

September 9, 2008

## MANAGEMENT OF LEAD-BASED PAINT IN VHA HOUSING AND CHILD- OCCUPIED FACILITIES

**1. PURPOSE:** This Veterans Health Administration (VHA) Directive establishes policy for the Lead-Based Paint (LBP) assessment program to reduce exposure to lead in VHA-owned housing and child-occupied facilities; this includes all VHA Housing constructed prior to 1978, in addition to regulated VHA Target Housing, with emphasis on the protection of children.

### 2. BACKGROUND

a. This LBP Program ensures VHA compliance with Environmental Protection Agency (EPA), Department of Housing and Urban Development (HUD) and Occupational Safety and Health Administration (OSHA) regulations while reducing the liability that could result from tort claims related to lead exposure. The LBP program places emphasis on children under the age of 6 and pregnant women who have been shown to be the most susceptible to the effects of lead exposure.

b. Under the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Public Law 102-550), EPA and HUD promulgated joint regulations for disclosure of any known LBP or known LBP hazards in Target Housing offered for sale or lease. EPA and HUD Target Housing is defined by regulation as non-exempt housing constructed prior to 1978 with confirmed LBP. Section 408 of the Act waives any immunity otherwise applicable to the United States, including Federal agencies, with regard to substantive or procedural requirements, including the assessment of a penalty or fine.

c. The Residential Lead-Based Paint Hazard Reduction Act of 1992 requires:

- (1) Sellers and lessors to provide purchasers with a lead hazard information pamphlet;
- (2) Sellers and lessors to disclose the presence of LBP and LBP hazards in Target Housing and provide purchasers and lessees with any lead hazard evaluation report that is available;
- (3) Sellers permit purchasers a 10-day opportunity to conduct a risk assessment or inspection for the presence of LBP hazards; and
- (4) Sales contracts include a lead warning statement and acknowledgement signed by the purchaser.

d. Regulations developed to implement the requirements of the Act are contained in HUD regulation Title 24 Code of Federal Regulations (CFR) Part 35 and EPA regulation 40 CFR Part 745. These regulations address requirements related to LBP in Housing and in child-occupied

**THIS VHA DIRECTIVE EXPIRES SEPTEMBER 30, 2013**

## VHA DIRECTIVE 2008-055

September 9, 2008

facilities, such as childcare centers and schools. Regulations for lead management and exposure can be found in the OSHA 29 CFR Parts 1926.62 and 1910.1025.

### e. Definitions

(1) **LBP Hazard.** A LBP hazard is defined as any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.

(2) **Lead-based Paint.** LBP is any paint or other surface coating that contains lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

(3) **0-Bedroom Dwelling.** A 0-Bedroom Dwelling is any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing (such as educational housing), military-style barracks, and rentals of individual rooms in residential dwellings.

(4) **Abatement.** Abatement means any set of measures designed to eliminate LBP hazards, including all preparation, cleanup, disposal, and post abatement clearance testing activities.

(5) **Environmental Intervention Blood Lead Level.** Environmental intervention blood lead level means a confirmed concentration of lead in whole blood equal to, or greater than, 20 micrograms of lead per deciliter ( $\mu\text{g}/\text{dL}$ ) for a single test or 15-19  $\mu\text{g}/\text{dL}$  in two tests taken at least 3 months apart.

(6) **VHA Target Housing.** VHA Target Housing means any VHA-owned housing that meets the definition of regulated housing in accordance with EPA 40 CFR Part 745 and HUD 24 CFR Part 35. From the Department of Veterans Affairs' (VA) perspective, this means VHA residential property constructed prior to 1978 and managed pursuant to a formal lease agreement that does not meet the EPA or HUD exemption clauses. The regulatory exemptions include housing with leases less than (<) 100 days, 0-bedroom dwellings, housing for the elderly or disabled employees (unless child-occupied), and unoccupied housing designated for demolition or emergency occupation.

(7) **VHA Housing.** VHA Housing means all residential property constructed prior to 1978 with confirmed lead-based paint that does not meet the definition of VHA Target Housing.

(8) **Child-Occupied Facility.** Child-occupied facility means any VHA facility space, constructed prior to 1978 with confirmed LBP and visited at least 2 days per week (more than 3 hours per day) by the same child, under 6 years of age. Typically, facilities include day care centers, preschools and kindergarten classrooms and may include VHA housing and target housing. A child-occupied facility also includes areas of informal care provided by relatives, neighbors and staff, regardless of compensation.

**3. POLICY:** It is VHA policy to protect occupants of childcare centers and VHA Housing constructed prior to 1978 from the hazards associated with LBP.

#### 4. ACTION

a. **Director, Office of Construction and Facilities Management (CFM).** The Director, CFM, adopts industry-based specifications and develops and updates, as necessary, construction specifications related to the management of LBP. *NOTE: Specifications are to address LBP inspection, risk assessment, hazard abatement, and LBP removal that may be necessary during construction projects.*

b. **Chief Consultant, Occupational, Health, Safety and Prevention Strategic Healthcare Group (13D).** The Chief Consultant advises VHA staff on public and occupational health issues related to LBP.

c. **Director, Safety and Technical Services (10NB).** The Director, Safety and Technical Services (10NB), provides administrative management and technical support to Veterans Integrated Service Networks (VISNs) and VHA facilities in complying with Federal, state, and local regulations regarding LBP.

d. **VISN Directors.** Each VISN Director is responsible for ensuring that:

(1) Occupants of VHA Target Housing, VHA Housing and VHA child-occupied facilities are protected from LBP hazards.

(2) Resources to implement the requirements of this Directive are provided. Resources are to cover implementation of strategies and oversight for the occupant disclosure process, baseline and periodic LBP inspections and risk assessments, and, where appropriate, LBP renovation and abatement.

(3) Construction project designs and specifications are reviewed to ensure that they comply with applicable Federal, state, and local health regulations related to LBP. This review is to be done by VISN industrial hygiene, environmental, or safety staff, or by contract with an industrial hygiene or engineering firm qualified to perform work related to LBP health and safety issues.

(4) Contracts for leasing or transfer of VHA Target Housing, VHA Housing and VHA child-occupied facilities are reviewed by VISN industrial hygiene, environmental or safety staff, or by contract with a qualified industrial hygiene or engineering firm. *NOTE: This review is to make certain that contracts for leasing or transfer comply with applicable Federal, state and local environmental LBP regulations. In addition, it ensures disclosure of the presence of LBP is made to occupants of VHA quarters and childcare facilities. This requirement does not eliminate the need for the review, approval, and other actions by VISN and VHA Facility Directors that are required by Federal, state, and local environmental requirements and other VA and VHA policy.*

## VHA DIRECTIVE 2008-055

September 9, 2008

(5) VHA facility employees responsible for conducting LBP regulated duties are trained and licensed or certified as required by OSHA, EPA, and State regulations.

e. **Facility Directors.** Each VHA facility Director must ensure:

(1) Staff and occupants of VHA Housing, VHA Target Housing and VHA child-occupied facilities are protected from LBP hazards in accordance with HUD 24 CFR Part 35, EPA 40 CFR Part 745 and OSHA 29 CFR Parts 1926.62 and 1910.1025 requirements; this includes:

(a) **Disclosure of LBP Information.** Access and disclosure information must be provided to existing, new or prospective residents of VHA Target Housing, VHA Housing and VHA child-occupied facilities.

1. An EPA-approved lead hazard information pamphlet must be provided to occupants of VHA Target Housing. The distribution of the information pamphlet must be documented at the time of the tenant agreement, by occupant signature or certification statement. **NOTE:** *Such pamphlets include the EPA document entitled, "Protect Your Family from Lead in Your Home" (EPA #747-K-99-001) or an equivalent pamphlet that has been approved for use in that State by EPA.*

2. Information on the presence of LBP locations and condition (hazards) must be provided prior to the lease of VHA Target Housing units. All VHA Housing and VHA Target Housing occupants must be provided opportunity and access to LBP records and reports for the unit occupied and for common areas. For multi-unit or 0-bedroom dwellings, general LBP information may be posted in common areas. Those VHA Housing occupants opting to review LBP records must be provided an EPA or State-equivalent lead hazard information pamphlet. Staff, parents, and guardians associated with child-occupied facilities must have the opportunity to review available LBP records and reports along with the EPA pamphlet information. All reviews need to be documented.

3. The lead warning statement and acknowledgment language appearing in 24 CFR 35.92 and 40 CFR 745.113, must be incorporated in all leases for VHA Target Housing with LBP.

(b) **Disposition of VHA Property.** The transfer of VHA Target Housing must comply with HUD and EPA disclosure, inspection, and abatement requirements.

1. Information on the presence of LBP locations and condition (hazards) must be provided prior to sale of VHA Target Housing. Copies of records and reports shall be provided upon request.

2. An EPA-approved lead hazard information pamphlet must be provided. **NOTE:** *Such pamphlets include the EPA document entitled, "Protect Your Family from Lead in Your Home" (EPA #747-K-99-001), or an equivalent pamphlet that has been approved for use in that State by EPA.*

3. The lead warning statement and acknowledgment language, appearing in 24 CFR 35.92 and 40 CFR 745.113, must be incorporated into the sales contract.

4. A 10-day opportunity for purchasers to conduct a LBP inspection or risk assessment at their own expense, must be provided.

5. For Target Housing constructed before 1960, a LBP risk assessment must be performed no more than 12 months before the beginning of any LBP abatement. When abatement is not completed before the closing of the sale, the abatement must be completed by the purchaser before occupancy of the property as EPA or HUD Target Housing and in accordance with 40 CFR 745.227.

6. For properties constructed after 1959 and before 1978, a LBP inspection and risk assessment must be completed before closing of the sale. The risk assessment and lead-based paint inspection must be made available to prospective purchasers.

(c) Exemption from Target Housing Compliance. In addition to a post-1978 construction date or LBP-free designation, certain conditions exempt VHA-owned housing from HUD and EPA Target Housing regulation (e.g., LBP location disclosures and pamphlet distribution, LBP assessment and abatement notifications, and full LBP abatement actions). The exemptions include:

1. 0-Bedroom Dwelling Units.

2. Housing for the elderly, or a residential property designated exclusively for disabled persons (VHA community nursing homes). The formal exemption does not apply when occupants include a child less than 6 years of age.

3. Short-term leases of 100 days or less, where no lease renewal or extension can occur.

4. Housing unoccupied until demolition and emergency LBP abatement or stabilization actions necessary for immediate protection of the occupants, including child blood lead level intervention.

5. Application of interim LBP controls for those on the National Register of Historic Places (listed or eligible) as determined by the State Preservation Office.

6. Renewals of existing leases in Target Housing with previously disclosed information required under 40 CFR 745.107. **NOTE:** *Some EPA regions have determined that an increase in rent payment requires re-disclosure of LBP information and pamphlet distribution.*

(d) LBP Assessment and Action Plans. To ensure a safe housing environment, VHA requires initial (baseline) LBP inspection and action plans for all VHA Housing, VHA Target Housing, and VHA child-occupied facilities. LBP inspections, lead hazard screens and risk assessments must be conducted in accordance with EPA 40 CFR 745.227, state, and local regulations.

## VHA DIRECTIVE 2008-055

September 9, 2008

1. Initial LBP inspections consist of comprehensive-visual inspections of known and suspected LBP, sampling of suspect LBP, and documentation of the paint condition. VHA LBP inspection staff and LBP consultant staff must be trained and certified to perform lead hazard inspections in accordance with EPA and State regulations. Annual visual assessments are required for VHA Target Housing in accordance with 24 CFR 35.1355(a). Similar assessments need to be conducted for VHA Housing to identify destabilized LBP surfaces.

2. A LBP hazard screen is a limited risk assessment used to detect whether LBP presents a health risk or hazard. If a VHA Target Housing lead hazard screen reveals lead dust hazards, action must be taken to mitigate the hazard and a LBP risk assessment undertaken in accordance with HUD 24 CFR 35.1320. Annual LBP hazard screens are to be considered upon new lease agreements when occupants include a child under the age of 6 years old. VHA requires LBP Hazard Screens to be conducted:

a. Upon the initial request of VHA Target Housing and VHA Housing occupant residing with children under the age of 6 years old or report of pregnancy. *NOTE: Any additional LBP hazard screens (frequency and scope) are at the discretion of the LBP Program Manager.*

b. Annually for VHA-managed child-occupied facilities (e.g., VA medical center facility childcare centers, daycare centers or preschool programs managed by VHA staff, contractors, volunteers, parents or guardians). Initial LBP hazard screens must be conducted upon the request of occupants, or the associated parent or guardian of children, in VHA Housing or VHA Target Housing that meet the definition of a child-occupied facility. *NOTE: Any additional LBP hazard screens (frequency and scope) are at the discretion of the LBP Program Manager.*

3. Corrective action plans need to be developed, monitored, and updated for VHA Housing, VHA Target Housing and child-occupied facilities when LBP inspections, visual assessments, and hazard screens indicate destabilized LBP or potential lead exposure risk to occupants. Action plans must identify the location and abatement, encapsulation or repair activities, including any replacement of facility components necessary to protect VHA staff, housing residents and children.

4. Non-VHA employees residing in housing or working in childcare centers are to be encouraged to inform VHA facility manager (or designee) of deteriorated LBP.

(e) LBP Renovations and Abatement. LBP renovations (repair) and abatement must be controlled to prevent the release of LBP dust and debris to the interior of facilities, exterior soil and child playgrounds. General construction contractors and VHA maintenance staff must be notified of the presence of LBP prior to work. VHA renovations and abatement must be performed in accordance with 40 CFR part 745, subpart E and subpart L, respectively.

1. General construction and renovation projects in VHA Housing, VHA Target Housing, and VHA child-occupied facilities must include an assessment for the potential impact to LBP surfaces to ensure residents and occupants are not potentially exposed to airborne lead or residual LBP debris. Residents and occupants must not be present in the renovation work area and work

area access routes during maintenance and repair activities which have the potential for release of LBP dust and debris. The potential for transfer of LBP airborne dust and debris must be determined and controlled during work activities.

2. For LBP abatement, a written occupant protection plan must be developed in accordance with EPA requirements by the EPA-certified supervisor or EPA-certified project designer (40 CFR 745.227). This plan must be reviewed and approved by the VHA facility industrial hygienist or safety manager. LBP abatement projects must comply with VHA Master Specifications, Lead-Based Paint Removal and Disposal, including Federal and state site clearance and sampling requirements.

3. LBP renovation and repair must be conducted in accordance with 40 CFR 745.85, minor repair and maintenance activities are excluded from these work practices as defined by 40 CFR 745.83. Occupants of VHA Target Housing units must be notified at least 60 days in advance of a LBP renovation and provide the EPA or State-equivalent pamphlet, "*Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools*" (40 CFR 745.84). A statement of receipt or certification of delivery must be obtained and a notice of hazard reduction activity must be provided to occupants within 15 days of completion (24 CFR 35.125). LBP renovations of VHA target housing common areas (multi-family dwellings) and child-occupied facilities are to be preceded by similar pamphlet distribution, or alternatively, post copies or availability of EPA or State-equivalent pamphlets and project information with completion date in a common area or main entry. Re-evaluation of hazard reduction activities are to be conducted in accordance with 24 CFR 35.1355(b).

4. Stop-work authority must be delegated to VHA facility safety, health, environmental, and fire protection staff.

(f) Child Blood Lead Level Intervention. A LBP risk assessment must be conducted when an environmental intervention blood lead level child is identified in VHA Housing, VHA Target Housing or child-occupied facility. VHA LBP program managers need to be knowledgeable of state and local regulations requiring blood lead intervention for children, and coordinate VHA programs as feasible. VHA-owned housing that is occupied by children may be inspected by state and local authorities when high blood lead levels are indicated. Risk assessment and investigations are to be comprehensive and include water supply, outdoor play sites, and any other potential exposure sources (foods, toys, jewelry, etc.).

(2) The facility safety, health, and environmental staff are responsible for:

(a) Developing written policies for compliance with LBP environmental and occupational safety and health standards, the procedures outlined in this Directive, and as may be required by Federal, state, or local regulations.

(b) Assisting VISN industrial hygiene, environmental and/or safety staff in the review of construction project designs and specifications to ensure compliance with applicable Federal, state, and local environmental and health regulations.

## **VHA DIRECTIVE 2008-055**

**September 9, 2008**

(c) Assisting EPA-certified inspectors and risk assessors with LBP assessment, abatement, and management activities to ensure that the information developed meets the needs of the VHA facility program.

(d) Assisting in the review of contracts for the lease or transfer of VHA property to ensure compliance with applicable Federal, state, and local LBP regulations.

(e) Conducting or monitoring LBP inspections, risk assessments, abatement operations, maintenance, and housekeeping activities to ensure compliance with this VHA policy, EPA, HUD and OSHA regulations.

(f) Exercising stop-work authority when activities threaten to release hazardous levels of lead or when prohibited activities are encountered.

(g) Consulting with the contracting officer or contracting officer technical representative regarding follow-up actions with contractors.

(h) Providing VHA maintenance, housekeeping staff, and employees with the information or awareness training, as appropriate, to assist them in recognizing deteriorated LBP.

(3) VHA employees and contractors who conduct LBP activities in VHA Housing, VHA Target Housing, and VHA child-occupied facilities are EPA-certified and comply with OSHA regulations. Such activities include: LBP inspections, risk assessments, hazard screens, project design, and lead abatement supervision and worker activities.

(4) LBP inspection and work activities meet all requirements of State-authorized programs.

(5) Records of LBP inspections, risk assessments, hazard screens, action plans and LBP mitigation are to be maintained indefinitely, to include:

(a) Ensuring that LBP inspection and sample data are accessible to VHA maintenance staff, safety managers, industrial hygienists, environmental program managers and project engineers.

(b) Storing notification records to occupants for the length of time required by VISN and facility policy, or 3 years, whichever is longer.

(6) Blood-lead and zinc protoporphyrin testing for each regulated LBP employee must be conducted, as required by OSHA 29 CFR 1926.62, by:

(a) Consulting with VHA facility's occupational health physician regarding employee LBP medical examination and blood testing.

(b) Conducting blood-lead testing in accordance with applicable VA policy and applicable Federal requirements regarding the privacy of medical data.

f. **VHA Employees.** VHA employees who reside in VHA Housing or VHA Target Housing, or work in child-occupied facilities are responsible for informing VHA LBP Program Manager of VHA Facility Management of deteriorated paint conditions.

## 5. REFERENCES

- a. EPA, Lead in Paint, Dust and Soil.  
<http://www.epa.gov/lead/>
- b. HUD Office of Healthy Homes and Lead Hazard Control.  
<http://www.hud.gov/offices/lead/>
- c. OSHA Safety and Health Topics - Lead.  
<http://www.osha.gov/SLTC/lead/index.html>
- d. Center for Disease Control, Lead Poisoning Prevention Program  
<http://www.cdc.gov/nceh/lead/>

**6. FOLLOW-UP RESPONSIBILITY:** The Assistant Deputy Under Secretary for Health for Operations and Management (10N) is responsible for VHA programs related to this Directive. Questions may be addressed to the Director, Safety and Technical Services at (202) 266-4602.

**7. RESCISSION:** VHA Directive 2002-010 is rescinded. This VHA Directive expires September 30, 2013.

Michael J. Kussman, MD, MS, MACP  
Under Secretary for Health

DISTRIBUTION: CO: E-mailed 9/9/08  
FLD: VISN, MA, DO, OC, OCRO, and 200 – E-mailed 9/9/08