

CHAPTER 63. LEAD-BASED PAINT POISONING PREVENTION

GRANTS FOR DETECTION AND TREATMENT OF LEAD-BASED PAINT POISONING

Section

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GRANTS FOR ELIMINATION OF LEAD-BASED PAINT POISONING

4811. [Repealed]

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GRANTS FOR DETECTION AND TREATMENT OF LEAD-BASED PAINT POISONING

§ 4801. [Repealed]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

This section (Act Jan. 13, 1971, P. L. 91-695, Title I, § 101, 84 Stat. 2078; Nov. 9, 1973, P. L. 93-151, § 1, 87 Stat. 565; June 23, 1976, P.

LEAD-BASED PAINT POISONING

42 USCS § 4821

L. 94-317, Title II, § 204(a), 90 Stat. 705) was repealed by Act Nov. 10, 1978, P. L. 95-626, Title II, § 208(b), 92 Stat. 3588, effective Oct. 1, 1979. It provided for the development of local programs for lead-based paint poisoning prevention. Similar provisions are located at 42 USCS § 247a.

Short titles:

Act Jan. 13, 1971 P. L. 91-695, § 1, 84 Stat. 2078, provided: "This Act [which appears as 42 USCS §§ 4801 et seq.] may be cited as the 'Lead-Based Paint Poisoning Prevention Act'."

GRANTS FOR ELIMINATION OF LEAD-BASED PAINT POISONING

§ 4811. [Repealed]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

This section (Act Jan. 13, 1971, P. L. 91-695, Title II, § 201, 84 Stat. 2078; Nov. 9, 1973, P. L. 93-151, § 2, 87 Stat. 565) was repealed by Act Nov. 10, 1978, P. L. 95-626, Title II, § 208(b), 92 Stat. 3588, effective Oct. 1, 1979. It provided for development of local lead-based paint poisoning prevention programs; assistance of Secretary; required provisions; consistency of assisted programs; and employment opportunities for local residents. Similar provisions are located at 42 USCS § 247a.

FEDERAL DEMONSTRATION AND RESEARCH PROGRAM; FEDERAL HOUSING ADMINISTRATION REQUIREMENTS

§ 4821. Development of program; consultation; nature of program; report to Congress

(a) The Secretary of Housing and Urban Development, in consultation with the Secretary of Health, Education, and Welfare [Secretary of Health and Human Services], shall develop and carry out a demonstration and research program to determine the nature and extent of the problem of lead based paint poisoning in the United States, particularly in urban areas, including the methods by which the lead based paint hazard can most effectively be removed from interior surfaces, porches, and exterior surfaces of residential housing to which children may be exposed.

(b) [Executed]

(Jan. 13, 1971, P. L. 91-695, Title III, § 301, 84 Stat. 2079; Nov. 9, 1973, P. L. 93-151, § 3, 87 Stat. 566.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES**Explanatory notes:**

The words "Secretary of Health and Human Services" are inserted on authority of Act Oct. 17, 1979, P. L. 96-88, Title V, § 509, 93 Stat. 695, which appears as 20 USCS § 3508, and which redesignated the Secretary of Health, Education, and Welfare as the Secretary of Health and Human Services and provided that any reference to the Secretary of Health, Education, and Welfare, in any law in force on the effective date of such Act Oct. 17, 1979, shall be deemed to refer and apply to the Secretary of Health and Human Services, except to the extent such reference is to a function or office transferred to the Secretary of Education or the Department of Education under such Act Oct. 17, 1979.

Subsec. (b) of this section is omitted as executed. It provided that the Chairman of the Consumer Product Safety Commission shall conduct appropriate research on multiple layers of dried paint film, containing the various lead compounds commonly used, in order to ascertain the safe level of lead in residential paint products and that, no later than December 31, 1974, the Chairman should submit to Congress a full and complete report of his findings and recommendations as developed pursuant to such programs, together with a statement of any legislation which should be enacted or any changes in existing law which should be made in order to carry out such recommendations.

Amendments:

1973. Act Nov. 9, 1973, substituted this section for one which read:

"The Secretary of Housing and Urban Development, in consultation with the Secretary of Health, Education, and Welfare, shall develop and carry out a demonstration and research program to determine the nature and extent of the problem of lead-based paint poisoning in the United States, particularly in urban areas, and the methods by which lead-based paint can most effectively be removed from interior surfaces, porches, and exterior surfaces to which children may be commonly exposed, of residential housing. Within one year after the date of the enactment of this Act the Secretary shall submit to the Congress a full and complete report of his findings and recommendations as developed pursuant to such program, together with a statement of any legislation which should be enacted, and any changes in existing law which should be made, in order to carry out such recommendations."

CODE OF FEDERAL REGULATIONS

Lead-based paint poisoning prevention in certain residential structures, 24 CFR Part 35.

RESEARCH GUIDE**Am Jur:**

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LEAD-BASED PAINT POISONING

INTERPRETIVE NOTES AND DECISIONS

The only duty expressly imposed on HUD by this Act is to develop and carry out, in consultation with HEW, demonstration and research program to determine nature and extent of problem of lead-based paint poisoning and methods for most effective removal of lead-based paint from interior and exterior surfaces of residences in which children may be commonly exposed,

and to make report to Congress by January 13, 1972; HUD has not complied with congressional mandate and its report is more than 1 year overdue; primary responsibility under other sub-chapters of this Act are placed in hands of HEW. City-Wide Coalition Against Childhood Lead Paint Poisoning v Philadelphia Housing Authority (1973, ED Pa) 356 F Supp 123.

§ 4822. Federal Housing Administration procedure requirements for elimination of hazards; housing coverage: existing housing; housing constructed before 1950; housing constructed during or after 1950, discretion of Secretary; federally owned property for residential habitation; other implementing procedures.

The Secretary of Housing and Urban Development (hereafter in this section referred to as the "Secretary") shall establish procedures to eliminate as far as practicable the hazards of lead based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary. Such procedures shall apply to all such housing constructed prior to 1950 and shall as a minimum provide for (1) appropriate measures to eliminate as far as practicable immediate hazards due to the presence of paint which may contain lead and to which children may be exposed, and (2) assured notification to purchasers and tenants of such housing of the hazards of lead based paint, of the symptoms and treatment of lead based paint poisoning, and of the importance and availability of maintenance and removal techniques for eliminating such hazards. Such procedures may apply to housing constructed during or after 1950 if the Secretary determines, in his discretion, that such housing presents hazards of lead based paint. The Secretary may establish such other procedures as may be appropriate to carry out the purposes of this section. Further, the Secretary shall establish and implement procedures to eliminate the hazards of lead based paint poisoning in all federally owned properties prior to the sale of such properties when their use is intended for residential habitation.

(Jan. 13, 1971, P. L. 91-695, Title III, § 302, as added Nov. 9, 1973, P. L. 93-151, § 4(a)(1), 87 Stat. 566.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

Act Nov. 9, 1973, P. L. 93-151, § 4(b), 87 Stat 565, provided: "The amendments made by subsection (a) of this section [which enacted this section] become effective upon the expiration of ninety days following the date of enactment of this Act [enacted Nov. 9, 1973]."

CODE OF FEDERAL REGULATIONS

Lead-based paint poisoning prevention in certain residential structures, 24
CFR Part 35.

PROHIBITION AGAINST FUTURE USE OF LEAD-BASED PAINT

§ 4831. Use of lead based paint

(a) Prohibition by Secretary of Health, Education, and Welfare [Secretary of Health and Human Services] in application to cooking, drinking, or eating utensils. The Secretary of Health, Education, and Welfare [Secretary of Health and Human Services], shall take such steps and impose such conditions as may be necessary or appropriate to prohibit the application of lead-based paint to any cooking utensil, drinking utensil, or eating utensil manufactured and distributed after the date of enactment of this Act [enacted June 23, 1976].

(b) Prohibition by Secretary of Housing and Urban Development of use in residential structures constructed or rehabilitated by Federal government or with Federal assistance. The Secretary of Housing and Urban Development shall take steps and impose such conditions as may be necessary or appropriate to prohibit the use of lead-based paint in residential structures constructed or rehabilitated by the Federal Government, or with Federal assistance in any form after the date of enactment of this Act [enacted June 23, 1976].

(c) Prohibition by Consumer Product Safety Commission in application to toys or furniture articles. The Consumer Product Safety Commission shall take such steps and impose such conditions as may be necessary or appropriate to prohibit the application of lead-based paint to any toy or furniture article.

(Jan. 13, 1971, P. L. 91-695, Title IV, § 401, 84 Stat. 2079; Nov. 9, 1973, P. L. 93-151, § 5, 87 Stat. 566; June 23, 1976, P. L. 94-317, Title II, § 204(b), 90 Stat. 705.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The words "Secretary of Health and Human Services" are inserted on authority of Act Oct. 17, 1979, P. L. 96-88, Title V, § 509, 93 Stat. 695, which appears as 20 USCS § 3508, and which redesignated the Secretary of Health, Education, and Welfare as the Secretary of Health and Human Services and provided that any reference to the Secretary of Health, Education, and Welfare, in any law in force on the effective date of such Act Oct. 17, 1979, shall be deemed to refer and apply to the Secretary of Health and Human Services, except to the extent such reference is to a function or office transferred to the Secretary of Education or the Department of Education under such Act Oct. 17, 1979.

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LEAD-BASED PAINT POISONING

42 USCS § 4841

Amendments:

1973. Act Nov. 9, 1973 substituted this section for one which read:

"The Secretary of Health, Education, and Welfare shall take such steps and impose such conditions as may be necessary or appropriate to prohibit the use of lead-based paint in residential structures constructed or rehabilitated after the date of enactment of this Act by the Federal government, or with Federal assistance in any form."

1976. Act June 23, 1976, substituted this section one which read:

"The Secretary of Health, Education, and Welfare, in consultation with the Secretary of Housing and Urban Development, shall take such steps and impose such conditions as may be necessary or appropriate—

"(1) to prohibit the use of lead based paint in residential structures constructed or rehabilitated by the Federal Government, or with Federal assistance in any form, after the date of enactment of this Act, and

"(2) to prohibit the application of lead based paint to any toy, furniture, cooking utensil, drinking utensil, or eating utensil manufactured and distributed after the date of enactment of this Act."

CODE OF FEDERAL REGULATIONS

Lead-based paint poisoning prevention in certain residential structures, 24
CFR Part 35.

RESEARCH GUIDE

Am Jur:

39 Am Jur 2d, Health § 2.

Law Review Articles:

Lead Paint Poisoning: The Response in Litigation. 19 St Louis U L J
244, Winter, 1974.

Greer, Lead Paint Poisoning—Municipal, State, and Local Approaches.
7 Urban L Ann 247, 1974.

GENERAL PROVISIONS

§ 4841. Definitions

As used in this Act [42 USCS §§ 4801 et seq.]—

(1) The term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(2) The term "units of general local government" means (A) any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, (B) any combination of units of general local government in one or more States, (C) an Indian tribe, or (D) with respect to lead-based paint poisoning elimination activities in their urban areas, the territories and possessions of the United States.

(3)(A) Except as provided in subparagraph (B), the term "lead-based paint" means any paint containing more than five-tenths of 1 per centum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both.

(B)(i) The Consumer Product Safety Commission shall, during the six-month period beginning on the date of the enactment of the National Health Promotion and Disease Prevention Act of 1976, determine, on the basis of available data and information and after providing opportunity for an oral hearing and considering recommendations of the Secretary of Health, Education, and Welfare [Secretary of Health and Human Services] (including those of the Center for Disease Control) and of the National Academy of Sciences, whether or not a level of lead in paint which is greater than six one-hundredths of 1 per centum but not in excess of five-tenths of 1 per centum is safe. If the Commission determines, in accordance with the preceding sentence, that another level of lead is safe, the term "lead-based paint" means, with respect to paint which is manufactured after the expiration of the six-month period beginning on the date of the Commission's determination, paint containing by weight (calculated as lead metal) in the total nonvolatile content of the paint more than the level of lead determined by the Commission to be safe or the equivalent measure of lead in the dried film of paint already applied, or both.

(ii) Unless the definition of the term "lead-based paint" has been established by a determination of the Consumer Product Safety Commission pursuant to clause (i) of this subparagraph, the term "lead-based paint" means, with respect to paint which is manufactured after the expiration of the twelve-month period beginning on such date of enactment, paint containing more than six one-hundredths of 1 per centum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both.

(Jan. 13, 1971, P. L. 91-695, Title V, § 501, 84 Stat. 2080; Nov. 9, 1973, P. L. 93-151, § 6, 87 Stat. 567; June 23, 1976, P. L. 94-317, Title II, § 204(c), 90 Stat. 706.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"The National Health Promotion and Disease Prevention Act of 1976", referred to in this section, is probably Act June 23, 1976, P. L. 94-317, 90 Stat. 695, which among other things, amended this section. For full classification of such Act, consult USCS Tables volumes.

"Such date of enactment", referred to in this section, is probably June 23, 1976, the date of approval of Act June 23, 1976, P. L. 94-317, 90 Stat. 695.

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LEAD-BASED PAINT POISONING

42 USCS § 4842

Explanatory notes:

The words "Secretary of Health and Human Services" are inserted on authority of Act Oct. 17, 1979, P. L. 96-88, Title V, § 509, 93 Stat. 695, which appears as 20 USCS § 3508, and which redesignated the Secretary of Health, Education, and Welfare as the Secretary of Health and Human Services and provided that any reference to the Secretary of Health, Education, and Welfare, in any law in force on the effective date of such Act Oct. 17, 1979, shall be deemed to refer and apply to the Secretary of Health and Human Services, except to the extent such reference is to a function or office transferred to the Secretary of Education or the Department of Education under such Act Oct. 17, 1979.

Amendments:

1973, Act Nov. 9, 1973, substituted paragraph (3) for former one which read: "the term 'lead-based paint' means any paint containing more than 1 per centum lead by weight (calculated as lead metal) in the total non-volatile content of liquid paints or in the dried film of paint already applied."

1976, Act June 23, 1976, in paras. (1), substituted "The term" for "the term" and ";" for "and"; in para. (2), substituted "The term" for "the term" and ";" for "and"; and substituted para. (3) for one which read:

"(3) the term 'lead based paint' means—

"(A) prior to December 31, 1974, any paint containing more than five-tenths of 1 per centum lead by weight (calculated as lead metal) in the total nonvolatile content of liquid paints or in the dried film of paint already applied;

"(B) after December 31, 1974, any paint containing more than six one-hundredths of 1 per centum lead by weight (calculated as lead metal) in the total nonvolatile content of liquid paints or in the dried film of paint already applied, except that if prior to December 31, 1974, the Chairman of the Consumer Product Safety Commission, based on studies conducted in accordance with section 301(b) of this Act, determines that another level of lead, not to exceed five-tenths of 1 per centum, is safe, then such other level shall be effective after December 31, 1974."

CODE OF FEDERAL REGULATIONS

Lead-based paint poisoning prevention in certain residential structures, 24 CFR Part 35.

§ 4842. Consultation by Secretary with other departments and agencies

In carrying out their respective authorities under this Act [42 USCS §§ 4801 et seq.], the Secretary of Housing and Urban Development and the Secretary of Health, Education, and Welfare [Secretary of Health and Human Services] shall each cooperate with and seek the advice of the heads of any other departments or agencies regarding any programs under

their respective responsibilities which are related to, or would be affected by, such authority.

(Jan. 13, 1971, P. L. 91-695, Title V, § 502, 84 Stat. 2080; June 23, 1976, P. L. 94-317, Title II, § 204(d), 90 Stat. 706.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The words "Secretary of Health and Human Services" are inserted on authority of Act Oct. 17, 1979, P. L. 96-88, Title V, § 509, 93 Stat. 695, which appears as 20 USCS § 3508, and which redesignated the Secretary of Health, Education, and Welfare as the Secretary of Health and Human Services and provided that any reference to the Secretary of Health, Education, and Welfare, in any law in force on the effective date of such Act Oct. 17, 1979, shall be deemed to refer and apply to the Secretary of Health and Human Services, except to the extent such reference is to a function or office transferred to the Secretary of Education or the Department of Education under such Act Oct. 17, 1979.

Amendments:

1976. Act June 23, 1976, substituted "their respective authorities" for "the authority" and added "Secretary of Housing and Urban Development".

CODE OF FEDERAL REGULATIONS

Lead-based paint poisoning prevention in certain residential structures, 24 CFR Part 35.

§ 4843. Authorization of appropriations

(a) There are authorized to be appropriated to carry out this Act [42 USCS §§ 4801 et seq.] \$10,000,000 for the fiscal year 1976, \$12,000,000 for the fiscal year 1977, and \$14,000,000 for the fiscal year 1978.

(b) Any amounts appropriated under this section shall remain available until expended when so provided in appropriation acts; and any amounts authorized for one fiscal year but not appropriated may be appropriated for the succeeding fiscal year.

(Jan. 13, 1971, P. L. 91-695, Title V, § 503, 84 Stat. 2080; Nov. 9, 1973, P. L. 93-151, § 7(a)-(d), 87 Stat. 567; June 23, 1976, P. L. 94-317, Title II, § 204(e), 90 Stat. 706.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1973. Act Nov. 9, 1973, in subsec. (a), substituted "," for "and", inserted before the period a comma and "and \$25,000,000 for each of the fiscal years 1974 and 1975"; in subsec. (b), substituted "," for "and", inserted before the period a comma and "and \$35,000,000 for each of the fiscal years 1974 and 1975"; in subsec. (c), substituted ","

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for "and", inserted before the period a comma and "and \$3,000,000 for each of the fiscal years 1974 and 1975"; and in subsec. (d), substituted "and any amounts authorized for one fiscal year but not appropriated may be appropriated for the succeeding fiscal year" for "and any amounts authorized for the fiscal year 1971 but not appropriated may be appropriated for the fiscal year 1972".

1976. Act June 23, 1976, substituted subsec. (a) for former subsecs. (a)-(c) which read:

"(a) There is hereby authorized to be appropriated to carry out the provisions of title I of this Act not to exceed \$3,330,000 for the fiscal year 1971, \$6,660,000 for the fiscal year 1972, and \$25,000,000 for each of the fiscal years 1974 and 1975.

"(b) There is hereby authorized to be appropriated to carry out the provisions of title II of this Act not to exceed \$5,000,000 for the fiscal year 1971, \$10,000,000 for the fiscal year 1972, and \$35,000,000 for each of the fiscal years 1974 and 1975.

"(c) There is hereby authorized to be appropriated to carry out the provisions of title III of this Act not to exceed \$1,670,000 for the fiscal year 1971, \$3,340,000 for the fiscal year 1972, and \$3,000,000 for each of the fiscal years 1974 and 1975."

Such Act further redesignated subsec. (d) as subsec. (b).

Other provisions:

Fiscal year transition period of July 1, 1976 through September 30, 1976 deemed part of fiscal year beginning July 1, 1975. Act Apr. 21, 1976, P. L. 94-274, Title II, § 204(3), 90 Stat. 393, which appears as 7 USCS § 390e, provided that for the purposes of subsection (d) [now subsec. (b)] of this section, the period of July 1, 1976, through September 30, 1976, shall be treated as part of the fiscal year beginning July 1, 1975.

CODE OF FEDERAL REGULATIONS

Lead-based paint poisoning prevention in certain residential structures, 24 CFR Part 35.

§§ 4844, 4845. [Repealed]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

These sections (Act Jan. 13, 1971, P. L. 91-695, Title V, §§ 504, 505, as added Nov. 9, 1973, P. L. 93-151, § 7(e), 87 Stat. 567, 568) were repealed by Act Nov. 10, 1978, P. L. 95-626, Title II, § 208(b), 92 Stat. 3588, effective Oct. 1, 1979. Section 4844 provided for eligibility of certain State agencies; and § 4845 provided for advisory boards.

§ 4846. State laws superseded, and null and void

It is hereby expressly declared that it is the intent of the Congress to supersede any and all laws of the States and units of local government insofar as they may now or hereafter provide for a requirement, prohibi-

42 USCS § 4846

PUBLIC HEALTH AND WELFARE

tion, or standard relating to the lead content in paints or other similar surface-coating materials which differs from the provisions of this Act or regulations issued pursuant to this Act [42 USCS §§ 4801 et seq.]. Any law, regulation, or ordinance purporting to establish such different requirement, prohibition, or standard shall be null and void.

(Jan. 13, 1971, P. L. 91-695, Title V, § 504[506], as added Nov. 9, 1973, P. L. 93-151, § 7(e), 87 Stat. 567; Nov. 10, 1978, P. L. 95-626, Title II, § 208(b), 92 Stat. 3588).

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 504 of Act Jan. 13, 1971, P. L. 91-695, which formerly appeared as 42 USCS § 4844, was repealed by Act Nov. 10, 1978, P. L. 95-626, effective Oct. 1, 1979.

Redesignation:

Act Nov. 10, 1978, P. L. 95-626, Title II, § 208(b), 92 Stat. 3588 redesignated § 506 of Act Jan. 13, 1971 to be § 504 of such Act, effective Oct. 1, 1979.

CODE OF FEDERAL REGULATIONS

Lead-based paint poisoning prevention in certain residential structures, 24 CFR Part 35.