

CHAPTER 12

Federal Facilities

Multiple federal statutes and regulations establish requirements for EPA and other federal agencies to protect human health and the environment through cleanups at federal facilities, including CERCLA, which was amended by SARA in 1986; the NCP; the National Defense Authorization Act (NDAA) amendments; various Base Realignment and Closure (BRAC) Acts; and RCRA. With certain exceptions specified in CERCLA Section 120(a), each federal agency shall be subject to CERCLA to the same extent as a private entity, including liability. Federal agencies shall comply with all guidelines, rules, regulations, and criteria related to removal and remedial actions and shall not adopt guidelines inconsistent with those established by the EPA Administrator.

While existing policy, guidance, and directives on lead contamination are applicable at federal facilities, property transfer issues may present unique requirements. Beginning in 1995, EPA and the U.S. Department of Defense (DOD) began to address policy differences on the cleanup levels for lead in soils from LBP. In March 1999, DOD and EPA formalized the *Principles Memorandum* (DOD/EPA 1999), an agreement on the management of LBP at residential and nonresidential areas at BRAC properties. The *Principles Memorandum* stated that for existing residential areas located on BRAC sites, Residential Lead-Based Paint Hazard Reduction Act of 1992 (also known as Title X¹²⁵) procedures provide an efficient, effective, and legally adequate framework for addressing LBP in residential areas, and that as a matter of policy, CERCLA/RCRA would apply in limited circumstances. For residential areas that were being transferred, EPA and DOD agreed that the Title X regulations would apply. Residential real property is defined by Title X as real property on which there is situated one or more residential dwellings used or occupied, in whole or in part, as the home or residence of one or more persons. It is important to note that Title X defines residential property differently than the Handbook.

For federal property transfers subject to CERCLA where there is a concern about lead contamination to soils from LBP, EPA Regions, where they are involved, will need to decide whether the property meets the requirements of CERCLA Section 120(h)(3). This section of CERCLA outlines deed requirements for transferring federally owned property listed on the NPL and requires covenants indicating that all remedial actions necessary to protect human health and the environment have been taken prior to the date of transfer with respect to any hazardous substances remaining on the property, and that any additional remedial action found

¹²⁵ <https://www.epa.gov/lead/residential-lead-based-paint-hazard-reduction-act-1992-title-x>.

to be necessary after the date of transfer shall be conducted by the United States. Federal property contaminated with lead from LBP should be evaluated based on the property's use, or its intended reuse, before the property has been sold or transferred to a nonfederal or private entity. Generally, EPA concurrence or nonconcurrence with a Finding of Suitability to Transfer (FOST) or Early Transfer (FOSET) is documented and included in the public or administrative record.

LBP is generally considered to be the predominant source of lead in residential soil on federal facilities but it is not the only source. When evaluating potential exposure, it is important to develop a CSM to determine if the lead is a result of paint, industrial processes, already contaminated soil from another location on base (*i.e.*, shooting range, etc.), or another scenario.

As science evolves or as EPA policy and/or guidance is updated, it may be appropriate for the federal facility, along with EPA or the state regulatory agency, to reassess sites with lead contamination previously assigned a "No Further Remedial Action Planned" (NFRAP) as part of a CERCLA remedial or removal action at the site for protectiveness and potential need for additional CERCLA response actions or RCRA corrective actions for locations with residential land use. Other federal agencies serving as the lead for these facilities should discuss prioritizing reassessment and other actions with its regulators.