
CHAPTER 13. LEAD-BASED PAINT (LBP) HAZARDS

SECTION I - POLICY

- 13-1 General. The procedures contained in this chapter relate to the elimination of lead-based paint hazards from HUD-owned one-to-four-family dwellings constructed prior to 1978 when their use is intended for residential habitation.
- 13-2 Treating Defective Paint. Field Offices have the option of treating defective paint surfaces prior to offering the property for sale, or at any reasonable time prior to the closing of a sale. Thus, Field Offices may list properties before defective paint surfaces have been treated.
- 13-3 Applicable surfaces in relation to these procedures are all intact and nonintact interior and exterior painted surfaces of a residential structure. For the purposes of implementing the LBP regulations, the following is broken down into two major categories: Section III, Defective Paint Surfaces, and Section IV, Chewable Surfaces.

SECTION II - INTERNAL CONTROL OBJECTIVES

- 13-4 Inspection/Certification. A Certificate of Inspection for Defective Paint Surfaces, if applicable, is completed for each property constructed prior to 1978 and the certificate maintained in the case file.
- 13-5 Disclosure. All hazards relating to defective paint are identified and disclosed to purchasers and renters, in accordance with HUD program requirements.

SECTION III - DEFECTIVE PAINT SURFACES

The procedures detailed in this section apply to all properties constructed prior to 1978.

- 13-6 Definition. Defective paint surface is defined as cracking, scaling, chipping, peeling or loose paint on all interior and exterior surfaces of a residential structure.
- 13-7 Inspection by Appraiser. Real Estate Asset Manager (REAM) or HUD Staff. For any residential structure constructed prior to 1978, HUD must have the property inspected to determine whether defective paint surfaces exist. This visual inspection should normally be performed by the appraiser or the REAM when making the initial inspection of the property. In the absence of appraiser or REAM services, HUD will perform this inspection.

The inspector completes the Certification of Inspection for Defective Paint Surfaces (Appendix 56) and, if a REAM, submits it along with the form HUD-9516-A, Initial Inspection Report (Appendix

16), within the mandatory five workday period. If no defective paint surfaces are found when the certification is submitted, proceed to program and list the property for sale.

- 13-8 Identifying Defective Surfaces. If defective paint surfaces are found, the REAM/inspector is to use Appendix 56 to identify the area(s) where the defective paint surfaces are located and provide an estimate of the cost for removal. Also, the REAM/inspector must provide an estimate of the cost to have the treated areas painted.
- 13-9 Treatment of Defective Surfaces. If defective paint surfaces are found, treatment necessary to eliminate the immediate hazards must, at a minimum, consist of the covering or removal of the defective paint surfaces. Covering of the defective paint surfaces may be accomplished by such means as adding a layer of wallboard to the wall surface. Depending on the wall condition, wall coverings which are permanently attached may be used. Covering or replacing trim surfaces is also permitted. Paint removal may be accomplished by such methods as scraping, heat

treatment (infra-red or coil type heat guns) or chemicals. Machine sanding and use of propane or gasoline torches (open-flame methods) are not permitted. Washing and repainting without thorough removal or covering does not constitute adequate treatment. In the case of defective paint spots, scraping and repainting the defective area is considered adequate treatment.

- 13-10 Contracting for Treatment. It is expected that in concentrated areas, the local office will enter into formal contract(s) for the removal of defective paint surfaces. For scattered sites, the local office may enter into formal contract(s) or may use the REAM to contract for these services using the small purchase contract procedures.
- 13-11 Final Inspection. After removal of the defective paint, the REAM or HUD staff person must inspect the property and complete Form HUD-9519, Acquired Property Inspection Report (Appendix 28) certifying proper treatment and work completion.
- 13-12 Timing of Treatment. Field Offices have the option of treating defective paint surfaces prior to offering properties for sale or at any reasonable time prior to the closing of a sale. When determining whether to treat prior to listing or prior to closing, Field Offices must consider the condition of the property as well as the effect of the treatment on the property and decide whether it is more advantageous to treat defective surfaces prior to listing or not.

The treatment of defective paint surfaces must be completed prior to

closing. Where defective paint surfaces are not treated prior to listing, brokers and purchasers must be advised that defective surfaces will be treated prior to closing. The purchasers must be made aware that the property will not be in the same condition as it was when advertised.

13-13 Painting of Treated Surfaces. Depending upon the value, condition and status of the property, Field Offices may wish to have the treated areas painted in order to make the property more marketable. Painting of treated surfaces should be done primarily to enhance the marketability of a property. Care should be taken in determining whether or not to paint treated surfaces. If painting is done, update the SAMS data base using the CM DS C2 screen.

13-14 Advertisement. Newspaper advertisements listing properties for sale that have not been treated for defective paint surfaces must identify those properties in the ad and state that HUD will treat the defective surfaces in the manner prescribed by HUD prior to closing. See paragraph 9-17 and 13-23 for advertisement of properties known to contain lead-based paint.

13-15 Brokers Information Release.

A. Since properties may be listed for sale before the treatment of defective paint surfaces has been completed, brokers must be advised so that they can alert purchasers and make the appropriate contract submissions. Broker Information Releases are to include a copy of the Addendum to Sales Contract shown at Appendix 58, and the Notice: Watch Out for Lead-Based Paint Poisoning! shown at Appendix 10. Brokers must reproduce the Addendum and Notice, and provide a copy of the Notice to all prospective purchasers. The notice must be signed by the purchaser on or before the date the Form HUD-9548, Sales Contract, is executed. If FHA financing is used, the broker must provide the Notice, with original signatures, to the lender.

B. Brokers must provide the Addendum to the Sales Contract to all prospective purchasers for completion. The Addendum, with original signatures, signed on or before execution of the Form HUD-9548, Sales Contract, must be appended to the Sales Contract. If it is not included with the Sales Contract the Field Office may, at its discretion, allow the broker an appropriate amount of additional time to provide the Addendum before accepting the next best bid or relisting. Without the Addendum, Field Offices may not accept a Sales Contract.

C. Brokers are to be advised that it is their responsibility to explain the following to all purchasers:

1. There is a possibility that lead-based paint may exist.
2. The addendum for lead-based paint (Appendix 58) must be completed and submitted with any offer to purchase.
3. The information required by the addendum is needed in order for HUD to comply with the outstanding lead-based paint regulation.
4. Any child under seven years of age to be tested for an elevated blood lead level must be tested at the parents' expense.
5. Failure to provide the test results to HUD within the 15-day time frame will result in cancellation of the contract without further notice.
6. To the extent practical, the broker will assist the purchaser in locating testing facilities and meeting the 15-day time frame in providing the test results to HUD.
7. If the child's EBL test is positive, HUD will, if able, have the property tested for the presence of lead-based paint on chewable surfaces. HUD may elect not to abate the lead-based paint hazard and the sales contract will be canceled and the earnest money returned.
8. If abatement of lead-based paint is performed prior to closing the sale, such work shall be at HUD's expense.
9. The purchaser has, under certain circumstances, the option to close the sale without abatement provided the appropriate blocks on the addendum are checked.

See paragraph 9-11 for additional information on Broker/Public Information Releases.

- 13-16 Lead-Based Paint Hazard Notice. All purchasers of properties constructed prior to 1978 must be given the Notice: Watch Out For Lead-Based Paint Poisoning! (Appendix 10). Purchasers must sign the Notice on or before execution of the Form HUD-9548, Sales Contract. If FHA financing is used, the broker must provide the Notice, with original signature, to the lender.
- 13-17 Timely Closing. Where sales contracts have been executed and defective paint surfaces have not been treated, Field Offices must ensure that treatment is performed as quickly as possible so that closings are not delayed. If such delays occur because the treatment has not been performed, purchasers are not to be charged extension fees for those delays.
- 13-18 Bulk Sales and Direct Sales to Governmental Entities and Qualified Nonprofit Organizations. Follow procedures in this chapter for properties being offered for sale in a bulk sales package and for properties made available to governmental entities and eligible nonprofit organizations, except refer to Chapter 8 for sales to

homeless providers.

- 13-19 Fire Damage. Properties conveyed by mortgagees in a substantially fire damaged condition will not be treated since the extent of the damage will make the elimination of defective surfaces impracticable. Additionally, treatment is not to be required since these properties will undergo major rehabilitation prior to residential habitation.

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- 13-20 Occupied Conveyance. See paragraph 2-29 for requirements in occupied conveyance procedures. The Certification of Inspection for Defective Paint Surfaces (Appendix 56), must be completed before occupied conveyance can be approved. Defective paint must be treated as soon as possible after acquiring a property approved for occupancy.

- 13-21 Rented Properties. Field Offices are reminded that it is not intended that HUD-owned properties be rented on a long-term basis except for homeless use. Renters of properties constructed prior to 1978 must be given a copy of the Notice: Watch Out For lead-Based Paint Poisoning! (Appendix 10) although renters are not required to sign the Notice.

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SECTION IV - CHEWABLE SURFACES

- 13-22 Definition.

- A. Chewable surface is defined as all chewable protruding painted surfaces, interior and exterior, up to five feet from the floor or ground, which are readily accessible to children under seven years of age, e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.
- B. Elevated blood lead level (EBL) is defined as an excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms per deciliter) or greater.

- 13-23 Advertisement Regardless of whether or not defective paint surfaces were found, or if they were found, whether or not they had been treated, the newspaper advertisement for any property constructed

prior to 1978 (or any other means of listing) must identify these properties as "LBP". The advertisement must state that "LBP" indicates the property may contain lead-based paint. (See Chapter 9 for advertising information.)

13-24 Brokers Information Release. See paragraph 13-15.

13-25 Processing of an Accepted Offer (Construction Prior to 1978). The Addendum to the Sales Contract must be signed by all purchasers on or before execution of the Sales Contract. Where the purchaser is an owner-occupant, and has a child under seven years of age, Field Offices must examine the completed Addendum to the Sales Contract to determine their course of action.

A. Section A of the Addendum to the sales Contract is applicable to all purchasers and is summarized as follows:

The Addendum acknowledges and certifies that the purchaser has received the Notice: Watch Out for Lead-Based Paint Poisoning! (Appendix 10); fully understands its contents; signed the Notice on or before execution of the Sales Contract and, that if the offer involves FHA-insured financing, the purchaser understands that the mortgage lender must be provided, as a condition of processing the mortgage application, with a copy of the Notice containing the purchaser's original signature and date.

B. Section B of the Addendum to the Sales Contract is applicable to owner-occupant purchasers, and must be completed, signed and dated on or before execution of the Form HUD-9548, Sales Contract. If the purchaser has children under the age of seven, Section B provides two options to choose from, as follows:

1. Option One:

- a. Within 15 days after acceptance of the contract, the parents, at their expense, will have each child under the age of seven years tested for an EBL, and will provide the test results to HUD.
- b. Failure to comply with this requirement will result in immediate cancellation of the contract.

No EBL Indicated. If testing is done as a result of this requirement and the results reflect an EBL of less than 25 ug/dl (micrograms per deciliter) of lead in whole blood, the office shall proceed to close the sale.

EBL Identified. If an EBL is identified and the property tests positive for the presence of lead-based paint, HUD may elect not to abate. In these cases, the contract will be canceled and the earnest money refunded. If test results reflect an EBL of 25 ug/dl or greater, and abatement is chosen, the sale cannot be closed until the following are completed:

- (1) Test the dwelling for lead-based paint on chewable surfaces (interior and exterior).
- (2) If the test is positive, follow treatment procedures as described herein, unless HUD has determined that treatment will not be undertaken. (See paragraph 13-28).

2. Option 2: Section B further provides, as an alternative to B.1, that the purchaser understands that he/she has the option of closing the sale if:

- a. A blood lead level screening program is not reasonably available, or
- b. Purchaser refuses to have their children tested for EBL, or
- c. HUD is unable to test for the existence of lead-based paint and
- d. The purchaser acknowledges the possibility that lead-based paint may exist in the property.

C. Sales Closing. HUD shall proceed to close the sale if the option shown in paragraph B.2. is chosen by the purchaser. If the purchaser later elects not to close, the contract shall be canceled and the earnest money forfeited, in accordance with current forfeiture policy.

13-26 Testing. Lead content must be tested by using an X-ray fluorescence analyzer (XRF) (24 CFR 200.815(c)) or laboratory analysis of paint samples. Testing for lead-based paint on chewable surfaces must be conducted by a state or local health or housing agency, an inspector certified or regulated by a State or local health or housing agency, a qualified HUD inspector (contractor), or by an organization recognized by HUD (200.815(c)). The Field Office should check with state or local health or housing agencies in an effort to obtain a list of qualified individuals/firms to perform the test using an XRF or paint samples.

It is suggested that Field Offices enter into formal contracts for the testing for LBP on chewable surfaces. The test should be completed and the results (including readings), along with a certification (Appendix 59) as to whether the property tested positive or negative for LBP, must be provided to HUD immediately upon completion of the test.

If the Field Office concludes that there are no qualified

individual/firms to perform this test or if the XRF equipment is not available, the Field Office must document its efforts to support this determination. Under these conditions, the Field Office has the option of abating all chewable surfaces, as described in paragraph 13-29, or permitting the purchaser to close. In the latter instance, the purchaser must have checked the appropriate block on the addendum.

- 13-27 Results of Testing. If the test readings are less than 1 mg/cm² (milligram per square centimeter), proceed to close the sale.

XRF test readings of 1 mg/cm² or higher will be considered positive for the presence of lead-based paint. If testing is conducted by laboratory analysis of paint samples and it is not practicable to determine the size of the sample area, then a concentration of 0.5 percent by weight, or 5000 parts per million (ppm), is considered positive. The sale is not to be closed until abatement of the entire interior and/or exterior chewable surfaces.

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- 13-28 Treatment. Treatment of chewable surfaces must be in the same manner as previously described in paragraph 13-9 for defective paint surfaces. Following treatment, the contractor shall provide the certification identified as Appendix 60. However, if it is determined by the Field Office that treatment of the chewable surfaces is not feasible or not in the best interests of the Department, the contract is to be canceled, the earnest money deposit returned and the property relisted for sale if no backup offer exists. In reaching such a determination, the file must be fully documented. As a general rule, if the cost of treatment exceeds 15 percent of the property value, the decision should be not to treat. This 15 percent amount applies only to chewable surfaces, not defective paint surfaces. Any property being listed or relisted and known to contain lead-based paint must have the following statement in the advertisement:

"PURCHASERS NOTE: Property contains lead-based paint hazards which will not be removed by HUD."

- 13-29 Abatement without Testing. In lieu of the procedure set forth in paragraph 13-26, the Field Office has the option to forego the testing of the property and abate all interior and exterior surfaces in accordance with treatment procedures. However, this action would not appear practical unless the Field Office has good reason to believe lead-based paint actually exists.
- 13-30 Blood Lead Level Screening Programs. The Field Office should contact the State or local health or housing agencies to determine the availability of blood lead level screening programs within its jurisdiction. In addition, the Field Office should contact private

laboratory facilities and/or hospitals to determine their capability of performing this service. The cost of this service should also be obtained. The location of facilities and the cost for the test should be made readily available to prospective purchasers. If no test facility appears reasonably available, the purchaser should be advised to contact his personal doctor to determine if the test can be performed by that source.

- 13-31 Screening Unavailable. If the Field Office determines that blood lead level screening programs are not reasonably available, the files must be documented to support the steps taken to locate these facilities. In addition, the Field Office should update its files every six to 12 months on the steps taken to locate blood lead level screening programs in its jurisdiction.

SECTION V - DOCUMENTATION

- 13-32 Documentation to be Maintained in Case File. The original inspection report and the original of all other documentation related to abatement, testing or treatment of defective paint, must be maintained in the property case file.

SECTION VI - PROCESSING REQUIREMENTS FOR SAMS

- 13-33 General. See the SAMS User Handbook for procedures and data screens to be used to indicate lead-based paint.