

Department of the Treasury  
Executive Office for Asset Forfeiture

Directive No: 30  
(Revised 11/25/96)

DATE: November 25, 1996

SUBJECT: **Interim Guidelines re: Lead-Based Paint in Residential Property Built Prior to 1978**

BACKGROUND

The Department of Housing and Urban Development (HUD) first promulgated regulations in 1978 regarding the use and disposal of residential property that may have lead based paints. The regulations require federal agencies to:

1. Inspect for lead-based paint
2. Eliminate the hazards of any lead-based paint present  
and
3. Notify prospective purchasers of the hazard

HUD is currently revising the regulation. This office and the U. S. Marshals Service have prepared coordinated responses on behalf of the Departments of Justice and Treasury on these regulations. These regulations coupled with the potential liabilities for leasing or selling residential properties with lead-based paint present considerable concerns for federal law enforcement agencies and their respective Departments. Litigation has already been filed in the millions of dollars for the lease and/or sale of residential properties subject to these regulations. Pending discussions and possible changes to the regulations, this office is issuing the following interim policy on this matter.

POLICY

- A. Unoccupied Pre-1978 Constructed Residential Properties Targeted for Seizure.

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1. It is the interim policy of the Department that Treasury law enforcement agencies shall not take custody of any residential property constructed prior to 1978 absent a compelling law enforcement purpose and careful pre-seizure planning that includes both an inspection for lead-based paint and an abatement cost estimate.

In the event an ongoing investigation does not permit the inspection and estimate of the targeted residential real property, the investigating agency shall assume the property is contaminated and include that critical element in the resulting net-equity evaluation and pre-seizure decision making.

2. Pre-seizure planning decisions on pre-1978 properties currently under indictment or subject to a civil forfeiture complaint, but not yet forfeited, should be re-examined to determine if it continues to be in the best interest of the government to forfeit the property.
3. Alternative methods to achieve the law enforcement purpose of removing the criminal activity and taking the property away from the criminal should be considered. (e.g., foreclosure, condemnation by public health and safety agencies, etc.)

B. Seized Unoccupied Residential Properties Leasing the Property

1. Do not lease the property. Assume the property is contaminated. Have an inspection conducted for lead-based paint as soon as practical.
2. Disposition of Residential Properties Notify potential purchasers or transferees that:
  - a. The property was built prior to 1978;
  - b. Based on an inspection, the property contains lead-based paint;
  - c. There are hazards, symptoms, and a treatment for lead-based paint poisoning;
  - d. Precautions should be taken to avoid lead-based paint poisoning.

*(Information regarding 3 a-d above is contained in the Environmental Protection Agency (EPA) fact sheet, booklet and sample disclosure forms. Copies are attached). Additional booklets will be provided the national seized property contractor for distribution to potential purchasers. The national seized property contractor will be tasked with identifying and securing qualified local inspectors and abatement services, if abatement of a lead-based hazard is considered in the best interests of the government)*

- e. Contracts for sale of potentially contaminated properties shall include language that advises the potential buyer of the hazard. If the government does not abate the hazard prior to the sale, the purchaser acknowledges that the transaction requires that he/she abate the hazard.
- f. The title transfer document should also include language that ensures that the purchaser of a residential property that is contaminated by lead-based paints is responsible for abating the hazard.
- g. A copy of the lead-based paint inspection report should be made available during pre-sale and provided to the successful purchaser of residential real property.

C. Seized and Occupied Pre-1978 Residential Property

1. The occupant(s) must be given immediate written notice of the potential hazard by the seizing agency or its agent. A copy of such notice and the receipt for same by the occupant(s) shall be maintained in the agency case file and the property custody file. This notice may be done in person or by certified, return receipt mail.
2. An inspection by a qualified lead-based paint inspector shall be conducted as soon as possible.
3. If lead-based paint is discovered, the occupant(s) should be asked to vacate the property. If they decline, the occupant(s) must execute a written waiver acknowledging that:
  - a. They were notified in writing of the hazard

- b. They were provided with a copy of the inspection report showing that lead-based paint was found in the property;
  - c. They elect to stay in the property; and,
  - d. They release the seizing agency, the Department, its employees, and the national seized property contractor and its employees and agents from any liability for illness arising from the presence of the lead-based paint.
4. If occupant(s) refuse to sign such a waiver, the seizing agency should move to have the occupant(s) vacated from the premises at the earliest possible opportunity.

D. Disposition of Seized Occupied Residential Property  
See "B. 2." Above

E. Continued Case Processing to Seizure/Forfeiture

Treasury law enforcement agencies who have decided to progress to seizure/forfeiture of a residential real property, found to be contaminated with lead-based paints, or who assume that a residential real property is contaminated with lead-based paints based solely on the fact that the property was constructed prior to 1978 *shall*:

1. Provide a written request, at least sixty days prior to a seizure/forfeiture action, to the Director, Executive Office for Asset Forfeiture, for concurrence. The request will be jointly submitted by the Treasury law enforcement seizing agency and the Assistant United States Attorney. The request shall include a detailed description of the property, including whether or not it is occupied, a detailed statement of the law enforcement purpose to be served and the reasons why it can not be accomplished by alternative means, and a net-equity analysis of the property that includes the estimated costs of inspection and abatement.
2. Further action to accomplish seizure and/or forfeiture, including taking custody of the property, should not be accomplished pending the written response of concurrence by the Director, Executive Office for Asset Forfeiture.

The national seized property contractor has been instructed not to take real property, subject to this Directive, into custody without the required written concurrence of the Director, Executive Office for Asset Forfeiture.

(Note: Part D is substantially similar to the Department of Justice policy in this matter.)

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