

West's Annotated Mississippi Code Currentness

Title 49. Conservation and Ecology

▢ Chapter 17. Pollution of Waters, Streams, and Air

➔ Lead-Based Paint Activity Accreditation and Certification Act

§ 49-17-501. Short title

Sections 49-17-501 through 49-17-531 shall be known as and may be cited as the "Lead-Based Paint Activity Accreditation and Certification Act."

§ 49-17-503. Purpose

The purpose of Sections 49-17-501 through 49-17-531 is to provide for the accreditation of lead-based paint activities training programs, procedures and requirements for certification of persons engaged in lead-based paint activities and development and implementation of work practice standards for lead-based paint activities in target housing, child-occupied facilities and other facilities regulated under Section 402 of the federal Toxic Substances Control Act. It is the intent of Sections 49-17-501 through 49-17-531 that the cost of the administration and enforcement of Sections 49-17-501 through 49-17-531 shall be borne fully by federal grants and fees for accreditation, certification and abatement projects.

§ 49-17-505. Definitions

For purposes of Sections 49-17-501 through 49-17-531, the following terms shall have the meaning ascribed herein unless the context clearly indicates otherwise:

- (a) "Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards consistent with 745 CFR Section 223. The term includes, but is not limited to, the removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil and all preparation, cleanup, disposal, and postabatement clearance testing activities associated with those measures. The term does not include renovation, remodeling, landscaping or other activities not designed to permanently eliminate lead-based paint hazards and interim controls, operations and maintenance activities or other activities and measures designed to temporarily, but not permanently reduce lead-based paint hazards.
- (b) "Accredited training program" means a training program that has been accredited by the commission, United States Environmental Protection Agency (EPA) or EPA-approved lead-based paint program in a state with reciprocity agreements with Mississippi to provide training for individuals engaged in lead-based paint activities.
- (c) "Certificate" means a document authorizing a person to perform lead-based paint activities as described in Sections 49-17-501 through 49-17-531.
- (d) "Child-occupied facility" means a building, or portion of a building, constructed before 1978, visited regularly by the same child, six (6) years of age or under, on at least two (2) different days within any calendar

week, if each day's visit lasts at least three (3) hours, the combined weekly visit lasts at least six (6) hours, and the combined annual visits last at least sixty (60) hours. Child-occupied facilities include, but are not limited to, day care centers, preschools and kindergarten classrooms.

(e) "Clearance levels" means the maximum amount of lead permitted in dust on a surface following completion of an abatement activity.

(f) "Commission" means the Mississippi Commission on Environmental Quality.

(g) "Department" means the Mississippi Department of Environmental Quality.

(h) "Executive director" means the Executive Director of the Mississippi Department of Environmental Quality.

(i) "Firm" means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs or offers to perform lead-based paint activities.

(j) "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.

(k) "Inspector" means an individual employed to inspect or reinspect for the presence of lead-based paint, to collect samples for the presence of lead in dust and soil for the purposes of abatement clearance testing and to prepare inspection reports.

(l) "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of one (1) milligram per square centimeter or more than one-half of one percent (0.5%) by weight.

(m) "Lead-based paint activities" means inspection, risk assessment and abatement of target housing or child-occupied facilities.

(n) "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the Administrator of the United States Environmental Protection Agency.

(o) "Person" means the state or other agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, firm, association, independent contractor or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation, or the United States or any officer or employee thereof.

(p) "Project designer" means an individual employed to prepare abatement project designs, occupant protection plans and abatement project reports.

(q) "Residential dwelling" means a detached single family dwelling unit, including attached structures such as porches and stoops or a single family dwelling unit in a structure that contains more than one (1) separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as

the home or residence of one or more persons.

(r) "Risk assessment" means an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards and the provision of a report by the person conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

(s) "Risk assessor" means an individual employed to conduct risk assessments and lead hazard screens, to prepare inspection reports and to collect samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

(t) "Supervisor" means an individual designated by a contractor or certified firm to be responsible for the direction and conduct of lead-based paint abatement activities and to prepare occupant protection plans and abatement reports.

(u) "Target housing" means any housing constructed before 1978, except housing for the elderly or persons with disabilities [unless any one or more children aged six (6) years or under resides or is expected to reside in that housing for the elderly or persons with disabilities] or any zero-bedroom dwelling.

(v) "Worker" means any individual who works on abatements.

§ 49-17-507. Commissioner powers

In addition to any other powers and duties authorized by law, the commission shall have the following powers and duties regarding lead-based paint activities:

(a) To adopt, modify, repeal and promulgate, after due notice and hearing, and where not otherwise prohibited by federal or state law, to make exceptions to and grant exemptions and variances from, and to enforce rules and regulations implementing or effectuating the powers and duties of the commission under [Sections 49-17-501 through 49-17-531](#);

(b) To issue, reissue, suspend, revoke or deny the issuance or reissuance of accreditation for lead-based paint activity training programs and to require the modification of those training programs;

(c) To issue, reissue, suspend, revoke or deny the issuance or reissuance of certificates for risk assessors, project designers, supervisors, inspectors and workers involved in lead-based paint activities;

(d) To develop and require the use of work practice standards for lead-based paint activities and to monitor compliance with those work practice standards;

(e) To enforce and assess penalties for violations of [Sections 49-17-501 through 49-17-531](#);

(f) To assess and collect fees for the accreditation of training programs, issuance and reissuance of certificates, and lead-based paint abatement projects;

(g) To develop an examination and grading system for testing applicants to be administered by accredited training programs;

- (h) To establish requirements and procedures for the administration of a third-party certification examination;
- (i) To enter into reciprocal agreements for accreditation of training programs and certification of risk assessors, project designers, supervisors, inspectors and workers with other states that have established accreditation and certification programs that meet or exceed the accreditation and certification requirements adopted under [Sections 49-17-501](#) through [49-17-531](#);
- (j) To apply for, receive and expend any contributions, gifts, devises, bequests or funds from any source relating to [Sections 49-17-501](#) through [49-17-531](#);
- (k) To enter into, and to authorize the executive director to execute with the approval of the commission, contracts, grants and cooperative agreements, except as limited under [Section 49-2-9](#), with any federal or state agency or subdivision thereof, any public or private institution, or any other person in connection with carrying out [Sections 49-17-501](#) through [49-17-531](#); and
- (l) To discharge other duties, responsibilities and powers necessary to implement [Sections 49-17-501](#) through [49-17-531](#).

§ 49-17-509. Adoption of regulations

- (1) The commission shall adopt regulations for accreditation of lead-based paint activity training programs. Accredited training programs shall ensure the availability of, and provide adequate facilities for, the delivery of lectures, course tests, hands-on training and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed. The training program shall offer courses which teach work practice standards for conducting lead-based paint activities as adopted by the United States Environmental Protection Agency or the commission under [Sections 49-17-501](#) through [49-17-531](#). These standards shall be taught in the appropriate courses to provide trainees with the knowledge needed to perform the lead-based paint activities they are responsible for. The commission also may adopt accreditation requirements for training programs providing refresher training programs.
- (2) The commission shall adopt regulations establishing work practice standards for performing lead-based paint activities in target housing and child-occupied facilities. These standards may include appropriate documented methodologies, clearance levels and requirements for lead hazard screens, risk assessments, abatement activities, sample collection and analysis and record keeping. Beginning on August 31, 1998, all lead-based paint activities shall be performed in accordance with work practice standards adopted under [Sections 49-17-501](#) through [49-17-531](#). The commission shall implement a compliance monitoring program to ensure compliance with the work practice standards.
- (3) The commission shall adopt regulations for certification of lead-based paint risk assessors, project designers, supervisors, inspectors and workers.
- (4) Applicants for the issuance or reissuance of certificates required under [Sections 49-17-511](#) through [49-17-519](#) shall submit to the commission, on forms prepared by the commission, an application. In addition, the applicant shall submit documentation deemed appropriate by the commission providing the educational background and demonstrating satisfactory completion of the applicable training programs and shall pay the applic-

able fee.

(5) The commission shall require certificates issued under [Sections 49-17- 511](#) through [49-17-521](#) to be reissued annually.

(6) Except as otherwise required by [Sections 49-17-501](#) through [49-17-531](#), regulations adopted under [Sections 49-17-501](#) through [49-17-531](#) shall be no more stringent than federal regulations for lead-based paint activities.

(7) [Sections 49-17-501](#) through [49-17-531](#) do not apply to a person who is performing lead-based paint activities or abatement of lead-based paint hazards in a residential dwelling owned by that person, unless the residential dwelling is occupied by a person or persons other than the owner or owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

§ 49-17-511. Risk assessor certificate

(1) After August 31, 1998, it is unlawful for an individual who does not possess a valid lead-based paint risk assessor certificate to conduct a risk assessment or lead hazard screen as part of any lead-based paint activity.

(2) To qualify for a lead-based paint risk assessor certificate, an applicant shall:

- (a)(i) Be a registered professional engineer or a licensed architect; or
 - (ii) Have bachelor's degree in a profession related to engineering, health or environmental science and one (1) year of experience in a related field, as determined by the commission; or
 - (iii) Have an associate's degree and two (2) years of experience in a related field, as determined by the commission; or
 - (iv) Have a high school diploma or equivalent and three (3) years of experience in a related field, as determined by the commission;
- (b) Satisfactorily complete an accredited training program for lead-based paint risk assessors and lead-based paint inspectors; and
- (c) Demonstrate to the satisfaction of the commission that the applicant is familiar with and capable of complying fully with all applicable federal and state laws and regulations.

§ 49-17-513. Paint project designer certificate

(1) After August 31, 1998, it is unlawful for any person who does not possess a valid lead-based paint project designer certificate to prepare abatement project designs, occupant protection plans and abatement reports.

(2) To qualify for a lead-based paint project designer certificate, an applicant shall:

- (a)(i) Be a registered professional engineer or a licensed architect; or

(ii) Have bachelor's degree in engineering, architecture or a profession related to engineering or architecture and one (1) year of experience in building design or a related field, as determined by the commission; or

(iii) Have an associate's degree and two (2) years of experience in building design or a related field, as determined by the commission; or

(iv) Have a high school diploma or equivalent and three (3) years of experience in building design or a related field, as determined by the commission;

(b) Satisfactorily complete an accredited training program for lead-based paint project designers and lead-based paint supervisor; and

(c) Demonstrate to the satisfaction of the commission that the applicant is familiar with and capable of complying fully with all applicable federal and state laws and regulations.

§ 49-17-515. Paint supervisor certificate

(1) After August 31, 1998, it is unlawful for an individual who does not possess a valid lead-based paint supervisor certificate to direct a lead-based paint abatement activity and to prepare occupant protection plans and abatement reports.

(2) To qualify for a lead-based paint supervisor certificate, an applicant shall:

(a) Have a high school diploma or its equivalent and one (1) year of experience as a certified lead-based paint abatement worker or two (2) years of experience in a related field, as determined by the commission or in the building trades;

(b) Satisfactorily complete an accredited training program for lead-based paint supervisors; and

(c) Demonstrate to the satisfaction of the commission that the applicant is familiar with and capable of complying fully with all applicable federal and state laws and regulations.

§ 49-17-517. Paint inspector certificate

(1) After August 31, 1998, it is unlawful for an individual who does not possess a valid lead-based paint inspector certificate to work as an inspector on a lead-based paint activity.

(2) To qualify for a lead-based paint inspector certificate, an applicant shall:

(a) Have a high school diploma or its equivalent;

(b) Satisfactorily complete an accredited training program for lead-based paint inspectors; and

(c) Demonstrate to the satisfaction of the commission that the applicant is familiar with and capable of complying fully with all applicable federal and state laws and regulations.

§ 49-17-519. Paint abatement worker certificate

- (1) After August 31, 1998, it is unlawful for an individual who does not possess a valid lead-based paint abatement worker certificate to work as a worker on a lead-based paint abatement activity.
- (2) After August 31, 1998, it is unlawful for a firm to employ a person as a worker on a lead-based paint abatement activity who does not possess a valid lead-based paint abatement worker certificate in accordance with this section.
- (3) To qualify for a lead-based paint abatement worker certificate an individual shall:
 - (a) Satisfactorily complete an accredited training program for lead-based paint abatement workers; and
 - (b) Demonstrate to the satisfaction of the commission that the applicant is familiar with and capable of complying fully with all applicable federal and state laws and regulations.

§ 49-17-521. Paint certified firm certificate

- (1) After August 31, 1998, it is unlawful for any firm which does not possess a valid lead-based paint certified firm certificate to perform or offer to perform any lead-based paint activity covered under [Sections 49-17-501](#) through [49-17-531](#).
- (2) To qualify for a lead-based paint certified firm certificate, an applicant shall submit to the commission a letter attesting that the firm shall employ only appropriately certified employees to conduct lead-based paint activities and that the firm and its employees shall follow the work practice standards adopted under [Sections 49-17-501](#) through [49-17-531](#) in conducting those activities.
- (3) Applicants for lead-based paint certified firm certificate shall pay the applicable fee.

§ 49-17-523. Denial of certificates

The commission may deny the issuance or reissuance of any certificate required under [Sections 49-17-511](#) through [49-17-521](#) if: (a) there has been a failure to comply with the application procedures established by regulations promulgated by the commission; (b) if the applicant fails to satisfy the application criteria established by [Sections 49-17-501](#) through [49-17-531](#) and by regulations promulgated by the commission; or (c) if the applicant fails to pay the applicable fee.

§ 49-17-525. Lead-Based Paint Program Operations Fund

- (1)(a) There is created in the State Treasury a fund to be designated as the Lead-Based Paint Program Operations Fund, referred to in this section as "fund," to be administered by the executive director and expended by appropriation approved by the Legislature.
 - (b) Monies in the fund shall be utilized to pay reasonable direct and indirect costs associated with the administration and enforcement of the lead-based paint activity accreditation and certification program.
 - (c) Expenditures may be made from the fund upon requisition by the executive director.
 - (d) The fund shall be treated as a special trust fund. Interest earned on the principal therein shall be credited

by the Treasurer to the fund.

(e) The fund may receive monies from any available public or private source, including, but not limited to, collection of fees, interest, grants, taxes, public and private donations, judicial actions and appropriated funds.

(f) Monies in the fund at the end of the fiscal year shall be retained in the fund for use in the next succeeding fiscal year to be expended by appropriation approved by the Legislature.

(2)(a) The commission shall set by order a schedule of fees for the accreditation of training programs, issuance and reissuance of certificates and lead-based paint abatement projects. The commission shall graduate fee levels to reflect the type of certificate and the size of the project, as the case may be.

(b) All monies collected under this section shall be deposited into the fund.

(c) The commission may delegate to the department responsibility for the collection of fees under this section.

(d) Any person required to pay a fee under this section who disagrees with the calculation or applicability of the fee may petition the commission for a hearing in accordance with [Section 49-17-35, Mississippi Code of 1972](#). Any hearing shall be in accordance with the provisions of [Section 49-17-33, Mississippi Code of 1972](#).

(e) Fees collected under this section shall not supplant or reduce in any way the general fund appropriation to the department.

§ 49-17-527. Prohibitions

It is unlawful to:

(a) Fail or refuse to comply with any rule, regulation or order of the commission issued under [Sections 49-17-501 through 49-17-531](#);

(b) Fail or refuse to establish, maintain, provide, copy, or permit access to records or reports as required by [Sections 49-17-501 through 49-17-531](#) regulations adopted under [Sections 49-17-501 through 49-17-531](#);

(c) Fail or refuse to permit entry or inspection as required by [Sections 49-17-501 through 49-17-531](#) or regulations adopted under [Sections 49-17-501 through 49-17-531](#);

(d) Obtain certification through fraudulent representation;

(e) Fail to obtain certification from the commission or the United States Environmental Protection Agency and perform work requiring certification at a job site; or

(f) Fraudulently obtain certification and engage in any lead-based paint activities requiring certification.

§ 49-17-529. Penalties

(1) Any person found by the commission to have violated [Sections 49-17-501 through 49-17-531](#) or any rule or regulation or written order of the commission issued under [Sections 49-17-501 through 49-17-531](#) or any certi-

ificate or accreditation issued under [Sections 49-17-501 through 49-17-531](#) shall be subject to a civil penalty of not more than Twenty-five Thousand Dollars (\$25,000.00) for each violation. The penalty may be assessed and levied by order of the commission after notice and hearing in accordance with subsection (5) of this section. In addition, the commission may issue a reprimand or a suspension or revocation of any certificate issued to the person under [Sections 49-17-501 through 49-17-531](#). The reprimand, suspension or revocation may be assessed and levied by order of the commission after notice and hearing as provided in subsection (5) of this section.

(2) In lieu of, or in addition to, the penalty provided for in subsection (1) of this section, the commission may institute and maintain in the name of the state any proceedings necessary to enforce [Sections 49-17-501 through 49-17-531](#), rules and regulations adopted under [Sections 49-17-501 through 49-17-531](#), and orders and certificates issued under [Sections 49-17-501 through 49-17-531](#) in the appropriate circuit, chancery, county or justice court of the county in which venue may lie. The commission may obtain mandatory or prohibitory injunctive relief, either temporary or permanent, and it shall not be necessary in those cases that the state plead or prove: (a) that irreparable damage would result if the injunction did not issue; (b) that there is no adequate remedy at law; or (c) that a written complaint or commission order has first been issued for the alleged violation.

(3) Any person who knowingly submits false or inaccurate information in support of an application for issuance or reissuance of an accreditation or a certificate under [Sections 49-17-501 through 49-17-531](#) or who willfully fails to comply with the conditions of the accreditation or the certificate issued by the commission or who willfully violates [Sections 49-17-501 through 49-17-531](#), or any rule, regulation or written order of the commission or emergency order issued by the director in pursuance thereof, upon conviction, shall be guilty of a misdemeanor and fined not less than One Hundred Dollars (\$100.00) within the discretion of the court. Each day in which that violation exists or continues shall constitute a separate offense.

(4) In addition to or in lieu of filing a criminal complaint for the willful misconduct described in subsection (3) of this section, the commission may impose a civil penalty in accordance with subsection (1)(a) of this section, and shall impose a reprimand or a suspension or revocation of any certificate in accordance with subsection (1)(b) of this section.

(5) All proceedings and hearings before the commission regarding violations of [Sections 49-17-501 through 49-17-531](#) or any rule or regulation, written order of the commission, emergency order of the director or certificate issued or reissued by the commission in pursuance thereof or any certificate issued under [Sections 49-17-501 through 49-17-531](#) and all appeals therefrom shall be conducted in accordance with [Sections 49-17-31 through 49-17-41, Mississippi Code of 1972](#).

(6) All fines, penalties and other sums recovered or collected by the commission for and on behalf of the state under this section shall be deposited in the Pollution Emergency Fund established under [Section 49-17-68, Mississippi Code of 1972](#).

§ 49-17-531. Reciprocity requirements

The commission may establish requirements for reciprocity for accreditation and certification of risk assessors, project designers, supervisors, inspectors and workers with other states that have established accreditation and certification programs that meet or exceed the requirements established by the commission for accreditation and certification in this state.

Current through all 2008 Sessions and HB Nos. 197, 699, 636 and 1027 of the 2009 Regular Session
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