He-P 1611.04; and
 - c. Ensuring that the facilities and equipment used meet the needs of the students and cover all required hands-on skills.
- (d) The principal instructor(s) shall:
- (1) Have at least 2 years of demonstrated experience, education, or training in the construction industry including, but not limited to, lead or asbestos abatement, painting, carpentry, renovation, or remodeling, including one year as a licensed or certified lead abatement supervisor, lead inspector, or lead risk assessor in an EPA authorized state or Tribal Nation, or as issued by the EPA;
 - (2) Have a current license in an EPA authorized state or Tribal Nation, or as issued by the EPA as:

- a. A lead abatement supervisor to teach a lead abatement worker or lead abatement supervisor program;
- b. A lead inspector or lead risk assessor to teach a lead inspector program; or
- c. A risk assessor to teach a lead inspector or lead risk assessor program;

(3) Have at least 12 hours of demonstrated classroom experience teaching workers or adults during the previous 6 months;

(4) Maintain professional competency by attending at least 12 hours of continuing education each licensing year in subject areas including, but not limited to, worker safety, hands-on skills, or related lead paint subject matter; and

(5) Organize and teach the program.

(e) The program manager shall notify the department in writing at least 30 days prior to making any changes in staff, course content, hands-on skill equipment, or classroom facilities, including documentation of the new instructor's qualifications and a description of any other program changes, as applicable.

(f) At least 10 days prior to the start of an educational program, the program manager shall provide the department with the following information:

- (1) Date, time, and location of the scheduled program; and
- (2) Name(s) of the program manager and all principal and guest instructors.

(g) A representative of the department shall be allowed to monitor and audit each program and to take the written examination without cost to the department.

(h) The program manager shall maintain records for a minimum of 5 years and make them available to the department upon request including:

- (1) The title of each educational program presented;
- (2) The dates when the program was presented;
- (3) The name, address, and date of birth of each student who successfully completed the program; and
- (4) The unique certificate number for each student who successfully completed the program;

He-P 1611.02 Certification of Lead Educational Programs.

(a) Any person or entity offering or providing lead educational programs for individuals to be licensed or certified by the state of New Hampshire as lead abatement workers, lead abatement supervisors, lead inspectors, or lead risk assessors shall be certified by the department in accordance with this section.

(b) The department shall certify the following programs:

- (1) Lead abatement worker – initial or refresher;
 - (2) Lead abatement supervisor – initial or refresher;
 - (3) Lead inspector – initial or refresher;
 - (4) Lead risk assessor – initial or refresher; and
 - (5) State of New Hampshire rules course which shall focus on the specific New Hampshire requirements of RSA 130-A and He-P 1600 for those seeking reciprocity.
- (c) No provider shall be certified to offer a refresher program without being certified to offer an initial program in the same discipline.
- (d) Fees shall be as follows:
- (1) For initial applicants for certification of a lead educational program:
 - a. The application fee shall be \$300;
 - b. To teach a lead abatement worker course, lead abatement supervisor course or any combination of the 2, the fee shall be \$200;
 - c. To teach a lead inspector or lead risk assessor course or any combination thereof, the fee shall be \$200; and
 - d. To teach a NH rules course for those seeking reciprocity, the fee shall be \$200; and
 - (2) For renewal applicants for certification of a lead educational program the application fee shall be \$300.
- (e) Any added disciplines or revision of course materials beyond those required by He-P 1611.01(c)(8)(b) shall be considered an initial application and follow the fee structure in (1) above; and
- (f) Any lead educational program whose certificate has expired by more than 30 days shall complete an initial application and follow the fee structure in (1) above.
- (g) All fees shall be non-transferable and non-refundable.
- (h) The department shall process all applications under this section in accordance with RSA 541-A:29.
- (i) Each applicant for certification as a lead educational program provider shall submit the following to the department at least 120 days prior to the anticipated start date of the program:
- (1) A completed “Request for Training Program Certification” application (May 2020) indicating the program(s) for which certification is being requested certifying the following:

“I certify that I have read, understand, and agree to comply with the New Hampshire Lead Poisoning Prevention Rules (He-P 1600) and the Lead Poisoning Prevention Statute (RSA 130-A). I further certify that all information contained herein, including any supplements

attached, is true and correct to the best of my knowledge and belief.”;

(2) The applicable certification fee(s) pursuant to (d) above, paid by check or money order, in the exact amount made payable to the “Treasurer, State of New Hampshire”; and

(3) The following for each program for which the provider is requesting certification:

- a. A copy of the course agenda, which includes all content required by He-P 1611.03;
- b. A copy of all student manuals, handouts, and instructor curriculum;
- c. A list of all audiovisual aids;
- d. All other course materials not listed above;
- e. For each program manager, principal instructor(s), guest instructor(s), or hands-on skills(s) instructor used by the program:
 1. Photocopies of applicable lead licenses, certificates, or any other documents which have been issued by another state, jurisdiction, Tribal Nation, or the EPA;
 2. Photocopies of official academic transcripts issued by the relevant educational institution;
 3. Résumés, qualifications, or records of work experience that show that the individual meets the requirements of He-P 1611.01(c) and (d); and
 4. A listing of what content areas and or hands-on skills practice that each individual will be involved with;
- f. A description of the hands-on training that will be provided, including the outline for instruction, the number of students to be accommodated, and the number of instructors;
- g. A detailed description of the facilities and equipment available for both lecture and hands-on skills practice and assessment;
- h. A copy of the quality control plan as required in He-P 1611.01(c)(8);
- i. A description of the format for all course examinations, which shall include:
 1. The proportion of written exam questions devoted to each major course topic; and
 2. A detailed description of the procedures to be used in the evaluation of hands-on skills for all skills required under He-P 1611.04(d);
- j. An example of the numbered course completion certificates, as described in He-P 1611.04(e)-(f), to be issued to students who successfully complete the course; and
- k. A list of all state and federal agencies that have certified, accredited, or given other forms of approval to the applicant to provide lead training, including the name, address, and telephone number of the person, department, or agency giving such approval, and

copies of all such written approvals.

(j) In addition to (g) above, a request for certification for a state of New Hampshire rules course program shall include documentation that the educational provider is currently certified or is currently requesting certification for at least one initial lead educational program.

(k) The following conditions shall apply to all certifications issued under this section:

(1) The certification(s) shall expire one year from the date of issuance, unless it has been suspended or revoked by the department pursuant to He-P 1606.03;

(2) The certified program shall be required to comply with all standards set forth in He-P 1611; and

(3) The program manager shall provide any of the above documentation upon request by the department.

(l) In order to renew a program certification, each certificate holder shall submit to the department the following within at least 120 days prior to the expiration date of the current certificate:

(1) A completed "Request for Training Program Certification" application (May 2020) indicating the program(s) for which certification is being requested, which has been legibly completed and signed by the applicant;

(2) The applicable certification fee(s) pursuant to (d) above, paid by check or money order, in the exact amount made payable to the "Treasurer, State of New Hampshire"; and

(3) Any new information required by (g)(3) above that has not been submitted to the department in accordance with He-P 1611.01(e).

(m) The denial, suspension, or revocation of a certification issued under this part shall be in accordance with He-P 1606.03.

He-P 1611.03 Program Content and Hands-On Skill Development.

(a) All lead educational programs shall:

(1) Include all required course content for the discipline of lead professional for which certificates are being offered;

(2) Present all information through a combination of lectures, demonstrations, and hands-on skill development;

(3) Include a discussion of New Hampshire requirements per RSA 130-A and He-P 1600;

(4) Provide instruction in hands-on skill development which meets the following requirements:

a. All students shall be required to perform those hands-on skills being taught; and

b. There shall be a student-to-instructor ratio of not greater than 10 to 1;

(5) Be conducted as follows:

- a. Offered by the training provider when at least 5 clients are scheduled for a course;
- b. No program shall last longer than 3 weeks;
- c. Students shall not be required to attend more than 8 hours of classes in a single 24-hour period;
- d. Evening classes shall not exceed 4 hours in any single session; and
- e. At the discretion of the program manager, previous education, including completion or partial completion of a lead educational program, may be recognized towards the requirements of another discipline of lead professional if the education occurred within the past 12 months; and

(6) Have written procedures for testing students and assessing hands-on skills, as set forth in He-P 1611.04.

(b) The lead abatement worker program shall:

(1) Contain a minimum of 24 hours of class time including a minimum of 8 hours of hands-on skills development; and

(2) Include the following content areas:

- a. History of lead paint use, and the history and recognition of sources of environmental lead contamination including paint, surface dust, and soil, water, air, food, and occupational exposure;
- b. An explanation of lead inspection and lead hazard reduction activities contained in all relevant local, state, and federal laws, rules, and ordinances including, but not limited to:
 1. Federal and OSHA worker safety requirements under state law and the OSHA Lead in Construction Standard, 29 CFR 1926.62;
 2. HUD "Guidelines for the Evaluation and Control of Lead Based Paint Hazards in Housing", (2012 Edition), available as noted in Appendix A and
 3. State requirements as set forth in RSA 130-A and He-P 1600;
- c. Roles and responsibilities of a lead abatement worker;
- d. Lead exposure hazard recognition and control;
- e. How lead enters the body and the health effects of lead exposure;
- f. Medical surveillance of worker lead exposure;
- g. Occupational health and safety;

- h. Respiratory protection in accordance with 29 CFR 1926.103, including the proper use of respiratory protection devices;
- i. The proper use of personal protective equipment;
- j. Hygiene practices;
- k. Engineering and work practices;
- l. Interpreting and responding to lead exposure measurements in the workplace;
- m. Prohibited and permissible lead hazard reduction methods, including the reduction of lead hazards associated with dust and soil;
- n. Requirements for controlling lead contamination and maintaining containment systems at work sites; and
- o. Interior and exterior clean-up methods, and preliminary clearance and final clearance standards.

(c) The lead abatement supervisor program shall:

- (1) Contain a minimum of 32 hours of class time, including a minimum of 8 hours of hands-on skills development; and
- (2) Include the following content areas:
 - a. A review of all content listed in (b)(2) above; and
 - b. Roles and responsibilities of a lead abatement supervisor including:
 - 1. Those listed in He-P 1612.01(c);
 - 2. Conducting and interpreting workplace lead exposure measurements and medical monitoring;
 - 3. Developing and implementing a worker safety and health plan including, but not limited to, medical surveillance of workers' lead exposure;
 - 4. Implementing programs for employee information and training;
 - 5. Development and implementation of an occupant protection plan and work scope;
 - 6. Risk assessment and inspection report interpretation;
 - 7. Waste management and disposal requirements;
 - 8. Clearance standards and testing;
 - 9. Record keeping requirements under He-P 1608.15;

10. Project management;
11. Cost estimation; and
12. Liability and insurance issues related to lead hazard reduction.

(d) The lead inspector program shall:

(1) Contain a minimum of 24 hours of class time with a minimum of 8 hours of hands-on skills development; and

(2) Contain the following content areas:

- a. The history and recognition of sources of environmental lead contamination including paint, surface dust, and soil, water, air, food, and occupational exposure;
- b. An explanation of lead inspection and lead hazard reduction activities contained in all relevant local, state, and federal laws, rules, and ordinances including, but not limited to:
 1. Federal and OSHA worker safety requirements under state law and the OSHA Lead in Construction Standard, 29 CFR 1926.62;
 2. HUD “Guidelines for the Evaluation and Control of Lead Based Paint Hazards in Housing”, (2012 Edition), available as noted in Appendix A ; and
 3. State requirements as set forth in RSA 130-A and He-P 1600;
- c. Role and responsibilities of the lead inspector including those listed in He-P 1612.01(e);
- d. How lead enters the body and the health effects of lead exposure;
- e. Symptoms of childhood lead poisoning and blood lead levels that indicate lead poisoning;
- f. Lead-based paint testing operations;
- g. Treatment and control of lead exposure hazards;
- h. Lead-based paint inspection methods and requirements including selection of rooms and components for sampling or testing;
- i. Clearance standards and testing, including random sampling;
- j. Formulating a sampling plan, including techniques for:
 1. Computing sample location and size;
 2. Selecting the components in each unit to be sampled; and

3. Classification of components;
 - k. Conducting visual assessments of potential sources of lead hazards and correctly identifying visible dust, debris, and deteriorated paint;
 - l. The licensing and registration, operation and maintenance of the XRF, including:
 1. Federal and New Hampshire state laws, rules, and regulations;
 2. Correcting for substrate interference;
 3. Radiation safety;
 4. Similarities and differences between the direct and spectrum;
 5. Interpretation of the XRF sampling data; and
 6. Transportation of XRF analyzers;
 - m. Alternative inspection technologies and methods, including paint chip, soil, and dust wipe sample collection for laboratory analysis;
 - n. Preparing for and collecting dust wipe samples following state and federal lead sampling requirements;
 - o. Selecting an accredited lab and submitting samples;
 - p. Interpreting the sampling results;
 - q. Preparing an accurate and understandable report of sampling results;
 - r. Record keeping requirements under He-P 1608.15; and
 - s. Preparation of final inspection report of test results in accordance with He-P 1608.01(e) and He-P 1608.12(u).
- (f) The lead risk assessor program shall:
- (1) Be a minimum of 40 hours with a minimum of 12 hours of hands-on skills development; and
 - (2) Contain the following content areas:
 - a. All information taught in the lead inspector course as listed in (d)(2) above;
 - b. Roles and responsibilities of a risk assessor including those listed in He-P 1612.01(f);
 - c. Collection of background information as required by He-P 1608.03 to perform a risk assessment;
 - d. Determining inspection criteria and locations to collect samples in accordance with

the requirements of He-P 1608.01 through He-P 1608.04;

e. Interpretation and preparation of inspection reports;

f. Development and implementation of sampling and analysis guidelines;

g. Dust wipe and soil sample collection in accordance with the requirements of He-P 1608.04(b) including the following:

1. Sources of lead dust exposure;

2. Sources of soil lead exposure;

3. Number and location of dust wipe and soil samples;

4. Dust wipe and soil sample collection techniques; and

5. Interpretation of test results;

h. Interpretation of lead-based paint and other lead sampling results, including all applicable federal and state laws, rules, and guidance pertaining to lead-based paint hazards;

i. Lead hazard reduction activities, abatement, and interim control methods;

j. Development of an occupant protection plan and work scope in accordance with He-P 1608.05, including the development of recommendations to abate or reduce lead-based paint hazards and instruction on when interim controls are appropriate;

k. Interpretation of results and preparation of preliminary and final clearance inspections or risk assessment reports, in accordance with the requirements of He-P 1608.01 through He-P 1608.04, He-P 1608.12, and He-P 1608.14;

l. Record keeping requirements under He-P 1608.15;

m. Clean-up and clearance testing requirements under He-P 1608.11 and He-P 1608.12;

n. Waste disposal requirements;

o. Operations and maintenance planning;

p. Construction techniques; and

q. Cost estimation.

(g) The refresher programs for lead abatement workers, lead abatement supervisors, lead inspectors, or lead risk assessors shall contain a minimum of 8 hours of class time and include the following:

(1) A review of all the curriculum topics from the full-length course, as appropriate;

- (2) An overview of the current worker safety and lead safety practices and requirements;
 - (3) An update on federal and state laws and regulations with regard to lead-based substance activities and occupational safety; and
 - (4) An update on current technologies related to lead-based paint work.
- (h) The NH rules course program shall:
- (1) Accept students who are seeking reciprocity and hold a current license or certificate as a lead abatement worker, lead abatement supervisor, lead abatement contractor, lead inspector, or risk assessor from an approved EPA state or Tribal Nation;
 - (2) Contain a minimum of 4 hours of class time; and
 - (3) Include the following content areas from RSA 130-A and He-P 1600:
 - a. Duties of the respective discipline of lead professional;
 - b. The role of the department in conducting investigations and issuing orders;
 - c. Full inspections;
 - d. Standard inspection protocols;
 - e. Custom inspection analysis and plans;
 - f. Occupant protection plans and work scopes;
 - g. Provisions for historic properties;
 - h. Prohibitions contained in RSA 130-A;
 - i. Prohibited lead hazard reduction activities;
 - j. Permitted lead hazard reduction activities;
 - k. Interim control methods and requirements;
 - l. Reporting requirements;
 - m. Record keeping requirements;
 - n. The issuance of certificates;
 - o. The role of the department in conducting compliance inspections; and
 - p. Requirements for maintaining licensure and certification.

(a) At the conclusion of each program, each student shall complete an examination that tests the student's knowledge of all required content areas.

(b) Successful completion of the written examination shall be demonstrated by receiving a score of at least 70%.

(c) The number of questions on the examinations shall be as follows:

(1) For lead abatement workers, and individuals seeking certification via reciprocity as lead abatement workers, there shall be at least 50 questions;

(2) For lead abatement supervisors, lead inspectors, and lead risk assessors, and individuals seeking licensure or certification via reciprocity as lead abatement supervisors, lead inspectors, or lead risk assessors, there shall be at least 100 questions;

(3) For individuals completing a refresher program for lead abatement workers, there shall be at least 25 questions; and

(4) For individuals completing a refresher program for lead abatement supervisors, lead inspectors, or lead risk assessors, there shall be at least 50 questions.

(d) At the conclusion of each program, excluding refresher programs and reciprocity programs, each student shall successfully complete a hands-on skills assessment which:

(1) Incorporates actual field conditions and current work practices;

(2) Evaluates the ability of the student to correctly perform all work practices and procedures that were covered in the hands-on skills portion of the course; and

(3) Shall be graded on a pass/fail basis and in accordance with the hands-on skills assessment developed by the program manager.

(e) Each student who successfully completes the course, including class attendance and passage of the written examination and hands-on skills assessment, shall receive a course completion certificate.

(f) The certificate shall include:

(1) The name, address, telephone number, and certification number of the provider of the program;

(2) The discipline of lead professional for which the completed educational program is certified;

(3) The number of course hours;

(4) The dates of the course;

(5) The name of the student; and

(6) A unique certificate number.

(g) Course completion certificates shall be valid for one year.

(h) If the third-party testing process is not completed within 6 months of successfully completing the applicable lead educational program, the applicant shall restart the process including retaking and successfully completing the applicable lead educational program.

PART He-P 1612 LICENSURE AND CERTIFICATION CRITERIA FOR LEAD PROFESSIONALS

He-P 1612.01 Functions of Certified and Licensed Persons and Business Entities.

(a) All persons and business entities licensed or certified under this part shall comply with all applicable sections of RSA 130-A and He-P 1600.

(b) No certified lead abatement worker shall perform lead hazard reduction activities unless under the supervision of a lead abatement supervisor or owner-contractor.

(c) A certified lead abatement supervisor shall:

- (1) Verify that all lead abatement workers are certified in accordance with this section;
- (2) Supervise all lead abatement workers;
- (3) Perform or direct workers, as applicable, to perform all lead hazard reduction activities, in accordance with He-P 1600;
- (4) Be physically present at the work site at all times when lead hazard reduction activities are being performed;
- (5) Ensure compliance with He-P 1600 at all lead hazard reduction projects to which they are assigned;
- (6) Prepare and ensure adherence to written occupant protection plans and work scopes for lead hazard reduction projects as set forth in He-P 1608.05; and
- (7) Maintain records in accordance with He-P 1608.15.

(d) A licensed lead abatement contractor shall be responsible for:

- (1) Assigning a lead abatement supervisor to perform the activities listed in (c) above;
- (2) Employing only appropriately certified and licensed lead abatement workers and lead abatement supervisors to conduct lead-based paint activities;
- (3) Ensuring that the business and its employees follow all applicable federal and state work practice standards for conducting lead-based paint activities; and
- (4) Maintaining records in accordance with He-P 1608.15.

(e) A licensed lead inspector shall:

- (1) Conduct inspections for lead-based substances and complete written inspection reports and

standard written protocols in accordance with He-P 1608.01, He-P 1608.02, and He-P 1608.04;

(2) Conduct clearance inspections in accordance with He-P 1608.12;

(3) Issue inspection reports pursuant to He-P 1608.01(e); and

(4) Issue certificates in accordance with He-P 1608.14.

(f) A licensed risk assessor shall:

(1) Be responsible for the same functions set forth in (e) above for lead inspector and He-P 1608.03;

(2) Be responsible for the work of all lead inspectors who are working under their supervision;

(3) Interpret the results of lead inspections and make recommendations on hazard control options;

(4) Prepare written occupant protection plans and work scopes for lead hazard reduction projects as set forth in He-P 1608.05; and

(5) Issue certificates in accordance with He-P 1608.14.

He-P 1612.02 Licensing or Certification Requirements.

(a) All individuals and business entities performing lead hazard reduction activities shall be licensed or certified, as applicable, in accordance with RSA 130-A and this part.

(b) The following categories of lead professionals and business entities shall be licensed by the department:

(1) Lead risk assessor;

(2) Lead inspector; and

(3) Lead abatement contractor.

(c) The following categories of lead professionals shall be certified by the department:

(1) Lead abatement supervisor; and

(2) Lead abatement worker.

(d) Pursuant to RSA 130-A, an owner-contractor shall not be required to be licensed, but he or she shall comply with all applicable licensing requirements, including the successful completion of a lead abatement supervisor educational program, successful completion of the required proficiency examinations, and submission of an application to the department.

(e) To be licensed as a lead risk assessor, an individual shall be 18 years of age or older and meet the following requirements:

- (1) Successfully complete a lead risk assessor educational program certified in accordance with He-P 1611;
- (2) Successfully complete the proficiency examinations described in He-P 1612.04;
- (3) The individual shall be a NH licensed lead inspector for a minimum of one year and shall have one of the following combinations of work and education requirements:
 - a. A bachelor's degree in environmental science, environmental engineering, environmental remediation, or environmental health;
 - b. A bachelor's degree in any discipline and one year of experience by the individual in a related field of lead, asbestos, environmental remediation work, or construction;
 - c. An associate's degree in any discipline and a minimum of 2 years of experience by the individual in a related field of lead, asbestos, environmental remediation work, or construction;
 - d. A high school diploma or equivalent and a minimum of 3 years of experience by the individual in a related field of lead, asbestos, environmental remediation work, or construction; or
 - e. Be licensed as an industrial hygienist, civil, environmental, or structural engineer, architect, or environmental health practitioner;
- (4) The individual shall have performed all aspects of lead and clearance inspections as detailed in (f)(4) and (5) below and all aspects of at least 5 risk assessments on 5 separate dwellings;
- (5) The risk assessments required in (4) above shall:
 - a. Be conducted after the successful completion of the risk assessor lead educational program;
 - b. Be conducted for inspections completed in New Hampshire over a period of at least 30 days but, no more than 90 days;
 - c. Be conducted in accordance with He-P 1608;
 - d. Be documented in accordance with He-P 1608 and sent to the department, either with or without redaction of the information requested in He-P 1608. 01(e)(2) and He-P 1608.01(e)(6), for review within 10 days of completion of each risk assessment; and
 - e. Be conducted under a supervised apprenticeship which shall be completed with a New Hampshire licensed risk assessor who has been licensed for a minimum of 2 years as a New Hampshire risk assessor.
- (f) To be licensed as a lead inspector, an individual shall be 18 years of age or older and meet the following requirements:
 - (1) Successfully complete a lead inspector educational program certified in accordance with

He-P 1611;

(2) Successfully complete the proficiency examinations described in He-P 1612.04; and

(3) Have one of the following combinations of work and education requirements:

a. A bachelor's degree in any discipline; no experience required;

b. An associate's degree in any discipline and a minimum of one year of experience by the individual in a related field of lead, asbestos, housing repair or inspection, or environmental remediation work; or

c. A high school diploma or equivalent and a minimum of 2 years of experience by the individual in a related field of lead, asbestos, housing repair or inspection, or environmental remediation work;

(4) The individual shall have performed all aspects of:

a. Five lead-based paint inspections performed in accordance with He-P 1608.02(a) on 5 separate dwellings;

b. Five lead-based substance inspections performed in accordance with He-P 1608.02(b) on 5 separate dwellings;

c. Three preliminary clearance inspections performed in accordance with He-P 1608.12 on 3 separate dwelling or dwelling units; and

d. Two full clearance inspections performed in accordance with He-P 1608.12 on 2 separate dwellings.

(5) The inspections required in (4) above shall:

a. Be conducted after the successful completion of the lead inspector lead educational program;

b. Be conducted for inspections completed in New Hampshire over a period of at least 30 days but, no more than 180 days;

c. Be conducted in accordance with He-P 1608.02 and 1608.12;

d. Be documented in accordance with He-P 1608 and sent to the department, either with or without redaction of the information requested in He-P 1608.01(e)(2), He-P 1608.01(e)(6), and He-P 1608.14(c)(1), for review within 10 days of completion of each inspection;

e. Be prepared for a minimum of 5 separate dwellings or dwelling units collectively; and

f. Be conducted under a supervised apprenticeship which shall be completed with a New Hampshire licensed risk assessor who has been licensed for a minimum of 2 years as a New Hampshire risk assessor.

- (g) To be licensed as a lead abatement contractor or to renew an existing lead abatement contractor license, an individual or business entity shall submit to the department a completed “Lead Abatement Contractor Application” (May 2020) and certifying the following:

“I certify that I have read, understand, and agree to comply with the New Hampshire Lead Poisoning Prevention Rules (He-P 1600) and the Lead Poisoning Prevention Statute (RSA 130-A). I understand I shall employ only individuals certified or licensed in accordance with He-P 1612, including lead-certified or licensed employees or lead-certified or licensed subcontractor personnel to conduct lead-based paint activities, and all employees and lead-certified subcontractors shall follow the work practice standards of He-P 1600. I further certify that all information contained herein, including any supplements attached, is true and correct to the best of my knowledge and belief.”

- (h) Along with the “Lead Abatement Contractor Application” (May 2020), the applicant shall demonstrate that he or she meets all applicable standards and requirements, including the following:

- (1) Evidence that the business entity:

a. Employs a lead abatement supervisor, lead inspector, or risk assessor certified in accordance with He-P 1612; and

b. If applicable, has an up-to-date written worker protection program that conforms with the following OSHA standards:

1. The standard for Respiratory Protection, 29 CFR 1910.134; and

2. The standard for Lead in Construction, 29 CFR 1926.62; and

(2) A list of all lead associated citations and notices of violation received in the United States including the name of the issuing agency or department and the final disposition of such citation or notice;

(3) A list of states in which the applicant holds a license, certification, accreditation, or any other approval for lead abatement activity and description of the licensed activity;

(4) A list of the names of the applicant’s principals or officers, and any persons with a controlling interest in the business;

(5) A list of all other entities that perform lead abatement activities of which the applicant or its principals or officers, or persons with a controlling interest, is a principal or officer, or person with a controlling interest;

(6) A list of all names and acronyms by which the applicant’s business entity is known or under which it does or has done business;

(7) A statement certifying that all of the information provided in support of the application is true and complete;

(8) A list of all individuals in the contractor’s employ that perform lead abatement activities including first and last names and license numbers; and

- (9) A statement attesting that the business entity shall employ only individuals certified or licensed in accordance with He-P 1612, including lead-certified or licensed employees or lead-certified or licensed subcontractor personnel to conduct lead-based paint activities, and that the business entity and its employees and lead-certified subcontractors will follow the work practice standards of He-P 1600.
- (i) To be certified as an owner-contractor, an individual shall be 18 years of age or older and meet the following requirements:
- (1) Successful completion of a lead abatement supervisor educational program certified in accordance with He-P 1611;
 - (2) Successful completion of the proficiency examinations described in He-P 1612.04; and
 - (3) Have at least 2 years of work experience in asbestos, lead, environmental remediation, or in the building trades.
- (j) To be certified as lead abatement supervisor, an individual shall be 18 years of age or older and meet the following requirements:
- (1) Successful completion of a lead abatement supervisor educational program certified in accordance with He-P 1611;
 - (2) Successful completion of the proficiency examinations described in He-P 1612.04; and
 - (3) The individual shall have the following experience requirements:
 - a. At least 12 months of work experience as a certified lead abatement worker; or
 - b. Have at least 2 years of work experience in asbestos, lead, environmental remediation, or in the building trades.
- (k) To be certified as a lead abatement worker, an individual shall be 18 years of age or older and successfully complete a lead abatement worker educational program certified in accordance with He-P 1611.
- (l) Any individual who has a current New Hampshire license as a lead inspector or risk assessor on the effective date of these rules and who continuously maintains that license shall not be required to meet the requirements in (e)(4)-(5) and (f)(4)-(5) above.
- (m) A refresher lead educational program, certified in accordance with He-P 1611 and specific to the discipline of lead professional being applied for, shall be successfully completed annually.
- (m) All individuals licensed or certified under this part shall notify the department, in writing, within 30 days of any changes to any of the information contained on the most current application submitted to the department.

He-P 1612.03 Reciprocity.

- (a) Any lead professional required to be licensed or certified who is currently licensed or certified as such in another state, Tribal Nation, or by the EPA shall apply for reciprocity in order to perform lead

hazard reduction activities in New Hampshire.

(b) An individual applying for reciprocity shall submit to the department the following:

(1) A completed application, pursuant to He-P 1612.05, except that:

a. The information described in He-P 1612.05(a)(4), relative to academic transcripts, and (a)(7), relative to work experience references, shall only be submitted to the department upon request;

b. The information described in He-P 1612.05(a)(5), relative to course completion certificates, shall not be required; and

c. The information described in He-P 1612.05(a)(6), relative to proficiency examinations, shall be submitted to the department in accordance with (4) below;

(2) A copy of the current license or certificate issued by another state, Tribal Nation, or the EPA;

(3) A refresher course completion certificate in the applicable lead professional discipline, issued by another state; and

(4) Documentation that the applicant has passed the following proficiency examinations within required timeframes:

a. The EPA proficiency examination described in He-P 1612.04(a)(2); and

b. One of the following:

1. The New Hampshire proficiency examination described in He-P 1612.04(a)(1); or

2. The NH rules reciprocity educational program examination described in He-P 1611.03(h).

(c) Upon request, the applicant shall submit to the department the licensing or certification requirements of their state or Tribal Nation, including the educational program requirements and content, so that equivalency can be determined.

He-P 1612.04 Proficiency Examinations.

(a) With the exception of lead abatement workers, all lead professionals seeking licensure or certification under this part shall successfully complete the following proficiency examinations specific to the discipline of lead professional being applied for:

(1) A New Hampshire proficiency examination that covers the requirements of RSA 130-A and He-P 1600, which shall meet the following requirements:

a. The examination shall include a minimum of 25 multiple choice questions; and

b. The examination shall be administered by the department.

- (2) An EPA examination that covers the requirements of 40 CFR 745 and the standards set forth in Appendix 14 of the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, (2012 Edition) available as noted in Appendix A, which shall meet the following requirements:
- a. The examination shall include a minimum of 100 multiple choice questions;
 - b. The examination shall be administered by the department or another state.
- (b) If the examinations in (a) above are not completed successfully within 6 months of successfully completing the applicable lead educational program, the applicant shall retake and successfully complete the applicable lead educational program.
- (c) An individual shall receive a score of at least 70% on each examination in order to have successfully completed the examinations.
- (d) Failure to attain a score of at least 70% shall result in the following:
- (1) After each examination(s) failure, the applicant shall take a different version of the examination(s);
 - (2) After the third failure of the EPA examination in (a)(2) above, the applicant shall be required to:
 - a. Retake and successfully complete the entire initial educational program; and
 - b. Successfully complete the failed examination; and
 - (3) After the third failure of the New Hampshire examination in (a)(1) above, the applicant shall be required to successfully complete the NH rules course described in He-P 1611.03(h).
- (d) Neither of the examinations listed in (a) above shall be taken more than 3 times within a 6-month period.
- (e) If an applicant provides proof of attaining a score of 70% or greater on an examination approved by the EPA, from an EPA authorized state or Tribal Nation, covering the content listed in (a)(2) above, the commissioner shall not require that the examination listed in (a)(2) be retaken.

He-P 1612.05 Initial License or Certificate Application Requirements.

- (a) Each applicant for a license or certificate as a lead professional shall comply with the requirements of RSA 130-A, and submit the following to the department:
- (1) A completed "Lead License or Certification Application" (May 2020) provided by the department for the discipline of lead professional being applied for, certifying the following:

"I certify that I have read, understand, and agree to comply with the New Hampshire Lead Poisoning Prevention Rules (He-P 1600) and the Lead Poisoning Prevention Statute (RSA 130-A). I further certify that all information contained herein, including any supplements attached, is true and correct to the best of my knowledge and belief.";

- (2) The applicable licensing or certification fee(s) pursuant to He-P 1612.08(a), for the discipline of lead professional being applied for, paid by check or money order, in the exact amount of the fee(s) and made payable to the "Treasurer, State of New Hampshire";
 - (3) An original, current, clear photograph of the applicant, such as a passport photograph;
 - (4) Photocopies of official academic transcripts and/or diplomas issued by the relevant educational institution or a GED, as required by He-P 1612.02;
 - (5) A copy of the course completion certificate for the lead educational program completed in accordance with He-P 1611 for the discipline of lead professional being applied for;
 - (6) With the exception of a lead abatement worker, documentation that the applicant has passed the proficiency examinations required by He-P 1612.04
 - (7) Documentation, including the name, address, telephone number, and e-mail, if available, of a contact person(s) who can verify all work experience required by He-P 1612.02;
 - (8) A list of all names, trade names, acronyms, and other identifiers used currently or in the past when performing lead hazard reduction activities, lead inspections, or risk assessments;
 - (9) A list of any pending or completed federal, state, or local enforcement actions against the applicant which resulted from lead hazard reduction activities, lead inspections, or risk assessments for the 10 years preceding submission of the application, including:
 - a. Notices of warnings, violations, or administrative fines;
 - b. Administrative orders or consent decrees;
 - c. Notices of license or certification denial, suspension, or revocation; and
 - d. Pending or completed civil or criminal actions involving the applicant; and
 - (10) If applying for a license as a lead inspector or a risk assessor, signed documentation that they agree to provide the department with proof of competency as required by He-P 1612.02(e)(4) or (f)(4).
- (b) The application required by (a) above shall be notarized.
- (c) The applicant shall mail or hand-deliver the documents to:
- Department of Health and Human Services
Division of Public Health Services
Healthy Homes and Lead Poisoning Prevention Program
29 Hazen Drive
Concord, NH 03301

He-P 1612.06 Processing of Applications and Issuance of Licenses or Certificates.

- (a) An application for an initial license or certificate shall be complete when the department

determines that all items required by He-P 1612.05(a) have been received.

(b) The department shall process all applications for licensure or certification in accordance with RSA 541-A, and as follows:

(1) If an application does not contain all of the items required by He-P 1612.05(a), the department shall notify the applicant in writing or by telephone of the items required before the application can be processed; and

(2) Any fee submitted to the department in the form of a check or money order and returned to the state for any reason shall be processed in accordance with RSA 6:11-a.

(c) Licensing or certification fees shall not be transferable to any other application(s).

(d) A license or certificate shall be issued if the department determines that an applicant requesting an initial license or certificate is in full compliance with RSA 130-A and He-P 1600.

(e) Any licensee or certificate holder who has failed to pay an outstanding administrative fine that has been imposed by the department shall submit full payment as a condition of initial licensure or certification.

(f) The department shall deny a licensing or certification request in accordance with He-P 1606.03.

He-P 1612.07 License and Certificate Expirations and Procedures for Renewals.

(a) All licenses and certificates shall expire one year from the date of issuance, unless the license or certificate has been suspended or revoked by the department pursuant to He-P 1606.03.

(b) In order to renew a license or certificate, each licensee or certificate holder shall complete and submit to the department a "Lead License or Certification Application" (May 2020) pursuant to He-P 1612.05(a)(1) no later than 60 days before the expiration date of the current license or certificate.

(c) The applicant shall submit with the renewal application:

(1) The current license or certificate number;

(2) The applicable fee(s) pursuant to He-P 1612.08(a);

(3) The material required in He-P 1612.05(a)(8) and (a)(9) if any of this information has changed;

(4) A list of all lead professionals in the applicant's employ at the time that the application is submitted;

(5) A request for renewal of any existing variances previously granted by the department, in accordance with He-P 1605.03, if applicable;

(6) Documentation of meeting the annual education requirement pursuant to He-P 1612.02;

(7) Proof of passing the proficiency examinations required in He-P 1612.04; and

- (8) If renewing a lead inspector or risk assessor license proof of competency, as described in He-P 1612.02(e)(4) or He-P 1612.02(f)(4).
- (d) A license or certificate shall be renewed if the department determines that the licensee or certificate holder:
- (1) Submitted an application containing all the items required by (b) and (c) above, as applicable, no later than 60 days before the expiration of the current license or certificate; and
 - (2) Has paid all outstanding administrative fines that have been imposed by the department.
- (e) The department shall deny a licensing or certification renewal request in accordance with He-P 1606.03.
- (f) Any licensee or certificate holder who has failed to pay an outstanding administrative fine that has been imposed by the department shall submit full payment as a condition of licensure or certification renewal.
- (g) If an individual's New Hampshire license or certificate lapses, the individual shall not engage in lead hazard reduction activities.
- (h) If an individual's New Hampshire license or certificate lapses, the individual may apply for a new license or certificate, in accordance with He-P 1612.05 without successfully completing the initial educational program if the individual's:
- (1) Proficiency examination results are at least 70% and less than 3 years old for the examination described in He-P 1612.04(a)(2);
 - (2) Annual ongoing education requirements listed in He-P 1612.02 are current; and
 - (3) The renewal application is received by the department within 6 months after the expiration of the current license or certificate.
- (i) Duplicate licenses shall be obtained by submitting a written request to the department with a current, clear photograph of the licensee and corresponding fee as listed in He-P 1612.08(a)(7).
- (j) Duplicate licenses shall not be issued if the approved license or certificate has expired.

He-P 1612.08 License and Certificate Fees.

- (a) Fees for initial and renewal licenses or certificates shall be as follows:
- (1) For a lead abatement worker, \$75.00;
 - (2) For a lead abatement supervisor, \$125.00;
 - (3) For a lead abatement contractor, \$300.00;
 - (4) For an owner-contractor with 4 to 6 dwelling units, \$150.00;
 - (5) For a lead inspector, \$100.00;

- (6) For a risk assessor, \$250.00;
 - (7) For a duplicate license, \$15.00;
 - (8) There shall be no fee for an owner-contractor with less than 4 dwelling units; and
 - (9) Individuals applying for more than one discipline shall pay the highest fee plus \$25 per additional discipline.
- (b) Application fees received by the department are non-transferable and non-refundable.

APPENDIX A: Incorporation by Reference Information

Rule	Title	Publisher; How to Obtain; and Cost
He-P 1608.04(a)(1), (a)(2), (b), (d)(3), and (e); He-P 1608.07(a), (c)(2); He-P 1608.08(a); He-P 1608.12(h) and (i); He-P 1608.14(h), (i); He-P 1611.03(b)(2)b.2., (d)(2)b.2.; and He-P 1612.04(a)(2)	“Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing” (2012 Edition)	Publisher: U.S. Department of Housing and Urban Development Cost: Free to the Public The incorporated document is available at: https://www.hud.gov/program_offices/healthy_homes/lbp/hudguidelines
He-P 1608.12(g)(4), and He-P 1609.03(c)(2)	ASTM E1796-03, “Standard Guide for Selection and Use of Liquid Coating Encapsulation Products for Leaded Paint in Buildings” (2016 edition)	Publisher: ASTM International Cost: \$48.00 The incorporated document is available at: https://www.astm.org/Standards/E1796.htm
He-P 1609.03(q)(1)	ASTM E 1795-17, “Standard Specifications for Non-Reinforced Liquid Coating Encapsulation Products for Leaded	Publisher: ASTM International Cost: \$48.00 The incorporated document is available at: http://www.astm.org/cgi-bin/resolver.cgi?E1795

Rule	Title	Publisher; How to Obtain; and Cost
	Paint in Buildings” (2016 edition)	
He-P 1609.03(q)(2)	ASTM E 1797-12, “Standard Specification for Reinforced Liquid Coating Encapsulation Products for Lead Paint in Buildings” (2017 edition)	Publisher: ASTM International Cost: \$48.00 The incorporated document is available at: https://www.astm.org/Standards/E1797.htm

APPENDIX B

Rule	Specific State Statute which the Rule is Intended to Implement
He-P 1601	RSA 130-A:2, I(d); RSA 130-A:11; RSA 130-A:11, I; 15 USC 2681-2692; 42 USC 4821-4856
He-P 1602	RSA 130-A:2, I(d); RSA 130-A:11, I
He-P 1602.02	RSA 130-A:2, I(i), RSA 130-A: 7, RSA 130-A:10, RSA 130-A:11, I, RSA 130-A:14, 40 CFR 745.327
He-P 1603	RSA 130-A:2, I(j); RSA 130-A:3; RSA 130-A:10, XII
He-P 1604	RSA 130-A:2, I(i); RSA 130-A:5; RSA 130-A:6; RSA 130-A:10, V; RSA 130-A:11, III
He-P 1605	RSA 130-A:2, I(i); RSA 130-A:6; RSA 130-A:7; RSA 130-A:10, III; RSA 130-A:10, VI; RSA 130-A:10, VIII; RSA 130-A 10, XV; RSA 130-A:17
He-P 1606	RSA 130-A:2, I (a)-(b); RSA 130-A:7, I and III; RSA 130-A:10, VII; RSA 130-A:10, IX and X; RSA 130-A:14; RSA 130-A:16
He-P 1607	RSA 130-A:10, X; RSA 130-A:14
He-P 1608	RSA 130-A:9, I-IV; RSA 130-A:9, VI; RSA 130-A:10, III and VIII; 15 USC 2682; 42 USC 4852c
He-P 1609	RSA 130-A:9, I; RSA 130-A:9, IV; RSA 130-A:9, VI RSA 130-A:10, VIII and XIV; 15 USC 2682
He-P 1610	RSA 130-A:7, V; RSA 130-A:9, I; RSA 130-A:10, III; RSA 130-A:10, VII and VIII; 15 USC 2682; 42 USC 4852c
He-P 1611	RSA 130-A:2, I(h); RSA 130-A:9, VII; RSA 130-A:10, XI; RSA 130-A:12, III; 15 USC 2682
He-P 1612	RSA 130-A:2, I(a)-(c); RSA 130-A:9, V and VI; RSA 130-A:10, I, II and IV; RSA 130-A:12; 15 USC 2682