



Georgia Department of Community Affairs

Sonny Perdue
Governor

Memorandum

To: ESGP, HOPWA and S+C Grantees
From: John Bassett
Subject: Lead-Based Paint (LBP) Requirements
Date: June 13, 2003

The purpose of this memo is to update LBP compliance procedures for our programs, as required by regulations at 24 CFR Part 35 and by State law. The Federal regulations can be viewed or downloaded at the HUD web site entitled "Office of Healthy Homes and Lead Hazard Control" located at www.hud.gov/offices/lead/. State law can be found at OCGA 391-3-24.

First for the Emergency Shelter Grant Program (ESG), the HUD-published ESG Desk Guide contains information on compliance in Chapter 8.2. I am enclosing an excerpt from the guide containing those provisions for your review. The full version of the ESG Desk Guide can be found on line at www.hud.gov/offices/cpd/homeless/programs/esg/index.cfm.

For Shelter + Care programs, HUD guidance is issued within the Shelter Plus Care Resource Manual, Attachment H. This excerpt is attached as well. The full version of this manual can be found on line at www.hud.gov/offices/cpd/homeless/programs/splusc/index.cfm.

For HOPWA programs, there is no specific guidance from HUD.

Regardless of whether or not your programs are "covered" or exempt, we trust that you wish to be cognizant of the dangers of lead-based paint and to act responsibly if your organization serves children or others at risk. If your programs serve children less than 6 years of age, if you house pregnant women or if you house women who might become pregnant, you are required or encouraged to take appropriate measures to protect clients in those units from lead hazards. Please read all of the rules and guidance and seek assistance from the HUD web site at www.hud.gov/offices/lead/, but in short, typical applicability of HUD compliance measures are as follows:

The facility is not subject to compliance if --

1. It does not (and will not) serve children younger than 6 years of age (or pregnant women), or
2. It was not built prior to January 1978, or
3. If it was built prior to January 1978, it has been certified as "lead free" by a certified LBP inspector. This would include facilities where certified contractors have performed LBP abatement.

If the facility is subject to HUD compliance, then at a minimum, HUD requires "visual assessment" and "disclosure". Please be advised however, that "visual assessment" does not appear to be an appropriate method of documenting compliance with Georgia law. Please refer to the next paragraph. Regardless, "visual assessment" training may be a useful to grantees and can be self-taught through the HUD web site

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at www.hud.gov/offices/lead/training/visualassessment/h00100.htm. "Disclosure" forms can be found on the HUD web site at www.hud.gov/offices/lead/.

As stated in the previous paragraph, HUD's "visual assessment" practice does not appear to be consistent with Georgia State law (GA Code 391-3-24). This law requires that "all lead-based paint activities" be carried out by certified "persons" or "firms." I am attaching a November 15, 2002 memorandum from the Georgia Department of Natural Resources that speaks to the differences between Federal and State requirements. Grantees are advised to follow the more stringent rule.

Should certified inspectors and contractors be required, or if you have questions regarding any of these matters, please seek assistance as follows:

Georgia Environmental Protection Division
Lead-Based Paint and Asbestos Program
4244 International Parkway, Suite 104
Atlanta, GA 30354
Phone: 404-362-2704
FAX: 404-362-2693
Contact: Maggie Williams (email: Maggie_Williams@mail.dnr.state.ga.us)
http://www.dnr.state.ga.us/dnr/environ/regcomm_files/regcomm.htm#lpb

In the future, DCA may update its guidance to grantees and/or its compliance requirements. Until that time, however, please prepare a file entitled "Lead Based Paint Compliance" and retain it with your program records. Within this file, please summarize all of your locations and provide specific information to address compliance for each site. If your agency is working to document compliance, please provide evidence of those efforts. And lastly, if you agency wishes to obtain DCA funding for certified inspection or abatement, please contact us about availability of funding.

In closing, please note that the Office of the State Housing Trust Fund does not have a specialist in the field of LBP compliance. Regardless, it is each agency's responsibility to assure that it is in compliance. While we would be glad to answer questions, technical questions are most appropriately addressed to the Georgia Department of Natural Resources' Environmental Protection Division as noted above.

Thank you for your time in review of this matter. Should you have questions, please do not hesitate to contact me at any time as follows: Phone (404) 679-3170, Fax (404) 679-0669, or Email jbassett@dca.state.ga.us

/jb

Enclosures:

1. Excerpt from ESG Desk Guide on LBP compliance
2. Excerpt from Shelter Plus Care Resource Manual, Attachment H on LBP compliance
3. GA DNR EPD Memorandum dated November 15, 2002

Georgia Department of Natural Resources

Environmental Protection Division
Lead-Based Paint & Asbestos Program
4244 International Parkway, Suite 104, Atlanta, Georgia 30354
Lonice C. Barrett, Commissioner
Harold F. Reheis, Director
404/363-7026

November 15, 2002

MEMORANDUM

TO: John Bassett
Georgia Department of Community Affairs

FROM: R. Mark Gwin
Georgia EPD, Lead-Based Paint and Asbestos Program

SUBJECT: Georgia Lead Rule 391-3-24

This memo is to outline Georgia Environmental Protection Division's (EPD) Chapter 391-3-24 Lead-Based Paint Abatement, Certification and Accreditation (Lead Rule) as it applies to target housing and Child-Occupied Facilities (COF) in Georgia. It appears that there are areas where the Georgia Lead Rule is more stringent than Housing and Urban Development (HUD) rules. It is our hope and expectation that the affected constituents will comply with the more stringent rule. We appreciate the opportunity to submit these comments, and welcome the occasion to work with the Department of Community Affairs (DCA) and its grantees to resolve any potential conflicts between the provisions of the two rules.

Georgia's Lead Rules contain procedures and requirements for the accreditation of lead-based paint activities training programs, procedures and requirements for the certification of persons and firms engaged in lead-based paint activities, and standards for performing such activities. The rule also requires that certified persons and lead firms perform **all lead-based paint activities** in target housing and child-occupied facilities. The rule does not require the mandatory abatement of lead-based paint. The rules are applicable to all persons and firms who are engaged in **lead-based paint activities** as defined in Rule 391-3-24-.03, except persons who perform these activities within residential dwellings that they own, 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 residential dwelling has been identified as having an elevated blood lead level. Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the State of Georgia having jurisdiction over any property or facility, or engaged in any activity resulting, or which may result, in a lead-based paint hazard, and each officer, agent, or employee thereof, shall be subject to, and comply with all requirements, both substantive and procedural, regarding lead-based paint, lead-based paint activities, and lead-based paint hazards (391-3-24-.01 Scope and Applicability. Amended). Clearly, the lead rule is quite broad in its scope and likely encompasses a good number of DCA funded programs and facilities.

Here are a few key definitions from Section 391-3-24-.03 that will most likely be applicable to some of the facilities operated by Department of Community Affairs grant holders in Georgia:

Child Occupied Facility: "Child-occupied facility means a building, or portion of a building constructed prior to 1978, visited by the same child, six years of age or under, on at least two different days within the same week (Sunday through Saturday period), provided each day's visit lasts at least three hours and the combined weekly visit lasts at least six hours. Child-occupied facilities include, but are not limited to, day-care centers, pre-schools and kindergarten classrooms." As you can see, Georgia lead rule makes no allowance for stays of less than 100 days. Our definition is much narrower in scope.

Lead Based Paint Activities mean, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement as defined in Georgia lead rule.

Target Housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child/children age six (6) years or under reside or is expected to reside in such housing for the elderly or persons with disabilities) or any zero (0) -bedroom dwelling.

Lead-Based Paint Inspection means a surface-by-surface investigation conducted by a lead inspector to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

Certified Lead Firm means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities, to which the Division has issued a certificate of approval pursuant to section 391-3-24-.05.

Certified Risk Assessor means an individual who has been trained by an accredited training program and certified by the Division to conduct risk assessments. A lead risk assessor also samples for the presence of lead in paint, dust, and soil for the purposes of abatement clearance testing.

Certified Inspector means an individual who has been trained by an accredited training program and certified by the Division to conduct inspections. A lead inspector also samples for the presence of lead in paint, dust, and soil for the purposes of abatement clearance testing.

Risk Assessment (1) an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and (2) the provision of a report by the person or the lead firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based hazards.

Lead Hazard Screen is a limited risk assessment activity that involves limited paint and dust sampling as described in 391-3-24-.06 (3) of these Rules.

Visual Inspection for Risk Assessment means the visual examination of a residential dwelling or a child-occupied facility to determine the existence of deteriorated lead-based paint or other potential sources of lead-based paint hazards.

The HUD "Visual Paint Assessment" activity, if we interpret the description correctly, sounds like the lead-based paint functions described at 391-3-24-.06(3)(a) and (b)i and 391-3-24-.06(4)(a) and (b):

391-3-24-.06(3) Lead Hazard Screen.

(a) A lead hazard screen shall be conducted only by a person certified by the Division as lead risk assessor.

(b) If conducted, a lead hazard screen shall be conducted as follows:

2. A visual inspection of the residential dwelling or child-occupied facility shall be conducted to: (i)

Determine if any deteriorated paint is present, . . .

391-3-24-.06(4) Risk Assessment.

(a) A risk assessment shall be conducted only by a person certified by the Division as a lead risk assessor and, if conducted, must be conducted according to the procedures in this section.

(b) A visual inspection for risk assessment of the residential dwelling or child-occupied facility shall be undertaken to locate **the existence of deteriorated paint**, assess the extent and causes of the deterioration, and other potential sources of lead-based paint hazards.

When these activities are conducted in target housing and child occupied facilities, they would be covered by the Georgia Lead Rule. They should only be conducted by properly trained and Georgia Certified individuals working under the authorities of a Georgia Lead Firm license. EPD does not recognize the self-taught "visual assessment" course available from the HUD website as meeting the requirements for performing a risk assessment, lead hazard screen, or a portion thereof.

While there is considerable discrepancy between the provisions of the HUD rule and the Georgia lead rule, this should not discourage you from pursuing your goal of providing a healthy environment for displaced children. After all, protecting children is the common goal of HUD, EPA, and EPD regulations pertaining to lead-based paint in residential settings. We feel certain that with a concerted effort between our agencies we can find a common ground that will allow you to pursue that goal while working within the provisions of each set of rules. We look forward to a growing relationship with DCA, and invite your questions and comments. Thank you again for this opportunity to provide input.

If you have questions concerning these matters, call Maggie Williams of our staff at (404)362-2704. If you desire, she can also arrange for us to meet with you and your staff to further discuss these important issues.

WS/mw

8.2 Lead-based Paint Requirements

Background

The purpose of these requirements is to ensure that housing receiving federal assistance (or being sold by the federal government) does not pose lead-based paint hazards to young children. As such, ESG grantees are subject to the requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (LBPPPA) and the Act's implementing regulations at [24 CFR Part 35](#) (see [Memorandum summarizing the Rule's requirements and effective dates at: http://www.hud.gov/lea/donovan_letter.pdf](#)) This Act, first passed by Congress in 1971 and amended several times since then, found that lead poisoning in children causes permanent damage to the brain and many other organs and results in reduced intelligence, low attention span, reading and learning disabilities, and can be linked to behavioral problems. The Centers for Disease Control and Prevention (CDC) have claimed lead poisoning to be the most common environmental disease that threatens our young children today. The most common sources of childhood exposure to lead are deteriorated lead-based paint and lead-contaminated soil in the residential environment.

In 1992, Congress passed the [Residential Lead-Based Paint Hazard Reduction Act](#), (<http://www.hud.gov/lea/leatilex.html>) referred to as "Title X." This law redefined the lead-paint hazard and set out specific requirements that necessitated a comprehensive revision of HUD's lead-based paint regulations. Title X stressed identification of hazards, notification to occupants of the existence of these hazards, and control of these hazards. HUD developed a [Final Rule](#) (http://www.hud.gov/lea/1012_3final.pdf) in September 1999 to implement sections 1012 and 1013 the statutory requirements of Title X (the sections that amend the LBPPPA) and to update and consolidate all of its lead-based paint regulations. The provisions of the new rules went into effect on September 15, 2000.

Effect of Lead-Based Paint Rules on ESG Projects

Since the ESG program deals primarily with the operation of short-term emergency shelters and the delivery of essential services to formerly homeless persons, ESG is governed by Subpart K of the Lead-Based Paint Hazard regulations. According to the *Interpretive Guidance* (http://www.hud.gov/lea/1012QA_final_sept21.PDF) to the regulations, most emergency shelters are exempt from the lead-based paint regulations.

Thus, emergency housing using efficiencies, studio apartments, dormitories, single room occupancy units, barracks, group homes, or room rentals in residential dwellings are all excluded from the lead-based paint requirements. The only ESG-assisted housing covered under the lead-based paint requirements is longer-term transitional housing in an apartment with one or more bedrooms AND which has family residents who are part of a program requiring continual residence of more than 100 days.

The majority of ESG projects, with their relatively short stays in HUD-assisted housing, are exempt from the Lead-based Paint requirements. Additionally, ESG projects providing essential services only are also excluded from the lead-based paint regulations. However, any ESG housing or services sites regularly frequented by children less than 6 years of age are encouraged to use ESG funds for testing and may use ESG rehabilitation funds for necessary abatement procedures.

In ESG projects where the residents select their own housing or where the grantee or recipient provides services such as housing search and homeless prevention services such as first month's rent, the units selected must be free from lead-based paint contamination. The remainder of Section 8.2 of the ESG Guide provides a summary of the basic requirements for transitional housing programs where the grantee or recipient provides the apartment units using ESG funds.

Section 8.2 of the ESG Guide summarizes the basic provisions of the lead-based paint regulations pertaining to ESG funded activities, such as rehabilitation and conversion of property. While the requirements pertaining to rehabilitation differ according to level of federal support (see below), the requirements around notification and provision of an information pamphlet apply for *all* types of federal housing assistance. Exemptions to the lead-based paint regulation are provided at the end of the section. Note that the lead-based paint requirements do not apply to housing assistance (such as for homeless persons) unless the assistance lasts more than 100 days.

Notice of Evaluation, Presumption, and Hazard Reduction Activities

When evaluation, or hazard reduction activities (or both) of lead-based paint is undertaken as part of federally-funded rehabilitation activities in long-term assisted housing, the grantee/recipient must notify occupants of

the property. Notification is also required when a presumption is made that lead-paint hazards are present. The grantee/recipient should provide notice to occupants within 15 days of the date the evaluation is completed (or a presumption is made) that lead-based paint hazards exist. In a format that it is clear and easy to read (i.e., in the occupant's primary language), the notice should include:

1. a summary of the nature, scope and results of the evaluation;
2. contact name, address and telephone number for more information; and
3. the date of the notice.

When hazard reduction activities are undertaken, the responsible party must provide notice to occupants no more than 15 days after the activity is completed. The notice should include the same elements as above, but also include available information on the location of any remaining lead-based paint hazards. The grantee/recipient should also provide the *Lead Hazard Information Pamphlet* available through HUD.

Rehabilitation, Renovation or Conversion

Requirements differ depending on the level of federal funding provided for these activities. The three categories include: 1) assistance of up to and including \$5,000 per unit; 2) assistance of more than \$5,000 per unit and up to and including \$25,000 per unit; and 3) assistance of more than \$25,000 per unit.

For long-term assisted housing properties receiving federal assistance of *up to \$5,000 per unit*, the following requirements apply:

1. Conduct paint testing (or presume the presence of lead-based paint);
2. Implement safe work practices during rehabilitation work if paint testing shows the presence of lead-based paint; repair any paint surfaces that are disturbed; and
3. Perform a clearance examination of the work site after completion of rehab disturbing painted surfaces. A clearance is not necessary if the rehab does not disturb painted surfaces.

For long-term assisted housing properties receiving federal assistance of \$5,000 and up to \$25,000 per unit, the following requirements apply:

1. Conduct paint testing (or presume the presence of lead-based paint);
2. Perform a risk assessment in the units, common areas and exteriors of those being rehabilitated using federal assistance; and
3. Perform interim controls. Interim controls include paint stabilization of deteriorated paint, treatments for friction and impact surfaces where levels of lead dust are above those specified in 24 CFR 35.1320, dust control and lead-contaminated soil control. *Paint stabilization* means: repair of any defective substrate that is causing paint deterioration, and removal of loose paint and other material using methods such as wet scraping, wet sanding or power sanding in conjunction with use of a HEPA filtered local exhaust attachment (dry sanding or scraping is allowed only for electrical safety reasons) and application of a new protective coating or paint.

For long-term assisted housing properties receiving federal assistance of above \$25,000 per unit, the following requirements apply:

1. Conduct paint testing (or presume the presence of lead-based paint);
2. Perform a risk assessment in the units, common areas and exteriors of those being rehabilitated using federal assistance; and
3. Abate all lead hazards identified in the test or assessment as well as any lead-based paint hazards created as a result of the rehab work.

Essential (Support) Services and Operations

For eligible ESG housing properties that receive federal assistance for essential support services or operations, a number of lead-based paint requirements apply. The grantee/recipient should conduct the following activities:

1. A visual assessment of all painted surfaces to identify deteriorated surfaces;
2. Complete paint stabilization of all deteriorated surfaces.
3. Incorporate ongoing lead-based paint maintenance activities into the regular building maintenance operations; and
4. Notification as described above.

Inspection and Abatement

In addition to complying with the regulations at 24 CFR 35, the grantee (or in the case of States, the State recipient) must also meet the following requirements relating to inspection and abatement of defective lead-based paint surfaces:

- Treatment of defective paint surfaces must be performed before final inspection and approval of the renovation, rehabilitation or conversion activity; and
- Appropriate action must be taken to protect shelter occupants from the hazards associated with lead-based paint abatement procedures.

The following chart summarizes the lead-based paint requirements applicable to the ESG program by type of program and the building's period of construction:

Type of Program	Construction Period	Requirements
Rehabilitation – Property receiving less than \$5,000 per unit	Pre-1978	<ul style="list-style-type: none"> ■ Provision of pamphlet. ■ Paint testing of surfaces to be disturbed, or presume LBP. ■ Safe work practices in rehab. ■ Repair disturbed paint. ■ Clearance of the worksite. ■ Notice to Occupants.
Rehabilitation – Property receiving more than \$5,000 and up to \$25,000 per unit	Pre-1978	<ul style="list-style-type: none"> ■ Provision of pamphlet. ■ Paint testing of surfaces to be disturbed, or presume LBP. ■ Risk assessment. ■ Interim Controls. ■ Notice to Occupants.
Rehabilitation – Property receiving more than \$25,000 per unit	Pre-1978	<ul style="list-style-type: none"> ■ Provision of pamphlet. ■ Paint testing of surfaces to be disturbed, or presume LBP. ■ Risk assessment. ■ Abatement of LBP hazards. ■ Notice to Occupants.
Support Services or Operation	Pre-1978	<ul style="list-style-type: none"> ■ Provision of pamphlet. ■ Visual Assessment. ■ Paint stabilization. ■ Notice to Occupants. ■ Ongoing LBP maintenance.

Are there Exemptions from these Regulations?

A number of properties are exempt from this regulation. For the properties that fall under the following categories, the lead-based paint regulations do not apply:

- Housing built after January 1, 1978 (the date when lead-based paint was banned for residential use);
- Housing exclusively for the elderly or persons with disabilities, unless a child under age 6 is expected to reside there;
- Zero bedroom dwellings, including efficiency apartments, single-room occupancy housing, dormitories, or military barracks;
- Property that has been found to be free of lead-based paint by a certified inspector;
- Property from which all lead-based paint has been removed, and clearance has been achieved;
- Unoccupied housing that will remain vacant until it is demolished;
- Non-residential property;
- Any rehabilitation or housing improvement that does not disturb a painted surface;
- Emergency repair actions which are needed to safeguard against imminent danger to human life, health or safety, or to protect property from further structural damage;
- Emergency housing assistance (such as for the homeless) unless the assistance is for long-term assistance that lasts more than 100 days. **In the case where long-term housing assistance lasts for more than 100 days, then the rule does apply.**

Copies of the lead-based paint regulation can be obtained by downloading it from the HUD Office of Lead Hazard Control web site at www.hud.gov/lea or by calling 1-800-424-LEAD.

Summary of New Lead-Based Paint Requirements

For S+C Grantees, except under SRO Component 24 CFR Part 35, Subpart K

<ul style="list-style-type: none"> ◆ Statute: Residential Lead-Based Paint Hazard Reduction Act of 1992, Title X (Sections 1012 – 1013) ◆ Regulations: 24 CFR Part 35, Subpart K (Sections 35.1000 - 35.1020) ◆ Additional information (Regulations, disclosure forms, training opportunities, guides): <ul style="list-style-type: none"> • HUD Office of Lead Hazard Control Homepage: www.hud.gov/offices/lead • EPA Clearinghouse: 1-800-424-LEAD • HUD LBP Compliance Assistance Center: 1-866-HUD-1012 	
Applicability <ul style="list-style-type: none"> • <i>Applies to S+C grants awarded pursuant to NOFAs published <u>after</u> 9/15/00 (beginning with 2001 awards)</i> • <i>Applies to structures built prior to 1/1/1978, unless pre-78 property is certified as LBP free or LBP removed (requires inspection by certified LBP inspector)</i> 	
Required Activities for Tenant-based Rental Assistance	
Disclosure	<ul style="list-style-type: none"> ◆ HUD (or grantee equivalent) pamphlet & disclosure form to all tenants ◆ Disclosure to occupants of any paint stabilization or repairs (if known LBP)
Evaluation	<ul style="list-style-type: none"> ◆ Visual assessment for deteriorated paint (chipping, peeling, cracking, chalking) ◆ Assess prior to occupancy & annually ◆ Assess units, common areas & exterior
Painting & Repairs	<ul style="list-style-type: none"> ◆ Repair paint using paint stabilization methods ◆ Safe work practices apply to paint repairs over 2 square feet on interior space
Clearance	<ul style="list-style-type: none"> ◆ If paint stabilization, work space must be cleared (visual assessment & dust wipes)
Ongoing Maintenance	<ul style="list-style-type: none"> ◆ Annual assessment ◆ Incorporate paint stabilization procedures for any painting & repairs
Training Requirements & Opportunities	
Training Requirements	<ul style="list-style-type: none"> ◆ Visual assessment: Take online visual assessment course @ http://www.hud.gov/lea/lbptraining.html ◆ Paint Stabilization: Workers must take HUD/EPA approved interim controls or paint maintenance course (e.g., Work Smart, Work Wet course approved by HUD) ◆ Clearance requires: <ul style="list-style-type: none"> • LBP Inspector or Risk Assessor certified by State/EPA • Clearance Sampling Technician certified by State/EPA • Recommend: work with local Housing Authority or city housing rehab office ◆ For training opportunities, contact: <ul style="list-style-type: none"> • HUD @ www.leadlisting.org, click on “HUD-Sponsored Training”

Note: For projects involving rehabilitation, please refer to the regulations.