

LEAD-BASED PAINT

The health risks to young children posed by lead-based paint is an important issue for the housing industry and the public health community alike. On September 15, 2000, new Lead-Based Paint Regulations (24 CFR Part 35) went into effect for properties receiving assistance from various HUD Programs, including the HOME Program.

The Lead-Based Paint Regulations apply to all HOME-assisted properties where the HOME funds were committed to that specific property after September 15, 2000. (The State of Kansas received a waiver from the rules until March 15, 2001, due to inadequate capacity to successfully implement the new rules.) There are four instances when the regulations do not apply:

- Residential structures built after January 1, 1978, or new construction developments.
- Existence of lead-based paint unlikely.
 - Properties that have been previously tested and found not to contain lead-based paint.
 - Properties where all lead-based paint has been previously identified and removed using approved methods.
- Human threat unlikely.
 - Unoccupied units that will be demolished.
 - Rehabilitation that does not disturb painted surfaces.
- Child occupancy unlikely.
 - Single Room Occupancy units.
 - Housing where occupancy is restricted to elderly and/or disabled persons.

Lead-Based Paint Requirements & Process

This section will attempt to explain step by step how the lead-based paint regulations affect a HOME rehabilitation development.

EPA Lead Hazard Pamphlet & Disclosure

All occupants, both in place and future tenants should be provided the “Protect Your Family From Lead In Your Home” pamphlet and disclosure statement developed by the EPA. A signed statement should be obtained from the tenant that this document was received.

Develop a scope of work.

The rehabilitation specialist for the owner/developer creates a scope of work and cost estimate to bring the property up to local building codes.

Determine Level of Rehab Assistance

There are three approaches to lead-based paint evaluation and reduction, which are based on the level of rehab assistance. This is determined by taking the lower of the per unit rehabilitation hard costs, or the per unit federal assistance.

- Rehabilitation hard costs do not include the cost of property acquisition, soft costs of inspections, appraisals, recording, administrative costs, relocation costs, or the costs of lead hazard evaluation and reduction.
- Federal assistance includes all Federal funds provided to the development, including program income, but excludes low-income housing tax credit funds or non-Federal HOME program match funds.

For multifamily developments:

- Where all units are federally assisted simply take the lesser of:
 - federal assistance divided by the number of units
 - rehab hard costs divided by the number of units.
- Where units are both federally and non-federally assisted take the lesser of:
 - federal assistance divided by the number of assisted units
 - rehab hard cost per unit utilizing the following formula:

$$\frac{\text{Rehab hard cost for all assisted units}}{\text{Number of federally-assisted units in the development}} + \frac{\text{Rehab hard cost for common areas/exterior surface}}{\text{Total number of units in the development}} = \text{Per Unit Rehab Cost}$$

Lead Hazard Evaluation

Based on the Level of Rehab Assistance (LRA), one of two evaluations are required:

- If the LRA is at or below \$5,000 per unit, paint testing of surfaces to be disturbed is required. Certified paint inspectors or risk assessors must do paint testing, or
- If the LRA is greater than \$5,000 per unit, a risk assessment is required. Personnel certified by the Kansas Department of Health and Environment must complete the risk assessment. Copy of the report (which should include scope of work) should be filed with the Kansas Housing Resources Corporation.

In the event that the evaluations determine that no lead-based paint is present, rehab of the property can continue without additional lead paint requirements. However, if lead is found, the owner/developer must adhere to additional lead-based paint requirements.

Notices of Lead Hazard Evaluation

If the unit is occupied, the tenants must be notified of any lead hazard evaluation results within 15 days of the evaluation report (or the presumption of lead-based paint/hazards).

Lead Hazard Reduction

If the evaluation has indicated the presence of lead hazards, the steps to reduce the hazard are based on the LRA:

Level of Rehab Assistance	≤ \$5,000	\$5,000-\$25,000	>\$25,000
Lead Hazard Reduction Required	<ul style="list-style-type: none"> • Repair surfaces disturbed during rehab • Safe work practices 	<ul style="list-style-type: none"> • Interim controls • Safe work practices 	<ul style="list-style-type: none"> • Abatement • Safe work practices

Safe Work Practices (SWP) includes extensive requirements and specific prohibited practices that must be performed by certified contractors/workers.

- Occupant protections
 - Occupants are not permitted to enter the worksite during hazard reduction activities until after hazard reduction work has been completed and clearance has been achieved.
 - In the event the unit is occupied, relocation may be necessary until clearance is achieved. Relocated tenants must receive reimbursement for reasonable out-of-pocket expenses, advisory services, and the offer of a decent, safe, sanitary and lead-hazard free temporary unit (HUD Handbook 1378). This can include providing a hotel room, temporary rental housing, or, if the tenant chooses, they may elect to stay with relatives. In theory, there are exceptions to the need for relocation, however, in-practice the tenants SHOULD be relocated. The exceptions are:
 - Treatment will not disturb lead-based paint, dust-lead hazards or soil-lead hazards.
 - Only the exterior of the dwelling unit is treated, and windows, doors, ventilation intakes and other openings in or near the worksite are sealed during hazard control work and cleaned afterward, and entry free of dust-lead hazards, soil-lead hazards, and debris is provided.
 - Treatment of the interior will be completed within one period of 8-daytime hours, including clearance.
 - Treatment of the interior will be completed within 5 calendar days; the worksite is contained so as to prevent the release of leaded dust and debris into other areas; treatment does not create other safety, health or environmental hazards; and, at the end of work on each day, the worksite and the area within at least 10 feet (3 meters) of the containment area is cleaned to remove any visible dust or debris, and occupants have safe access to sleeping areas, and bathroom and kitchen facilities.

- The unit and the worksite must be secured against unauthorized entry, and occupants' belongings protected from contamination by dust-lead hazards and debris during hazard reduction activities. Occupants' belongings in the containment area shall be relocated to a safe and secure area outside the containment area.
- Worksite preparation
 - The worksite should be prepared to prevent the release of leaded dust, and contain lead-based paint chips and other debris from hazard reduction activities within the worksite until they can be safely removed. Practices that minimize the spread of leaded dust, paint chips, soil and debris should be used during worksite preparation.
 - A warning sign should be posted at each entry to a room where hazard reduction activities are conducted when occupants are present; or at each main and secondary entryway to a building from which occupants have been relocated.
- The following methods can not be used to remove paint that is, or may be, lead-based paint:
 - Open flame burning or torching
 - Machine sanding or grinding without a high-efficiency particulate air (HEPA) local exhaust control.
 - Abrasive blasting or sandblasting without HEPA local exhaust control.
 - Heat guns operating above 1100 degrees Fahrenheit or charring the paint.
 - Dry sanding or dry scraping, except dry scraping in conjunction with heat guns or within 1ft. of electrical outlets, or when treating defective paint spots totaling no more than 2 sq. ft. in any one interior room or space, or totaling no more than 20 sq. ft. on exterior surfaces.
 - Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the Consumer Product Safety Commission, and/or a hazardous chemical in accordance with the Occupational Safety and Health Administration regulations, as applicable to the work..
 - After hazard reduction activities have been completed, the worksite must be cleaned using cleaning methods, products, and devices that are successful in cleaning up dust-lead hazards, such as a HEPA vacuum or other method of equivalent efficacy, and lead-specific detergents or equivalent.

Interim controls temporarily reduce exposure to lead-based paint hazards through repairs, painting, maintenance, special cleaning, occupant protection measures, clearance, and education programs. Interim control methods require safe practices and include:

- Paint stabilization. All deteriorated paint on exterior and interior surfaces must be stabilized through repairs, safe paint removal, and repainting.
- Treatment for friction and impact surfaces. If lead-based paint is found and exceeds acceptable levels or is presumed, the conditions creating friction or impact with surfaces with lead-based paint such as those that rub, bind, or crush must be corrected. Examples of this work include rehangng binding doors, installing doorstops, or reworking windows.
- Treatment for chewable surfaces. If a child under age six has chewed surfaces known to contain lead-based paint or if lead-based paint is presumed, these surfaces must be enclosed or coated so they are impenetrable.
- Lead-contaminated dust control. All horizontal surfaces that are rough, pitted, or porous such as bare floors, stairs, windowsills, and window troughs must be covered with a smooth, cleanable covering or coating such as metal coil stock, plastic, polyurethane, or linoleum. Carpeting must be vacuumed or rugs must be removed and vacuumed on both sides. Vacuuming must be done using HEPA vacuums.
- Lead-contaminated soil control. If soil is lead-contaminated, interim controls that may be used include impermanent surface coverings such as gravel, bark, and sod as well as land use controls such as fencing, landscaping, and warning signs.

Persons performing interim controls must be trained in accordance with OSHA Hazard Communication requirements (29 CFR 1926.59) and either be supervised by a individual certified by the Kansas Department of Health and Environment (KDHE) as a lead-based paint abatement supervisor or have completed one of the following courses:

- A lead-based paint abatement supervisor course accredited in accordance with 40 CFR 745.225;
- A lead-based paint abatement worker course accredited in accordance with 40 CFR 745.225;
- The Lead-Based Paint Maintenance Training Program, "Work Smart, Work Wet, and Work Clean to Work Lead Safe," prepared by the National Environmental Training Association for EPA and HUD;
- "The Remodeler's and Renovator's Lead-Based Paint Training Program," prepared by HUD and the National Association of the Remodeling Industry;

Abatement permanently removes lead-based paint and lead-based paint hazards by removing lead-based paint and its dust, or permanently encapsulating or enclosing the lead-based paint, replacing components with lead-based paint, and removing or permanently covering lead-contaminated soil. Encapsulation and enclosure require ongoing maintenance to check their

effectiveness. Persons performing abatement activities must be certified through the Kansas Department of Health and Environment.

Planning Lead Reduction and Other Rehab

Planning is a key to reducing the time and cost of lead reduction. The owner/developer should develop an action plan for the lead-hazard reduction and remaining rehab. The owner/developer will need to bid and award the lead reduction part of the rehab job appropriately. It should be noted that all the rehab work does not need to be done by certified contractors, only that as required above. In abatement properties, it may be possible to have certified contractors do the lead work, obtain clearance, and then have non-certified contractors complete the rehab.

Notice of Lead Hazard Reduction Activities

The tenant must be provided with a notice that specifically outlines what lead hazard reduction activities were completed.

Clearance

Once the lead hazard reduction work is complete, a certified clearance examiner must evaluate the unit and prepare a report indicating whether the unit is free of lead based paint hazards. For multifamily properties, units may be sampled at random. Once received, the clearance report should be provided to the tenant and to the KHRC within 15 days.

Optional Process

A CHDO may choose to presume that lead-based paint and/or lead based paint hazards are present as an alternative to performing lead hazard evaluation activities. If the owner/developer elects to presume lead, they must conduct one of the following lead hazard reduction methods based on the Level of Rehab Assistance:

- If interim controls are required, conduct standard treatments in lieu of interim controls on all applicable surfaces, including soil, to control lead-based paint hazards that may be present; or
- If abatement is required, abate all applicable surfaces, including soil, to control lead-based paint hazards that may be present.

Standard treatment methods must follow the same safe work practice and clearance requirements that apply to interim control activities. These methods include:

- **Paint Stabilization.** All deteriorated paint on exterior and interior surfaces must be stabilized through repairs, safe paint removal, and repainting or abatement.
- **Smooth and Cleanable Horizontal Surfaces.** All horizontal surfaces that are rough, pitted, or porous such as bare floors, stairs, windowsills, and window troughs must be covered with a smooth, cleanable covering or coating such as metal coil stock, plastic, polyurethane, or linoleum.

- **Correcting Dust-Generating Conditions.** All conditions that generate lead-contaminated dust such as those that rub, bind, or crush surfaces with lead-based paint must be corrected. Examples include rehanging doors, installing doorstops, or reworking windows.
- **Bare Residential Soil.** Soil is addressed using interim control methods including impermanent surface coverings such as gravel, bark, and sod as well as land use controls such as fencing, landscaping, and warning signs.

Ongoing Maintenance

Ongoing maintenance is an important post-rehabilitation activity because many treatments of lead are not permanent. Only in cases where lead-based paint was abated is maintenance not required.

Regular maintenance and evaluation of the lead hazard reduction work must be performed. The owner/developer is responsible for creating a maintenance plan that includes the following elements:

- Ensuring maintenance staff receives training in Lead Safe Work Practices and follows Safe Work Practices when doing subsequent repairs to the unit(s).
- A visual inspection of lead-based paint annually and at unit turn-over;
- Repair of all unstable paint; and
- Repair of encapsulated or enclosed areas that are damaged. Owner should request, in writing, that the occupants of rental units monitor lead-based paint surfaces and inform the owner of potential lead hazards.
- If repairs are required, safe work practices are applicable. The owner will likely be required to relocate the tenant. It is important to note that HOME funds cannot be used for relocation in this instance because of the one-year rule.

The owner must inform current and new occupants of the lead hazard reduction methods that took place and where lead-based paint exists in their units. The lead information pamphlet 'Protect Your Family from Lead in Your Home,' must be provided to new occupants before they move in.

Internet Resources:

HUD Healthy Homes and Lead Hazard Control: www.hud.gov/offices/lead/index.cfm

HUD Lead Service Providers site: www.leadlisting.org

Kansas Department of Health & Environment: www.kdhe.state.ks.us/lead