

ALLIANCE FOR HEALTHY HOMES

Protecting Children from Lead and Other Environmental Health Hazards



Lead-Safe Housing Policy Guidance Series Reference Materials



ACKNOWLEDGEMENTS

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APPENDIX A

Federal Law

The *Lead-Safe Housing Policy Guidance Series* is intended to help jurisdictions build on the foundation of existing federal, state, and local requirements. Federal requirements of particular importance include:

- ❑ **The Fair Housing Act of 1968** (42 U.S.C. § 3601 et. seq.) The Fair Housing Act prohibits discrimination in housing because of (among other things) familial status, which includes families with children under the age of 18, pregnant women, and people securing custody of children under 18. The Act covers most housing. In some circumstances, the Act exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members. Discriminatory actions include taking the following actions based on an individual's familial status: refusing to rent or negotiate for housing; or setting different terms, conditions or privileges for the rental of a dwelling. It is also illegal for anyone to advertise or make any statement that indicates a limitation or preference based on familial status. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.
- ❑ **Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing** (24 C.F.R. Part 35, Subpart H and 40 C.F.R. Part 745, Subpart F) These joint HUD and EPA regulations require lessors of virtually all pre-1978 dwellings to disclose known information about lead hazards and provide an approved educational pamphlet to prospective tenants.
- ❑ **Residential Property Renovation** (40 C.F.R. Part 745, Subpart E) These EPA regulations require landlords (who make repairs themselves) and contractors to distribute an educational pamphlet to owners and occupants before beginning renovation work in most pre-1978 housing.
- ❑ **Requirements for Notification, Evaluation, Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance** (24 C.F.R. Part 35) The "Lead Safe Housing Rule" was designed to protect children from lead-based paint hazards in housing that is either receiving assistance from the federal government or is being sold by the government. The regulation establishes procedures for evaluating whether a hazard may be present, controlling or eliminating the hazard, and notifying occupants of what was found and what was done in such housing.
- ❑ **Lead-Based Paint Poisoning Prevention in Certain Residential Structures** (40 C.F.R. Part 745) These EPA regulations identify lead-based paint hazards, standards for lead-based paint hazards in target housing and child-occupied facilities, procedures and requirements for the accreditation of lead-based paint activities training programs, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities.

APPENDIX B

Federal Standards for Hazardous Lead Dust

EPA's national standards establishing dangerous levels of lead in dust, paint, and soil took effect in March 2001. This EPA rulemaking filled a gaping void by establishing the first national standards for lead in the residential environment, specifically lead hazards in deteriorated paint, settled dust on floors and window sills, and soil. These standards govern all properties receiving federal assistance as well as activities by certified lead services providers. While these EPA standards do not mandate action to either identify or control lead hazards in private housing, they provide a clear yardstick to guide responsible action by state and local health departments, property owners, remodeling and painting contractors, lenders, insurers, and others.

The final national standards reflect the results of research and real-world experience over recent years and promise to prove both workable and protective. Among other things, the standards set the stage for expanded environmental sampling of hazardous properties in distressed communities to target attention and resources to protecting children at highest risk. State and local jurisdictions can incorporate by reference these standards to enable automatic updates based on research that prompts changes in federal standards.

Key elements of these standards are highlighted below:

- ❑ **Dust-lead hazard** – 40 µg/square foot on floors and 250 µg/square foot on window sills. The floor standard applies to carpeted surfaces as well as bare floors. After work has been performed on windows, a window trough clearance standard of 400 µg/square foot applies. While some scientists strongly believe that a lower floor dust standard is needed, the floor dust-lead hazard standard established is substantially more protective than EPA's previous guideline (100 µg/square foot). 40 C.F.R. § 745.65(b).
- ❑ **Soil-lead hazard** – 400 parts per million (ppm) for bare soil in play areas and 1,200 ppm average in the rest of the yard. 40 C.F.R. § 745.65(c).
- ❑ **Paint-lead hazard** – Any of the following conditions constitutes a paint lead hazard: 1) lead-based paint on friction surfaces that are subject to abrasion where dust lead hazards are present; 2) lead-based paint on impact surfaces that are damaged or deteriorated; 3) any chewable lead-based painted surface on which there is evidence of teeth marks; and 4) any other deteriorated lead-based paint. Work practice standards do not apply when treating lead paint hazards that are less than two square feet per room, 20 square feet on the exterior building, and 10 percent of a component's total surface area. 40 C.F.R. § 745.65(a).
- ❑ **Work practice standards** – This EPA rulemaking also made a number of conforming changes in work practice standards for conducting lead-based paint activities in target housing. 40 C.F.R. § 745.227.

NDIX C

Fundamental Tenant Safeguards

Tenants who have limited housing choices may be reluctant to report poor property conditions for fear of eviction or other landlord retaliation. State and local governments can help lessen these fears by enacting appropriate legislation, offering temporary housing, and providing additional resources for tenants.

- Prohibit landlords from retaliating against tenants who report code violations** State and local governments should specifically prohibit property retaliation against tenants who report code violations. Alternately, enacting a “just cause” eviction law can accomplish this same goal.
- Allow tenants to escrow rent when their landlord has outstanding code violations** Property owners should not be allowed to generate income from substandard properties. To establish a strong incentive for property owners to correct code violations, state and local governments can allow tenants to escrow rent payments until the property is in compliance. Courts can determine how much of the escrowed payments is due to the landlord when the repairs are completed.
- Enact a state or local lead hazard disclosure law to bolster federal requirements and local enforcement authority** Although the federal lead hazard disclosure law requires disclosure of known lead hazards prior to the sale or lease of pre-1978 properties, state and local governments have no enforcement authority. Jurisdictions can adopt state or local disclosure laws to complement federal law, and provide supplemental funding for state and local programs through penalties. State or local disclosure laws also can expand the protection afforded by the federal law.
- Enable tenants to bring enforcement actions for retaliation and provide for recovery of damages and attorney fees** In many cases, local agencies lack adequate resources for enforcement of code violations. To ensure that egregious violators are held accountable, jurisdictions can give tenants or non-profit advocacy groups the power to pursue enforcement in court themselves.
- Maintain and publicize registry of properties with lead hazards (or lead-free/lead-safe units)** Housing registries can contain information on properties with outstanding code violations, including lead hazards. Others can list properties deemed “lead-safe” based upon existing standards, including those that comply with federal and state lead laws and regulations.

APPENDIX D

Acronym Index

CBO—Community-based organization

CDBG—Community Development Block Grant program

CDC—U.S. Centers for Disease Control and Prevention

CEHRC—Community Environmental Health Resource Center

CLPPP—Childhood Lead Poisoning Prevention Program

EBL—Elevated blood lead level

EPA—U.S. Environmental Protection Agency

GIS—Geographic Information Systems

HIPAA—Health Insurance Portability and Accountability Act of 1996

HOME—Home Investment Partnership Grant program

HUD—U.S. Department of Housing and Urban Development

LST—Lead sampling technician

LSWP—Lead-safe work practices

APPENDIX E

Glossary Of Terms

Abatement—Any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards. Abatement includes: (1) The removal of lead-based paint and dust-lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-lead hazards; and (2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

Clearance examination—An activity conducted following lead-based paint hazard reduction activities to determine that the hazard reduction activities are complete and that no soil-lead hazards or settled dust-lead hazards exist in the dwelling unit or worksite. The clearance process includes a visual assessment and collection and analysis of environmental samples.

Containment—The physical measures taken to ensure that dust and debris created or released during lead-based paint hazard reduction are not spread, blown, or tracked from inside to outside of the worksite.

Deteriorated paint—Any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the surface to which it was applied.

Dry sanding—Sanding without moisture; includes both hand and machine sanding.

Elevated blood lead level—The level at which the CDC considers a child to be lead poisoned. Currently, this threshold is set at 10 micrograms/deciliter.

Encapsulation—The application of a covering or coating that acts as a barrier between lead-based paint and the environment and that relies for its durability on adhesion between the encapsulant and the painted surface, and on the integrity of the existing bonds between paint layers and between the paint and the surface to which it was applied.

Federal Lead Hazard Disclosure law—A federal statute, administered by HUD and EPA, that requires owners of pre-1978 housing to disclose lead hazards to prospective tenants or buyers.

Friction surface—An interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

Hazard reduction—Measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls, abatement, or a combination of the two.

HEPA vacuum—A vacuum cleaner with an included high efficiency particulate air (HEPA) filter through which contaminated air flows. A HEPA filter is one that captures at least 99.97 percent of airborne particles of at least 0.3 micrometers in diameter.

Impact surface—An interior or exterior surface that is subject to damage by repeated sudden force, such as certain parts of doorframes.

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Interim controls—A set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards. Interim controls include, but are not limited to, repairs, painting, temporary containment, specialized cleaning, clearance, ongoing lead-based paint maintenance activities, and the establishment and operation of management and resident education programs.

Lead-based paint—Paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

Lead-based paint hazard—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 established by the CDC or another appropriate federal agency.

Lead-based paint inspection—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.

Lead-free housing—Target housing that has been found to be free of paint or other surface coatings that contain lead-based paint.

Lead-safe work practices (LSWP)—Lead safe work practices (LSWP) are a collection of “best practices” techniques, methods, and processes that minimize the amount of dust and debris created during remodeling, renovation, rehabilitations, or repair of pre-1978 housing. LSWP include appropriate worksite preparation and containment, occupant protection, safe paint removal methods, and specialized cleaning. Worksite preparation and containment means setting up the area where work that could disturb lead-based paint is to be performed, so that all debris from the work is contained within the worksite. Occupant protection means taking appropriate precautions to protect occupants and their belongings during ongoing work that may disturb lead-based paint. Specialized cleaning means cleaning the worksite carefully, using techniques that are effective in removing lead-contaminated dust. Cleanup activities should be ongoing during the workday, in addition to a final cleanup at the end of the job.

Lead Hazard Control Grant program—A HUD-administered program that awards grants to cities and states to facilitate the control of lead hazards, mainly in targeted low-income housing.

Lead hazard evaluation—A risk assessment, a lead hazard screen, a lead-based paint inspection, paint testing, or a combination of these to determine the presence of lead-based paint hazards or lead-based paint in a residential building.

Lead inspector—An individual trained under a state- or EPA-approved course to conduct official lead inspections. A lead inspector can also conduct clearance tests after abatement and non-abatement work as well as other lead sampling, but a lead inspector *cannot* perform a risk assessment. A lead inspector must attend three days of training to be certified.

Lead sampling technician—An individual trained under an EPA-approved course to conduct clearance testing after non-abatement work and to conduct other dust wipe sampling. A lead sampling technician *cannot* conduct a lead inspection or a risk assessment. A lead sampling technician must attend five hours of training to be certified.

Paint removal—A method of abatement that permanently eliminates lead-based paint from surfaces.

Paint stabilization—Repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.

Paint testing—The process of determining, by a certified lead inspector or risk assessor, the presence or the absence of lead-based paint on deteriorated paint surfaces or painted surfaces to be disturbed or replaced.

Painted surface to be disturbed—A paint surface that is to be scraped, sanded, cut, penetrated, or otherwise affected by rehabilitation work in a manner that could potentially create a lead-based paint hazard by generating dust, fumes, or paint chips.

Public health department—A state, tribal, county or municipal public health department, or the Indian Health Service.

Rehabilitation—The improvement of an existing structure through alterations, incidental additions, or enhancements. Rehabilitation includes repairs necessary to correct the results of deferred maintenance, the replacement of principal fixtures and components, improvements to increase the efficient use of energy, and installation of security devices.

Risk assessment—An on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including: (1) information-gathering regarding the age and history of the housing and occupancy by children under age 6; (2) visual inspection; (3) dust wipe sampling or other environmental sampling techniques; (4) other activity as may be appropriate; and (5) provision of a report explaining the results of the investigation.

Risk assessor—An individual trained under a state- or EPA-approved course to conduct risk assessments. A risk assessor may also conduct paint inspections, clearance testing after abatement and non-abatement work, and other lead sampling. A risk assessor must attend five days of training to be certified.

Section 8—A HUD-administered assistance program that helps low-income families secure housing they may otherwise be unable to afford.

Target housing—Any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing), or any 0-bedroom dwelling.

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Visual assessment—Looking for, as applicable: (1) deteriorated paint; (2) visible surface dust, debris, and residue as part of a risk assessment or clearance examination; or (3) the completion or failure of a hazard reduction measure.

Wet sanding or wet scraping—A process of removing loose paint in which the painted surface to be sanded or scraped is kept wet to minimize the dispersal of paint chips and airborne dust.

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