

Lead Poisoned Children Rules

I. Purpose and Authority

These rules are adopted to assure that prompt action will be taken to confirm a lead poisoning diagnosis, to inspect the possible sources of lead poisoning, and to secure voluntary compliance or to take necessary enforcement action towards abatement and/or interim controls in target housing which is rented or leased.

These rules are adopted under authority of Section 1757 of Title 18 of the Vermont Statutes Annotated, and under the authority of the Secretary of the Agency of Human Services to promulgate such rules as are necessary to administer Title 18.

II. Definitions

Words and phrases used in these rules and not defined herein shall have the meanings given to them in Chapter 38, Title 18 of the Vermont Statutes Annotated or in the Federal Residential Lead-Based Paint Hazard Reduction Act of 1992. In the event of inconsistency between meanings given in such federal act and meanings given in Chapter 38, the federal act shall apply except where meanings given in Chapter 38 serve to narrow, limit or restrict the applicability of a word or phrase, in which cases the narrower meaning shall apply.

For purposes of these rules:

(1) "Abatement" means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by appropriate state and federal agencies. The term includes:

(A) the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil; and

(B) all preparation, cleanup, disposal and post-abatement clearance testing activities associated with such measures.

(2) "Commissioner" means the Commissioner of the Department of Health.

(3) "Comprehensive environmental lead inspection" or "inspection" means 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.

(4) "Department" means the Department of Health.

(5) "Dwelling" means:

(A) a single-family dwelling, including attached structures such as porches and stoops; or

(B) a single-family dwelling unit in a structure that contains more than one separate

residential dwelling unit, and which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

(6) "Interim Controls" means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

(7) "Lead-based paint" means paint or other surface coatings that contain lead in excess of limits established under section 302(c) of the Federal Lead-Based Paint Poisoning Prevention Act.

(8) "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, 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.

(9) "Lead poisoning" means, for purposes of these rules, a confirmed blood lead level in a child less than six years of age greater than or equal to ten micrograms of lead per deciliter of whole blood.

(10) "Licensed Private Inspector" means a private person licensed to carry out inspections in accordance with Section 1752(d) of Title 18 of the Vermont Statutes Annotated.

(11) "Occupant" means any person who resides in or regularly uses, a dwelling, dwelling unit, or structure.

(12) "Owner" means any person who, alone or jointly or severally with others:

(A) Has legal title to any dwelling or dwelling unit or day care facility with or without accompanying actual possession thereof; or

(B) Has charge, care or control of any dwelling or dwelling unit or day care facility as owner or agent of the owner, or an executor, administrator, trustee, or guardian of the estate of the owner. Any person representing the actual owner shall comply with the provisions of Chapter 38 of Title 18 and the rules adopted pursuant to Chapter 38 to the same extent as if that person were the owner. An agent of the owner does not include real estate and property management functions where the agent is only responsible for the property management and does not have authority to fund capital or major property rehabilitation on behalf of the owner.

(C) For purposes of publicly-owned property only, the owner shall be the chief executive officer of the municipal or state agency which owns, leases or controls the use of the property.

(D) A mortgagee or other secured lender or lienholder shall not be considered an owner unless such person has foreclosed or taken actual physical possession pursuant to applicable law.

(13) "Risk assessment" means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including-

(A) information gathering regarding the age and history of the housing and occupancy by children under age six;

(B) visual inspection;

(C) limited wipe sampling or other environmental sampling techniques;

(D) other activities as may be appropriate, and

(E) provision of a report explaining the results of the investigation.

(14) "Severely lead poisoned" means a confirmed blood lead level in a child under age six greater than or equal to twenty micrograms of lead per deciliter of whole blood.

(15) "State inspector" means the Commissioner or any person who is authorized in writing by the Commissioner to conduct inspections for the Department.

(16) "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities or any 0 - bedroom dwelling).

III. Protocol

1. Confirmation of Report

Upon receiving a report that a child under age six has been diagnosed by a qualified physician to have lead poisoning, the Commissioner of Health or the Commissioner's designee shall take prompt action to confirm the diagnosis.

2. Inspections/Risk Assessments

If the child is severely lead-poisoned, the Commissioner or the Commissioner's designee shall provide for the inspection/risk assessment of the dwelling unit occupied by the child and other locations where the child is known to spend 10 or more hours per week, by a State Inspector/Risk Assessor or Licensed Private Inspector/Risk Assessor.

3. Development of Plan

The Commissioner or the Commissioner's designee shall work with the parents, owner, physician, and others involved with a severely lead-poisoned child to develop a plan to minimize exposure of the child to lead hazards.

In some cases, a lead-poisoned child may require temporary or permanent relocation to

allow for the implementation of lead-based paint hazard controls. The Commissioner will work with the Department of Housing and Community Affairs to evaluate the possible resources available for this purpose. At least twice a year, the Department of Housing and Community Affairs will provide the Commissioner with a list of the owners of housing units that have received public funding and have also followed the applicable lead paint policies.

IV. Voluntary Compliance and Enforcement

Abatement and/or interim controls will be required when a child under age six who is severely lead poisoned resides in target housing which is rented or leased, and a lead-based paint hazard has been identified by an inspection/risk assessment of the dwelling unit in which the child resides. The following procedure will be followed to assure abatement and/or interim controls in such cases:

1. The owner will be given immediate written notice fully describing the lead-based paint hazards in the dwelling.
2. A specific and reasonable time period for abatement and/or interim controls will be required. This time period will depend on factors such as the extent of the abatement and/or interim controls required, and will be documented by the owner's agreement with the time period established:
3. If the time period established for abatement and/or interim controls is not adhered to, voluntary compliance will be sought by asking the owner to enter into a written Assurance of Discontinuance in accordance with 18 VSA § 125. This Assurance will include a description of the abatement and/or interim controls required and a time period for abatement and/or interim controls. The signed Assurance will be filed with the Superior Court and become an Order of the Court.
4. If an owner refuses to enter into an Assurance of Discontinuance, the Commissioner will immediately institute an action or proceeding under 18 VSA § 126 (health orders), 18 VSA § 127 (emergency health orders), 18 VSA § 130 (civil enforcement), or 18 VSA § 131 (criminal penalty) or will work with local health officials to institute such an action or proceeding.
5. Any enforcement action will include providing the child's parents or guardians and the owner with appropriate educational materials on lead poisoning prevention. The child's parents or guardians will also be provided with information obtained from the Department of Housing and Community Affairs regarding temporary or permanent relocation resources.

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