

**GUIDANCE FOR
LEAD-BASED PAINT HAZARD MANAGEMENT
DURING TRANSFER OF ARMY REAL PROPERTY**

DAIM-FDF-FE

30 March 2000

1. Purpose. The purpose of this guidance is to:

a. Inform commanders of Army Major Commands (MACOMs) concerning requirements for management of lead-based paint hazards during transfer by sale of Army Real Property.

b. Supplement current Army policy and technical guidance contained in AR 420-70, AR 200-1, and Public Works Technical Bulletin 420-70-2.

c. Ensure that Army real property is transferred in a manner that is protective of human health and the environment, in compliance with Federal, state, and local requirements, and consistent with Department of Defense (DOD) policy.

d. Implement DoD Memorandum, subject: Lead-Based Paint Policy For Disposal Of Residential Real Property, dated 7 January 2000. The DOD policy adds the following requirements to current federal regulations:

(1) Abatement of soil-lead hazards in all residential real property constructed before 1978.

(2) Evaluation of the need for interim controls, abatement, or no action for concentrations of lead in bare soil between 400 ppm and 2000 ppm in non-play areas in residential real property.

(3) Abatement of lead-based paint hazards in child-occupied facilities that are located on residential real property and that will be reused as child-occupied facilities.

(4) Abatement of soil-lead hazards after residential real property has been demolished and redeveloped for residential use following transfer.

2. Applicability. This guidance is:

a. Applicable to Base Realignment and Closure (BRAC) and similar actions for the transfer by sale of Army "residential real property" that was constructed prior to 1978. For purposes of this guidance, "residential real property" includes both "residential property" as defined by 24 CFR 35.110 and "child-occupied facilities" as defined by 40 CFR 745.223. It also includes real property that is currently used for non-residential purposes, but for which there is a reasonable certainty that it will be reused as residential real property or as a child-occupied facility following transfer.

b. Not applicable to:

(1) Actions to transfer Army residential real property located outside the United States and its territories or to other federal agencies.

(2) Residential real property included in transfer agreements executed prior to 30 March 2000.

(3) Actions to privatize management of Army housing. In such cases, MACOMs should consult with their legal offices and the Office of the Judge Advocate General, Environmental Law Division, to determine applicable requirements.

(4) Current active duty residential real property. MACOMs should address lead-based paint in current active duty residential real property in accordance with AR 420-70, Buildings and Structures, Public Works Technical Bulletin 420-70-2, Installation Lead Hazard Management, and AR 200-1, Environmental Protection and Enhancement.

(5) Transfer of non-residential real property, except where there is a reasonable certainty that the reuse after transfer will be for residential or child-occupied facility use.

(6) Leased property and other real property not subject to disposition.

(7) Residential real property not intended for residential occupancy or reuse as a child-occupied facility following transfer.

c. MACOMs and their installations that are confronted with other lead-based paint issues (such as applicability of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)) should request guidance from the Office of the Director of Environmental Programs (for active residential real property) or the Base Realignment and Closure Office (for BRAC actions) and the Office of the Judge Advocate General, Environmental Law Division (OTJAG, ELD).

3. References.

a. DUSD(ES) memorandum, subject: Lead-Based Paint Policy Guidance for Disposal of Residential Real Property, 7 January 2000, with attachment, Guidelines for DOD Residential Real Property – A Field Guide. A copy of the DoD Field Guide can be found at the following URL: <http://www.dtic.mil/envirodod/envdocs.html>.

b. AR 200-1, Environmental Protection and Enhancement, 21 February 1997, §4-6.

c. AR 420-70, Building and Structure, 10 October 1997, §3-3.

d. Public Works Technical Bulletin 420-70-2, Installation Lead Hazard Management, 20 February 1997.

e. Lead-Based Paint Poisoning Prevention Act, as amended by the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X), 42 U.S.C.A. §4801, et seq.
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f. 40 CFR 745, Lead-Based Paint Poisoning Prevention in Certain Residential Structures, as amended.

g. 24 CFR 35, Lead-Based Paint Poisoning Prevention in Certain Residential Structures, Final Rule, 15 September 1999, 64 FR 50140.

h. US Environmental Protection Agency (EPA) Guidance on Identification of Lead-Based Paint Hazards, Notice, 11 September 1995, 60 FR 47248.

i. Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, June 1995 Edition, revised September 1997.

4. Transfer of Army Real Property.

a. MACOMs should consult state and local law to determine if there are more stringent, generally applicable legal standards relating to lead-based paint. If so, those standards are to be followed.

b. MACOMs will perform the following actions:

(1) Perform a lead-based paint hazard risk assessment and a paint inspection before the closing of the sale to identify the presence of lead-based paint and lead-based paint hazards on a surface-by-surface basis. The results of the risk assessment and the paint inspection must be made available to prospective transferees. Therefore these activities should be performed prior to entering into negotiations with prospective transferees. Methods and standards for lead-based paint inspections and risk assessments are described in reference f., §745.227.

(a) A *lead-based paint hazard* is any condition that causes exposure to lead from dust-lead hazards, soil-lead hazards, or lead-based paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces, and that would result in adverse human health effects. See APPENDIX B for additional information on lead-based paint hazards.

(b) A *potential soil-lead hazard* applies only to non-play areas in residential real property and is a concentration of lead in at least 9 square feet of bare soil that is greater than or equal to 400 parts per million (ppm) and less than 2000 ppm. See APPENDIX B for additional information on potential soil-lead hazards.

(c) A *risk assessment* is an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards and includes a report by the certified individual or firm conducting the risk assessment explaining the results of the investigation and options for

abating lead-based paint hazards and managing potential lead-based paint hazards. Interim controls

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are not permitted for lead-based paint hazards but are an option for controlling potential soil-lead hazards.

(d) A *paint inspection* is a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

(2) Disclose the known presence of lead-based paint and/or lead-based paint hazards to prospective purchasers and to transferees in accordance with the Disclosure Rule issued jointly by HUD (Subpart A of reference g.) and EPA (Subpart F of reference h.).

(3) Contractually arrange for the transferee to perform, as a condition of sale, abatement of lead-based paint hazards and all other requirements set forth in paragraph 4.c. of this guidance.

(a) MACOMs should describe with particularity the specific actions that the transferee is required to perform as a condition of the transfer.

(b) The delineation of responsibility for abatement of lead-based paint hazards must occur prior to signing of and be contained in a Memorandum of Agreement or contract for sale for transfer of the property.

(c) MACOMs should use the Army Model Language for Memorandums of Agreement (MOA), Findings of Suitability for Transfer (FOST), and Deeds (APPENDIX A) relating to lead-based paint for all real property transfers. MACOMs should consult with Army legal counsel to modify the model language to reflect agreement reached with the transferee and to determine, on a case-by-case basis, if the model language should be used in the deed, as well as in the MOA.

c. Transferees, as contractually required, should perform the Army's obligations required by 24 CFR 35, as amended by Final Rule dated 15 September 1999, and comply with the following additional requirements:

(1) Abate lead-based paint hazards prior to reoccupancy as residential real property. The abatement must begin within 12 months of the date of the risk assessment used for the identification of hazards. If more than 12 months have elapsed since the date of the risk assessment, the transferee should perform a new risk assessment.

(2) Abate soil-lead hazards in residential real property and in non-residential real property that is located in or adjacent to property intended with reasonable certainty for residential or child-occupied use following transfer.

(3) Address potential soil-lead hazards in or adjacent to residential non-play areas and determine appropriate actions—either abatement, interim controls, or no action. In evaluating each of these alternatives, the relative proximity of play areas, the potential for dust generation, the areal

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extent of bare soil available for exposure, the feasibility of any control options, and state and local requirements should be considered.

(4) Abate dust-lead and deteriorated lead-based paint hazards in residential real property constructed prior to 1960.

(5) Identify and abate soil-lead hazards in residential real property that is demolished and redeveloped for residential or child-occupied facility use following transfer. The transferee will abate soil-lead hazards prior to occupancy of redeveloped residential real property.

(6) Evaluate lead-based paint hazards in non-residential real property for which there is a reasonable certainty that the property will be converted for residential or child-occupied facility use after transfer. The transferee will abate lead-based paint hazards prior to occupancy of converted non-residential real property.

(7) Evaluate lead-based paint hazards in child-occupied facilities on residential real property that will be reused as child-occupied facilities after transfer. The transferee will abate lead-based paint hazards prior to reuse as a child-occupied facility.

(8) Send a copy of the clearance documentation to the Army to be retained in official records relating to the transfer.

5. Facilities, environmental, and medical questions relating to the interpretation of technical, procedural, or policy guidance should be referred to the Office of the Assistant Chief of Staff for Installation Management or the U.S. Army Center for Health Promotion and Preventive Medicine. Legal questions regarding whether a particular state or local law is applicable to the property transfer or regarding interpretation of proposed regulations, HUD Guidelines, or EPA guidance should be referred to the MACOM legal office or to the Office of the Judge Advocate General, Environmental Law Division.

APPENDIX A

ARMY MODEL LANGUAGE FOR MEMORANDUMS OF AGREEMENT (MOA), FINDINGS OF SUITABILITY FOR TRANSFER (FOST), AND DEEDS

MACOMs are instructed to use the following model language for both residential and non-residential real property transfers. The determination as to whether this language should be included in the deed, as well as the MOA, should be made on a case-by-case basis in consultation with Army legal counsel.

“Notice of the Presence of Lead Based Paint and Covenant Against the Use of the Property for Residential Purposes.”

A. The Grantee is hereby informed and does acknowledge that all buildings on the Property, which were constructed or rehabilitated prior to 1978, are presumed to contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Every purchaser of any interest in Residential Real Property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. "Residential Real Property" means dwelling units, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences and play equipment affixed to the land, available for use by residents but not including land used for agricultural, commercial, industrial, or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways and buildings visited regularly by the same child, 6 years of age or under, on at least two different days within any week, including day-care centers, preschools and kindergarten classrooms.

B. Available information concerning known lead-based paint and/or lead-based paint hazards, the location of lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces is contained in the Environmental Baseline Survey and (for residential properties) the lead-based paint inspection and risk assessment, which have been provided to the Grantee. All purchasers must receive the federally-approved pamphlet on lead poisoning prevention. The Grantee hereby acknowledges receipt of all of the information described in this subparagraph. Additionally, the following reports pertaining to lead-based paint and/or lead-based paint hazards have been provided to the Grantee. [List here any additional installation reports on LBP and/or LBP hazards.]

C. The Grantee acknowledges that it has received the opportunity to conduct its own risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of this document.

D. The Grantee covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on the Property as Residential Real Property, as defined in paragraph A, above, without complying with this section and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. Prior to permitting the occupancy of the Property where its use subsequent to sale is intended for residential habitation, the Grantee specifically agrees to perform, at its sole expense, the Army's abatement requirements under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992) (hereinafter Title X).

The Grantee shall, after consideration of the guidelines and regulations established pursuant to Title X: (1) Perform a Risk Assessment if more than 12 months have elapsed since the date of the last Risk Assessment; (2) Comply with the joint HUD and EPA Disclosure Rule (24 CFR 35, Subpart H, 40 CFR 745, Subpart F), when applicable, by disclosing to prospective purchasers the known presence of lead-based paint and/or lead-based paint hazards as determined by previous risk assessments; (3) Abate lead dust and lead-based paint hazards in pre-1960 residential real property, as defined in paragraph A, above, in accordance with the procedures in 24 CFR 35; (4) Abate soil-lead hazards in pre-1978 residential real property, as defined in paragraph A, above, in accordance with the procedures in 24 CFR 35; (5) Abate lead-soil hazards following demolition and redevelopment of structures in areas that will be developed as residential real property; (6) Comply with the EPA lead-based paint work standards when conducting lead-based paint activities (40 CFR 745, Subpart L); (7) Perform the activities described in this paragraph within 12 months of the date of the lead-based paint risk assessment and prior to occupancy or use of the residential real property; and (8) Send a copy of the clearance documentation to the Grantor. In cases where a transfer MOA has already been executed as of [insert the date of the Army Guidance], the Grantee is responsible for conducting lead-based paint activities in accordance with the negotiated MOA transfer documents

In complying with these requirements, the Grantee covenants and agrees to be responsible for any abatement or remediation of lead-based paint or lead-based paint hazards on the Property found to be necessary as a result of the subsequent use of the property for residential purposes. The Grantee covenants and agrees to comply with solid or hazardous waste laws that may apply to any waste that may be generated during the course of lead-based paint abatement activities.

E. The Grantee further agrees to indemnify and hold harmless the Army, its officers, agents and employees, from and against all suits, claims, demands, or actions, liabilities, judgments, costs and attorney's fees arising out of, or in a manner predicated upon personal injury, death or property damage resulting from, related to, caused by or arising out of lead-based paint or lead-based paint hazards on the Property if used for residential purposes. [In the MOA add: This section and the obligations of the Grantee hereunder shall survive the expiration or termination of this MOA, and any conveyance of the Property to the Grantee. The Grantee's obligation hereunder shall apply whenever the United States of America incurs costs or liabilities for actions giving rise to liability under this section.]

F. The covenants, restrictions, and requirements of this Section___ shall be binding upon the Grantee, its successors and assigns and all future owners and shall be deemed to run with the land. The Grantee on behalf of itself, its successors and assigns covenants that it will include and

make legally binding, this Section___ in all subsequent transfers, leases, or conveyance documents.”

APPENDIX B

LEAD-BASED PAINT (LBP) HAZARD RECOGNITION

Media	Location	LBP Hazard Recognition for TRANSFER of Army Residential Property	LBP Hazard Recognition for ACTIVE Army Residential Property
PAINT	Painted Surface	Lead-based paint is present on the painted surface and the painted surface is deteriorated.	Lead-based paint in poor condition (>10 ft2 on exterior or > 2 ft2 on interior components or > 10 % of total surface area of the component is deteriorated)
	Friction Surface	Lead-based paint is present on the friction surface, and lead-dust levels on the nearest horizontal surface underneath the friction surface exceed the dust-lead hazard standards, and the painted surface shows evidence of abrasion.	Lead-based paint in poor condition (> 10 % of total surface area of the component is deteriorated)
	Impact Surface	Lead-based paint is present on the impact surface, and paint on the impact surface is damaged or otherwise deteriorated, and the damaged paint is caused by impact of a related building component.	Lead-based paint in poor condition (> 10 % of total surface area of the component is deteriorated)
	Accessibility (Chewable) Surface	Lead-based paint is present on the accessible surface and the surface shows evidence of teeth marks.	Lead-based paint in poor condition (> 10 % of total surface area of the component is deteriorated or evidence of teeth marks)
	On carpeted and uncarpeted interior floors	³ 40 mg/ft2 for Risk assessment (³ 25 mg/ft2 for Lead Hazard Screen)	³ 100 mg/ft2 for Risk assessment (³ 50 mg/ft2 For Lead Hazard Screen)
DUST	Interior Window Sills	³ 250 mg/ft2 for Risk assessment (³ 125 mg/ft2 for Lead Hazard Screen)	³ 500 mg/ft2 for Risk assessment (³ 250 mg/ft2 for Lead Hazard Screen)
	Window Troughs	N/A for Risk assessment (N/A for Lead Hazard Screen)	³ 800 mg/ft2 for Risk assessment (³ 400 mg/ft2 for Lead Hazard Screen)
	Play Area	Abate if ³ 400 ppm	Interim control(s) ³ 400 ppm Abate if ³ 5000 ppm
BARE SOIL (> 9 Square feet)	Non Play Area	Abate if ³ 2000 ppm	Interim control(s) ³ 2000 ppm Abate if ³ 5000 ppm
	Non Play Area	“Potential Soil-Lead Hazard” – Concentration between 400 ppm and 2000 ppm of lead in bare soil areas. Alternatives to address potential soil-lead hazards include interim controls, abatement, or no action, with selection dependent on the presence and likelihood of exposure of children.	No action required < 2000 ppm