Lead-Based Paint Regulations: Subpart J and K

Session 2: Subpart J: Rehabilitation Planning Phase

February 2021

1

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2

Series Overview

3

Webinar Series Agenda

Session 1 → **Session 2** → Session 3 → Session 4

- **Session 1**
  - LSHR Basics
  - Regulatory Subparts per Assistance Type
- **Session 2**
  - Subpart J: Rehab Requirements for Planning
- **Session 3**
  - Subpart J: Rehab Requirements for Construction and Clearance
- **Session 4**
  - Subpart K: Acquisition, Leasing, Support Services or Operation Programs

4

Goals for this Training

- Review how costs are calculated
- Show requirements for three levels of hazard reduction
- Track project costs
- Explain risk assessment and project planning
- Provide refresher on notification requirements
- Review requirements for construction:
  - Contracting
  - Final inspections and clearance

5

Subpart J Examples of Rehabilitation Programs

- Community Development Block Grant Program
- HOME Investment Partnerships (HOME)
- Housing Trust Fund
- Indian Housing Block Grant Program
- Indian Community Development Block Grant Program
- Housing Opportunities for Persons with AIDS

J

- Homeownership of Multifamily Units
- Emergency Solutions Grants
- Continuum of Care (CoC)
- Interest Reduction Payment Grant program
- Flexible Subsidy Capital Improvement Loan Program
- Mark to Market Program

*Not an exhaustive list

6

Federal Lead Regulations

HUD/EPA s Lead Disclosure Rule	HUD s Lead Safe Housing Rule (LSHR)	EPA's Renovation, Repair, and Painting (RRP) Rule
• Applies to most housing, public and private, built before 1978. Effective March 1996 (except exemptions mentioned earlier)	• Applies to most Federally–assisted and Federally-owned housing built before 1978. Effective September 2000 • *Amendments (EBLL) effective 2/13/17*	• Applies to almost all target housing, public and private, built before 1978, including child-occupied facilities such as schools and day-care facilities. Effective April 2010

7

Key Steps in LBP Compliance Process

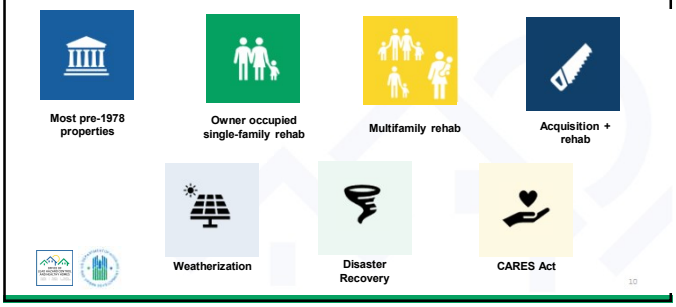
DISCLOSE	LOOK	TREAT	CLEAR	TELL
• Pamphlet	• Paint testing • Risk assessment • Inspection	• Repair • Interim controls • Hazard abatement	• Clearance	• Notification to owners and residents

8

Housing Rehabilitation Programs

9

Programs Affected: Federally Affected Rehab Programs



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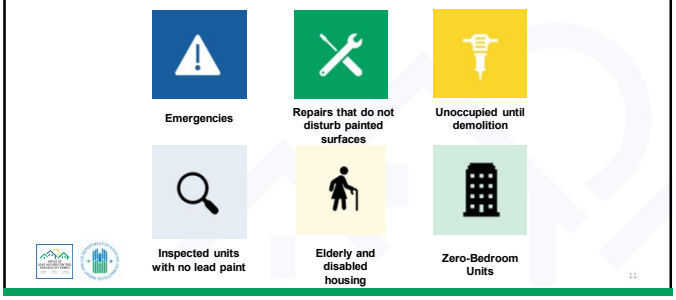
Programs/Buildings Not Affected



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Exterior Repair Programs are Not Exempt

- Exterior repair/beautification programs usually in $5,000 - $25,000 range
- In many cases, programs incorrectly assume that interior lead hazard control work is not required and skip testing and hazard control work
- Lead rules for $5,000 - $25,000 range require risk assessment.
  - If results indicate LBP hazards on the interior (paint or dust), interim control work to the interior hazards is required

12

Historic Preservation

- Limited Exemption…
  - Properties listed or eligible for the National Register, if requested by the SHPO, may conduct interim controls instead of abatement
- Historic Preservation Brief 37
- HUD Guidelines – Chapter 18

13

13

Exemptions Limited to Specific Repair/Rehab work

- Work area is below the de minimis threshold
- Lead safe work practices **NOT** required when minor maintenance or activities disturb painted surfaces that are less than de minimis levels:
  - 2 sq. ft. per interior space
  - 10% of small component type
  - 20 sq. ft. for exterior work

Note: HUD de minimis levels are more protective than the EPA RRP guidelines

14

14

Key Actors

- Program staff
  - Homeowner intake, Inspectors, Compliance staff, Finance Dept
  - Ideally the Specification Writer (In-house or not) will be qualified as a certified Risk Assessor
  - Training is often an eligible cost
- Traditional participants in rehab
  - General contractors, painters, plumbers, electricians
  - General contractors should all be RRP Certified at a minimum
- Lead specialists
  - Certified paint inspectors, risk assessors (RA), and clearance examiners
  - Certified or trained lead contractors, lead abatement supervisors, and RRP workers

15

15

Required Approach to Hazard Evaluation/Control: Level of Rehabilitation Assistance

Level of Rehabilitation Assistance determines the required approach to lead-based paint testing and lead hazard control measures

The amount of rehabilitation assistance is the **lesser** of two amounts:

Hard costs of rehab from **all sources** per unit (excludes soft costs and lead hazard control)

OR

Federal assistance for **all uses** per unit

16

16

Costs that are Not Counted in Rehabilitation Hard Costs

The following soft costs are **not** counted in calculating rehab hard costs:

- Financing fees
- Credit reports
- Legal, accounting, insurance, architectural and engineering fees
- Staff, overhead, or administrative costs
- Acquisition of the property
- Appraisals
- Relocation costs
- Environmental review
- Lead hazard evaluation and reduction costs*

*Costs of rehabilitation that would have been performed in the absence of the lead-based paint regulation should **not** be excluded.

17

17

Calculating the Level of Rehab Assistance Example 1

Example 1

- A single-family home is rehabilitated for **$50,000** (rehabilitation hard costs $23,000 and lead hazard reduction costs $27,000).
- Total CDBG assistance is receiving a **$50,000** from the city's CDBG Program.

Show Your Work

Federal Assistance: $50,000
Rehab Hard Cost: $23,000

Lesser of the two is $23,000

Answer

The level of rehabilitation assistance is $23,000.

18

18

Calculating the Level of Rehab Assistance Example 2

Example 2

- A family is participating in a rehabilitation and refinancing program. The total amount of HOME assistance is **$60,000**.
- The hard costs of rehabilitation are **$26,000**.

Show Your Work

Federal Assistance: $60,000
Rehab Hard Cost: $26,000

Lesser of the two is $26,000

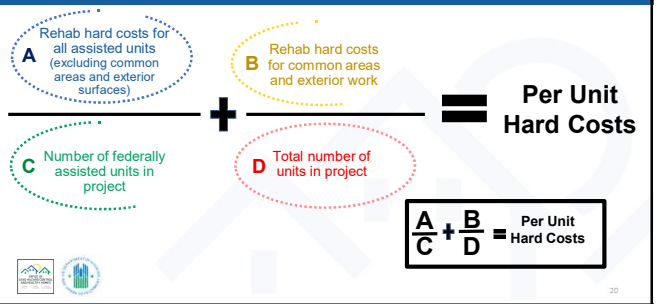
Answer

The level of rehabilitation assistance is $26,000.

19

19

Per Unit Hard Costs for Multifamily Mixed Projects



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Calculating the Level of Rehab Assistance Example 3

Example 3

- A 20-unit property will spend **$65,000** to rehabilitate the structure
- The rehab will include **$20,000** in hard costs for repairs to exterior and common areas
- And **$45,000** in hard costs for 15 HOME-assisted units

Show Your Work

A/C + B/D = per unit hard costs

$45,000 + $20,000 = $3,000 + $1,000 = $4,000
15 units 20 units

Answer

The per unit hard costs are $4,000/unit.

21

21

Subpart J Rehabilitation Summary

	≤$5 000	$5 000 $25K	>$25 000
Approach to Lead Hazard Evaluation & Reduction	Do no harm (1)	Identify & control lead hazards (3)	Identify & abate lead hazards (4)
Notification	Yes	Yes	Yes
Lead Hazard Evaluation	Paint Testing (surfaces to be disturbed)	Paint Testing & Risk Assessment	Paint Testing & Risk Assessment
Lead Hazard Reduction	Repair surfaces disturbed during rehabilitation	Interim Controls	Hazard abatement (interim controls on exterior not disturbed by rehab)
	Lead Safe Work Practices Clearance	Lead Safe Work Practices Clearance	Lead Safe Work Practices Clearance
Ongoing Maintenance	HOME rental only	HOME rental only	HOME rental only
EBLL Requirements	No	No	No
Presumptions	Presume LBP – Safe work practices on all painted surfaces	Presume LBP and/or hazards – standard treatments on all painted surfaces	Presume LBP and/or hazards – abate all applicable surfaces

22

22

How does *Level of Rehab Assistance* Influence Evaluation and Lead Hazard Control Requirements?

< $5,000	• Presume or test disturbed painted surfaces • Repair surfaces disturbed during rehabilitation
$5,000 - $25,000	• Presume or test disturbed painted surfaces • Risk assessment • Interim controls or abatement of all hazards (If presume, use standard treatments on all deteriorated and friction and impact surfaces)
> $25,000	• Presume or test disturbed painted surfaces • Risk assessment • Abate all hazards

Remember: Anywhere lead is found or presumed, lead safe work practices, clearance and lead hazard reduction notice are required.

23

23

Decision Making Process to Test or Presume

- Level of assistance indicates level of evaluation and hazard reduction required
- Use results to decide whether to evaluate or presume lead-based paint
- Ideally the program inspector is also a certified Risk Assessor

24

24

Options Presuming the Presence of LBP

If ≤ $5,000	If $5,000 $25,000	If > $25,000
• Repair all painted surfaces	• Standard treatments for the entire unit	• Abate applicable surfaces

25

25

Notice of Presumption

- Provided within 15 days of presuming Lead-Based Paint
- Identifies locations of Presumption Notice form
  - Bare soil
  - Dust locations
  - Other presumed lead hazards both interior and exterior (such as windows, doors, trim, walls, floors, ceilings, fences, cladding, outbuildings, porches etc.

LEAD HAZARD PRESUMPTION NOTICE - SAMPLE FORM

The property listed below has not been evaluated for lead-based paint but it has been presumed that lead-based paint or lead based paint hazards are present.

Address/location of property or structure(s) this notice of presumption applies to:

_____

_____

_____

Types of Presumption (Check all that Apply)

____ Lead-based paint is presumed to be present.

____ Lead-based paint hazard(s) is(are) presumed to be present.

https://files.hudexchange.info/resources/documents/LSHR-Lead-Hazard-Presumption-Notice-Sample-Form.pdf

26

26

Step 2. Look

LBP Evaluation

27

LBP Evaluations

Paint testing	Risk Assessment	LBP Inspection
Determine if painted surfaces contain LBP • Using methods such as an XRF analyzer or lab analysis	Identifies LBP hazards • Sampling of deteriorated paint, dust, bare soil (risk based), water (optional)	Surface-by-surface investigation to determine if LBP is present above HUD thresholds; not if LBP is an immediate hazard • Sampling of painted surfaces (dust, bare soil, and water testing is optional)
Purpose: Testing paint surfaces to be disturbed	Purpose: Interim controls, sale of property or turnover, documentation of absence of lead hazards	Purpose: Abatement, renovation/weatherization, sale or turnover of property, remodeling/repainting
If no inspection conducted, any painted surface that was not replaced after 1977 must be assumed to contain LBP	Final report: Lead Hazard Control Plan with options for interim controls or certification of LBP compliance	Final report: Whether LBP is present, where it is located, and at what concentrations
	Environmental Investigation is an enhanced Risk Assessment with review of other sources of lead exposure (EI not required in Subpart J)	Combined Risk Assessment & Inspection may prove more cost effective than separate investigations

28

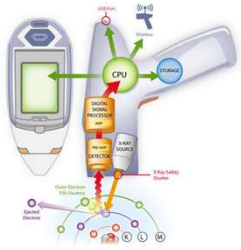
New EPA Dust Hazard Standards Effective 1/6/2020
(Not Yet for EPA Authorized States)

Media	New Lead Level Risk Assessment	Old Lead Level Risk Assessment
Paint	1 mg/ cm^2	1 mg/ cm^2
Dust (wipe sampling only; single-surface or composite) Carpeted Floors Hard Floors Interior Window Sills	 **10 µm/ft^2** **10 µm/ft^2** **100 µm/ft^2**	 **40 µm/ft^2** **40 µm/ft^2** **250 µm/ft^2**
Bare Soil: Bare soil in play areas Bare soil in non-play areas	 400 µm/ft^2 1,200 µm/ft^2	 400 µm/ft^2 1,200 µm/ft^2
Water (optional) – first draw, 250mL	20 ppb (µm/L)	20 ppb (µm/L)

Find out if you work in an EPA Authorized State:
https://www.epa.gov/lead/lead-abatement-inspection-and-risk-assessment

29

X Ray Refractive Fluorescence (XRF) Device



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Finding Appropriate Firms and Individuals

- RFP/RFQ should include specific information on:
  - License and certification requirements
  - Type of evaluation to be performed: Risk assessment, inspection, clearance, or combination
  - See HUD Guidelines for more information
- Some grantees and property owners/managers report they can not find trainers, contractors, paint inspectors, risk assessors, or clearance technicians they need
  - Locate Certified Renovation Firms and RRP Training Providers from EPA's Lead homepage
    - Some states have their own RRP Programs. See state agency for more info.
  - Contact the local entitlement (CDBG/HOME) grantee for referrals
  - Contact Lead-Based Paint Hazard Control Grantees

31

31

HUD LSHR incorporates EPA Regulations

24 CFR 35.1320

- (a) *Lead-based paint inspections and paint testing.* Lead-based paint inspections shall be performed in accordance with methods and standards established either by a State or Tribal program authorized by the EPA under 40 CFR 745.324, or by the EPA at 40 CFR 745.227(b) and (h). Paint testing to determine the presence or absence of lead-based paint on deteriorated paint surfaces or surfaces to be disturbed or replaced shall be performed by a certified lead-based paint inspector or risk assessor.

32

32

What is in a Risk Assessment?

- On-site investigation to determine the existence, nature, severity, and location of LBP hazards
  - Must be conducted by a certified risk assessor
- Visual inspection to locate deteriorated paint, including extent and causes
- Background information on physical characteristics of dwelling and occupants' patterns that may cause LBP exposure to child < 6 years of age
- Test for presence on each friction or impact surfaces with deteriorated paint
- Dust samples from windowsills and floors
- Soil samples

Note: Risk Assessor **must** have the preliminary rehab specs in hand to perform a proper Risk Assessment

33

33

What is in a Risk Assessment Report?

A risk assessment report by the certified risk assessor or firm conducting the risk assessment explaining the results of the investigation and options for reducing LBP hazards

The report includes:

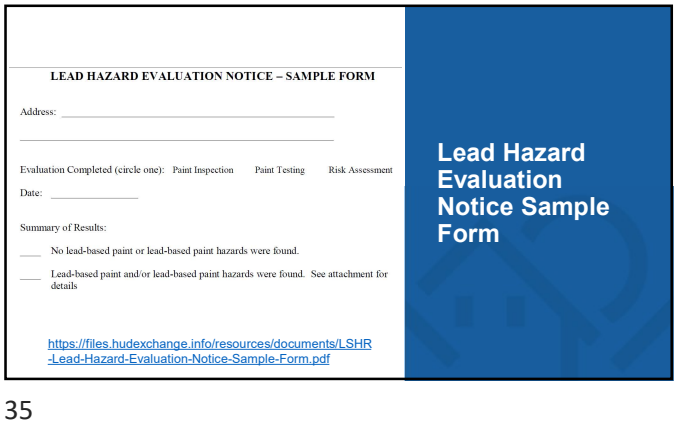
- Summary of the property, basic inspection information, and results
- Full explanation of testing methodology and results
- Lead hazard control plan
- Detailed laboratory analysis forms and data including XRF data

View details on the Risk Assessment Report Checklist

https://portalapps.hud.gov/CORVID/HUDLBPAdvisor/info/documents/Risk Assessment Report Checklist.pdf

34

34



LEAD HAZARD EVALUATION NOTICE – SAMPLE FORM

Address: _____

_____

Evaluation Completed (circle one): Paint Inspection Paint Testing Risk Assessment

Date: _____

Summary of Results:

____ No lead-based paint or lead-based paint hazards were found.

____ Lead-based paint and/or lead-based paint hazards were found. See attachment for details

https://files.hudexchange.info/resources/documents/LSHR-Lead-Hazard-Evaluation-Notice-Sample-Form.pdf

Lead Hazard Evaluation Notice Sample Form

35

Lead Hazard Evaluation Notice

- Single-family buildings
  - Full report is provided directly to homeowner
  - If unit is tenant occupied, tenant receives notice of evaluation
- Multifamily buildings
  - Distribute to each household or
  - Post in central location where all residents can access it
- Documenting the Results
  - Notice and reports of all evaluations must be made available to residents if requested.
- Timing
  - Notice must be provided within 15 days after results determined.

36

Step 3. Treat

LBP Hazard Reduction

37

Lead Hazard Reduction

Repair (rehab ≤$5,000)	Interim Controls (rehab $5,000 $25,000)	Abatement (rehab >$25,000)
• Repair surfaces disturbed during rehab	• Set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards	• Set of measures designed to permanently eliminate lead-based paint hazards

38

Lead Hazard Treatments

Repair	Interim Controls	Abatement

• Repair of paint disturbed during rehab includes:
  • Surface preparation
  • Applying a new coat of paint
  • Worksite containment
  • Specialized cleaning
  • Clearance
	• Temporarily reduce exposure to LBP hazards includes
	  • Repairs
	  • Painting
	  • Temporary containment
	  • Specialized cleaning
	  • Clearance
	  • Ongoing maintenance
	  • Management and resident education
		• Permanently eliminate LBP hazards includes
		  • Removal
		  • Enclosure/encapsulation
		  • Replace components
		• All preparation, cleanup, disposal, and post abatement clearance testing activities associated with such measures

39

Rehabilitation Planning

Program staff should:

- Plan the rehab and hazard reduction before work starts
- Write specs for hazard control work

Issues to consider include:

40

40

Contractor Selection

- Staff check

- Contractors submit bids for work
- Program may opt to maintain list of pre-qualified lead contractors

Note: It is the law (EPA RRP) that trainers are trained and certified if they work on any pre-1978 housing and/or child-occupied facilities regardless of funding source.

41

41

EPA Renovation, Repair and Painting Rule (RRP)

Contractors performing RRP projects that disturb lead-based paint in homes, childcare facilities and pre-schools built before 1978 must:

- Have their firm certified by EPA or an EPA authorized state
- Use certified renovators trained by EPA-approved training providers
- Follow lead-safe work practices
- Provide "Renovate Right" pamphlet
- VIOLATIONS: Civil Money Penalties $41,056 /unit

42

42

Determination that LBP is present	Certified LBP inspector or risk assessor (not EPA testing kits)	Certified renovators use an EPA- recognized test kit
Training	All workers and supervisors must complete a HUD-approved curriculum in lead safe work practices. Renovation firms must be certified. At least one certified renovator must be at the job or available when work is being done. **Exception:** Non-certified renovation workers need only on-the-job training if they are supervised by a certified LBP abatement supervisor who is also a certified renovator	EPA or EPA authorized States certify renovation firms and accredit training providers that certify renovators. • Only the certified renovator is required to have classroom training. • Workers must receive on-the-job training from the certified renovator.
Pre-Renovation	HUD requires conformance with EPA regulations, including EPA's Pre-Renovation Education Rule	Education Renovators must hand out the Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools pamphlet.

43

43

LSHR and RRP: During the Job

Requirement	HUD Lead Safe Housing Rule (LSHR)	EPA Renovation, Repair and Painting Rule (RRP)
Treating LBP hazards	Depending on type and amount of HUD assistance, lead hazards are treated using "interim controls" or "ongoing lead-based paint maintenance"	EPA generally requires that renovations in target housing be performed using lead safe work practices
Prohibited Work Practices	HUD prohibits 6 work practices: • EPA's 3 prohibited work practices plus • Heat guns that char paint • Dry scraping or sanding farther than 1 ft. of electrical outlets • Use of a volatile stripper in poorly ventilated space	EPA prohibits 3 work practices: • Open flame burning or torching • Heat guns above 1100 degrees F • Machine removal without HEPA vacuum attachment
Threshold minimum amounts of interior paint disturbance which trigger lead activities	HUD has a more protective interior de minimis threshold than EPA for lead safe work practices. HUD also uses this lower threshold for clearance and occupant notification.	EPA's interior threshold for minor repair and maintenance activities is higher than HUD's de minimis threshold.

44

44

LSHR and RRP: End of Job

Requirement	HUD Lead Safe Housing Rule (LSHR)	EPA Renovation, Repair and Painting Rule (RRP)
Confirmatory Testing	HUD requires a clearance examination done by an independent, 3rd party instead of the certified renovator's cleaning verification procedure	EPA allows cleaning verification by the renovator or 3rd party clearance examination. The cleaning verification does not involve sampling and laboratory analysis of the dust.
Notification to Occupants	HUD requires the designated party to distribute notices to occupants within 15 days after lead hazard evaluation and control activities in/of their unit (and common areas, if applicable)	EPA has no requirement to notify residents who are not the owners after the renovation

45

45

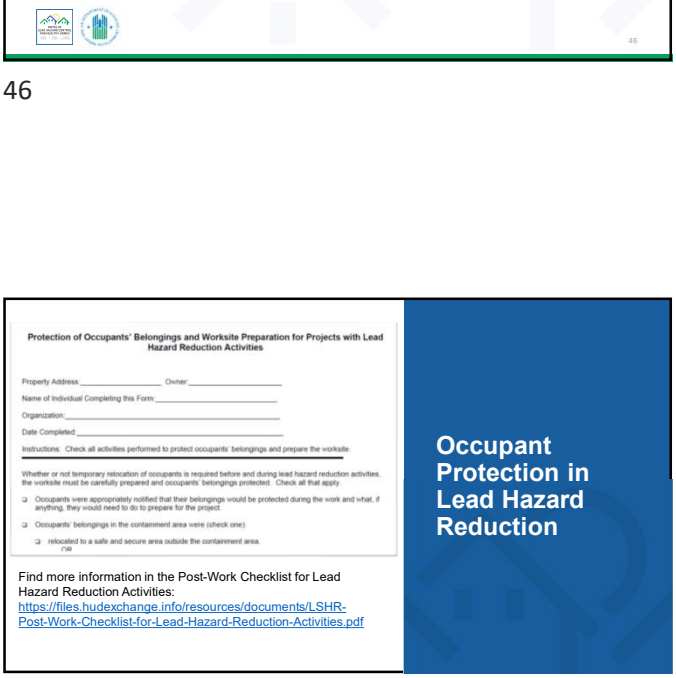
Monitoring Construction

In addition to regular monitoring, check for:

- Occupant protection measures
- Worksite preparation
- Daily cleanup
- Safe work practices and avoiding prohibited practices
- Worker protection (employer's responsibility)

46

46



Protection of Occupants' Belongings and Worksite Preparation for Projects with Lead Hazard Reduction Activities

Property Address:_____ Owner:_____

Name of Individual Completing this Form:_____

Organization:_____

Date Completed:_____

Instructions: Check all activities performed to protect occupants' belongings and prepare the worksite.

Whether or not temporary relocation of occupants is required before and during lead hazard reduction activities, the worksite must be carefully prepared and occupants' belongings protected. Check all that apply.

- ☐ Occupants were appropriately notified that their belongings would be protected during the work and what, if anything, they would need to do to prepare for the project.
- ☐ Occupants' belongings in the containment area were (check one):
  - ☐ relocated to a safe and secure area outside the containment area.

Find more information in the Post-Work Checklist for Lead Hazard Reduction Activities: https://files.hudexchange.info/resources/documents/LSHR-Post-Work-Checklist-for-Lead-Hazard-Reduction-Activities.pdf

Occupant Protection in Lead Hazard Reduction

47

Step 4. Clear

48

Clearance

- Hazard reduction work is only complete upon passing a Clearance Examination
- Performed by a certified risk assessor or lead-based paint inspector (or sampling technician supervised and signed off by such)
- Purpose is to assure work was done as specified and site is clear of hazards
- No conflict of interest
  - Clearance examiners must be independent from hazard control, rehabilitation, or maintenance work
  - May work for same firm that provides pre-work paint testing or risk assessment
- Interim Clearance to allow for non-lead workers to enter site is OK, but Final Clearance must also be done

49

49

Clearance (cont.)

- Dust wipe samples must be collected (by certified risk assessor/inspector or his/her clearance technician) and submitted to an accredited laboratory for analysis
- LBP hazard control is not complete until clearance testing is performed and passed

Dust Clearance Levels	
Carpeted Floors	10 µm/ft²
Hard Floors	10 µm/ft²
Interior Windowsills	100 µm/ft²

Collected → Submitted → Passed testing

50

50

Clearance (cont.)

Includes:
- Visual assessment to determine completion of work, absence of hazards
- Dust sampling, (processed by accredited lab) to measure residual lead-dust levels
- Interpretation of sampling results
- Preparation of a report

If site fails:
- Worksite must be re-cleaned and
- Another clearance test conducted
- Additional work may be needed if continued clearance failure

51

51

Step 5. Tell

52

Notice of Hazard Reduction includes Clearance Results

Occupants must receive a Notice of Hazard Reduction, within 15 days of completion of the work (pass Clearance)

- Activities performed
- Clearance Date
- Tech's ID Info, Contact info
- Visual Inspection Results
- Dust/Locations/µg/sf
- Lab ID + #
- Reduction Dates
- LBP Remaining
- Contractor ID

53

53

Lead Hazard Reduction Notice

Sample Notice of Lead Hazard Reduction

Property Address:_____ Today's Date:_____

Summary of the Hazard Reduction Activity:

Start Date:_____ Completion Date:_____

Location and type of activity. (List the location and type of activity conducted or attach a copy of the summary page from the clearance report or the lead hazard scope of work providing this information.)

_____

_____

_____

_____

Date(s) of clearance testing:_____

Summary of results of clearance testing:

(a) _____ No clearance testing was performed.

https://files.hudexchange.info/resources/documents/LSHR-Sample-Notice-of-Lead-Hazard-Reduction.pdf

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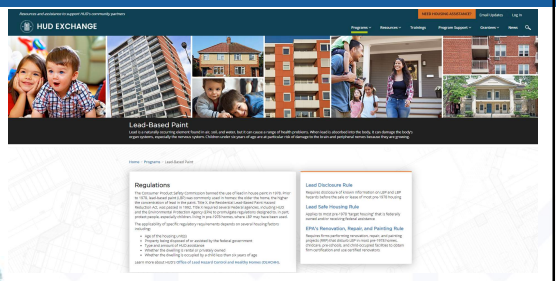
54

Available Resources

55

HUD Exchange Lead Based Paint Page



https://www.hudexchange.info/programs/lead-based-paint/

56

Guidance and Performance Criteria

https://www.hud.gov/program_offices/healthy_homes/lbp/hudguidelines

HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing

- OLHCHH has published two editions of the Guidelines, a technical manual for lead hazard evaluation and control in federally-assisted housing; cited by EPA in its lead rules as a "documented methodology."

https://www.hud.gov/program_offices/healthy_homes/lbp/hudguidelines

Pictures from Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing

57

Resources

- Lead Regulations: http://portal.hud.gov/hudportal/HUD?src=/program_offices/healthy_homes/enforcement/regulations
- Lead Safe Housing Rule (LSHR) Training: https://www.hudexchange.info/trainings/lead-safe-housing-rule/
- EPA page: https://www.epa.gov/lead
- Lead Compliance Advisor: https://portalapps.hud.gov/CORVID/HUDLBPAdvisor/welcome.html
- Lead-Based Paint: https://www.hudexchange.info/programs/lead-based-paint/

Contact OLHCHH: leadregulations@hud.gov

58

58

Schedule for Upcoming Webinar Sessions

✓**Completed: Session 1** Rehabilitation, Acquisition, Leasing, Services and Operations

✓**Completed: Session 2** Subpart J: Rehab Planning Phase

Next: Session 3 Subpart J: Rehab Construction Phase

- **Session 4** Subpart K: Acquisition, Leasing, Support Services and Operation Programs

59

59

Q&A

60