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RECORD-KEEPING CHECKLIST FOR HOME BUYER ASSISTANCE PROGRAM

CDBG Home Buyer Assistance recipients must demonstrate compliance with applicable requirements. IEDA will monitor recipients and activities for full compliance. The recipient should establish a filing system to provide a historic record of all activities. Files should be established for all contracts. Files must be maintained for five years after contract expiration. Files should be made for each major category shown below, as applicable, with sub-files as needed. Documents submitted to IEDA should be done through iowagrants.gov with recipients maintaining original documents in their project file.

General Administration Files

I. CDBG Housing Application

- Completed application
- Amendments and revisions to the application if any
- Correspondence about the application

II. Agreement with IEDA

- Award letter
- Signed contract (and all components), requests for amendments, approved amendments, and documentation supporting requests to amend activities or transfer funds and budget revision requests (including security instruments)
- Acknowledgement from the Environmental Officer that the proper documents were uploaded to IowaGrants and acceptable. (No official Release of Funds will be issued for this program).
- Other applicable reports and supporting documentation

III. Financial Management

- Chart of accounts
- Accounting procedures
- Accounting books of original and final entry
- Source documentation (e.g., purchase orders, invoices, contracts, budget transfer memoranda, time records)
- Lending institution records (e.g., canceled checks, deposit slips, bank statements)
- Procurement records (i.e., rationale for method of procurement, procurement policy, selection of contract type, advertisements, notification of bidding and basis of cost)

- Contractor payment control record
- Property inventory file listing any real or personal property acquired with Housing Fund assistance, as applicable and allowable

IV. Contract Transactions (may be included as part of project/activity files)

- Original recipient contracts with service providers
- Iowa Department of Public Health registration number for each contractor (or social security numbers for individuals on contract)
- Contractor clearances

V. Monitoring/Inspection

- Monitoring follow-up letters
- IEDA letters of findings and recommendations
- Response to letters of findings
- Evidence clearing any monitoring findings

VI. Audit (local governments and non-profits)

- Audit firm procurement documentation
- Hiring letter to audit firm
- Audit report
- Correspondence regarding findings

VII. Closeout

- Any final reports
- Closeout letter from IEDA and response

VIII. General Correspondence

- All correspondence received and sent, that does not fall into one of the above project file categories, including, for local governments, comments received by the recipient on the project from citizens and the recipient's response to these comments.

IX. General Complaints/Disputes

- Correspondence from local residents, government officials and/or media representatives, expressing dissatisfaction with the project; and the recipient's response to complaints. Document non-written complaints (e.g., telephone calls) with internal notes to the file.

General Compliance Files

- I. Environmental Review Record
 - Level of Review Form
- II. Equal Opportunity/Civil Rights
 - Community profile
 - Racial, ethnic and gender data showing the extent to which these categories of persons have participated in, or benefited from, Housing Fund activities
 - Documentation of all affirmative actions taken to achieve fair housing, including a local fair housing ordinance, if available
 - Evidence of attempts to identify and solicit minority contractors and vendors, including records of all contracts and subcontracts (by number and dollar amount) awarded to minority business and women's business enterprises
 - Documentation of compliance with Section 3 requirements, as applicable to the project (Refer to Section 3 portion of the CDBG Management Guide)
 - Copy of local equal opportunity policy and/or affirmative action plan (i.e., local governments with 15 or more FTEs) and data which records affirmative action in employment

Project Administration Files

Records should be maintained according to individual projects and should include the following:

- I. General project administration documents, including policies, procedures, standards, and other information of general project interest.
- II. Professional or technical services procurement and contracts
- III. Management control records
 - Where recipients are responsible for implementing a number of similar activities, such as owner-occupied rehabilitation, an ongoing composite record of current status/progress should be maintained for all similar projects. The management control record should identify major tasks accomplished, to date, for all individual projects. Ethnic/racial data should also be maintained.

Individual Project Files

Individual project files should contain a complete record of all project activities. Each project should have its own file. Within each file there should be documentation to record the chronological history of the project. Project files should include, where applicable, the following items.

- I. Individual Project Files
 - Completed formal application (and pre-application if used)
 - Income and asset documentation of applicant(s)

- Verification of income and assets and all forms used for verification
- Eligibility determination documentation
- Demographic data (i.e., family size, minority, disability, female head-of-household, age, etc.)
- Determination of type(s) and amount(s) of assistance
- Lender's documentation regarding closing costs and required down payment
- HUD Closing Statement
- Documentation of Home Inspection (if applicable)
- Lead inspection or assessment (signed or initialed, and dated)
- Work write-up and/or project specifications
- Staff cost estimate
- Lead hazards identification and all notices (as applicable)
- Revision to specifications (as applicable for lead safe housing)
- Copies of all bids and/or bid tabulation sheet (should include all bid documents such as notification of hearing and letting.)
- Letter of award to lowest responsible bidding contractor
- Letters of non-award to other contractors
- Executed copy of contract
- Permits, insurance
- All change orders
- Record of interim inspections
- Payment(s) record
- Clearance testing documentation (as applicable)
- Final inspection(s)
- Completion certificate(s) and owner acceptance of work
- Complete and recorded repayment agreement (mortgage and/or security note)
- Lien waivers (including partial lien waivers)
- Warranties or guarantees

II. Professional or Technical Services Procurement

- List of firms/individuals solicited
- Written request for proposals or qualifications for professional services (if secured by competitive negotiation), specifying the work to be done
- Evaluation criteria/review process
- Publicized notice
- Denial/award letters
- Minutes of the meeting(s) at which the contract was awarded
- Copies of contracts

III. Construction Contract

- Copy of bid advertisement
- Copy of bid package
 - Project specifications
 - Statement of terms and conditions
 - Contractor and subcontractor certification forms
 - Bid, performance and other bond requirements
- Construction contract procurement and award
 - Minutes of the bid opening meeting
 - Log of bid package recipients and bidders
 - Bid tabulation
 - Check for contractor debarment/Iowa registration
 - Copy of contract must include the same items as the bid package with completed forms
 - Pre-construction conference report or minutes
 - Copy of notice of contract award
 - Notice to contractor to proceed with the work
- Contractor performance records.
 - Reports on job site inspections
 - Log of payments made to contractor
- Records of contractor violations (if applicable)
 - Notice of contractor violation
 - Record of resolution

RECORD-KEEPING CHECKLIST FOR HOUSING SUSTAINABILITY PROGRAM

CDBG Owner Occupied Housing Sustainability recipients must demonstrate compliance with applicable requirements. IEDA will monitor recipients and activities for full compliance. The recipient should establish a filing system to provide a historic record of all activities. Files should be established for all contracts. Files must be maintained for five years after contract expiration. Files should be made for each major category shown below, as applicable, with sub-files as needed. Documents submitted to IEDA should be done through iowagrants.gov with recipients maintaining original documents in their project file.

General Administration Files

I. CDBG Housing Application

- Completed application
- Amendments and revisions to the application if any
- Correspondence about the application

II. Agreement with IEDA

- Award letter
- Signed contract (and all components), requests for amendments, approved amendments, and documentation supporting requests to amend activities or transfer funds and budget revision requests (including security instruments)
- Requests for funds
- Other applicable reports and supporting documentation

III. Financial Management

- Chart of accounts
- Accounting procedures
- Accounting books of original and final entry
- Source documentation (e.g., purchase orders, invoices, contracts, budget transfer memoranda, time records)
- Lending institution records (e.g., canceled checks, deposit slips, bank statements)
- Procurement records (i.e., rationale for method of procurement, procurement policy, selection of contract type, advertisements, notification of bidding and basis of cost)
- Contractor payment control record

- Property inventory file listing any real or personal property acquired with Housing Fund assistance, as applicable and allowable

IV. Contract Transactions (may be included as part of project/activity files)

- Original recipient contracts with service providers
- Iowa Department of Public Health registration number for each contractor (or social security numbers for individuals on contract)
- Contractor clearances

V. Monitoring/Inspection

- Monitoring follow-up letters
- IEDA letters of findings and recommendations
- Response to letters of findings
- Evidence clearing any monitoring findings

VI. Audit (local governments and non-profits) (If applicable, see the amended Single Audit Act of 1996)

- Audit firm procurement documentation
- Hiring letter to audit firm
- Audit report
- Correspondence regarding findings

VII. Closeout

- Any final reports
- Closeout letter from IEDA and response

VIII. General Correspondence

- All correspondence received and sent, that does not fall into one of the above project file categories, including, for local governments, comments received by the recipient on the project from citizens and the recipient's response to these comments.

IX. General Complaints/Disputes

- Correspondence from local residents, government officials and/or media representatives, expressing dissatisfaction with the project; and the recipient's response to complaints. Document non-written complaints (e.g., telephone calls) with internal notes to the file.

General Compliance Files

I. Environmental Review Record

- Environmental assessment
- Copies of published notices
- Copy of Request for Release of Funds (HUD Form 7015.15)
- Letter from IEDA releasing funds
- Section 106 approval from IEDA
- Documentation of compliance with Environmental Clearance Worksheets
- Copies of citizen comments made on the environmental assessment

II. Equal Opportunity/Civil Rights

- Community profile
- Racial, ethnic and gender data showing the extent to which these categories of persons have participated in, or benefited from, Housing Fund activities
- Documentation of all affirmative actions taken to achieve fair housing, including a local fair housing ordinance, if available
- Evidence of attempts to identify and solicit minority contractors and vendors, including records of all contracts and subcontracts (by number and dollar amount) awarded to minority business and women's business enterprises
- Documentation of compliance with Section 3 requirements, as applicable to the project (Refer to Chapter 8/ Appendix 8 of the CDBG Management Guide)
- Copy of local equal opportunity policy and/or affirmative action plan (i.e., local governments with 15 or more FTEs) and data which records affirmative action in employment

Project Administration Files

Records should be maintained according to individual projects and should include the following:

- I. General project administration documents, including policies, procedures, standards, and other information of general project interest.
- II. Professional or technical services procurement and contracts
- III. Management control records
 - Where recipients are responsible for implementing a number of similar activities, such as owner-occupied rehabilitation, an ongoing composite record of current status/progress should be maintained for all similar projects. The management control record should identify major tasks accomplished, to date, for all individual projects. Ethnic/racial data should also be maintained.

Individual Project Files

Individual project files should contain a complete record of all project activities. Each project should have its own file. Within each file there should be documentation to record the chronological history of the project. Project files should include, where applicable, the following items.

I. Individual Project Files

- Completed formal application (and pre-application if used)
- Income and asset documentation of applicant(s)
- Verification of income and assets and all forms used for verification
- Verification of the homeowner's OR household member's elderly (60+) OR "Severely Disabled" status (Architectural Barrier Removal Program ONLY)
- Verification of ownership and primary place of residence
- Eligibility determination documentation
- Demographic data (i.e., family size, minority, disability, female head-of-household, age, etc.)
- Determination of type(s) and amount(s) of assistance
- Initial inspection (signed or initialed, and dated) (For Exterior Home Improvements and Energy Efficiency Improvements Programs ONLY)
- Needs Assessment (signed or initialed, and dated) showing what is required for the homeowner or household member to have completed to remain residing in the home. (For Architectural Barrier Removal Program ONLY)
- Energy Audit (Energy Efficiency Improvements Program ONLY)
- Work write-up and/or project specifications
- The CDBG Home Energy Efficiency Eligible Activities Checklist (Energy Efficiency Improvements Program ONLY)
- Staff cost estimate
- Lead hazards identification and all notices (as applicable)
- Revision to specifications (as applicable for lead safe housing)
- Copies of all bids and/or bid tabulation sheet (should include all bid documents such as notification of hearing and letting.)
- Letter of award to lowest responsible bidding contractor
- Letters of non-award to other contractors

- Executed copy of contract
- Permits, insurance
- All change orders
- Record of interim inspections
- Payment(s) record
- Clearance testing documentation (as applicable)
- Final inspection(s)
- Completion certificate(s) and owner acceptance of work
- Complete and recorded repayment agreement (mortgage and/or security note)
- Lien waivers (including partial lien waivers)
- Warranties or guarantees

II. Professional or Technical Services Procurement

- List of firms/individuals solicited
- Written request for proposals or qualifications for professional services (if secured by competitive negotiation), specifying the work to be done
- Evaluation criteria/review process
- Publicized notice
- Denial/award letters
- Minutes of the meeting(s) at which the contract was awarded
- Copies of contracts

III. Construction Contract

- Copy of bid advertisement
- Copy of bid package
 - Project specifications
 - Statement of terms and conditions
 - Contractor and subcontractor certification forms
 - Bid, performance and other bond requirements

- Construction contract procurement and award
 - Minutes of the bid opening meeting
 - Log of bid package recipients and bidders
 - Bid tabulation
 - Check for contractor debarment/Iowa registration
 - Documentation of Single Source approval from IEDA. (if applicable)
 - Copy of contract must include the same items as the bid package with completed forms
 - Pre-construction conference report or minutes
 - Copy of notice of contract award
 - Notice to contractor to proceed with the work

- Contractor performance records.
 - Reports on job site inspections
 - Log of payments made to contractor

- Records of contractor violations (if applicable)
 - Notice of contractor violation
 - Record of resolution

MEMORANDUM

Date: July 22, 2016
To: CDBG Owner Occupied Housing Program Recipients
From: Iowa Economic Development Authority
Subject: Radon Testing

Thank you to everyone who attended the Radon Testing/Mitigation Training in Des Moines, presented by the American Lung Association. I wanted to follow up on important information regarding radon and how we will implement the new requirements into Iowa's CDBG projects.

Short-term test kits are available for purchase through the American Lung Association of the Upper Midwest. Approved charcoal test kits can be ordered by calling the ALA Hotline at 1-800-383-5992.

12 hours prior to testing, doors and windows should remain closed, except for normal daily use. **Homeowners should be informed all doors and windows must remain closed (except for normal use), and the kit must remain undisturbed throughout the duration of testing.**

The test kit should be placed using the following guidelines:

- One kit per foundation type
- Kit should be placed at the **lowest livable area of the home**. If a basement is not used as a family room or bedroom, then the lowest livable area would be the 1st floor.
- Between 20 in. and 6 ft. from the floor (breathable zone)
- At least 1 ft. from walls
- At least 3 ft. from doors and windows
- 4 in. away from any objects directly above or horizontally
- 20ft from any air flow devices (A/C, etc.)
- Away from heat sources, high humidity areas, furnaces, washer/dryers
- Test kits should be hung using clear plastic hook included on the kit
- Test for 3-7 days

While testing, whole house fans should not be used and A/C units must be placed on recirculating mode. Indoor temperature should be set at 72 degrees +/- 5 degrees. Please note, severe weather will impact results, please be aware of future weather conditions prior to scheduling your testing period.

If the test results indicate a reading above 4 picocuries per liter, mitigation should be considered. At this time, you are not required to mitigate radon if there are other home repairs that are more important to protect the health and safety of the occupants. However, if your budget allows for mitigation it should be completed.

If the initial charcoal test comes back above 4 picocuries per liter, we recommend completing a second test before deciding to mitigate. Mitigation is a considerable investment, and you'll want to be sure that the test was done appropriately. If project timelines make it difficult to do the second test, it is recommended to conduct simultaneous tests, using two charcoal kits which are placed 4-6 inches from

each other. Average the two results to confirm and have reassurance the test was done correctly as the two results should be close in number.

You will need to have the homeowner sign off that they have received the radon results and that you have discussed with them mitigation if the levels are above 4 picocuries per liter.

Contact information, including name of the homeowner, address and the grant administrator's email address, should be filled out completely on the test kit. Each test includes a serial number which can be used to look up test results online at Radon.com. http://www.radon.com/radon/radon_results.html

To find a mitigation specialist in your area, please visit the website below and select the link for "Iowa Credentialed Radon Mitigation Specialists" or "Map of Iowa Credentialed Radon Mitigation Specialists". <http://idph.iowa.gov/radon/fix>

If you have any questions regarding testing, please contact your project manager.

Income Verification Guidance for Recipients- CDBG Housing Programs

Under the Federal CDBG regulations, recipients must select and use one of three methods for calculating income to determine if households are eligible to participate in a CDBG program.

IEDA has made the determination that communities receiving CDBG funding should use the Part 5 definition of income when collecting information and verifying income for potential homeowners.

The Part 5 definition of income is the gross amount of income of all adult household members that is anticipated to be received during the coming 12-month period. A detailed list of income and asset sources can be found in federal regulation 24 CFR 5.609 (regulation attached).

To verify income, the following documents must be collected from homeowners:

- IRS form 1040/ tax return from the most recent year
- Disclosure of all anticipated income for the next 12 months with documentation (sample income verification form attached)

Notes

- Documentation used for CDBG income verification is valid for 12 months.
- 3rd party verification of income is allowed under the CDBG program and is considered a best practice when verifying documentation provided by a homeowner/homebuyer/tenant. However, 3rd party verification is not required.

Additional resources:

HUD has an on-line income calculator that can be used to help determine a household's annual gross income for establishing eligibility for assistance. Communities and grant administrators may reference the CPD Income Eligibility Calculator at <https://www.hudexchange.info/incomecalculator/>.

HUD's "*Technical Guide on Determining Income and Allowances under the HOME Program*," is a very thorough and detailed guide. This guide may be helpful when assessing how to handle particular assets. The guide can be found at:

<https://www.hudexchange.info/resources/documents/HOMEGuideForIncomeAndAllowances.pdf>.

Sample Income Verification Form- CDBG Housing Programs

INCOME INFORMATION (For all members of the household)

Please answer each of the following questions for each member of the household.

For each question answered "Yes," please provide details in the chart below on page 3 and attach documentation of income (examples: W-2s, pay stubs, etc.)

Does any member of your household:

- Yes No 1. Work full-time, part-time or seasonally?
- Yes No 2. Expect to work for any period during the next 12 months?
- Yes No 3. Work for someone who pays them cash?
- Yes No 4. Now receive or expect to receive unemployment benefits in the next 12 months?
- Yes No 5. Now receive or expect to receive workers compensation in the next 12 months?
- Yes No 6. Now receive or expect to receive student financial aid of any kind in the next 12 months?
- Yes No 7. Now receive or expect to receive veteran's benefits in the next 12 months?
- Yes No 8. Now receive or expect to receive military pay in the next 12 months?
- Yes No 9. Now receive or expect to receive income from self-employment in the next 12 months?
- Yes No 10. Now receive or expect to receive child support in the next 12 months?
- Yes No 11. Now receive or expect to receive alimony in the next 12 months?
- Yes No 12. Now receive or expect to receive FIP from Dept of Human Services (do not include food stamps)?
- Yes No 13. Now receive or expect to receive Social Security or disability benefits in the next 12 months?
- Yes No 14. Now receive or expect to receive income from a pension or annuity in the next 12 months?
- Yes No 15. Now receive or expect to receive regular contributions from anyone not living in the unit in the next 12 months?
- Yes No 16. Receive income from assets including interest or dividends on checking, savings accounts, CDs, bonds or stocks?
- Yes No 17. Do you own real estate? List address(es) _____
- Yes No 18. Do you receive income from rental property? List address(es) _____

Sample Income Verification Form- CDBG Housing Programs

ASSET INFORMATION (For all members of the household)

Please answer each of the following questions for each member of the household.

For each “yes” provide details in the chart below and attach documentation of assets (examples: bank statements, etc.)

Does any member of your household have:

- Yes No 1. Cash in a checking account?
- Yes No 2. Cash in a savings account?
- Yes No 3. Cash value in a revocable trust?
- Yes No 4. Cash value in stock, bonds, treasury bills?
- Yes No 5. Cash value in Certificates of Deposit and/or Money Market Accounts?
- Yes No 6. Equity in rental property, farm land or other capital investment?
- Yes No 7. Value in an Individual Retirement Plan or Keogh Account?
- Yes No 8. Retirement and/or Pension Fund?
- Yes No 9. Now receive or expect to receive child support?
- Yes No 10. Insurance Settlement?
- Yes No 11. Mortgages or deeds of trust held?

Sample Income Verification Form- CDBG Housing Programs

(Note: Click on document to open in Excel format)

Sample Format for Calculating Part 5 Annual Income					
1. Name:			2. Identification:		
ASSETS					
Household Member	Asset Description			Actual Income from Assets	
3. Total Actual Income from Assets.....					\$0
ANTICIPATED ANNUAL INCOME					
Household Member	a. Wages/ Salaries	b. Benefits/ Pensions	c. Public Assistance	d. Other Income	e. Asset Income
4. Totals	\$0	\$0	\$0	\$0	\$0
5. Total of items from 4a. through 4e is <i>Annual Income</i>					\$0

X _____
Applicant Signature

Date

 For Office Use Only

Household Income: _____
 Income Level _____

Signature of Certifying Staff

Sample Income Verification Form- CDBG Housing Programs

I certify by signing below that the information provided in this document is complete, true and correct. I certify that information for each household member is provided, including all income and asset information.

I understand that the above information is being collected to determine eligibility under a Federal Community Development Block Grant (CDBG) funded project.

I authorize the city of _____ or its appointed representative to verify all information provided on this application and to contact current sources for credit and certification information which may be released to appropriate Federal, State, or local agencies.

I understand that additional information may be required to determine program eligibility.

I understand that if, in the next 12 months, any of the above information changes, I must notify the city of _____ and provide updated information.

I understand that if the city of _____ or its appointed representative determines my household income is above the 80% of the median household income, I am ineligible to receive assistance under the CDBG program.

I understand that if the city of _____ or its appointed representative determines my household income is above 80% of the median household income, and CDBG funds have been spent on the property, those funds must be repaid to the city of _____ immediately.

I understand that providing false statements or information is punishable under State and/or Federal law.

Applicant signature

Property address: _____

SAMPLE FORGIVABLE MORTGAGE

Notice: This Mortgage secures a loan (“*Loan*”) in the amount of \$_____. This Loan is senior to indebtedness to other creditors under subsequently recorded or filed mortgages and liens unless the Lender enters into a written subordination agreement.

Grant of Mortgage. For valuable consideration, name of borrowers (“*Grantor*”) hereby grants, mortgages and conveys to [name of lender] (“*Lender*”) a security interest in all of Grantor’s right, title, and interest in and to the following described real property (“*Mortgaged Property*”) located in the County of [county name]:

Insert legal description here

The Mortgaged Property or its address is commonly known as [insert street address].

The security interest in the Mortgaged Property includes all existing or subsequently erected or affixed buildings, improvements, and fixtures.

This Mortgage is given to secure the Grantor’s performance of any, and all, obligations under the Forgivable Loan Promissory Note (“*Note*”) executed by the Grantor on this date and payable to the Lender.

Performance. Except as otherwise provided in this Mortgage or the Note, the Grantor shall strictly perform all of Grantor’s obligations under this Mortgage and the Note.

Terms and Conditions

1. Affordability Period. The Grantor shall comply with the terms of this Forgivable Loan Promissory Note for a term of [(*enter length of affordability period*)] (“*Affordability Period*”) beginning on the date of this Forgivable Loan Promissory Note. The Loan shall be forgiven 1/ [*depending on length of affordability period*] on each anniversary of the date the Grantor executed this Forgivable Mortgage for each year during the Affordability Period.

2. Principal Residence Requirement: Notice of Sale and Recapture. The Grantor shall own and occupy the Mortgaged Property as the Grantor’s principal residence. The Grantor shall notify the Lender if the Grantor no longer occupies the Mortgaged Property as the Grantor’s principal residence or if the Grantor sells or transfers for any reason, the Mortgage Property during the Affordability Period. If the Grantor sells or transfers the Mortgaged Property during the Affordability Period, the Grantor shall pay the Lender the un-forgiven balance of the Loan, unless the Net Proceeds (defined as the sale price minus the payoff on the first mortgage lien on the property and any usual and customary sellers’ closing costs) of the sale are not sufficient to cover the un-forgiven balance of the Loan. If the Net Proceeds are not sufficient to cover the un-forgiven balance of the Loan, the amount of the Loan subject to recapture shall be determined in accordance with the provisions of paragraph 3, below.

3. Insufficient Proceeds. If Net Proceeds are insufficient to repay the un-forgiven balance of the Loan, any Net Proceeds available shall be distributed to the Grantor and the Lender based on a ratio of the Original Loan Amount (“OLA”) to the sum of the OLA and the Grantor’s Investment (“GI” – defined as any out-of-pocket down payment paid by the Grantor plus any verified capital improvements made by the Grantor), as follows:

$\frac{\text{OLA}}{\text{OLA} + \text{GI}} \times \text{Net proceeds} = \text{Recapture Amount payable to Lender}$
--

$\frac{GI}{OLA + GI} \times \text{Net Proceeds} = \text{Proceeds payable to Grantor}$

If there are no Net Proceeds to distribute, the recapture amount payable to the Lender shall be zero.

4. Refinance. If the Grantor refinances the first lien on the Mortgaged Property with a lender approved by the Iowa Economic Development Authority during the Affordability Period, the Lender may, in its sole discretion, agree to sign a subordination agreement subordinating the mortgage securing this debt to the new mortgage held by the IEDA-approved lender. The refinancing of the Homebuyer Assistance lien may ONLY be refinanced for the purpose of lowering the interest rate and not for cash out during the Period of Affordability. If the Grantor refinances both the first mortgage and this mortgage during the Affordability Period, the Grantor shall pay the Lender the entire un-forgiven balance of the Loan

5. Duty to Maintain. Grantor shall maintain the Mortgaged Property in good condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value and shall not cause or suffer waste on or to the Mortgaged Property.

6. Taxes and Liens. Grantor shall pay all taxes and special assessments before the taxes or special assessments become delinquent. Grantor shall maintain the Mortgaged Property free of any liens having priority over the interest of the Lender, except as specifically agreed to in writing by the Lender.

7. Insurance. Grantor shall keep in force homeowners insurance with a standard mortgagee clause in favor of the Lender covering all improvements on the Mortgaged Property against loss by fire, tornado and other hazards in an amount not less than the total combined mortgages and liens on the Mortgaged Property. Grantor shall provide proof of insurance and appropriate riders to the Lender and shall pay all premiums on the insurance when due.

8. Lender's Expenses. If the Grantor fails to (a) pay all taxes, (b) maintain required insurance coverage on the Mortgaged Property, or (c) maintain the Mortgaged Property in good condition, the Lender may do so, at the Lender's sole discretion. The Grantor shall be obligated to repay all expenses incurred or paid by Lender for such purposes and any amounts owed to the Lender for such purposes will accrue interest at [describe the rate that will apply]. The rights provided in this paragraph shall be in addition to any other rights or any remedies to which the Lender may be entitled as a result of any default. Any such action by Lender shall not be construed as curing the default so as to bar Lender from any remedy that it otherwise would have had.

9. Acceleration of Maturity and Receivership. If the Grantor defaults on this Forgivable Mortgage and the Note, the Lender may declare the Grantor in default and the entire un-forgiven amount of the Loan plus any payments made by the Lender for taxes, assessments, insurance premiums, or repairs shall become due and owing and the entire amount shall be collectable by foreclosure or otherwise. At any time after the commencement of any action in foreclosure, or during the period of redemption, and upon the request of the Lender, the court shall appoint a receiver to take immediate possession of the Mortgaged Property.

10. Default Events. At Lender's option, Grantor will be in default under this Mortgage if any of the following happens:

- a. The Grantor fails to occupy the Mortgaged Property as Grantor's principal residence for a period of two consecutive months.
- b. The Grantor sells, transfers, or conveys the Mortgaged Property.
- c. The Grantor fails to pay all taxes, to pay the insurance, or to maintain the property in good condition.

11. Attorney's Fees. If Lender institutes any suit to enforce this Forgivable Mortgage and the Note and to foreclose on the Forgivable Mortgage, the Grantors shall pay all costs of the action, including reasonable attorneys' fees, court costs, and abstracting fees.

12. Governing Law. This Forgivable Mortgage and the Note shall be construed in accordance with the laws of the State of Iowa and the federal laws and regulations governing the HOME Investment Partnership Program.

13. Warranty of Title. The Grantor warrants that Grantor holds good and marketable title of record to the Mortgaged Property in fee simple, clear of all liens and encumbrances other than the first mortgage lien held by a lender approved by the Iowa Economic Development Authority and agreed to by the Lender.

14. Eminent Domain. If the Mortgaged Property is subject to eminent domain proceedings, the transfer shall constitute a sale of the Mortgaged Property and the proceeds shall be subject to the recapture provisions described above.

15. Non-judicial Foreclosure. Lender may exercise the right to non-judicial foreclosure pursuant to Iowa Code section 654.18 and Chapter 655A as currently enacted or hereafter modified, amended or replaced.

16. Shortened Redemption. Grantor hereby agrees that, in the event of foreclosure of this Forgivable Mortgage, Lender may, at Lender's sole option, elect to reduce the period of redemption pursuant to Iowa Code sections 628.26, 628.27, or 628.28, or any other Iowa Code section, to such time as may then be applicable and provided by law.

17. Notices. Any notice provided for under this Forgivable Mortgage shall be given in writing by registered or certified mail, by receipted hand delivery, or by courier and addressed to the Grantor at the Mortgaged Property's address. Notice shall be effective at the earliest of (a) the time it is actually received, (b) within one day if it is delivered using an overnight courier service, or (c) within five days after it is deposited in the U.S. mail if it is delivered using registered or certified mail.

18. Successors and Assigns. Subject to any limitations stated in this Forgivable Mortgage, this Forgivable Mortgage shall be binding on and inure to the benefit of the parties' successors and assigns.

19. Time is of the Essence. Time is of the essence in the performance of this Forgivable Mortgage and the Note.

20. Release of Rights of Dower, Homestead and Distributive Share. Each of the undersigned Grantors hereby relinquishes all rights of dower, homestead and distributive share in and to the Mortgaged Property and waives all rights of exemption as to any of the Mortgaged Property. If a Grantor is not an owner of the Property, that Grantor executes this Mortgage for the sole purpose of relinquishing and waiving such rights.

21. Impact on Real Property. All of the terms and conditions herein shall run with and encumber the Mortgaged Property and the improvements thereon, and be binding upon the Grantor and the Grantor's successors and/or assigns during the Affordability Period.

EACH GRANTOR ACKNOWLEDGES HAVING READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS FORGIVABLE MORTGAGE, AND EACH AGREES TO ITS TERMS.

GRANTOR ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS FORGIVABLE MORTGAGE AND ALL OTHER DOCUMENTS RELATING TO THIS DEBT.

GRANTOR:

[Name of Grantor], Individually

[Name of Grantor], Individually

INDIVIDUAL ACKNOWLEDGEMENT

STATE OF IOWA)
) SS
COUNTY OF)

On this ____ day of 20____, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared [*Grantors names*], to me known to be the persons named in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her voluntary act and deed.

Seal

Notary Public in and for the State of Iowa

Commission Expires: _____

RECORD-KEEPING CHECKLIST FOR UPPER STORY CONVERSION PROGRAM

CDBG Upper Story Conversion recipients must demonstrate compliance with applicable requirements. IEDA will monitor recipients and activities for full compliance. The recipient should establish a filing system to provide a historic record of all activities. Files should be established for all contracts. Files must be maintained for five years after contract expiration. Files should be made for each major category shown below, as applicable, with sub-files as needed. Documents submitted to IEDA should be done through iowagrants.gov with recipients maintaining original documents in their project file.

General Administration Files

I. CDBG Housing Application

- Completed application
- Amendments and revisions to the application if any
- Correspondence about the application

II. Agreement with IEDA

- Award letter
- Signed contract (and all components), requests for amendments, approved amendments, and documentation supporting requests to amend activities or transfer funds and budget revision requests (including security instruments)
- Requests for funds
- Other applicable reports and supporting documentation

III. Financial Management

- Chart of accounts
- Accounting procedures
- Accounting books of original and final entry
- Source documentation (e.g., purchase orders, invoices, contracts, budget transfer memoranda, time records)
- Lending institution records (e.g., canceled checks, deposit slips, bank statements)
- Procurement records (i.e., rationale for method of procurement, procurement policy, selection of contract type, advertisements, notification of bidding and basis of cost)
- Contractor payment control record

- Property inventory file listing any real or personal property acquired with Housing Fund assistance, as applicable and allowable

IV. Contract Transactions (may be included as part of project/activity files)

- Original recipient contracts with service providers
- Contractor clearances

V. Monitoring/Inspection

- Monitoring follow-up letters
- IEDA letters of findings and recommendations
- Response to letters of findings
- Evidence clearing any monitoring findings

VI. Audit (local governments and non-profits)

- Audit firm procurement documentation
- Hiring letter to audit firm
- Audit report
- Correspondence regarding findings

VII. Closeout

- Any final reports
- Closeout letter from IEDA and response

VIII. General Correspondence

- All correspondence received and sent, that does not fall into one of the above project file categories, including, for local governments, comments received by the recipient on the project from citizens and the recipient's response to these comments.

IX. General Complaints/Disputes

- Correspondence from local residents, government officials and/or media representatives, expressing dissatisfaction with the project; and the recipient's response to complaints. Document non-written complaints (e.g., telephone calls) with internal notes to the file.

General Compliance Files

I. Environmental Review Record

- Environmental assessment
- Copies of published notices
- Copy of Request for Release of Funds (HUD Form 7015.15)
- Letter from IEDA releasing funds
- Section 106 approval from IEDA
- Documentation of compliance with Environmental Clearance Worksheets
- Copies of citizen comments made on the environmental assessment
- Verification that when mitigation was necessary that it was completed or attenuated.

II. Equal Opportunity/Civil Rights

- Community profile
- Racial, ethnic and gender data showing the extent to which these categories of persons have participated in, or benefited from, Housing Fund activities
- Documentation of all affirmative actions taken to achieve fair housing, including a local fair housing ordinance, if available
- Evidence of attempts to identify and solicit minority contractors and vendors, including records of all contracts and subcontracts (by number and dollar amount) awarded to minority business and women's business enterprises
- Documentation of compliance with Section 3 requirements, as applicable to the project (Refer to Chapter 8 & Appendix 8 of the CDBG Management Guide)
- Copy of local equal opportunity policy and/or affirmative action plan (i.e., local governments with 15 or more FTEs) and data which records affirmative action in employment

Project Administration Files

Records should be maintained according to individual projects and should include the following:

- I. General project administration documents, including policies, procedures, standards, and other information of general project interest.
- II. Professional or technical services procurement and contracts
- III. Management control records
 - Where recipients are responsible for implementing a number of similar activities, such as owner-occupied rehabilitation, an ongoing composite record of current status/progress should be

maintained for all similar projects. The management control record should identify major tasks accomplished, to date, for all individual projects. Ethnic/racial data should also be maintained.

Project File

Project files should contain a complete record of all project activities. Each project should have its own file. Within each file there should be documentation to record the chronological history of the project. Project files should include, where applicable, the following items.

Project File:

- Development Agreement
- Rent Calculation Worksheet
- Source and Use of Funds form
- Financial commitments including construction and permanent financing for all sources of funds other than CDBG
- Documentation of Site Control
- Green Development Plan and Checklist
- Documentation of Non-profit status
- Documentation of Proper Zoning

II. Professional Procurement (Applicable for those not a party to the Development Agreement)

- List of firms/individuals solicited
- Written request for proposals or qualifications for professional services (if secured by competitive negotiation), specifying the work to be done
- Evaluation criteria/review process
- Publicized notice
- Denial/award letters
- Minutes of the meeting(s) at which the contract was awarded
- Copies of contracts

III. Construction Contract (If applicable)

- Copy of bid advertisement
- Copy of bid package
 - Project specifications

- Statement of terms and conditions
- Contractor and subcontractor certification forms
- Bid, performance and other bond requirements

- Construction contract procurement and award
 - Minutes of the bid opening meeting
 - Log of bid package recipients and bidders
 - Bid tabulation
 - Check for contractor debarment/Iowa registration
 - Copy of contract must include the same items as the bid package with completed forms
 - Pre-construction conference report or minutes
 - Copy of notice of contract award
 - Notice to contractor to proceed with the work

- Contractor performance records.
 - Reports on job site inspections
 - Log of payments made to contractor

- Records of contractor violations (if applicable)
 - Notice of contractor violation
 - Record of resolution

Tenant Files

Each tenant should have their own file. Tenant files should include, where applicable, the following items.

Tenant Files

- Completed formal application (and pre-application if used)
- Income and asset documentation of applicant(s)
- Verification of income and assets and all forms used for verification
- Eligibility determination documentation
- Demographic data (i.e., family size, minority, disability, female head-of-household, age, etc.)
- Lead hazards identification and all notices (as applicable)
- Executed lease agreement

Homebuyer Assistance Lead Summary

The CDBG program is impacted by HUD's Lead Safe Housing Regulations. This legislation is formally known as the "Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Final Rule" (24 CFR, Part 35, et. al.).

The applicability of the various subparts of these regulations will depend upon the type of activity you are undertaking.

Home Buying Activity Guidance:

For home buying requirements for the Homebuyer Assistance Program, the following apply.

Subpart A – "Disclosure of Known Lead-Based Paint Hazards Upon Sale or Lease of Residential Property"

Requirements

The regulation details that; (a) before a purchaser is obligated under any contract to purchase target housing, the **SELLER** shall permit the purchaser a 10-day period (unless the parties mutually agree in writing, upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint and /or lead-based paint hazards. Notwithstanding paragraph (a) of this section, a purchaser has the right to waive the opportunity to conduct the risk assessment or inspection by indicating so in writing. (*See statement below.)

*However, the Homebuyer Assistance Program has mandated a lead inspection/risk assessment conducted and hazards be addressed in order for the Homebuyer to be eligible for assistance on any homes built prior to 1978. Funds have been made available as part of this program to cover these expenses.

Once the lead inspection/risk assessment is completed, then the requirements are applicable to the next section, Rehabilitation.

Notification

Be aware with any homeownership assistance activity (target housing), the SELLER must provide the buyer with a notice, "Disclosure of Known Lead-Based Paint Hazards Upon Sale or Lease of Residential Property". The SELLER must also disclose any reports or records, if known, pertaining to lead-based paint and/or lead-based paint hazards in the home. The purchaser must affirm receipt of said information.

General Requirements and Rehabilitation Activity Guidance:

Regulations

For Rehabilitation requirements for the Homebuyer Assistance Program, the following apply.

Subpart K - "Acquisition, Leasing, Support Services or Operation"

You are encouraged to read and become familiar with above listed subpart of this legislation. The purpose of Subpart K is to establish procedures to eliminate, as far as practicable, lead-based

paint hazards in a residential property that receives Federal assistance under certain HUD programs for acquisition, leasing, support services, or operation.

HUD's Lead Safe Housing regulations apply to all residential property constructed prior to January 1, 1978 (commonly referred to as "target housing") being assisted with HUD funds.

Exemptions

There are a number of exemptions to the regulations. Recipients should contact their IEDA project manager to determine if an exemption is applicable to a property. IEDA will make the final determination on any exemptions to the regulations.

Exemptions include (from 24 CFR Part 35):

- (1) A residential property for which construction was completed on or after January 1, 1978, or, in the case of jurisdictions which banned the sale or residential use of lead-containing paint prior to 1978, an earlier date as HUD may designate (see Sec. 35.160).
- (2) A zero-bedroom dwelling unit, including a single room occupancy (SRO) dwelling unit.
- (3) Housing for the elderly, or a residential property designated exclusively for persons with disabilities; except this exemption shall not apply if a child less than age 6 resides or is expected to reside in the dwelling unit
- (4) Residential property found not to have lead-based paint by a lead-based paint inspection conducted in accordance with Sec. 35.1320(a). Results of additional test(s) by a certified lead-based paint inspector may be used to confirm or refute a prior finding.
- (5) Residential property in which all lead-based paint has been identified, removed, and clearance has been achieved in accordance with 40 CFR 745.227(b)(e) before September 15, 2000, or in accordance with Secs. 35.1320, 35.1325 and 35.1340 on or after September 15, 2000. This exemption does not apply to residential property where enclosure or encapsulation has been used as a method of abatement.
- (6) An unoccupied dwelling unit or residential property that is to be demolished, provided the dwelling unit or property will remain unoccupied until demolition.
- (7) A property or part of a property that is not used and will not be used for human residential habitation, except that spaces such as entryways, hallways, corridors, passageways or stairways serving both residential and nonresidential uses in a mixed-use property shall not be exempt.
- (8) Any rehabilitation that does not disturb a painted surface.
- (9) For emergency actions immediately necessary to safeguard against imminent danger to human life, health or safety, or to protect property from further structural damage (such as when a property has been damaged by a natural disaster, fire, or structural collapse), occupants shall be protected from exposure to lead in dust and debris generated by such emergency actions to the extent practicable, and the requirements of subparts B through R of this part shall not apply. This exemption applies only to repairs necessary to respond to the emergency. The requirements of subparts B through R of this part shall apply to any work undertaken subsequent to, or above and beyond, such emergency actions.
- (10) If a Federal law enforcement agency has seized a residential property and owns the property for less than 270 days, Secs. 35.210 and 35.215 shall not apply to the property.

(11) The requirements of subpart K of this part do not apply if the assistance being provided is emergency rental assistance or foreclosure prevention assistance, provided that this exemption shall expire for a dwelling unit no later than 100 days after the initial payment or assistance.

(12) Performance of an evaluation or lead-based paint hazard reduction or lead-based paint abatement on an exterior painted surface as required under this part may be delayed for a reasonable time during a period when weather conditions are unsuitable for conventional construction activities.

(13) Where abatement of lead-based paint hazards or lead-based paint is required by this part and the property is listed or has been determined to be eligible for listing in the National Register of Historic Places or contributing to a National Register Historic District, the designated party may, if requested by the State Historic Preservation Office, conduct interim controls in accordance with Sec. 35.1330 instead of abatement. If interim controls are conducted, ongoing lead-based paint maintenance and reevaluation shall be conducted as required by the applicable subpart of this part in accordance with Sec. 35.1355.

Requirements

The regulations detail five standard approaches to compliance with the HUD Lead Safe Housing Regulations, all activities. The four approaches for achieving compliance to the specific requirements are "Notification", "Identification", "Reduction", and "Clearance".

Notification

There is an up-front notification requirement to the current or the intended occupant(s) of the assisted unit. This initial notification is to convey general information of lead-based paint dangers. You need to use EPA's standard pamphlet "Protect Your Family from Lead in Your Home" or the Iowa Department of Public Health's pamphlet "Lead Poisoning - How to the Protect Iowa's Families" for this purpose. Documentation indicating this initial notification was conveyed to the occupant(s) must be contained in your project files.

A notice must be conveyed to the owner and the occupant(s) of any paint testing and risk assessment that will be done on their residential unit. A notice of the presumption of lead-based paint or lead-based paint hazards must be conveyed if paint testing and risk assessment is not going to be conducted.

You must also notify the owner and the occupant(s) of any lead hazard reduction activity to be accomplished on their unit (including a summary of any rehabilitation activity that will reduce or abate lead-based paint hazards). This information is typically contained in and subsequently conveyed by reports required following an inspection/risk, assessment, or presumption/visual risk assessment.

Following the completion of all rehabilitation work, lead hazard reduction or abatement activity (including cleaning, final visual risk assessment and clearance testing) the owner and occupant(s) must be notified of the clearance testing results.

In conjunction with the notification requirements, reports need to be prepared for all inspections/risk assessments conducted, presumptions/visual risk assessments, and for all final visual risk assessments/clearance testings conducted. Where lead hazard abatement or paint abatement was conducted; specific reports/documentation is required, particularly if a lead-free certification on the unit(s), is being sought. These reports need to be accomplished in accordance with the Iowa Department of Public Health's (IDPH's) requirements found in chapter

70 of the Iowa Administrative Code. Certified lead professionals must be familiar with the IDPH's requirements. Sample reports are available from the IDPH.

Another notification requirement (an IDPH/EPA requirement) is the "Pre-Renovation Notification" - contractors are required to notify the property owner about lead-based paint and lead-based paint hazards when their renovation work will disturb painted surfaces. This requirement applies to any renovation work the contractor performs on target housing assisted with or without HUD funds.

There are notification requirements associated with on-going maintenance inspections (rental activities) as well.

Copies of various notices you may need (including the EPA or IDPH pamphlet used for the initial notification) are in this Chapters' appendices. Please note the form used for the final visual risk assessment and clearance testing results serves as both the notification and the required report.

Identification

There are also requirements for lead-based paint and lead-based paint hazards identification. What is specifically required in terms of identification will depend on what activity you are undertaking. If you are undertaking rehabilitation (of any kind), identification of lead-based paint and lead-based paint hazards requirements vary depending on the amount of HUD assistance invested per unit.

Some activities require only a visual risk assessment be conducted to determine if and where any lead hazards exist that need to be addressed. Most activities (rehabilitation in particular) require residential structures to be assisted be tested for lead-based paint (through XRF paint analysis testing and/or paint chip sampling and laboratory analysis) and evaluated (through a formal risk assessment) to determine if and where any lead-based paint is and if and where there are any lead-based paint hazards that need to be addressed. Recipients conducting rehabilitation activities can forego the need for testing and risk assessment by "presuming" that lead-based paint and lead-based paint hazards are present (all painted surfaces, the entire property). By making this "presumption" (which can only be made by a certified lead professional), the recipient avoids the need for paint testing and evaluation, but does not avoid the requirements relating to visual risk assessment, reporting, notification, lead hazard reduction or abatement, and/or on-going maintenance activities.

Another form of identification is clearance testing. Clearance testing (including the final visual risk assessment) is required following the completion of any and all rehabilitation that disturbs paint (known or presumed to be lead-based paint) and/or any specific lead-based paint hazard reduction or abatement activity that is undertaken.

Reduction

One form of reduction is paint stabilization. Paint stabilization is repairing deteriorated painted surfaces (e.g., wet scraping and/or wet sanding followed by repainting). Paint stabilization is only a temporary measure employed to make a residential unit temporarily lead safe.

Another form of reduction is known as interim controls. Interim controls may include paint stabilization but is not limited only to that type of lead hazard reduction. Interim controls are measures, or a set of measures, to address any and all lead-based paint hazards identified.

Interim controls are typically employed to reduce lead-based paint hazards identified in rehabilitation projects (those rehabilitation projects at or less than \$25,000 per unit of HUD assistance for the hard costs of rehabilitation) following required paint testing and risk assessment. Interim controls are only temporary measures employed to make a residential unit temporarily lead safe.

A third form of reduction is known as standard treatments. Standard treatments are the same as interim controls, with a couple of distinctions. Interim controls are measures to address lead-based paint hazards existing in specific locations following required paint testing and risk assessment (in other words, addressing only the hazards where it is specifically known that the painted surface contains lead-based paint). Standard treatments are employed based on the “presumption” of lead-based paint and all hazards and potential hazards must be addressed throughout the unit and the property as a whole. The application of standard treatments also requires that all flat, horizontal surfaces that are rough, porous and/or pitted be addressed (e.g., covering or coating, such as metal coil stock, plastic, polyurethane or linoleum); all dust generating conditions be addressed (i.e., accessible (chewable), friction or impact surfaces); and all bare soil be treated.

Another form of reduction (considered a permanent solution) is known as abatement (specifically, lead-based paint hazards abatement, not lead-based paint abatement). Lead hazards abatement is permanent elimination of all lead-based paint hazards. Total lead-based paint hazards abatement is required for all rehabilitation projects where the per unit HUD assistance is greater than \$25,000 for the hard costs of rehabilitation.

The remaining form of reduction (in actuality “elimination”) is lead based paint abatement, a permanent solution, whereby all lead based paint is removed from the unit(s), the building(s), and the property as a whole (common areas, grounds, etc.). Lead based paint abatement is recommended by IEDA only for multi-family (rental) projects and only when: (a) the property owner is desirous of opting out of the required real estate disclosure to tenants and obtains “lead-free” certification; and (b) is financially feasible to do so.

You should refer to the HUD and/or EPA regulations for more detail on various forms of reduction, elimination, and actual procedures for implementation of various methods of reduction or elimination.

Response to an Elevated Blood Level (EBL) Child

If and when it might become known there is, or there will be, a child residing in a residential unit to be assisted that has an elevated blood level, you need to immediately contact the local or state public health department and inform them of that information so that they can intervene with appropriate action.

Cross-Cutting Legislation

Implementation of HUD’s Lead Safe Housing regulations has been a collaborative and cooperative effort between two state departments, the IEDA and the Iowa Department of Public Health (IDPH). The IDPH is responsible for administering the related and cross-cutting Environmental Protection Agency (EPA) regulations found at 40 CFR, Part 745. HUD’s Lead Safe Housing regulations rely on a framework of personnel trained and/or certified in accordance with the IDPH’s state EPA program.

Lead Professionals Needed to Implement the HUD Regulations

Those trained and/or certified under IDPH's program are collectively referred to as lead professionals. Certain procedures or processes involved in the implementation of HUD's lead safe housing regulations can only be accomplished by lead professionals.

Lead professionals include persons or firms who conduct lead abatement (lead hazard abatement or lead paint abatement), lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, visual risk assessments, clearance testing after lead abatement, clearance testing after interim controls, paint stabilization or standard treatments, on-going maintenance, or rehabilitation pursuant to 24 CFR 35.1340.

Safe Work Practices

HUD's Lead Safe Housing regulations require all rehabilitation activity (less than \$25,000 in rehabilitation hard costs) disturbing painted surfaces in assisted target housing (known or presumed to be lead-based paint) and any additional lead hazard reduction activity, employ "safe work practices". Safe work practices entail:

Using only contractors (including their employees and subcontractors) having the required eight hours of safe work practices training.

Not using any of the "prohibited methods of paint removal", such as:

- Open flame burning or torching,

- Machine sanding or grinding without HEPA exhaust controls,

- Abrasive blasting or sandblasting without HEPA exhaust controls,

- Heat guns operating above 1,100 degrees F,

- Dry sanding or scraping,

- Paint stripping in poorly ventilated areas using volatile strippers containing hazardous substances.

Requiring and using thorough and specialized cleaning methods following any lead hazard reduction activity (including lead-based hazards addressed with normal rehabilitation work);

Providing both the occupant(s) of the unit and all workers with adequate protection.

Safe work practices are not required when lead hazard reduction, rehabilitation that disturbs painted surfaces, or on-going maintenance activities do not disturb painted surfaces that total more than the regulatory "de minimis levels." The de minimis levels are: a) twenty (20) square feet or less on exterior surfaces; b) two (2) square feet or less on any one interior room or space; or c) ten percent (10%) of the total surface area or less of an interior or exterior component with a small surface area (e.g., window sills, baseboards, trim, etc.).

Occupant Protection

Occupant protection (including their belongings) must be provided during lead hazard reduction or abatement activity, rehabilitation that disturbs paint (known or presumed lead-based painted surfaces), or on-going maintenance activity. During any of this type of activity:

The occupants of the assisted residential unit shall not be permitted to enter the workspace(s) until after the work has been completed, cleaned and has passed clearance testing;

All workspaces (including access to and from the workspaces) shall be contained and secured to deter entry by anyone other than the trained or certified workers doing the work;

The occupant's belongings shall be protected from contamination by lead-dust hazards and debris generated from the work. The occupant's belongings shall either be moved to a safe and secure area outside of the containment area(s), or moved to the center of the workspace and covered with an impermeable covering with all seams and edges taped or otherwise sealed;

Temporary relocation of the occupants to a suitable, decent, safe and similarly accessible dwelling unit, free of lead-based paint hazards, shall be provided if:

Utilities will be shut off for more than eight (8) hours; or

The lead hazard reduction activity is being done in the only kitchen or in the only bathroom of the unit and cannot be completed within 8-daytime hours; or

There is extensive lead hazard reduction being done in several rooms and over an extended period of time (i.e., several areas over several days); or

A child under the age of six resides in the unit; or

Construction debris and/or dust cannot be contained and/or access to the work area(s) cannot be secured from entry by the occupants; or

You are performing lead hazard or lead paint abatement.

For owner-occupied rehabilitation activities (target housing), recipients are required to temporarily locate all assisted property owners during any interior rehabilitation that disturbs paint (known or presumed to be lead based paint) and/or during any interior lead hazard reduction activity. For homeownership assistance activities (those involving rehabilitation to target housing), it is recommended that all interior rehabilitation and lead hazard reduction activity be accomplished prior to allowing the assisted homebuyer to occupy the purchased unit.

Temporary relocation of the occupants to a suitable, decent, safe and similarly accessible dwelling unit free of lead-based paint hazards shall be provided unless:

Treatment will not disturb lead-based paint, lead-dust hazards, or lead-soil hazards; or

Only the exterior of the unit is being treated and: a) all windows, doors and ventilation intakes or other openings in or near the workspace are sealed during the lead hazard reduction activity; b) the treatment is followed by necessary cleaning and clearance testing; and c) there are provisions for entry to the unit that is free of lead-dust hazards, lead-soil hazards and debris; or

Treatment of the interior (or interior space) will be completed within one period of 8-daytime hours (this includes workspace preparation, completion of the work, cleaning and successful clearance testing).

Worker Protection

Worker protection is required. This requires contractor adherence / compliance to OSHA's Lead in Construction worker safety and protection standards. There are worksite preparation requirements to prevent the release of leaded dust and to contain lead-based paint chips and/or debris to within the workspace(s) until it can be safely removed. Worksite preparation might include covering of floors and furnishings (if not removed from the workspace) or covering exterior areas adjacent to the lead hazard reduction or abatement activity, sealing off all workspaces and securing access to those areas, and turning off HVAC systems during the

reduction or abatement activity. Workers may not use any of the prohibited methods of paint removal. Workers will need to use appropriate respiratory protection (APRs) and wear appropriate protective clothing and gear during lead hazard reduction or abatement activity.

Cleaning and Clearance Testing

Directly related to occupant and worker protection is the thorough cleaning procedures necessary to pass the required clearance testing at the conclusion of any rehabilitation that disturbs painted surfaces (known or presumed to be lead-based paint) and/or any lead hazard reduction or abatement activity. This will entail vacuuming the work areas (ceilings, walls, floors, window troughs and sills, etc.) with a HEPA vacuum, wet washing (first with a detergent solution, and twice with rinse cycles), and re-vacuuming those areas with a HEPA vacuum. All waste and debris to be removed from the worksite must be removed in sealed containers or wrapped and taped so as not to contaminate areas of the unit that were not treated.

Clearance testing is required following any lead hazard reduction or abatement activity accomplished on federally assisted target housing (paint stabilization, interim controls, standard treatments, on-going maintenance, rehabilitation activity that disturbs known or presumed lead based paint, or lead hazard or lead paint abatement). Clearance testing (rehabilitation under \$25,000) entails a final visual risk assessment, dust-wipe sampling and laboratory analysis and the preparation of a report, as well as notification to the property owner. Clearance testing must be performed in accordance with the Iowa Department of Public Health's State Environmental Protection Agency program requirements and can only be performed by certain certified lead professionals. Clearance testing results must conform to the EPA clearance standards found in the Iowa Department of Public Health's Chapter 70 of the Iowa Administrative Code. There are specific procedures for clearance testing following lead based paint or lead based paint hazard abatement. There are specific procedures for lead-free inspections following lead based paint abatement.

The preceding information is only a brief summary of the requirements. You should become familiar with the HUD Lead Safe Housing regulations (particularly Subparts B and R, and any other subpart applicable to the type of activity you are conducting if your project or activity involves target housing). The HUD "Guidelines for the Control of Lead-Based Paint in Housing" (made available to all individuals that have taken any of the IDPH's lead professional training and certification courses) is another valuable reference tool, particularly for procedural issues.

Remember there are varying requirements depending on the activity type you are doing. Where one activity is subject to more than one subpart of the regulations, the more restrictive requirements apply. As you conduct your activities that are subject to HUD's Lead Safe Housing regulations, feel free to contact your IEDA Project Manager with questions.

Housing Sustainability Lead Summary

Regulations

The CDBG program is impacted by HUD's Lead Safe Housing Regulations. This legislation is formally known as the "Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Final Rule" (24 CFR, Part 35, et. al.).

The applicability of the various subparts of these regulations will depend upon the type of activity you are undertaking. For the Housing Sustainability Program, the following apply.

Subpart B - "General Lead Based Paint Requirements and Definitions for all Programs" (ALL ACTIVITIES);

Subpart J - "Rehabilitation" (Any activity involving rehabilitation such as owner-occupied rehabilitation programs; rehabilitation in support of, or incidental to, homeownership; and rental rehabilitation);

Subpart R - "Methods and Standards for Lead-Based Paint Hazard Evaluation and Hazard Reduction Activities" (ALL ACTIVITIES).

You are encouraged to read and become familiar with above listed subparts of this legislation. As you can see, more than one subpart applies. When this occurs, the most restrictive subpart takes precedence. Subpart B covers requirements and definitions of terms and applies to all activities. Subpart J details requirements and definitions for programs involving rehabilitation. Subpart R details specific requirements and procedures for reducing or abating lead-based paint hazards and applies to all activities.

HUD's Lead Safe Housing regulations apply to all residential property constructed prior to January 1, 1978 (commonly referred to as "target housing") being assisted with HUD funds. These requirements also apply to non-residential structures being converted into residential use (e.g., converting an old school building into multi-family, rental housing).

Exemptions

There are a number of exemptions to the regulations. Recipients should contact their IEDA project manager to determine if an exemption is applicable to a property. IEDA will make the final determination on any exemptions to the regulations.

Exemptions include (from 24 CFR Part 35):

- (1) A residential property for which construction was completed on or after January 1, 1978, or, in the case of jurisdictions which banned the sale or residential use of lead-containing paint prior to 1978, an earlier date as HUD may designate (see Sec. 35.160).
- (2) A zero-bedroom dwelling unit, including a single room occupancy (SRO) dwelling unit.
- (3) Housing for the elderly, or a residential property designated exclusively for persons with disabilities; except this exemption shall not apply if a child less than age 6 resides or is expected to reside in the dwelling unit

- (4) Residential property found not to have lead-based paint by a lead-based paint inspection conducted in accordance with Sec. 35.1320(a). Results of additional test(s) by a certified lead-based paint inspector may be used to confirm or refute a prior finding.
- (5) Residential property in which all lead-based paint has been identified, removed, and clearance has been achieved in accordance with 40 CFR 745.227(b)(e) before September 15, 2000, or in accordance with Secs. 35.1320, 35.1325 and 35.1340 on or after September 15, 2000. This exemption does not apply to residential property where enclosure or encapsulation has been used as a method of abatement.
- (6) An unoccupied dwelling unit or residential property that is to be demolished, provided the dwelling unit or property will remain unoccupied until demolition.
- (7) A property or part of a property that is not used and will not be used for human residential habitation, except that spaces such as entryways, hallways, corridors, passageways or stairways serving both residential and nonresidential uses in a mixed-use property shall not be exempt.
- (8) Any rehabilitation that does not disturb a painted surface.
- (9) For emergency actions immediately necessary to safeguard against imminent danger to human life, health or safety, or to protect property from further structural damage (such as when a property has been damaged by a natural disaster, fire, or structural collapse), occupants shall be protected from exposure to lead in dust and debris generated by such emergency actions to the extent practicable, and the requirements of subparts B through R of this part shall not apply. This exemption applies only to repairs necessary to respond to the emergency. The requirements of subparts B through R of this part shall apply to any work undertaken subsequent to, or above and beyond, such emergency actions.
- (10) If a Federal law enforcement agency has seized a residential property and owns the property for less than 270 days, Secs. 35.210 and 35.215 shall not apply to the property.
- (11) The requirements of subpart K of this part do not apply if the assistance being provided is emergency rental assistance or foreclosure prevention assistance, provided that this exemption shall expire for a dwelling unit no later than 100 days after the initial payment or assistance.
- (12) Performance of an evaluation or lead-based paint hazard reduction or lead-based paint abatement on an exterior painted surface as required under this part may be delayed for a reasonable time during a period when weather conditions are unsuitable for conventional construction activities.
- (13) Where abatement of lead-based paint hazards or lead-based paint is required by this part and the property is listed or has been determined to be eligible for listing in the National Register of Historic Places or contributing to a National Register Historic District, the designated party may, if requested by the State Historic Preservation Office, conduct interim controls in accordance with Sec. 35.1330 instead of abatement. If interim controls are conducted, ongoing lead-based paint maintenance and reevaluation shall be conducted as required by the applicable subpart of this part in accordance with Sec. 35.1355.

Requirements

The regulations detail five standard approaches to compliance with the HUD Lead Safe Housing Regulations, all activities. The five approaches for achieving compliance to the specific requirements are “Notification”, Identification”, “Reduction”, “On-Going Maintenance”, and “Response to a Child with an Elevated Blood Level”.

Notification

There is an up-front notification requirement to the current or the intended occupant(s) of the assisted unit. This initial notification is to convey general information of lead-based paint dangers. You need to use EPA's standard pamphlet "Protect Your Family from Lead in Your Home" or the Iowa Department of Public Health's pamphlet "Lead Poisoning - How to the Protect Iowa's Families" for this purpose. Documentation indicating this initial notification was conveyed to the occupant(s) must be contained in your project files.

A notice must be conveyed to the owner and the occupant(s) of any paint testing and risk assessment that will be done on their residential unit. A notice of the presumption of lead-based paint or lead-based paint hazards must be conveyed if paint testing and risk assessment is not going to be conducted.

You must also notify the owner and the occupant(s) of any lead hazard reduction activity to be accomplished on their unit (including a summary of any rehabilitation activity that will reduce or abate lead-based paint hazards). This information is typically contained in and subsequently conveyed by reports required following an inspection/risk, assessment, or presumption/visual risk assessment.

Following the completion of all rehabilitation work, lead hazard reduction or abatement activity (including cleaning, final visual risk assessment and clearance testing) the owner and occupant(s) must be notified of the clearance testing results.

In conjunction with the notification requirements, reports need to be prepared for all inspections/risk assessments conducted, presumptions/visual risk assessments, and for all final visual risk assessments/clearance testings conducted. Where lead hazard abatement or paint abatement was conducted; specific reports/documentation is required, particularly if a lead-free certification on the unit(s), is being sought. These reports need to be accomplished in accordance with the Iowa Department of Public Health's (IDPH's) requirements found in chapter 70 of the Iowa Administrative Code. Certified lead professionals must be familiar with the IDPH's requirements. Sample reports are available from the IDPH.

Be aware with any homeownership assistance activity (target housing), the seller must provide the buyer with another notice. Refer to Subpart A of the regulations, "Disclosure of Known Lead-Based Paint Hazards Upon Sale or Lease of Residential Property". For rental activities, the same notice is required from the property owner to all tenants prior to their occupancy and throughout the period of affordability.

Another notification requirement (an IDPH/EPA requirement) is the "Pre-Renovation Notification" - contractors are required to notify the property owner about lead-based paint and lead-based paint hazards when their renovation work will disturb painted surfaces. This requirement applies to any renovation work the contractor performs on target housing assisted with or without HUD funds.

There are notification requirements associated with on-going maintenance inspections (rental activities) as well.

Copies of various notices you may need (including the EPA or IDPH pamphlet used for the initial notification) are in this Chapters' appendices. Please note the form used for the final visual risk assessment and clearance testing results serves as both the notification and the required report.

Identification

There are also requirements for lead-based paint and lead-based paint hazards identification. What is specifically required in terms of identification will depend on what activity you are undertaking. If you are undertaking rehabilitation (of any kind), identification of lead-based paint and lead-based paint hazards requirements vary depending on the amount of HUD assistance invested per unit.

Some activities require only a visual risk assessment be conducted to determine if and where any lead hazards exist that need to be addressed. Most activities (rehabilitation in particular) require residential structures to be assisted be tested for lead-based paint (through XRF paint analysis testing and/or paint chip sampling and laboratory analysis) and evaluated (through a formal risk assessment) to determine if and where any lead-based paint is and if and where there are any lead-based paint hazards that need to be addressed. Recipients conducting rehabilitation activities can forego the need for testing and risk assessment by “presuming” that lead-based paint and lead-based paint hazards are present (all painted surfaces, the entire property). By making this “presumption” (which can only be made by a certified lead professional), the recipient avoids the need for paint testing and evaluation, but does not avoid the requirements relating to visual risk assessment, reporting, notification, lead hazard reduction or abatement, and/or on-going maintenance activities.

Another form of identification is clearance testing. Clearance testing (including the final visual risk assessment) is required following the completion of any and all rehabilitation that disturbs paint (known or presumed to be lead-based paint) and/or any specific lead-based paint hazard reduction or abatement activity that is undertaken.

Reduction

One form of reduction is paint stabilization. Paint stabilization is repairing deteriorated painted surfaces (e.g., wet scraping and/or wet sanding followed by repainting). Paint stabilization is only a temporary measure employed to make a residential unit temporarily lead safe.

Another form of reduction is known as interim controls. Interim controls may include paint stabilization but is not limited only to that type of lead hazard reduction. Interim controls are measures, or a set of measures, to address any and all lead-based paint hazards identified. Interim controls are typically employed to reduce lead-based paint hazards identified in rehabilitation projects (those rehabilitation projects at or less than \$25,000 per unit of HUD assistance for the hard costs of rehabilitation) following required paint testing and risk assessment. Interim controls are only temporary measures employed to make a residential unit temporarily lead safe.

A third form of reduction is known as standard treatments. Standard treatments are the same as interim controls, with a couple of distinctions. Interim controls are measures to address lead-based paint hazards existing in specific locations following required paint testing and risk assessment (in other words, addressing only the hazards where it is specifically known that the painted surface contains lead-based paint). Standard treatments are employed based on the “presumption” of lead-based paint and all hazards and potential hazards must be addressed throughout the unit and the property as a whole. The application of standard treatments also requires that all flat, horizontal surfaces that are rough, porous and/or pitted be addressed (e.g., covering or coating, such as metal coil stock, plastic, polyurethane or linoleum); all dust

generating conditions be addressed (i.e., accessible (chewable), friction or impact surfaces); and all bare soil be treated.

Another form of reduction (considered a permanent solution) is known as abatement (specifically, lead-based paint hazards abatement, not lead-based paint abatement). Lead hazards abatement is permanent elimination of all lead-based paint hazards. Total lead-based paint hazards abatement is required for all rehabilitation projects where the per unit HUD assistance is greater than \$25,000 for the hard costs of rehabilitation.

The remaining form of reduction (in actuality “elimination”) is lead based paint abatement, a permanent solution, whereby all lead based paint is removed from the unit(s), the building(s), and the property as a whole (common areas, grounds, etc.). Lead based paint abatement is recommended by IEDA only for multi-family (rental) projects and only when: (a) the property owner is desirous of opting out of the required real estate disclosure to tenants and obtains “lead-free” certification; and (b) is financially feasible to do so.

You should refer to the HUD and/or EPA regulations for more detail on various forms of reduction, elimination, and actual procedures for implementation of various methods of reduction or elimination.

Response to an Elevated Blood Level (EBL) Child

If and when it might become known there is, or there will be, a child residing in a residential unit to be assisted that has an elevated blood level, you need to immediately contact the local or state public health department and inform them of that information so that they can intervene with appropriate action.

Cross-Cutting Legislation

Implementation of HUD’s Lead Safe Housing regulations has been a collaborative and cooperative effort between two state departments, the IEDA and the Iowa Department of Public Health (IDPH). The IDPH is responsible for administering the related and cross-cutting Environmental Protection Agency (EPA) regulations found at 40 CFR, Part 745. HUD’s Lead Safe Housing regulations rely on a framework of personnel trained and/or certified in accordance with the IDPH’s state EPA program.

Lead Professionals Needed to Implement the HUD Regulations

Those trained and/or certified under IDPH’s program are collectively referred to as lead professionals. Certain procedures or processes involved in the implementation of HUD’s lead safe housing regulations can only be accomplished by lead professionals.

Lead professionals include persons or firms who conduct lead abatement (lead hazard abatement or lead paint abatement), lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, visual risk assessments, clearance testing after lead abatement, clearance testing after interim controls, paint stabilization or standard treatments, on-going maintenance, or rehabilitation pursuant to 24 CFR 35.1340.

Safe Work Practices

HUD's Lead Safe Housing regulations require all rehabilitation activity (less than \$25,000 in rehabilitation hard costs) disturbing painted surfaces in assisted target housing (known or presumed to be lead-based paint) and any additional lead hazard reduction activity, employ "safe work practices". Safe work practices entails:

Using only contractors (including their employees and subcontractors) having the required eight hours of safe work practices training;

Not using any of the "prohibited methods of paint removal", such as:

Open flame burning or torching,

Machine sanding or grinding without HEPA exhaust controls,

Abrasive blasting or sandblasting without HEPA exhaust controls,

Heat guns operating above 1,100 degrees F,

Dry sanding or scraping,

Paint stripping in poorly ventilated areas using volatile strippers containing hazardous substances.

Requiring and using thorough and specialized cleaning methods following any lead hazard reduction activity (including lead-based hazards addressed with normal rehabilitation work);

Providing both the occupant(s) of the unit and all workers with adequate protection.

Safe work practices are not required when lead hazard reduction, rehabilitation that disturbs painted surfaces, or on-going maintenance activities do not disturb painted surfaces that total more than the regulatory "de minimis levels." The de minimis levels are: a) twenty (20) square feet or less on exterior surfaces; b) two (2) square feet or less on any one interior room or space; or c) ten percent (10%) of the total surface area or less of an interior or exterior component with a small surface area (e.g., window sills, baseboards, trim, etc.).

Occupant Protection

Occupant protection (including their belongings) must be provided during lead hazard reduction or abatement activity, rehabilitation that disturbs paint (known or presumed lead-based painted surfaces), or on-going maintenance activity. During any of this type of activity:

The occupants of the assisted residential unit shall not be permitted to enter the workspace(s) until after the work has been completed, cleaned and has passed clearance testing;

All workspaces (including access to and from the workspaces) shall be contained and secured to deter entry by anyone other than the trained or certified workers doing the work;

The occupant's belongings shall be protected from contamination by lead-dust hazards and debris generated from the work. The occupant's belongings shall either be moved to a safe and secure area outside of the containment area(s), or moved to the center of the workspace and covered with an impermeable covering with all seams and edges taped or otherwise sealed;

Temporary relocation of the occupants to a suitable, decent, safe and similarly accessible dwelling unit, free of lead-based paint hazards, shall be provided if:

Utilities will be shut off for more than eight (8) hours; or

The lead hazard reduction activity is being done in the only kitchen or in the only bathroom of the unit and cannot be completed within 8-daytime hours; or

There is extensive lead hazard reduction being done in several rooms and over an extended period of time (i.e., several areas over several days); or

A child under the age of six resides in the unit; or

Construction debris and/or dust cannot be contained and/or access to the work area(s) cannot be secured from entry by the occupants; or

You are performing lead hazard or lead paint abatement.

For owner-occupied rehabilitation activities (target housing), recipients are required to temporarily locate all assisted property owners during any interior rehabilitation that disturbs paint (known or presumed to be lead based paint) and/or during any interior lead hazard reduction activity. For homeownership assistance activities (those involving rehabilitation to target housing), it is recommended that all interior rehabilitation and lead hazard reduction activity be accomplished prior to allowing the assisted homebuyer to occupy the purchased unit.

Temporary relocation of the occupants to a suitable, decent, safe and similarly accessible dwelling unit free of lead-based paint hazards shall be provided unless:

Treatment will not disturb lead-based paint, lead-dust hazards, or lead-soil hazards; or

Only the exterior of the unit is being treated and: a) all windows, doors and ventilation intakes or other openings in or near the workspace are sealed during the lead hazard reduction activity; b) the treatment is followed by necessary cleaning and clearance testing; and c) there are provisions for entry to the unit that is free of lead-dust hazards, lead-soil hazards and debris; or

Treatment of the interior (or interior space) will be completed within one period of 8-daytime hours (this includes workspace preparation, completion of the work, cleaning and successful clearance testing).

Worker Protection

Worker protection is required. This requires contractor adherence / compliance to OSHA's Lead in Construction worker safety and protection standards. There are worksite preparation requirements to prevent the release of leaded dust and to contain lead-based paint chips and/or debris to within the workspace(s) until it can be safely removed. Worksite preparation might include covering of floors and furnishings (if not removed from the workspace) or covering exterior areas adjacent to the lead hazard reduction or abatement activity, sealing off all workspaces and securing access to those areas, and turning off HVAC systems during the reduction or abatement activity. Workers may not use any of the prohibited methods of paint removal. Workers will need to use appropriate respiratory protection (APRs) and wear appropriate protective clothing and gear during lead hazard reduction or abatement activity.

Cleaning and Clearance Testing

Directly related to occupant and worker protection is the thorough cleaning procedures necessary to pass the required clearance testing at the conclusion of any rehabilitation that disturbs painted surfaces (known or presumed to be lead-based paint) and/or any lead hazard reduction or abatement activity. This will entail vacuuming the work areas (ceilings, walls, floors, window

troughs and sills, etc.) with a HEPA vacuum, wet washing (first with a detergent solution, and twice with rinse cycles), and re-vacuumping those areas with a HEPA vacuum. All waste and debris to be removed from the worksite must be removed in sealed containers or wrapped and taped so as not to contaminate areas of the unit that were not treated.

Clearance testing is required following any lead hazard reduction or abatement activity accomplished on federally assisted target housing (paint stabilization, interim controls, standard treatments, on-going maintenance, rehabilitation activity that disturbs known or presumed lead based paint, or lead hazard or lead paint abatement). Clearance testing (rehabilitation under \$25,000) entails a final visual risk assessment, dust-wipe sampling and laboratory analysis and the preparation of a report, as well as notification to the property owner. Clearance testing must be performed in accordance with the Iowa Department of Public Health's State Environmental Protection Agency program requirements and can only be performed by certain certified lead professionals. Clearance testing results must conform to the EPA clearance standards found in the Iowa Department of Public Health's Chapter 70 of the Iowa Administrative Code. There are specific procedures for clearance testing following lead based paint or lead based paint hazard abatement. There are specific procedures for lead-free inspections following lead based paint abatement.

The preceding information is only a brief summary of the requirements. You should become familiar with the HUD Lead Safe Housing regulations (particularly Subparts B and R, and any other subpart applicable to the type of activity you are conducting if your project or activity involves target housing). The HUD "Guidelines for the Control of Lead-Based Paint in Housing" (made available to all individuals that have taken any of the IDPH's lead professional training and certification courses) is another valuable reference tool, particularly for procedural issues.

Remember there are varying requirements depending on the activity type you are doing. Where one activity is subject to more than one subpart of the regulations, the more restrictive requirements apply. As you conduct your activities that are subject to HUD's Lead Safe Housing regulations, feel free to contact your IEDA Project Manager with questions.

Upper Story Conversion Lead Summary

The CDBG program is impacted by HUD's Lead Safe Housing Regulations. This legislation is formally known as the "Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Final Rule" (24 CFR, Part 35, et. al.).

The applicability of the various subparts of these regulations will depend upon the type of activity you are undertaking.

Upper Story Conversion Activity Guidance:

For the conversion of upper story space, the requirements that apply as follows:

Subpart A – "Disclosure of Known Lead-Based Paint Hazards Upon Sale or Lease of Residential Property

Requirements/Notification

Under Subpart A, a LESSOR shall disclose to the LESSEE the presence of any known lead-based paint and/or lead-based hazards; provide available records and reports; provide the LESSEE with a lead hazard information pamphlet; and attach specific disclosure and warning language to the leasing contract before the LESSEE is obligated under a contract to lease "Target Housing".

In the case of the Upper Story Conversion Program, after rehabilitation is completed on a building built prior to January 1, 1978, or in other words, "Target Housing", the above stated will pertain to all future tenant's of the new rental units.

General Requirements and Rehabilitation Activity Guidance:

Regulations

For the General and Rehabilitation requirements for the Home Buyer Assistance Program, the following apply.

Subpart B - "General Lead Based Paint Requirements and Definitions for all Programs" (ALL ACTIVITIES);

Subpart J - "Rehabilitation" (Any activity involving rehabilitation such as owner-occupied rehabilitation programs; rehabilitation in support of, or incidental to, homeownership; and rental rehabilitation);

Subpart R - "Methods and Standards for Lead-Based Paint Hazard Evaluation and Hazard Reduction Activities" (ALL ACTIVITIES).

You are encouraged to read and become familiar with above listed subparts of this legislation. As you can see, more than one subpart applies. When this occurs, the most restrictive subpart takes precedence. Subpart B covers requirements and definitions of terms and applies to all activities. Subpart J details requirements and definitions for programs involving rehabilitation. Subpart R details specific requirements and procedures for reducing or abating lead-based paint hazards and applies to all activities.

HUD's Lead Safe Housing regulations apply to all residential property constructed prior to January 1, 1978 (commonly referred to as "target housing") being assisted with HUD funds. These requirements also apply to non-residential structures being converted into residential use (e.g., converting an old school building into multi-family, rental housing).

Exemptions

There are a number of exemptions to the regulations. Recipients should contact their IEDA project manager to determine if an exemption is applicable to a property. IEDA will make the final determination on any exemptions to the regulations.

Exemptions include (from 24 CFR Part 35):

- (1) A residential property for which construction was completed on or after January 1, 1978, or, in the case of jurisdictions which banned the sale or residential use of lead-containing paint prior to 1978, an earlier date as HUD may designate (see Sec. 35.160).
- (2) A zero-bedroom dwelling unit, including a single room occupancy (SRO) dwelling unit.
- (3) Housing for the elderly, or a residential property designated exclusively for persons with disabilities; except this exemption shall not apply if a child less than age 6 resides or is expected to reside in the dwelling unit
- (4) Residential property found not to have lead-based paint by a lead-based paint inspection conducted in accordance with Sec. 35.1320(a). Results of additional test(s) by a certified lead-based paint inspector may be used to confirm or refute a prior finding.
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- (6) An unoccupied dwelling unit or residential property that is to be demolished, provided the dwelling unit or property will remain unoccupied until demolition.
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- (8) Any rehabilitation that does not disturb a painted surface.
- (9) For emergency actions immediately necessary to safeguard against imminent danger to human life, health or safety, or to protect property from further structural damage (such as when a property has been damaged by a natural disaster, fire, or structural collapse), occupants shall be protected from exposure to lead in dust and debris generated by such emergency actions to the extent practicable, and the requirements of subparts B through R of this part shall not apply. This exemption applies only to repairs necessary to respond to the emergency. The requirements of subparts B through R of this part shall apply to any work undertaken subsequent to, or above and beyond, such emergency actions.
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(11) The requirements of subpart K of this part do not apply if the assistance being provided is emergency rental assistance or foreclosure prevention assistance, provided that this exemption shall expire for a dwelling unit no later than 100 days after the initial payment or assistance.

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The regulations detail five standard approaches to compliance with the HUD Lead Safe Housing Regulations, all activities. The five approaches for achieving compliance to the specific requirements are “Notification”, Identification”, “Reduction”, "On-Going Maintenance”, and “Response to a Child with an Elevated Blood Level”.

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Following the completion of all rehabilitation work, lead hazard reduction or abatement activity (including cleaning, final visual risk assessment and clearance testing) the owner and occupant(s) must be notified of the clearance testing results.

In conjunction with the notification requirements, reports need to be prepared for all inspections/risk assessments conducted, presumptions/visual risk assessments, and for all final visual risk assessments/clearance testings conducted. Where lead hazard abatement or paint abatement was conducted; specific reports/documentation is required, particularly if a lead-free certification on the unit(s), is being sought. These reports need to be accomplished in

accordance with the Iowa Department of Public Health's (IDPH's) requirements found in chapter 70 of the Iowa Administrative Code. Certified lead professionals must be familiar with the IDPH's requirements. Sample reports are available from the IDPH.

Another notification requirement (an IDPH/EPA requirement) is the "Pre-Renovation Notification" - contractors are required to notify the property owner about lead-based paint and lead-based paint hazards when their renovation work will disturb painted surfaces. This requirement applies to any renovation work the contractor performs on target housing assisted with or without HUD funds.

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There are also requirements for lead-based paint and lead-based paint hazards identification. What is specifically required in terms of identification will depend on what activity you are undertaking. If you are undertaking rehabilitation (of any kind), identification of lead-based paint and lead-based paint hazards requirements vary depending on the amount of HUD assistance invested per unit.

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Another form of identification is clearance testing. Clearance testing (including the final visual risk assessment) is required following the completion of any and all rehabilitation that disturbs paint (known or presumed to be lead-based paint) and/or any specific lead-based paint hazard reduction or abatement activity that is undertaken.

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One form of reduction is paint stabilization. Paint stabilization is repairing deteriorated painted surfaces (e.g., wet scraping and/or wet sanding followed by repainting). Paint stabilization is only a temporary measure employed to make a residential unit temporarily lead safe.

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measures, or a set of measures, to address any and all lead-based paint hazards identified. Interim controls are typically employed to reduce lead-based paint hazards identified in rehabilitation projects (those rehabilitation projects at or less than \$25,000 per unit of HUD assistance for the hard costs of rehabilitation) following required paint testing and risk assessment. Interim controls are only temporary measures employed to make a residential unit temporarily lead safe.

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Another form of reduction (considered a permanent solution) is known as abatement (specifically, lead-based paint hazards abatement, not lead-based paint abatement). Lead hazards abatement is permanent elimination of all lead-based paint hazards. Total lead-based paint hazards abatement is required for all rehabilitation projects where the per unit HUD assistance is greater than \$25,000 for the hard costs of rehabilitation.

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You should refer to the HUD and/or EPA regulations for more detail on various forms of reduction, elimination, and actual procedures for implementation of various methods of reduction or elimination.

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Lead professionals include persons or firms who conduct lead abatement (lead hazard abatement or lead paint abatement), lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, visual risk assessments, clearance testing after lead abatement, clearance testing after interim controls, paint stabilization or standard treatments, on-going maintenance, or rehabilitation pursuant to 24 CFR 35.1340.

Safe Work Practices

HUD's Lead Safe Housing regulations require all rehabilitation activity (less than \$25,000 in rehabilitation hard costs) disturbing painted surfaces in assisted target housing (known or presumed to be lead-based paint) and any additional lead hazard reduction activity, employ "safe work practices". Safe work practices entails:

Using only contractors (including their employees and subcontractors) having the required eight hours of safe work practices training;

Not using any of the "prohibited methods of paint removal", such as:

- Open flame burning or torching,

- Machine sanding or grinding without HEPA exhaust controls,

- Abrasive blasting or sandblasting without HEPA exhaust controls,

- Heat guns operating above 1,100 degrees F,

- Dry sanding or scraping,

- Paint stripping in poorly ventilated areas using volatile strippers containing hazardous substances.

Requiring and using thorough and specialized cleaning methods following any lead hazard reduction activity (including lead-based hazards addressed with normal rehabilitation work);

Providing both the occupant(s) of the unit and all workers with adequate protection.

Safe work practices are not required when lead hazard reduction, rehabilitation that disturbs painted surfaces, or on-going maintenance activities do not disturb painted surfaces that total more than the regulatory "de minimis levels." The de minimis levels are: a) twenty (20) square feet or less on exterior surfaces; b) two (2) square feet or less on any one interior room or space; or c) ten percent (10%) of the total surface area or less of an interior or exterior component with a small surface area (e.g., window sills, baseboards, trim, etc.).

Occupant Protection

Occupant protection (including their belongings) must be provided during lead hazard reduction or abatement activity, rehabilitation that disturbs paint (known or presumed lead-based painted surfaces), or on-going maintenance activity. During any of this type of activity:

The occupants of the assisted residential unit shall not be permitted to enter the workspace(s) until after the work has been completed, cleaned and has passed clearance testing;

All workspaces (including access to and from the workspaces) shall be contained and secured to deter entry by anyone other than the trained or certified workers doing the work;

The occupant's belongings shall be protected from contamination by lead-dust hazards and debris generated from the work. The occupant's belongings shall either be moved to a safe and secure area outside of the containment area(s), or moved to the center of the workspace and covered with an impermeable covering with all seams and edges taped or otherwise sealed;

Temporary relocation of the occupants to a suitable, decent, safe and similarly accessible dwelling unit, free of lead-based paint hazards, shall be provided if:

Utilities will be shut off for more than eight (8) hours; or

The lead hazard reduction activity is being done in the only kitchen or in the only bathroom of the unit and cannot be completed within 8-daytime hours; or

There is extensive lead hazard reduction being done in several rooms and over an extended period of time (i.e., several areas over several days); or

A child under the age of six resides in the unit; or

Construction debris and/or dust cannot be contained and/or access to the work area(s) cannot be secured from entry by the occupants; or

You are performing lead hazard or lead paint abatement.

For owner-occupied rehabilitation activities (target housing), recipients are required to temporarily locate all assisted property owners during any interior rehabilitation that disturbs paint (known or presumed to be lead based paint) and/or during any interior lead hazard reduction activity. For homeownership assistance activities (those involving rehabilitation to target housing), it is recommended that all interior rehabilitation and lead hazard reduction activity be accomplished prior to allowing the assisted homebuyer to occupy the purchased unit.

Temporary relocation of the occupants to a suitable, decent, safe and similarly accessible dwelling unit free of lead-based paint hazards shall be provided unless:

Treatment will not disturb lead-based paint, lead-dust hazards, or lead-soil hazards; or

Only the exterior of the unit is being treated and: a) all windows, doors and ventilation intakes or other openings in or near the workspace are sealed during the lead hazard reduction activity; b) the treatment is followed by necessary cleaning and clearance testing; and c) there are provisions for entry to the unit that is free of lead-dust hazards, lead-soil hazards and debris; or

Treatment of the interior (or interior space) will be completed within one period of 8-daytime hours (this includes workspace preparation, completion of the work, cleaning and successful clearance testing).

Worker Protection

Worker protection is required. This requires contractor adherence / compliance to OSHA's Lead in Construction worker safety and protection standards. There are worksite preparation

requirements to prevent the release of leaded dust and to contain lead-based paint chips and/or debris to within the workspace(s) until it can be safely removed. Worksite preparation might include covering of floors and furnishings (if not removed from the workspace) or covering exterior areas adjacent to the lead hazard reduction or abatement activity, sealing off all workspaces and securing access to those areas, and turning off HVAC systems during the reduction or abatement activity. Workers may not use any of the prohibited methods of paint removal. Workers will need to use appropriate respiratory protection (APRs) and wear appropriate protective clothing and gear during lead hazard reduction or abatement activity.

Cleaning and Clearance Testing

Directly related to occupant and worker protection is the thorough cleaning procedures necessary to pass the required clearance testing at the conclusion of any rehabilitation that disturbs painted surfaces (known or presumed to be lead-based paint) and/or any lead hazard reduction or abatement activity. This will entail vacuuming the work areas (ceilings, walls, floors, window troughs and sills, etc.) with a HEPA vacuum, wet washing (first with a detergent solution, and twice with rinse cycles), and re-vacuuming those areas with a HEPA vacuum. All waste and debris to be removed from the worksite must be removed in sealed containers or wrapped and taped so as not to contaminate areas of the unit that were not treated.

Clearance testing is required following any lead hazard reduction or abatement activity accomplished on federally assisted target housing (paint stabilization, interim controls, standard treatments, on-going maintenance, rehabilitation activity that disturbs known or presumed lead based paint, or lead hazard or lead paint abatement). Clearance testing (rehabilitation under \$25,000) entails a final visual risk assessment, dust-wipe sampling and laboratory analysis and the preparation of a report, as well as notification to the property owner. Clearance testing must be performed in accordance with the Iowa Department of Public Health's State Environmental Protection Agency program requirements and can only be performed by certain certified lead professionals. Clearance testing results must conform to the EPA clearance standards found in the Iowa Department of Public Health's Chapter 70 of the Iowa Administrative Code. There are specific procedures for clearance testing following lead based paint or lead based paint hazard abatement. There are specific procedures for lead-free inspections following lead based paint abatement.

The preceding information is only a brief summary of the requirements. You should become familiar with the HUD Lead Safe Housing regulations (particularly Subparts B and R, and any other subpart applicable to the type of activity you are conducting if your project or activity involves target housing). The HUD "Guidelines for the Control of Lead-Based Paint in Housing" (made available to all individuals that have taken any of the IDPH's lead professional training and certification courses) is another valuable reference tool, particularly for procedural issues.

Remember there are varying requirements depending on the activity type you are doing. Where one activity is subject to more than one subpart of the regulations, the more restrictive requirements apply. As you conduct your activities that are subject to HUD's Lead Safe Housing regulations, feel free to contact your IEDA Project Manager with questions.

PART 35 - LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

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Authority: 42 U.S.C. 3535(d), 4821, and 4851.

Source: 64 FR 50201, Sept. 15, 1999; 65 FR 3387, Jan. 21, 2000.

Subpart A— Disclosure of Known Lead-Based Paint Hazards Upon Sale or Lease of Residential Property

§ 35.80. Purpose.

This subpart implements the provisions of 42 U.S.C. 4852d, which impose certain requirements on the sale or lease of target housing. Under this subpart, a seller or lessor of target housing shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards; provide available records and reports; provide the purchaser or lessee with a lead hazard information pamphlet; give purchasers a 10-day opportunity to conduct a risk assessment or inspection; and attach specific disclosure and warning language to the sales or leasing contract before the purchaser or lessee is obligated under a contract to purchase or lease target housing.

§ 35.82. Scope and applicability.

This subpart applies to all transactions to sell or lease target housing, including subleases, with the exception of the following:

- (a) Sales of target housing at foreclosure.
- (b) Leases of target housing that have been found to be lead-based paint free by an inspector certified under the Federal certification program or under a federally accredited State or tribal certification program. Until a Federal certification program or federally accredited State certification program is in place within the State, inspectors shall be considered qualified to conduct an inspection for this purpose if they have received certification under any existing State or tribal inspector certification program. The lessor has the option of using the results of additional test(s) by a certified inspector to confirm or refute a prior finding.
- (c) Short-term leases of 100 days or less, where no lease renewal or extension can occur.
- (d) Renewals of existing leases in target housing in which the lessor has previously disclosed all information required under §35.88 and where no new information described in §35.88 has come into the possession of the lessor. For the purposes of this paragraph, renewal shall include both re-negotiation of existing lease terms and/or ratification of a new lease.

§ 35.84. Effective dates.

The requirements in this subpart take effect in the

following manner:

- (a) For owners of more than four residential dwellings, the requirements shall take effect on September 6, 1996.
- (b) For owners of one to four residential dwellings, the requirements shall take effect on December 6, 1996.

§ 35.86. Definitions.

The following definitions apply to this subpart.

The Act means the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852d.

Agent means any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing. This term does not apply to purchasers or any purchaser's representative who receives all compensation from the purchaser.

Available means in the possession of or reasonably obtainable by the seller or lessor at the time of the disclosure.

Common area means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

Contract for the purchase and sale of residential real property means any contract or agreement in which one party agrees to purchase an interest in real property on which there is situated one or more residential dwellings 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.

EPA means the Environmental Protection Agency.

Evaluation means a risk assessment and/or inspection.

Foreclosure means any of the various methods, statutory or otherwise, known in different jurisdictions, of enforcing payment of a debt, by the taking and selling of real property.

Housing for the elderly means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

Inspection means:

- (1) A surface-by-surface investigation to determine the presence of lead-based paint as provided in section 302(c) of the Lead-Based Paint Poisoning and Prevention Act [42 U.S.C. 4822], and
- (2) The provision of a report explaining the results of the investigation.

Lead-based paint means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

Lead-based paint free housing means target housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

Lead-based paint hazard means 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.

Lessee means any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Lessor means any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Owner means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

Purchaser means an entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Reduction means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

Residential dwelling means:

- (1) A single-family dwelling, including attached structures such as porches and stoops; or
- (2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

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:

- (1) Information gathering regarding the age and history of the housing and occupancy by children under age 6;
- (2) Visual inspection;
- (3) Limited wipe sampling or other environmental sampling techniques;
- (4) Other activity as may be appropriate; and
- (5) Provision of a report explaining the results of the investigation.

Seller means any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. The term "seller" also includes:

- (1) An entity that transfers shares in a cooperatively owned project, in return for consideration; and
- (2) An entity that transfers its interest in a lease hold, in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement, in return for consideration.

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) or any 0-bedroom dwelling.

TSCA means the Toxic Substances Control Act, 15 U.S.C. 2601.

0-bedroom dwelling means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

§ 35.88. Disclosure requirements for sellers and lessors.

(a) The following activities shall be completed before the purchaser or lessee is obligated under any contract to purchase or lease target housing that is not otherwise an exempt transaction pursuant to §35.82. Nothing in this section implies a positive obligation on the seller or lessor to conduct any evaluation or reduction activities.

(1) The seller or lessor shall provide the purchaser or lessee with an EPA-approved lead hazard information pamphlet. Such pamphlets include the EPA document entitled *Protect Your Family From Lead in Your Home* (EPA #747-K-94-001) or an equivalent pamphlet that has been approved for use in that State by EPA.

(2) The seller or lessor shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. The seller or lessor shall also disclose any additional information available concerning the known lead based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) The seller or lessor shall disclose to each agent the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased and the existence of any available records or reports pertaining to lead-based paint and/or lead-based paint hazards. The seller or lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(4) The seller or lessor shall provide the purchaser or lessee with any records or reports available to the seller or lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. This requirement includes records and reports regarding common areas. This requirement also includes records and reports regarding other residential dwellings in multifamily target housing, provided that such information is part of an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the target housing as a whole.

(b) If any of the disclosure activities identified in paragraph (a) of this section occurs after the purchaser or lessee has provided an offer to purchase or lease the housing, the seller or lessor shall complete the required disclosure activities prior to accepting the purchaser's

or lessee's offer and allow the purchaser or lessee an opportunity to review the information and possibly amend the offer.

§ 35.90. Opportunity to conduct an evaluation.

(a) Before a purchaser is obligated under any contract to purchase target housing, the seller shall permit the purchaser a 10-day period (unless the parties mutually agree, in writing, upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

(b) Notwithstanding paragraph (a) of this section, a purchaser may waive the opportunity to conduct the risk assessment or inspection by so indicating in writing.

§ 35.92. Certification and acknowledgment of disclosure.

(a) *Seller requirements.* Each contract to sell target housing shall include an attachment containing the following elements, in the language of the contract (e.g., English, Spanish):

(1) A Lead Warning Statement consisting of the following language:

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

(2) A statement by the seller disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being sold or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The seller shall also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) A list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the purchaser. If no such records or reports are available, the seller shall so indicate.

(4) A statement by the purchaser affirming receipt of the information set out in paragraphs (a)(2) and (a)(3) of this section and the lead hazard information pamphlet required under section 15 U.S.C. 2696.

(5) A statement by the purchaser that he/she has either:

- (i) Received the opportunity to conduct the risk assessment or inspection required by §35.90(a); or
- (ii) Waived the opportunity.

(6) When any agent is involved in the transaction

to sell target housing on behalf of the seller, a statement that:

(i) The agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d; and

(ii) The agent is aware of his/her duty to ensure compliance with the requirements of this subpart.

(7) The signatures of the sellers, agents, and purchasers, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

(b) *Lessor requirements.* Each contract to lease target housing shall include, as an attachment or within the contract, the following elements, in the language of the contract (e.g., English, Spanish):

(1) A Lead Warning Statement with the following language:

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

(2) A statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist in the housing, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) A list of any records or reports available to the lessor pertaining to lead based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate.

(4) A statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2696.

(5) When any agent is involved in the transaction to lease target housing on behalf of the lessor, a statement that:

(i) The agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d; and

(ii) The agent is aware of his/her duty to ensure compliance with the requirements of this subpart.

(6) The signatures of the lessors, agents, and lessees certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signature.

(c) *Retention of certification and acknowledgment information.*

(1) The seller, and any agent, shall retain a copy of the completed attachment required under paragraph (a) of this section for no less than 3 years from the completion date of the sale. The

lessor, and any agent, shall retain a copy of the completed attachment or lease contract containing the information required under paragraph (b) of this section for no less than 3 years from the commencement of the leasing period.

(2) This recordkeeping requirement is not intended to place any limitations on civil suits under the Act, or to otherwise affect a lessee's or purchaser's rights under the civil penalty provisions of 42 U.S.C. 4852d(b)(3).

(d) The seller, lessor, or agent shall not be responsible for the failure of a purchaser's or lessee's legal representative (where such representative receives all compensation from the purchaser or lessee) to transmit disclosure materials to the purchaser or lessee, provided that all required parties have completed and signed the necessary certification and acknowledgment language required under paragraphs (a) and (b) of this section.

§ 35.94. Agent responsibilities.

(a) Each agent shall ensure compliance with all requirements of this subpart. To ensure compliance, the agent shall:

(1) Inform the seller or lessor of his/her obligations under §§35.88, 35.90, and 35.92.

(2) Ensure that the seller or lessor has performed all activities required under §§35.88, 35.90, and 35.92, or personally ensure compliance with the requirements of §§35.88, 35.90, and 35.92.

(b) If the agent has complied with paragraph (a)(1) of this section, the agent shall not be liable for the failure to disclose to a purchaser or lessee the presence of lead-based paint and/or lead-based paint hazards known by a seller or lessor but not disclosed to the agent.

§ 35.96. Enforcement.

(a) Any person who knowingly fails to comply with any provision of this subpart shall be subject to civil monetary penalties in accordance with the provisions of 42 U.S.C. 3545 and 24 CFR part 30.

(b) The Secretary is authorized to take such action as may be necessary to enjoin any violation of this subpart in the appropriate Federal district court.

(c) Any person who knowingly violates the provisions of this subpart shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual.

(d) In any civil action brought for damages pursuant to 42 U.S.C. 4852d(b)(3), the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.

(e) Failure or refusal to comply with §§35.88 (disclosure requirements for sellers and lessors), §§35.90 (opportunity to conduct an evaluation), §35.92 (certification and acknowledgment of disclosure), or §35.94 (agent responsibilities) is a violation of 42 U.S.C. 4852d(b)(5) and of TSCA section 409 (15 U.S.C. 2689).

(f) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation. For purposes of enforcing this subpart, the penalty for each violation applicable under 15 U.S.C. 2615 shall be not more than \$10,000.

§ 35.98. Impact on State and local requirements.

Nothing in this subpart shall relieve a seller, lessor, or agent from any responsibility for compliance with State or local laws, ordinances, codes, or regulations governing notice or disclosure of known lead-based paint and/or lead-based paint hazards. Neither HUD nor

EPA assumes any responsibility for ensuring compliance with such State or local requirements.

Subpart B— General Lead-Based Paint Requirements and Definitions for All Programs.

§ 35.100. Purpose and applicability.

(a) *Purpose.* The requirements of subparts B through R of this part are promulgated to implement the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821 et seq.), and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 et seq.).

(b) *Applicability.*—

(1) *This subpart.* This subpart applies to all target housing that is federally owned and target housing receiving Federal assistance to which subparts C, D, F through M, and R of this part apply, except where indicated.(2) *Other subparts.*—

(i) *General.* Subparts C, D, and F through M of this part each set forth requirements for a specific type of Federal housing activity or assistance, such as multifamily mortgage insurance, project-based rental assistance, rehabilitation, or tenant-based rental assistance. Subpart R of this part provides standards and methods for activities required in subparts B, C, D, and F through M of this part.

(ii) *Application to programs.* Most HUD housing programs are covered by only one subpart of this part, but some programs can be used for more than one type of assistance and therefore are covered by more than one subpart of this part. A current list of programs covered by each subpart of this part is available on the internet at <http://www.hud.gov>, or by mail from the National Lead Information Center at 1-800-424-LEAD. Examples of flexible programs that can provide more than one type of assistance are the HOME Investment Partnerships program, the Community Development Block Grant program, and the Indian Housing Block Grant Program. Grantees, participating jurisdictions, Indian tribes and other entities administering such flexible programs must decide which subpart applies to the type of assistance being provided to a particular dwelling unit or residential property.

(iii) *Application to dwelling units.* In some cases, more than one type of assistance may be provided to the same dwelling unit. In such cases, the subpart or section with the most protective initial hazard reduction requirements applies. Paragraph (c) of this section provides a table that lists the subparts and sections of this part in order from the most protective to the least protective. (This list is based only on the requirements for initial hazard reduction. The summary of requirements on this list is not a complete list of requirements. It is necessary to refer to the applicable subparts and sections to determine all applicable requirements.)

(iv) *Example.* A multifamily building has 100 dwelling units and was built in 1965. The property is financed with HUD multifamily mortgage insurance. This building is covered by subpart G of this part (see §35.625—

Multifamily mortgage insurance for properties constructed after 1959), which is at protectiveness level 5 in the table set forth in paragraph (c) of this section. In the same building, however, 50 of the 100 dwelling units are receiving project-based assistance, and the average annual assistance per assisted unit is \$5,500. Those 50 units, and common areas servicing those units, are covered by the requirements of subpart H of this part (see §35.715—Project-based assistance for multifamily properties receiving more than \$5,000 per unit), which are at protectiveness level 3. Therefore, because

level 3 is a higher level of protectiveness than level 5, the units receiving project-based assistance, and common areas servicing those units, must comply at level 3, while the rest of the building can be operated at level 5. The owner may choose to operate the entire building at level 3 for simplicity.

(c) *Table One.* The following table lists the subparts and sections of this part applying to HUD programs in order from most protective to least protective hazard reduction requirements. The summary of hazard reduction requirements in this table is not complete. Readers must refer to the relevant subpart for complete requirements.

Level of protection	Subpart, section, and type of assistance	Hazard reduction requirements
1	Subpart L, Public housing. Subpart G, §35.630, Multifamily mortgage insurance for conversions and major rehabilitations.	Full abatement of lead-based paint.
2	Subpart J, §35.930(d), Properties receiving more than \$25,000 per unit in rehabilitation assistance.	Abatement of lead-based paint hazards.
3	Subpart G, §35.620, Multifamily mortgage insurance for properties constructed before 1960, other than conversions and major rehabilitations. Subpart H, §35.715, Project-based assistance for multifamily properties receiving more than \$5,000 per unit. Subpart I, HUD-owned multifamily property. Subpart J, §35.930(c), Properties receiving more than \$5,000 and up to \$25,000 per unit in rehabilitation assistance.	Interim controls.
4	Subpart F, HUD-owned single-family properties. Subpart H, §35.720, Project-based rental assistance for multifamily properties receiving up to \$5,000 per unit and single family properties. Subpart K, Acquisition, leasing, support services, or operation. Subpart M, Tenant-based rental assistance.	Paint stabilization.
5	Subpart G, §35.625, Multifamily mortgage insurance for properties constructed after 1959.	Ongoing lead-based paint maintenance.
6	Subpart J, §35.930(b), Properties receiving up to and including \$5,000 in rehabilitation assistance.	Safe work practices during rehabilitation.

§ 35.105. Effective dates.

The effective date for subparts B through R of this part is September 15, 2000, except that the effective date for prohibited methods of paint removal, described in §35.140, is November 15, 1999. Subparts F through M of this part provide further information on the application of the effective date to specific programs. Before September 15, 2000, a designated party has the option of following the procedures in subparts B through R of this part, or complying with current HUD lead-based paint regulations.

§ 35.106. Information collection requirements.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 2501 to 3520), and have been assigned OMB control number 2539-0009. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

§ 35.110. Definitions.

Abatement means any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards (see definition of “permanent”).

Abatement includes:

- (1) The removal of lead-based paint and dust-lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil lead hazards; and
- (2) All preparation, cleanup, disposal, and post abatement clearance testing activities associated with such measures.

Act means the Lead-Based Paint Poisoning Prevention Act, as amended, 42 U.S.C. 4822 et seq.

Bare soil means soil or sand not covered by grass, sod, other live ground covers, wood chips, gravel, artificial turf, or similar covering.

Certified means licensed or certified to perform such activities as risk assessment, lead-based paint inspection, or abatement supervision, either by a State or Indian tribe with a lead-based paint certification program authorized by the Environmental Protection Agency (EPA), or by the EPA, in accordance with 40 CFR part 745, subparts L or Q.

Chewable surface means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an “accessible surface” as defined in 42 U.S.C. 4851b(2)). Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.

Clearance examination means an activity conducted following lead-based paint hazard reduction activities to determine that the hazard reduction activities are complete and that no soil-lead hazards or settled dust-lead hazards, as defined in this part, exist in the dwelling unit or worksite. The clearance process includes a visual assessment, collection, and analysis of environmental samples. Dust-lead standards for clearance are found at §35.1320.

Common area means a portion of a residential property that is available for use by occupants of more than one dwelling unit. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, on-site day care facilities, garages and boundary fences.

Component means an architectural element of a

dwelling unit or common area identified by type and location, such as a bedroom wall, an exterior windowsill, a baseboard in a living room, a kitchen floor, an interior windowsill in a bathroom, a porch floor, stair treads in a common stairwell, or an exterior wall.

Composite sample means a collection of more than one sample of the same medium (e.g., dust, soil or paint) from the same type of surface (e.g., floor, interior window sill, or window trough), such that multiple samples can be analyzed as a single sample.

Containment means the physical measures taken to ensure that dust and debris created or released during lead-based paint hazard reduction are not spread, blown or tracked from inside to outside of the worksite.

Designated party means a Federal agency, grantee, subrecipient, participating jurisdiction, housing agency, Indian Tribe, tribally designated housing entity (TDHE), sponsor, or property owner responsible for complying with applicable requirements.

Deteriorated paint means any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

Dry sanding means sanding without moisture and includes both hand and machine sanding.

Dust-lead hazard means surface dust that contains a dust-lead loading (area concentration of lead) equal to or exceeding the levels promulgated by the EPA at 40 CFR 745.65 or, if such levels are not in effect, the standards for dust-lead hazards in §35.1320.

Dwelling unit means a:

- (1) Single-family dwelling, including attached structures such as porches and stoops; or
- (2) Housing unit in a structure that contains more than 1 separate housing unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or separate living quarters of 1 or more persons.

Encapsulation means the application of a covering or coating that acts as a barrier between the lead-based paint and the environment and that relies for its durability on adhesion between the encapsulates and the painted surface, and on the integrity of the existing bonds between paint layers and between the paint and the substrate. Encapsulation may be used as a method of abatement if it is designed and performed so as to be permanent (see definition of "permanent").

Enclosure means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment. Enclosure may be used as a method of abatement if it is designed to be permanent (see definition of "permanent").

Environmental intervention blood lead level means a confirmed concentration of lead in whole blood equal to or greater than 20 µg/dL (micrograms of lead per deciliter) for a single test or 15–19 µg/dL in two tests taken at least 3 months apart.

Evaluation means a risk assessment, a lead hazard screen, a lead-based paint inspection, paint testing, or a combination of these to determine the presence of lead-based paint hazards or lead-based paint.

Expected to reside means there is actual knowledge that a child will reside in a dwelling unit reserved for the elderly or designated exclusively for persons with disabilities. If a resident woman is known to be pregnant, there is actual knowledge that a child will reside in the dwelling unit.

Federal agency means the United States or any

executive department, independent establishment, administrative agency and instrumentality of the United States, including a corporation in which all or a substantial amount of the stock is beneficially owned by the United States or by any of these entities. The term "Federal agency" includes, but is not limited to, Rural Housing Service (formerly Rural Housing and Community Development Service that was formerly Farmers Home Administration), Resolution Trust Corporation, General Services Administration, Department of Defense, Department of Veterans Affairs, Department of the Interior, and Department of Transportation.

Federally owned property means residential property owned or managed by a Federal agency, or for which a Federal agency is a trustee or conservator.

Firm commitment means a valid commitment issued by HUD or the Federal Housing Commissioner setting forth the terms and conditions upon which a mortgage will be insured or guaranteed.

Friction surface means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

g means gram, *mg* means milligram (thousandth of a gram), and *µg* means microgram (millionth of a gram).

Grantee means any state or local government, Indian Tribe, IHBG recipient, insular area or nonprofit organization that has been designated by HUD to administer Federal housing assistance under a program covered by subparts J and K of this part, except the HOME program.

Hard costs of rehabilitation means:

- (1) Costs to correct substandard conditions or to meet applicable local rehabilitation standards;
- (2) Costs to make essential improvements, including energy-related repairs, and those necessary to permit use by persons with disabilities; and costs to repair or replace major housing systems in danger of failure; and
- (3) Costs of non-essential improvements, including additions and alterations to an existing structure; but
- (4) Hard costs do not include administrative costs (e.g., overhead for administering a rehabilitation program, processing fees, etc.).

Hazard reduction means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls or abatement or a combination of the two.

HEPA vacuum means a vacuum cleaner device with an included high-efficiency particulate air (HEPA) filter through which the contaminated air flows, operated in accordance with the instructions of its manufacturer. A HEPA filter is one that captures at least 99.97 percent of airborne particles of at least 0.3 micrometers in diameter.

Housing for the elderly means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more, or other age if recognized as elderly by a specific Federal housing assistance program.

Housing receiving Federal assistance means housing which is covered by an application for HUD mortgage insurance, receives housing assistance payments under a program administered by HUD, or otherwise receives more than \$5,000 in project-based assistance under a Federal housing program administered by an agency other than HUD.

HUD means the United States Department of Housing and Urban Development.

HUD-owned property means residential property owned or managed by HUD, or for which HUD is a trustee or conservator.

Impact surface means an interior or exterior surface that is subject to damage by repeated sudden force, such as certain parts of door frames.

Indian Housing Block Grant (IHBG) recipient means a tribe or a tribally designated housing entity (TDHE) receiving IHBG funds.

Indian tribe means a tribe as defined in the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.)

Inspection (See Lead-based paint inspection).

Insular areas means Guam, the Northern Mariana Islands, the United States Virgin Islands and American Samoa.

Interim controls means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards. Interim controls include, but are not limited to, repairs, painting, temporary containment, specialized cleaning, clearance, ongoing lead-based paint maintenance activities, and the establishment and operation of management and resident education programs.

Interior window sill means the portion of the horizontal window ledge that protrudes into the interior of the room, adjacent to the window sash when the window is closed. The interior window sill is sometimes referred to as the window stool.

Lead-based paint means paint or other surface coatings that contain lead equal to or exceeding 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million (ppm) by weight.

Lead-based paint hazard means any condition that causes exposure to lead from dust-lead hazards, soil-lead hazards, or lead-based paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces, and that would result in adverse human health effects.

Lead-based paint 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.

Lead hazard screen means a limited risk assessment activity that involves paint testing and dust sampling and analysis as described in 40 CFR 745.227(c) and soil sampling and analysis as described in 40 CFR 745.227(d).

Mortgagee means a lender of a mortgage loan.

Mortgagor means a borrower of a mortgage loan.

Multifamily property means a residential property containing five or more dwelling units.

Occupant means a person who inhabits a dwelling unit.

Owner means a person, firm, corporation, nonprofit organization, partnership, government, guardian, conservator, receiver, trustee, executor, or other judicial officer, or other entity which, alone or with others, owns, holds, or controls the freehold or leasehold title or part of the title to property, with or without actually possessing it. The definition includes a vendee who possesses the title, but does not include a mortgagee or an owner of a reversionary interest under a ground rent lease.

Paint stabilization means repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.

Paint testing means the process of determining, by a certified lead-based paint inspector or risk assessor, the

presence or the absence of lead-based paint on deteriorated paint surfaces or painted surfaces to be disturbed or replaced.

Paint removal means a method of abatement that permanently eliminates lead-based paint from surfaces.

Painted surface to be disturbed means a paint surface that is to be scraped, sanded, cut, penetrated or otherwise affected by rehabilitation work in a manner that could potentially create a lead-based paint hazard by generating dust, fumes, or paint chips.

Participating jurisdiction means any State or local government that has been designated by HUD to administer a HOME program grant.

Permanent means an expected design life of at least 20 years.

Play area means an area of frequent soil contact by children of less than 6 years of age, as indicated by the presence of play equipment (e.g. sandboxes, swing sets, sliding boards, etc.) or toys or other children's possessions, observations of play patterns, or information provided by parents, residents or property owners.

Project-based rental assistance means Federal rental assistance that is tied to a residential property with a specific location and remains with that particular location throughout the term of the assistance.

Public health department means a State, tribal, county or municipal public health department or the Indian Health Service.

Public housing development means a residential property assisted under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.), but not including housing assisted under section 8 of the 1937 Act.

Reevaluation means a visual assessment of painted surfaces and limited dust and soil sampling conducted periodically following lead-based paint hazard reduction where lead-based paint is still present.

Rehabilitation means the improvement of an existing structure through alterations, incidental additions or enhancements. Rehabilitation includes repairs necessary to correct the results of deferred maintenance, the replacement of principal fixtures and components, improvements to increase the efficient use of energy, and installation of security devices.

Replacement means a strategy of abatement that entails the removal of building components that have surfaces coated with lead-based paint and the installation of new components free of lead-based paint.

Residential property means a dwelling unit, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences and play equipment affixed to the land, belonging to an owner and available for use by residents, but not including land used for agricultural, commercial, industrial or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways.

Risk assessment means:

- (1) An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and
- (2) The provision of a report by the individual or firm conducting the risk assessment explaining the results of the investigation and options for reducing lead-based paint hazards.

Single family property means a residential property containing one through four dwelling units.

Single room occupancy (SRO) housing means housing consisting of zero-bedroom dwelling units that may contain food preparation or sanitary facilities or both (see Zero-bedroom dwelling).

Soil-lead hazard means bare soil on residential property that contains lead equal to or exceeding levels promulgated by the EPA at 40 CFR 745.65 or, if such levels are not in effect, the standards for soil-lead hazards in §35.1320.

Sponsor means mortgagor (borrower).

Sub-recipient means any nonprofit organization selected by the grantee or participating jurisdiction to administer all or a portion of the Federal rehabilitation assistance or other non-rehabilitation assistance, or any such organization selected by a sub-recipient of the grantee or participating jurisdiction. An owner or developer receiving Federal rehabilitation assistance or other assistance for a residential property is not considered a sub-recipient for the purposes of carrying out that project.

Standard treatments means a series of hazard reduction measures designed to reduce all lead-based paint hazards in a dwelling unit without the benefit of a risk assessment or other evaluation.

Substrate means the material directly beneath the painted surface out of which the components are constructed, including wood, drywall, plaster, concrete, brick or metal.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless a child of less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling. In the case of jurisdictions which banned the sale or use of lead-based paint prior to 1978, HUD may designate an earlier date.

Tenant means the individual named as the lessee in a lease, rental agreement or occupancy agreement for a dwelling unit.

A *visual assessment* alone is not considered an evaluation for the purposes of this part. Visual assessment means looking for, as applicable:

Visual assessment means looking for, as applicable.

- (1) Deteriorated paint;
- (2) Visible surface dust, debris, and residue as part of a risk assessment or clearance examination; or
- (3) The completion or failure of a hazard reduction measure.

Wet sanding or wet scraping means a process of removing loose paint in which the painted surface to be sanded or scraped is kept wet to minimize the dispersal of paint chips and airborne dust.

Window trough means the area between the interior window sill (stool) and the storm window frame. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered.

Worksite means an interior or exterior area where lead-based paint hazard reduction activity takes place. There may be more than one worksite in a dwelling unit or at a residential property.

Zero-bedroom dwelling means any residential dwelling in which the living areas are not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory or single room occupancy housing, military barracks, and rentals of individual rooms in residential dwellings (see Single room occupancy (SRO)).

§ 35.115. Exemptions.

(a) Subparts B through R of this part do not apply to the following:

- (1) A residential property for which construction was completed on or after January 1, 1978, or, in

the case of jurisdictions which banned the sale or residential use of lead-containing paint prior to 1978, an earlier date as HUD may designate (see §35.160).

(2) A zero-bedroom dwelling unit, including a single room occupancy (SRO) dwelling unit.

(3) Housing for the elderly, or a residential property designated exclusively for persons with disabilities; except this exemption shall not apply if a child less than age 6 resides or is expected to reside in the dwelling unit (see definitions of "housing for the elderly" and "expected to reside" in §35.110).

(4) Residential property found not to have lead-based paint by a lead-based paint inspection conducted in accordance with §35.1320(a) (for more information regarding inspection procedures consult the 1997 edition of Chapter 7 of the HUD Guidelines). Results of additional test(s) by a certified lead-based paint inspector may be used to confirm or refute a prior finding.

(5) Residential property in which all lead-based paint has been identified, removed, and clearance has been achieved in accordance with 40 CFR 745.227(b)(e) before September 15, 2000, or in accordance with §§35.1320, 35.1325 and 35.1340 on or after September 15, 2000. This exemption does not apply to residential property where enclosure or encapsulation has been used as a method of abatement.

(6) An unoccupied dwelling unit or residential property that is to be demolished, provided the dwelling unit or property will remain unoccupied until demolition.

(7) A property or part of a property that is not used and will not be used for human residential habitation, except that spaces such as entryways, hallways, corridors, passageways or stairways serving both residential and nonresidential uses in a mixed-use property shall not be exempt.

(8) Any rehabilitation that does not disturb a painted surface.

(9) For emergency actions immediately necessary to safeguard against imminent danger to human life, health or safety, or to protect property from further structural damage (such as when a property has been damaged by a natural disaster, fire, or structural collapse), occupants shall be protected from exposure to lead in dust and debris generated by such emergency actions to the extent practicable, and the requirements of subparts B through R of this part shall not apply. This exemption applies only to repairs necessary to respond to the emergency. The requirements of subparts B through R of this part shall apply to any work undertaken subsequent to, or above and beyond, such emergency actions.

(10) If a Federal law enforcement agency has seized a residential property and owns the property for less than 270 days, §§35.210 and 35.215 shall not apply to the property.

(11) The requirements of subpart K of this part do not apply if the assistance being provided is emergency rental assistance or foreclosure prevention assistance, provided that this exemption shall expire for a dwelling unit no later than 100 days after the initial payment or assistance.

(12) Performance of an evaluation or lead-based paint hazard reduction or lead-based paint

abatement on an exterior painted surface as required under this part may be delayed for a reasonable time during a period when weather conditions are unsuitable for conventional construction activities.

(13) Where abatement of lead-based paint hazards or lead-based paint is required by this part and the property is listed or has been determined to be eligible for listing in the National Register of Historic Places or contributing to a National Register Historic District, the designated party may, if requested by the State Historic Preservation Office, conduct interim controls in accordance with §35.1330 instead of abatement. If interim controls are conducted, ongoing lead-based paint maintenance and reevaluation shall be conducted as required by the applicable subpart of this part in accordance with §35.1355.

(b) For the purposes of subpart C of this part, each Federal agency other than HUD will determine whether appropriations are sufficient to implement this rule. If appropriations are not sufficient, subpart C of this part shall not apply to that Federal agency. If appropriations are sufficient, subpart C of this part shall apply.

§ 35.120. Options.

(a) *Standard treatments.* Where interim controls are required by this part, the designated party has the option to presume that lead-based paint or lead-based paint hazards or both are present throughout the residential property. In such a case, evaluation is not required. Standard treatments shall then be conducted in accordance with §35.1335 on all applicable surfaces, including soil. Standard treatments are completed only when clearance is achieved in accordance with §35.1340.

(b) *Abatement.* Where abatement is required by this part, the designated party may presume that lead-based paint or lead-based paint hazards or both are present throughout the residential property. In such a case, evaluation is not required. Abatement shall then be conducted on all applicable surfaces, including soil, in accordance with §35.1325, and completed when clearance is achieved in accordance with §35.1340. This option is not available in public housing, where inspection is required.

(c) *Lead hazard screen.* Where a risk assessment is required, the designated party may choose first to conduct a lead hazard screen in accordance with §35.1320(b). If the results of the lead hazard screen indicate the need for a full risk assessment (e.g., if the environmental measurements exceed levels established for lead hazard screens in §35.1320(b)(2)), a complete risk assessment shall be conducted. Environmental samples collected for the lead hazard screen may be used in the risk assessment. If the results of the lead hazard screen do not indicate the need for a follow-up risk assessment, a risk assessment is not required.

(d) *Paint testing.* Where paint stabilization or interim controls of deteriorated paint surfaces are required by this rule, the designated party has the option to conduct paint testing of all surfaces with non-intact paint. If paint testing indicates the absence of lead-based paint on a specific surface, paint stabilization or interim controls are not required on that surface.

§ 35.125. Notice of evaluation and hazard reduction activities.

The following activities shall be conducted if notice is required by subparts D and F through M of this part.

(a) *Notice of evaluation or presumption.* When

evaluation is undertaken and lead-based paint or lead-based paint hazards are found to be present, or if a presumption is made that lead-based paint or lead-based paint hazards are present in accordance with the options described in §35.120, the designated party shall provide a notice to occupants within 15 calendar days of the date when the designated party receives the report or makes the presumption. A visual assessment alone is not considered an evaluation for the purposes of this part. If only a visual assessment alone is required by this part, and no evaluation is performed, a notice of evaluation or presumption is not required.

(1) The notice of the evaluation shall include:

- (i) A summary of the nature, dates, scope, and results of the evaluation;
- (ii) A contact name, address and telephone number for more information, and to obtain access to the actual evaluation report; and
- (iii) The date of the notice.

(2) The notice of presumption shall include:

- (i) The nature and scope of the presumption;
- (ii) A contact name, address and telephone number for more information; and
- (iii) The date of the notice.

(b) *Notice of hazard reduction activity.* When hazard reduction activities are undertaken, each designated party shall:

(1) Provide a notice to occupants not more than 15 calendar days after the hazard reduction activities (including paint stabilization) have been completed. Notice of hazard reduction shall include, but not be limited to:

- (i) A summary of the nature, dates, scope, and results (including clearance) of the hazard reduction activities;
- (ii) A contact name, address, and telephone number for more information;
- (iii) Available information on the location of any remaining lead-based paint in the rooms, spaces, or areas where hazard reduction activities were conducted, on a surface-by-surface basis; and
- (iv) The date of the notice.

(2) Update the notice, based on reevaluation of the residential property and as any additional hazard reduction work is conducted.

(3) Provision of a notice of hazard reduction is not required if a clearance examination is not required.

(c) *Availability of notices of evaluation, presumption, and hazard reduction activities.*

(1) The notices of evaluation, presumption, and hazard reduction shall be of a size and type that is easily read by occupants.

(2) To the extent practicable, each notice shall be made available, upon request, in a format accessible to persons with disabilities (e.g., Braille, large type, computer disk, audio tape).

(3) Each notice shall be provided in the occupants' primary language or in the language of the occupants' contract or lease.

(4) The designated party shall provide each notice to the occupants by:

- (i) Posting and maintaining it in centrally located common areas and distributing it to any dwelling unit if necessary because the head of household is a person with a known disability; or
- (ii) Distributing it to each occupied dwelling unit affected by the evaluation, presumption, or hazard reduction activity or serviced by

common areas in which an evaluation, presumption or hazard reduction has taken place.

§ 35.130. Lead hazard information pamphlet.

If provision of a lead hazard information pamphlet is required in subparts D and F through M of this part, the designated party shall provide to each occupied dwelling unit to which subparts D and F through M of this part apply, the lead hazard information pamphlet developed by EPA, HUD and the Consumer Product Safety Commission pursuant to section 406 of the Toxic Substances Control Act (15 U.S.C. 2686), or an EPA-approved alternative; except that the designated party need not provide a lead hazard information pamphlet if the designated party can demonstrate that the pamphlet has already been provided in accordance with the lead-based paint notification and disclosure requirements at §35.88(a)(1), or 40 CFR 745.107(a)(1) or in accordance with the requirements for hazard education before renovation at 40 CFR part 745, subpart E.

§ 35.135. Use of paint containing lead.

(a) *New use prohibition.* The use of paint containing more than 0.06 percent dry weight of lead on any interior or exterior surface in federally owned housing or housing receiving Federal assistance is prohibited. As appropriate, each Federal agency shall include the prohibition in contracts, grants, cooperative agreements, insurance agreements, guaranty agreements, trust agreements, or other similar documents.

(b) *Pre-1978 prohibition.* In the case of a jurisdiction which banned the sale or residential use of lead-containing paint before 1978, HUD may designate an earlier date for certain provisions of subparts D and F through M of this part.

§ 35.140. Prohibited methods of paint removal.

The following methods shall not be used to remove paint that is, or may be, lead-based paint:

- (a) Open flame burning or torching.
- (b) Machine sanding or grinding without a high-efficiency particulate air (HEPA) local exhaust control.
- (c) Abrasive blasting or sandblasting without HEPA local exhaust control.
- (d) Heat guns operating above 1100 degrees Fahrenheit or charring the paint.
- (e) Dry sanding or dry scraping, except dry scraping in conjunction with heat guns or within 1.0 ft. (0.30 m.) of electrical outlets, or when treating defective paint spots totaling no more than 2 sq. ft. (0.2 sq. m.) in any one interior room or space, or totaling no more than 20 sq. ft. (2.0 sq. m.) on exterior surfaces.
- (f) Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the Consumer Product Safety Commission at 16 CFR 1500.3, and/or a hazardous chemical in accordance with the Occupational Safety and Health Administration regulations at 29 CFR 1910.1200 or 1926.59, as applicable to the work.

§ 35.145. Compliance with Federal laws and authorities.

All lead-based paint activities, including waste disposal, performed under this part shall be performed in accordance with applicable Federal laws and authorities. For example, such activities are subject to the applicable environmental review requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Toxic Substances Control Act, Title IV (15 U.S.C. 2860 et seq.), and other environmental laws and authorities (see, e.g., laws and

authorities listed in §50.4 of this title).

§ 35.150. Compliance with other State, tribal, and local laws.

(a) *HUD responsibility.* If HUD determines that a State, tribal or local law, ordinance, code or regulation provides for evaluation or hazard reduction in a manner that provides a comparable level of protection from the hazards of lead-based paint poisoning to that provided by the requirements of subparts B, C, D, F through M and R of this part and that adherence to the requirements of subparts B, C, D, F through M, and R of this part, would be duplicative or otherwise cause inefficiencies, HUD may modify or waive some or all of the requirements of the subparts in a manner that will promote efficiency while ensuring a comparable level of protection.

(b) *Participant responsibility.* Nothing in this part is intended to relieve any participant in a program covered by this subpart of any responsibility for compliance with State, tribal or local laws, ordinances, codes or regulations governing evaluation and hazard reduction. If a State, tribal or local law, ordinance, code or regulation defines lead-based paint differently than the Federal definition, the more protective definition (i.e., the lower level) shall be followed in that State, tribal or local jurisdiction.

§ 35.155. Minimum requirements.

(a) Nothing in subparts B, C, D, F through M, and R of this part is intended to preclude a designated party or occupant from conducting additional evaluation or hazard reduction measures beyond the minimum requirements established for each program in this regulation. For example, if the applicable subpart requires visual assessment, the designated party may choose to perform a risk assessment in accordance with §35.1320. Similarly, if the applicable subpart requires interim controls, a designated party or occupant may choose to implement abatement in accordance with §35.1325.

(b) To the extent that assistance from any of the programs covered by subparts B, C, D, and F through M of this part is used in conjunction with other HUD program assistance, the most protective requirements prevail.

§ 35.160. Waivers.

In accordance with §5.110 of this title, on a case-by-case basis and upon determination of good cause, HUD may, subject to statutory limitations, waive any provision of subparts B, C, D, F through M, and R of this part.

§ 35.165. Prior evaluation or hazard reduction.

If an evaluation or hazard reduction was conducted at a residential property or dwelling unit before the property or dwelling unit became subject to the requirements of subparts B, C, D, F through M, and R of this part, such an evaluation, hazard reduction or abatement meets the requirements of subparts B, C, D, F through M, and R of this part and need not be repeated under the following conditions:

(a) *Lead-based paint inspection.*

(1) A lead-based paint inspection conducted before March 1, 2000, meets the requirements of this part if:

- (i) At the time of the inspection the lead-based paint inspector was approved by a State or Indian tribe to perform lead-based paint inspections. It is not necessary that the State or tribal approval program had EPA authorization at the time of the inspection.
- (ii) Notwithstanding paragraph (a)(1)(i) of this

section, the inspection was conducted and accepted as valid by a housing agency in fulfillment of the lead-based paint inspection requirement of the public and Indian housing program.

(2) A lead-based paint inspection conducted on or after March 1, 2000, must have been conducted by a certified lead-based paint inspector.

(b) *Risk assessment.*

(1) A risk assessment must be no more than 12 months old to be considered current.

(2) A risk assessment conducted before March 1, 2000, meets the requirements of this part if, at the time of the risk assessment, the risk assessor was approved by a state or Indian Tribe to perform risk assessments. It is not necessary that the state or tribal approval program had EPA authorization at the time of the risk assessment.

(3) A risk assessment conducted on or after March 1, 2000, must have been conducted by a certified risk assessor.

(4) Paragraph (b) of this section does not apply in a case where a risk assessment is required in response to the identification of a child with an environmental intervention blood lead level. In such a case, the requirements in the applicable subpart for responding to a child with an environmental intervention blood lead level shall apply.

(c) *Interim controls.* If a residential property is under a program of interim controls and ongoing lead-based paint maintenance and reevaluation activities established pursuant to a risk assessment conducted in accordance with paragraph (b) of this section, the interim controls that have been conducted meet the requirements of this part if clearance was achieved after such controls were implemented. In such a case, the program of interim controls and ongoing activities shall be continued in accordance with the requirements of this part. (d) *Abatement.*

(1) An abatement conducted before March 1, 2000, meets the requirements of this part if:

(i) At the time of the abatement the abatement supervisor was approved by a State or Indian tribe to perform lead-based paint abatement. It is not necessary that the State or tribal approval program had EPA authorization at the time of the abatement.

(ii) Notwithstanding paragraph (d)(1)(i) of this section, it was conducted and accepted by a housing agency in fulfillment of the lead-based paint abatement requirement of the public housing program or by an Indian housing authority (as formerly defined under the U.S. Housing Act of 1937) in fulfillment of the lead-based paint requirement of the Indian housing program formerly funded under the U.S. Housing Act of 1937.

(2) An abatement conducted on or after March 1, 2000, must have been conducted under the supervision of a certified lead-based paint abatement supervisor.

§ 35.170. Noncompliance with the requirements of subparts B through R of this part.

(a) *Monitoring and enforcement.* A designated party who fails to comply with any requirement of subparts B, C, D, F through M, and R of this part shall be subject to the sanctions available under the relevant Federal housing assistance or ownership program and may be subject to other penalties authorized by law.

(b) A property owner who informs a potential purchaser or occupant of lead-based paint or possible lead-based paint hazards in a residential property or dwelling unit, in accordance with subpart A of this part, is not relieved of the requirements to evaluate and reduce lead-based paint hazards in accordance with subparts B through R of this part as applicable.

§ 35.175. Records.

The designated party, as specified in subparts C, D, and F through M of this part, shall keep a copy of each notice, evaluation, and clearance or abatement report required by subparts C, D, and F through M of this part for at least three years. Those records applicable to a portion of a residential property for which ongoing lead-based paint maintenance and/or reevaluation activities are required shall be kept and made available for the Department's review, until at least three years after such activities are no longer required.

Subpart C— Disposition of Residential Property Owned by a Federal Agency Other Than HUD

§ 35.200. Purpose and applicability.

The purpose of this subpart C is to establish procedures to eliminate as far as practicable lead-based paint hazards prior to the sale of a residential property that is owned by a Federal agency other than HUD. The requirements of this subpart apply to any residential property offered for sale on or after September 15, 2000.

§ 35.205. Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.210. Disposition of residential property constructed before 1960.

(a) *Evaluation.* The Federal agency shall conduct a risk assessment and a lead-based paint inspection in accordance with 40 CFR 745.227 before the closing of the sale.

(b) *Abatement of lead-based paint hazards.* The risk assessment used for the identification of hazards to be abated shall have been performed no more than 12 months before the beginning of the abatement. The Federal agency shall abate all identified lead-based paint hazards in accordance with 40 CFR 745.227. Abatement is completed when clearance is achieved in accordance with 40 CFR 745.227. Where abatement of lead-based paint hazards is not completed before the closing of the sale, the Federal agency shall be responsible for assuring that abatement is carried out by the purchaser before occupancy of the property as target housing and in accordance with 40 CFR 745.227.

§ 35.215. Disposition of residential property constructed after 1959 and before 1978.

The Federal agency shall conduct a risk assessment and a lead-based paint inspection in accordance with 40 CFR 745.227. Evaluation shall be completed before closing of the sale according to a schedule determined by the Federal agency. The results of the risk assessment and lead-based paint inspection shall be made available to prospective purchasers as required in subpart A of this part.

Subpart D— Project-Based Assistance Provided by a Federal Agency Other Than HUD

§ 35.300. Purpose and applicability.

The purpose of this subpart D is to establish procedures to eliminate as far as practicable lead-based paint hazards in a residential property that receives more than \$5,000 annually per project in project-based assistance on or after September 15,

2000, under a program administered by a Federal agency other than HUD.

§ 35.305. Definitions and other general requirements. Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.310. Notices and pamphlet.

(a) *Notice.* A notice of evaluation or hazard reduction shall be provided to the occupants in accordance with §35.125.

(b) *Lead hazard information pamphlet.* The owner shall provide the lead hazard information pamphlet in accordance with §35.130.

§ 35.315. Risk assessment.

Each owner shall complete a risk assessment in accordance with 40 CFR 745.227(d). Each risk assessment shall be completed in accordance with the schedule established by the Federal agency.

§ 35.320. Hazard reduction.

Each owner shall conduct interim controls consistent with the findings of the risk assessment report. Hazard reduction shall be conducted in accordance with subpart R of this part.

§ 35.325. Child with an environmental intervention blood lead level.

If a child less than 6 years of age living in a federally assisted dwelling unit has an environmental intervention blood lead level, the owner shall immediately conduct a risk assessment in accordance with 40 CFR 745.227(d). Interim controls of identified lead-based paint hazards shall be conducted in accordance with §35.1330. Interim controls are complete when clearance is achieved in accordance with §35.1340. The Federal agency shall establish a timetable for completing risk assessments and hazard reduction when an environmental intervention blood lead level child is identified.

Subpart E. [Reserved]

Subpart F— HUD-Owned Single Family Property

§ 35.500. Purpose and applicability.

The purpose of this subpart F is to establish procedures to eliminate as far as practicable lead-based paint hazards in HUD-owned single family properties that have been built before 1978 and are sold with mortgages insured under a program administered by HUD. The requirements of this subpart apply to any such residential properties offered for sale on or after September 15, 2000.

§ 35.505. Definitions and other general requirements. Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.510. Required procedures.

(a) The following activities shall be conducted for all properties to which this subpart is applicable:

- (1) A visual assessment of all painted surfaces in order to identify deteriorated paint;
- (2) Paint stabilization of all deteriorated paint in accordance with §35.1330(a) and (b); and
- (3) Clearance in accordance with §35.1340.

(b) Occupancy shall not be permitted until all required paint stabilization is complete and clearance is achieved.

(c) If paint stabilization and clearance are not completed before the closing of the sale, the Department shall assure that paint stabilization and clearance are carried out pursuant to subpart R of this part by the purchaser before occupancy.

Subpart G— Multifamily Mortgage Insurance

§ 35.600. Purpose and applicability.

The purpose of this subpart G is to establish procedures to eliminate as far as practicable lead-based paint hazards in a multifamily residential property for which HUD is the owner of the mortgage or the owner receives mortgage insurance, under a program administered by HUD.

§ 35.605. Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.610. Exemption.

An application for insurance in connection with a refinancing transaction where an appraisal is not required under the applicable procedures established by HUD is excluded from the coverage of this subpart.

§ 35.615. Notices and pamphlet.

(a) *Notice.* If evaluation or hazard reduction is undertaken, the sponsor shall provide a notice to occupants in accordance with §35.125. A visual assessment alone is not considered an evaluation for the purposes of this part.

(b) *Lead hazard information pamphlet.* The sponsor shall provide the lead hazard information pamphlet in accordance with §35.130.

§ 35.620. Multifamily insured property constructed before 1960.

Except as provided in §35.630, the following requirements apply to multifamily insured property constructed before 1960:

(a) *Risk assessment.* Before the issuance of a firm commitment the sponsor shall conduct a risk assessment in accordance with §35.1320(b).

(b) *Interim controls.*

(1) The sponsor shall conduct interim controls in accordance with §35.1330 to treat the lead-based paint hazards identified in the risk assessment. Interim controls are considered completed when clearance is achieved in accordance with §35.1340.

(2) The sponsor shall complete interim controls before the issuance of the firm commitment or interim controls may be made a condition of the Federal Housing Administration (FHA) firm commitment, with sufficient repair or rehabilitation funds escrowed at initial endorsement of the FHA insured loan.

(c) *Ongoing lead-based paint maintenance activities.*

Before the issuance of the firm commitment, the sponsor shall agree to incorporate ongoing lead-based paint maintenance into regular building operations and maintenance activities in accordance with §35.1355(a).

§ 35.625. Multifamily insured property constructed after 1959 and before 1978.

Except as provided in §35.630, before the issuance of the firm commitment, the sponsor shall agree to incorporate ongoing lead-based paint maintenance practices into regular building operations, in accordance with §35.1355(a).

§ 35.630. Conversions and major rehabilitations.

The procedures and requirements of this section apply when a nonresidential property constructed before 1978 is to be converted to residential use, or a residential property constructed before 1978 is to undergo rehabilitation that is estimated to cost more than 50 percent of the estimated replacement cost after rehabilitation.

(a) *Lead-based paint inspection.* Before issuance of a firm FHA commitment, the sponsor shall conduct a lead-based paint inspection in accordance with

§35.1320(a).

(b) *Abatement.* Prior to occupancy, the sponsor shall conduct abatement of all lead-based paint on the property in accordance with §35.1325. Whenever practicable, abatement shall be achieved through the methods of paint removal or component replacement. If paint removal or component replacement are not practicable, that is if such methods would damage substrate material considered architecturally significant, permanent encapsulation or enclosure may be used as methods of abatement. Abatement is considered complete when clearance is achieved in accordance with §35.1340. If encapsulation or enclosure is used, the sponsor shall incorporate ongoing lead-based paint maintenance into regular building operations maintenance activities in accordance with §35.1355.

(c) *Historic properties.* Section 35.115(a)(13) applies to this section.

Subpart H— Project-Based Assistance

§ 35.700. Purpose and applicability.

(a) This subpart H establishes procedures to eliminate as far as practicable lead-based paint hazards in residential properties receiving project-based assistance under a HUD program. The requirements of this subpart apply only to the assisted dwelling units in a covered property and any common areas servicing those dwelling units. This subpart does not apply to housing receiving rehabilitation assistance or to public housing, which are covered by subparts J and M of this part, respectively.

(b) For the purposes of competitively awarded grants under the Housing Opportunities for Persons with AIDS Program (HOPWA), the Supportive Housing Program (42 U.S.C. 11381 to 11389) and the Shelter Plus Care Program project-based rental assistance and sponsor-based rental assistance components (42 U.S.C. 11402 to 11407), the requirements of this subpart shall apply to grants awarded pursuant to Notices of Funding Availability published on or after October 1, 1999. For the purposes of formula grants awarded under the Housing Opportunities for Persons with AIDS Program (HOPWA) (42 U.S.C. 12901 et seq.), the requirements of this subpart shall apply to activities for which program funds are first obligated on or after September 15, 2000.

§ 35.705. Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.710. Notices and pamphlet.

(a) *Notice.* If evaluation or hazard reduction is undertaken, each owner shall provide a notice to occupants in accordance with §35.125. A visual assessment alone is not considered an evaluation for the purposes of this part.

(b) *Lead hazard information pamphlet.* The owner shall provide the lead hazard information pamphlet in accordance with §35.130.

§ 35.715. Multifamily properties receiving more than \$5,000 per unit.

The requirements of this section shall apply to a multifamily residential property that is receiving an average of more than \$5,000 per assisted dwelling unit annually in project-based assistance.

(a) *Risk assessment.* Each owner shall complete a risk assessment in accordance with §35.1320(b). A risk assessment is considered complete when the owner receives the risk assessment report. Until the owner conducts a risk assessment as required by this section, the requirements of paragraph (d) of this section shall

apply. After the risk assessment has been conducted the requirements of paragraphs (b) and (c) of this section shall apply. Each risk assessment shall be completed no later than the following schedule or a schedule otherwise determined by HUD:

(1) Risk assessments shall be completed on or before September 17, 2001, in a multifamily residential property constructed before 1960.

(2) Risk assessments shall be completed on or before September 15, 2003, in a multifamily residential property constructed after 1959 and before 1978.

(b) *Interim controls.* Each owner shall conduct interim controls in accordance with §35.1330 to treat the lead-based paint hazards identified in the risk assessment. Interim controls are considered completed when clearance is achieved in accordance with §35.1340. Interim controls shall be completed no later than the following schedule:

(1) In units occupied by families with children of less than 6 years of age and in common areas servicing those units, interim controls shall be completed no later than 90 days after the completion of the risk assessment. In units in which a child of less than 6 years of age moves in after the completion of the risk assessment, interim controls shall be completed no later than 90 days after the move-in.

(2) In all other dwelling units, common areas, and the remaining portions of the residential property, interim controls shall be completed no later than 12 months after completion of the risk assessment for those units.

(c) *Ongoing lead-based paint maintenance and reevaluation activities.* Effective immediately after completion of the risk assessment required in §35.715(a), the owner shall incorporate ongoing lead-based paint maintenance and reevaluation into the regular building operations in accordance with §35.1355, unless all lead-based paint has been removed. If the reevaluation identifies new lead-based paint hazards, the owner shall conduct interim controls in accordance with §35.1330.(d) *Transitional requirements.*—

(1) *Effective date.* The requirements of this paragraph shall apply effective September 15, 2000, and continuing until the applicable date specified in §35.715(a) (1) or (2) or until the owner conducts a risk assessment, whichever is first.

(2) Definitions and other general requirements that apply to this paragraph are found in subpart B of this part.

(3) *Ongoing lead-based paint maintenance.* The owner shall incorporate ongoing lead-based paint maintenance activities into regular building operations, in accordance with §35.1355(a), except that clearance is not required.

(4) *Child with an environmental intervention blood lead level.* If a child of less than 6 years of age living in a dwelling unit covered by this paragraph has an environmental intervention blood lead level, the owner shall comply with the requirements of §35.730.

§ 35.720. Multifamily properties receiving up to \$5,000 per unit, and single-family properties.

Effective September 15, 2000, the requirements of this section shall apply to a multifamily residential property that is receiving an average of up to and including \$5,000 per assisted dwelling unit annually in project-based assistance and to a single family residential

property that is receiving project-based assistance through the Section 8 Moderate Rehabilitation program, the Project-Based Certificate program, or any other HUD program providing project-based assistance.

(a) *Activities at initial and periodic inspection.*—

(1) *Visual assessment.* During the initial and periodic inspections, an inspector trained in visual assessment for deteriorated paint surfaces in accordance with procedures established by HUD shall conduct a visual assessment of all painted surfaces in order to identify any deteriorated paint.

(2) *Paint stabilization.* The owner shall stabilize each deteriorated paint surface in accordance with §35.1330(a) and §35.1330(b) before occupancy of a vacant dwelling unit or, where a unit is occupied, within 30 days of notification of the results of the visual assessment. Paint stabilization is considered complete when clearance is achieved in accordance with §35.1340.

(3) *Notice.* The owner shall provide a notice to occupants in accordance with §35.125(b) (1) and (c) describing the results of the clearance examination.

(b) *Ongoing lead-based paint maintenance activities.* The owner shall incorporate ongoing lead-based paint maintenance activities into regular building operations in accordance with §35.1355(a), unless all lead-based paint has been removed.

(c) *Child with an environmental intervention blood lead level.* If a child of less than 6 years of age living in a dwelling unit covered by this section has an environmental intervention blood lead level, the owner shall comply with the requirements of §35.730.

§ 35.725. Section 8 Rent adjustments.

HUD may, subject to the availability of appropriations for Section 8 contract amendments, on a project by project basis for projects receiving Section 8 project based assistance, provide adjustments to the maximum monthly rents to cover the costs of evaluation for and reduction of lead-based paint hazards, as defined in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992.

§ 35.730. Child with an environmental intervention blood lead level.

(a) *Risk assessment.* Within 15 days after being notified by a public health department or other medical health care provider that a child of less than 6 years of age living in a dwelling unit to which this subpart applies has been identified as having an environmental intervention blood lead level, the owner shall complete a risk assessment of the dwelling unit in which the child lived at the time the blood was last sampled and of common areas servicing the dwelling unit. The risk assessment shall be conducted in accordance with 35.1320(b) and is considered complete when the owner receives the risk assessment report. The requirements of this paragraph apply regardless of whether the child is or is not still living in the unit when the owner receives the notification of the environmental intervention blood lead level. The requirements of this paragraph (a) shall not apply if the owner conducted a risk assessment of the unit and common areas servicing the unit between the date the child's blood was last sampled and the date when the owner received the notification of the environmental intervention blood lead level. If a public health department has already conducted an evaluation of the dwelling unit, the requirements of this paragraph shall not apply.

(b) *Verification.* After receiving information from a person who is not a medical health care provider that a

child of less than 6 years of age living in a dwelling unit covered by this subpart may have an environmental intervention blood lead level, the owner shall immediately verify the information with the public health department or other medical health care provider. If that department or provider verifies that the child has an environmental intervention blood lead level, such verification shall constitute notification, and the owner shall take the action required in paragraphs (a) and (c) of this section.

(c) *Hazard reduction.* Within 30 days after receiving the report of the risk assessment conducted pursuant to paragraph (a) of this section or the evaluation from the public health department, the owner shall complete the reduction of identified lead-based paint hazards in accordance with §35.1325 or §35.1330. Hazard reduction is considered complete when clearance is achieved in accordance with §35.1340 and the clearance report states that all lead-based paint hazards identified in the risk assessment have been treated with interim controls or abatement or the public health department certifies that the lead-based paint hazard reduction is complete. The requirements of this paragraph do not apply if the owner, between the date the child's blood was last sampled and the date the owner received the notification of the environmental intervention blood lead level, already conducted a risk assessment of the unit and common areas servicing the unit and completed reduction of identified lead-based paint hazards.

(d) *Notice.* If evaluation or hazard reduction is undertaken, each owner shall provide a notice to occupants in accordance with §35.125.

(e) *Reporting requirement.* The owner shall report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 working days of being so notified by any other medical health care professional.

Subpart I— HUD-Owned and Mortgagee-in-Possession Multifamily Property

§ 35.800. Purpose and applicability.

The purpose of this subpart I is to establish procedures to eliminate as far as practicable lead-based paint hazards in a HUD-owned multifamily residential property or a multifamily residential property for which HUD is identified as 5350mortgagee-in-possession. The requirements of this subpart apply to any such property that is offered for sale or held or managed on or after September 15, 2000.

§ 35.805. Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.810. Notices and pamphlet.

(a) *Notices.* When evaluation or hazard reduction is undertaken, the Department shall provide a notice to occupants in accordance with §35.125. A visual assessment alone is not considered an evaluation for the purposes of this part.

(b) *Lead hazard information pamphlet.* HUD shall provide the lead hazard information pamphlet in accordance with §35.130.

§ 35.815. Evaluation.

HUD shall conduct a risk assessment and a lead-based paint inspection in accordance with §35.1320(a) and (b). For properties to which this subpart applies on September 15, 2000, the lead-based paint inspection and risk assessment shall be conducted no later than December 15, 2000, or before publicly advertising the property for sale, whichever is sooner. For properties to

which this subpart becomes applicable after September 15, 2000, the lead-based paint inspection and risk assessment shall be conducted no later than 90 days after this subpart becomes applicable or before publicly advertising the property for sale, whichever is sooner.

§ 35.820. Interim controls.

HUD shall conduct interim controls in accordance with §35.1330 to treat the lead-based paint hazards identified in the evaluation conducted in accordance with §35.815. Interim controls are considered completed when clearance is achieved in accordance with §35.1340. Interim controls of all lead-based paint hazards shall be completed no later than the following schedule:

(a) In units occupied by families with children of less than 6 years of age and in common areas servicing those units, interim controls shall be completed no later than 90 days after the completion of the risk assessment. In units in which a child of less than 6 years of age moves in after the completion of the risk assessment, interim controls shall be completed no later than 90 days after the move-in.

(b) In all other dwelling units, common areas, and the remaining portions of the residential property, interim controls shall be completed no later than 12 months after completion of the risk assessment for those units.

(c) If conveyance of the title by HUD at a sale of a HUD-owned property or a foreclosure sale caused by HUD when HUD is mortgagee-in-possession occurs before the schedule in paragraphs (a) and (b) of this section, HUD shall complete interim controls before conveyance or foreclosure, or HUD shall be responsible for assuring that interim controls are carried out by the purchaser. If interim controls are made a condition of sale, such controls shall be completed according to the following schedule:

(1) In units occupied by families with children of less than 6 years of age and in common areas servicing those units, interim controls shall be completed no later than 90 days after the date of the closing of the sale. In units in which a child of less than 6 years of age moves in after the closing of the sale, interim controls shall be completed no later than 90 days after the move-in.

(2) In all other dwelling units, in common areas servicing those units, and in the remaining portions of the residential property, interim controls shall be completed no later than 180 days after the closing of the sale.

§ 35.825. Ongoing lead-based paint maintenance and reevaluation.

HUD shall incorporate ongoing lead-based paint maintenance and reevaluation, in accordance with §35.1355, into regular building operations if HUD retains ownership of the residential property for more than 12 months.

§ 35.830. Child with an environmental intervention blood lead level.

(a) *Risk assessment.* Within 15 days after being notified by a public health department or other medical health care provider that a child of less than 6 years of age living in a multifamily dwelling unit owned by HUD (or where HUD is mortgagee-in-possession) has been identified as having an environmental intervention blood lead level, HUD shall complete a risk assessment of the dwelling unit in which the child lived at the time the blood was last sampled and of common areas servicing the dwelling unit. The risk assessment shall be conducted in accordance with §35.1320(b) and is considered complete when HUD receives the risk assessment report. The requirements of this paragraph

apply regardless of whether the child is or is not still living in the unit when HUD receives the notification of the environmental intervention blood lead level. The requirements of this paragraph do not apply if HUD conducted a risk assessment of the unit and common areas servicing the unit between the date the child's blood was last sampled and the date when HUD received the notification of the environmental intervention blood lead level. If a public health department has already conducted an evaluation of the dwelling unit, the requirements of this paragraph shall not apply.

(b) *Verification.* After receiving information from a person who is not a medical health care provider that a child of less than 6 years of age living in a multifamily dwelling unit owned by HUD (or where HUD is mortgagee-in-possession) may have an environmental intervention blood lead level, HUD shall immediately verify the information with the public health department or other medical health care provider. If that department or provider verifies that the child has an environmental intervention blood lead level, such verification shall constitute notification, and HUD shall take the action required in paragraphs (a) and (c) of this section.

(c) *Hazard reduction.* Within 30 days after receiving the report of the risk assessment conducted pursuant to paragraph (a) of this section or the evaluation from the public health department, HUD shall complete the reduction of lead-based paint hazards identified in the risk assessment in accordance with §35.1325 or §35.1330. Hazard reduction is considered complete when clearance is achieved in accordance with §35.1340 and the clearance report states that all lead-based paint hazards identified in the risk assessment have been treated with interim controls or abatement or the public health department certifies that the lead-based paint hazard reduction is complete. The requirements of this paragraph do not apply if HUD, between the date the child's blood was last sampled and the date HUD received the notification of the environmental intervention blood lead level, conducted a risk assessment of the unit and common areas servicing the unit and completed reduction of identified lead-based paint hazards.

(d) *Reporting requirement.* HUD shall report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 working days of being so notified by any other health professional.

(e) *Closing.* If the closing of a sale is scheduled during the period when HUD is responding to a case of a child with an environmental intervention blood lead level, HUD may arrange for the completion of the procedures required by §35.830(a) to (d) by the purchaser within a reasonable period of time.

(f) *Extensions.* The Assistant Secretary for Housing-Federal Housing Commissioner or designee may consider and approve a request for an extension of deadlines established by this section for a lead-based paint inspection, risk assessment, hazard reduction, and reporting. Such a request may be considered, however, only during the first six months during which HUD is owner or mortgagee-in-possession of a multifamily property.

Subpart J— Rehabilitation

§ 35.900. Purpose and applicability.

(a) Purpose and applicability.

(1) The purpose of this subpart J is to establish procedures to eliminate as far as practicable lead-based paint hazards in a residential property that receives Federal rehabilitation assistance under a program administered by HUD. Rehabilitation assistance does not include project-based rental assistance, rehabilitation mortgage insurance or assistance to public housing.

(2) The requirements of this subpart shall not apply to HOME funds which are committed to a specific project in accordance with §92.2 of this title before September 15, 2000. Such projects shall be subject to the requirements of §92.355 of this title that were in effect at the time of project commitment or the requirements of this subpart.

(3) For the purposes of the Indian Housing Block Grant program and the CDBG Entitlement program, the requirements of this subpart shall apply to all residential rehabilitation activities (except those otherwise exempted) for which funds are first obligated on or after September 15, 2000. For the purposes of the State, HUD-Administered Small Cities, and Insular Areas CDBG programs, the requirements of this subpart shall apply to all covered activities (except those otherwise exempted) for which grant funding is awarded to the unit of local government by the State or HUD, as applicable, on or after September 15, 2000. For the purposes of the Emergency Shelter Grant Program (42 U.S.C. 11371 to 11378) and the formula grants awarded under the Housing Opportunities for Persons with AIDS Program (HOPWA) (42 U.S.C. 12901 et. seq.), the requirements of this subpart shall apply to activities for which program funds are first obligated on or after September 15, 2000.

(4) For the purposes of competitively awarded grants under the HOPWA Program and the Supportive Housing Program (42 U.S.C. 11481 to 11389), the requirements of this subpart shall apply to grants awarded under Notices of Funding Availability published on or after September 15, 2000.

(5) For the purposes of the Indian CDBG program (§1003.607 of this title), the requirements of this subpart shall not apply to funds whose notice of funding availability is announced or funding letter is sent before September 15, 2000. Such project grantees shall be subject to the regulations in effect at the time of announcement or funding letter.

(b) The grantee or participating jurisdiction may assign to a sub-recipient or other entity the responsibilities set forth in this subpart.

§ 35.905. Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.910. Notices and pamphlet.

(a) *Notices.* In cases where evaluation or hazard reduction or both are undertaken as part of federally funded rehabilitation, the grantee or participating jurisdiction shall provide a notice to occupants in accordance with §35.125. A visual assessment alone is not considered an evaluation for the purposes of this part.

(b) *Lead hazard information pamphlet.* The grantee or participating jurisdiction shall provide the lead hazard

information pamphlet in accordance with §35.130.

§ 35.915. Calculating Federal rehabilitation assistance.

(a) *Applicability.* This section applies to recipients of Federal rehabilitation assistance.

(b) Rehabilitation assistance.

(1) Lead-based paint requirements for rehabilitation fall into three categories that depend on the amount of Federal rehabilitation assistance provided. The three categories are:

(i) Assistance of up to and including \$5,000 per unit;

(ii) Assistance of more than \$5,000 per unit up to and including \$25,000 per unit; and

(iii) Assistance of more than \$25,000 per unit.

(2) For purposes of implementing §§35.930 and 35.935, the amount of rehabilitation assistance is the lesser of two amounts: the average Federal assistance per assisted dwelling unit and the average per unit hard costs of rehabilitation. Federal assistance includes all Federal funds assisting the project, regardless of the use of the funds. Federal funds being used for acquisition of the property are to be included as well as funds for construction, permits, fees, and other project costs. The hard costs of rehabilitation include all hard costs, regardless of source, except that the costs of lead-based paint hazard evaluation and hazard reduction activities are not to be included. Costs of site preparation, occupant protection, relocation, interim controls, abatement, clearance, and waste handling attributable to compliance with the requirements of this part are not to be included in the hard costs of rehabilitation. All other hard costs are to be included, regardless of whether the source of funds is Federal or non-Federal, public or private.

(c) *Calculating rehabilitation assistance in properties with both assisted and unassisted dwelling units.* For a residential property that includes both federally assisted and non-assisted units, the rehabilitation costs and Federal assistance associated with non-assisted units are not included in the calculations of the average per unit hard costs of rehabilitation and the average Federal assistance per unit.

(1) The average per unit hard costs of rehabilitation for the assisted units is calculated using the following formula: Per Unit Hard Costs of Rehabilitation \$ = (a/c) + (b/d). Where: a = Rehabilitation hard costs for all assisted units (not including common areas and exterior surfaces), b = Rehabilitation hard costs for common areas and exterior painted surfaces = Number of federally assisted units = Total number of units

(2) The average Federal assistance per assisted dwelling unit is calculated using the following formula: Per unit Federal assistance = e/c.

Where: e = Total Federal assistance for the project, c = Number of federally assisted units

§ 35.920.

§ 35.925. Examples of determining applicable requirements.

The following examples illustrate how to determine whether the requirements of §35.930(b), (c), or (d) apply to a dwelling unit receiving Federal rehabilitation assistance (dollar amounts are on a per unit basis):

(a) If the total amount of Federal assistance for a dwelling is \$2,000, and the hard costs of rehabilitation are \$10,000, the lead-based paint requirements would be those described in §35.930(b), because Federal

rehabilitation assistance is up to and including \$5,000.

(b) If the total amount of Federal assistance for a dwelling unit is \$6,000, and the hard costs of rehabilitation are \$2,000, the lead-based paint requirements would be those described in §35.930(b). Although the total amount of Federal dollars is more than \$5,000, only the \$2,000 of that total can be applied to rehabilitation. Therefore, the Federal rehabilitation assistance is \$2,000 which is not more than \$5,000.

(c) If the total amount of Federal assistance for a unit is \$6,000, and the hard costs of rehabilitation are \$6,000, the lead-based paint requirements are those described in §35.930(c), because the amount of Federal rehabilitation assistance is more than \$5,000 but not more than \$25,000.

(d) If eight dwelling units in a residential property receive Federal rehabilitation assistance [symbol c in §35.915(c)(2)] out of a total of 10 dwelling units [d], the total Federal assistance for the rehabilitation project is \$300,000 [e], the total hard costs of rehabilitation for the dwelling units are \$160,000 [a], and the total hard costs of rehabilitation for the common areas and exterior surfaces are \$20,000 [b], then the lead-based paint requirements would be those described in §35.930(c), because the level of Federal rehabilitation assistance is \$22,000, which is not greater than \$25,000. This is calculated as follows: The total Federal assistance per assisted unit is \$37,500 ($e/c = \$300,000/8$), the per unit hard costs of rehabilitation is \$22,000 ($a/c + b/d = \$160,000/8 + \$20,000/10$), and the level of Federal rehabilitation assistance is the lesser of \$37,500 and \$22,000.

§ 35.930. Evaluation and hazard reduction requirements.

(a) *Paint testing.* The grantee or participating jurisdiction shall either perform paint testing on the painted surfaces to be disturbed or replaced during rehabilitation activities, or presume that all these painted surfaces are coated with lead-based paint.

(b) *Residential property receiving an average of up to and including \$5,000 per unit in Federal rehabilitation assistance.* Each grantee or participating jurisdiction shall:

- (1) Conduct paint testing or presume the presence of lead-based paint, in accordance with paragraph (a) of this section. If paint testing indicates that the painted surfaces are not coated with lead-based paint, safe work practices and clearance are not required.
- (2) Implement safe work practices during rehabilitation work in accordance with §35.1350 and repair any paint that is disturbed.
- (3) After completion of any rehabilitation disturbing painted surfaces, perform a clearance examination of the worksite(s) in accordance with §35.1340. Clearance is not required if rehabilitation did not disturb painted surfaces of a total area more than that set forth in §35.1350(d).

(c) *Residential property receiving an average of more than \$5,000 and up to and including \$25,000 per unit in Federal rehabilitation assistance.* Each grantee or participating jurisdiction shall:

- (1) Conduct paint testing or presume the presence of lead-based paint, in accordance with paragraph (a) of this section.
- (2) Perform a risk assessment in the dwelling units receiving Federal assistance, in common areas servicing those units, and exterior painted surfaces, in accordance with §35.1320(b), before rehabilitation begins.

- (3) Perform interim controls in accordance with §35.1330 of all lead-based paint hazards identified pursuant to paragraphs (c)(1) and (c)(2) of this section.
- (4) Implement safe work practices during rehabilitation work in accordance with §35.1350 and repair any paint that is disturbed and is known or presumed to be lead-based paint.

(d) *Residential property receiving an average of more than \$25,000 per unit in Federal rehabilitation assistance.* Each grantee or participating jurisdiction shall:

- (1) Conduct paint testing or presume the presence of lead-based paint in accordance with paragraph (a) of this section.
- (2) Perform a risk assessment in the dwelling units receiving Federal assistance and in associated common areas and exterior painted surfaces in accordance with §35.1320(b) before rehabilitation begins.
- (3) Abate all lead-based paint hazards identified by the paint testing or risk assessment conducted pursuant to paragraphs (d)(1) and (d)(2) of this section, in accordance with §35.1325, except that interim controls are acceptable on exterior surfaces that are not disturbed by rehabilitation and on paint-lead hazards that have an area smaller than the *de minimis* limits of §35.1350(d). If abatement of a paint lead hazard is required, it is necessary to abate only the surface area with hazardous conditions.
- (4) Implement safe work practices during rehabilitation work in accordance with §35.1350 and repair any paint that is disturbed and is known or presumed to be lead-based paint.

§ 35.935. Ongoing lead-based paint maintenance activities.

In the case of a rental property receiving Federal rehabilitation assistance under the HOME program, the grantee or participating jurisdiction shall require the property owner to incorporate ongoing lead-based paint maintenance activities in regular building operations, in accordance with §35.1355(a).

§ 35.940. Special requirements for insular areas.

If a dwelling unit receiving Federal assistance under a program covered by this subpart is located in an insular area, the requirements of this section shall apply and the requirements of §35.930 shall not apply. All other sections of this subpart J shall apply. The insular area shall conduct the following activities for the dwelling unit, common areas servicing the dwelling unit, and the exterior surfaces of the building in which the dwelling unit is located:

(a) *Residential property receiving an average of up to and including \$5,000 per unit in Federal rehabilitation assistance.*

- (1) Implement safe work practices during rehabilitation work in accordance with §35.1350 and repair any paint that is disturbed by rehabilitation.
- (2) After completion of any rehabilitation disturbing painted surfaces, perform a clearance examination of the worksite(s) in accordance with §35.1340. Clearance shall be achieved before residents are allowed to occupy the worksite(s). Clearance is not required if rehabilitation did not disturb painted surfaces of a total area more than that set forth in §35.1350(b).

(b) *Residential property receiving an average of more than \$5,000 per unit in Federal rehabilitation*

assistance.

- (1) Before beginning rehabilitation, perform a visual assessment of all painted surfaces in order to identify deteriorated paint.
- (2) Perform paint stabilization of each deteriorated paint surface and each painted surface being disturbed by rehabilitation, in accordance with §35.1330(a) and (b).
- (3) After completion of all paint stabilization, perform a clearance examination of the affected dwelling units and common areas in accordance with §35.1340. Clearance shall be achieved before residents are allowed to occupy rooms or spaces in which paint stabilization has been performed.

Subpart K— Acquisition, Leasing, Support Services, or Operation.

§ 35.1000. Purpose and applicability.

(a) The purpose of this subpart K is to establish procedures to eliminate as far as practicable lead-based paint hazards in a residential property that receives Federal assistance under certain HUD programs for acquisition, leasing, support services, or operation. Acquisition, leasing, support services, and operation do not include mortgage insurance, sale of federally owned housing, project-based or tenant based rental assistance, rehabilitation assistance, or assistance to public housing. For requirements pertaining to those activities or types of assistance, see the applicable subpart of this part.

(b) The grantee or participating jurisdiction may assign to a sub-recipient or other entity the responsibilities set forth in this subpart.

- (c) (1) The requirements of this subpart shall not apply to HOME funds which are committed to a specific project in accordance with §92.2 of this title before September 15, 2000. Such projects shall be subject to the requirements of §92.355 of this title that were in effect at the time of project commitment, or the requirements of this subpart.
- (2) For the purposes of the CDBG Entitlement program and the Indian Housing Block Grant program, the requirements of this subpart shall apply to activities (except those otherwise exempted) for which funds are first obligated on or after September 15, 2000. For the purposes of the State, HUD-Administered Small Cities, and Insular Areas CDBG programs, the requirements of this subpart shall apply to all covered activities (except those otherwise exempted) for which grant funding is awarded to the unit of local government by the State or HUD, as applicable, on or after September 15, 2000. For the purposes of the Emergency Shelter Grant Program (42 U.S.C. 11371 to 11378) and the formula grants awarded under the Housing Opportunities for Persons with AIDS Program (HOPWA) (42 U.S.C. 12901 et. seq.), the requirements of this subpart shall apply to activities for which program funds are first obligated on or after September 15, 2000.
- (3) For the purposes of competitively awarded grants under the HOPWA Program and the Supportive Housing Program (42 U.S.C. 11481 to 11389), the requirements of this subpart shall apply to grants awarded under Notices of Funding Availability published on or after September 15, 2000.
- (4) For the purposes of the Indian CDBG program (§1003.607 of this title), the requirements of this subpart shall not apply to funds whose notice of

funding availability is announced or funding letter is sent before September 15, 2000. Such project grantees shall be subject to the regulations in effect at the time of announcement or funding letter.

§ 35.1005. Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.1010. Notices and pamphlet

(a) *Notice.* In cases where evaluation or hazard reduction, including paint stabilization, is undertaken, each grantee or participating jurisdiction shall provide a notice to residents in accordance with §35.125. A visual assessment is not considered an evaluation for purposes of this part.

(b) *Lead hazard information pamphlet.* The grantee or participating jurisdiction shall provide the lead hazard information pamphlet in accordance with §35.130.

§ 35.1015. Visual assessment, paint stabilization, and maintenance.

If a dwelling unit receives Federal assistance under a program covered by this subpart, each grantee or participating jurisdiction shall conduct the following activities for the dwelling unit, common areas servicing the dwelling unit, and the exterior surfaces of the building in which the dwelling unit is located:

- (a) A visual assessment of all painted surfaces in order to identify deteriorated paint;
- (b) Paint stabilization of each deteriorated paint surface, and clearance, in accordance with §35.1330(a) and (b), before occupancy of a vacant dwelling unit or, where a unit is occupied, immediately after receipt of Federal assistance; and
- (c) The grantee or participating jurisdiction shall require the incorporation of ongoing lead-based paint maintenance activities into regular building operations, in accordance with §35.1355(a), if the dwelling unit has a continuing, active financial relationship with a Federal housing assistance program, except that mortgage insurance or loan guarantees are not considered to constitute an active programmatic relationship for the purposes of this part.
- (d) The grantee or participating jurisdiction shall provide a notice to occupants in accordance with §35.125(b)(1) and (c), describing the results of the clearance examination.

§ 35.1020. Funding for evaluation and hazard reduction.

The grantee or participating jurisdiction shall determine whether the cost of evaluation and hazard reduction is to be borne by the owner/developer, the grantee or a combination of the owner/developer and the grantee, based on program requirements and local program design.

Subpart L— Public Housing Programs

§ 35.1100. Purpose and applicability.

The purpose of this subpart L is to establish procedures to eliminate as far as practicable lead-based paint hazards in residential property assisted under the U.S. Housing Act of 1937 (42 U.S.C. 1437 et seq.) but not including housing assisted under section 8 of the 1937 Act.

§ 35.1105. Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.1110. Notices and pamphlet.

(a) *Notice.* In cases where evaluation or hazard reduction is undertaken, each public housing agency (PHA) shall provide a notice to residents in accordance with §35.125. A visual assessment alone is not

considered an evaluation for purposes of this part.
(b) *Lead hazard information pamphlet.* The PHA shall provide the lead hazard information pamphlet in accordance with §35.130.

§ 35.1115. Evaluation.

(a) A lead-based paint inspection shall be conducted in all public housing unless a lead-based paint inspection that meets the conditions of §35.165(a) has already been completed. If a lead-based paint inspection was conducted by a lead-based paint inspector who was not certified, the PHA shall review the quality of the inspection, in accordance with quality control procedures established by HUD, to determine whether the lead-based paint inspection has been properly performed and the results are reliable. Lead-based paint inspections of all housing to which this subpart applies shall be completed no later than September 15, 2000. Revisions or augmentations of prior inspections found to be of insufficient quality shall be completed no later than September 17, 2001.

(b) If a lead-based paint inspection has found the presence of lead-based paint, or if no lead-based paint inspection has been conducted, the PHA shall conduct a risk assessment according to the following schedule, unless a risk assessment that meets the conditions of §35.165(b) has already been completed:

(1) Risk assessments shall be completed on or before March 15, 2001, in a multifamily residential property constructed before 1960.

(2) Risk assessments shall be completed on or before March 15, 2002, in a multifamily residential property constructed after 1959 and before 1978.

(c) A PHA that advertises a construction contract (including architecture/engineering contracts) for bid or award or plans to start force account work shall not execute such contract until a lead-based paint inspection and, if required, a risk assessment, has taken place and any necessary abatement is included in the modernization budget, except for contracts solely for emergency work in accordance with §35.115(a)(9).

(d) The five-year funding request plan for CIAP and CGP shall be amended to include the schedule and funding for lead-based paint activities.

§ 35.1120. Hazard reduction.

(a) Each PHA shall, in accordance with §35.1325, abate all lead-based paint and lead-based paint hazards identified in the evaluations conducted pursuant to §35.1115. The PHA shall abate lead-based paint and lead-based paint hazards in accordance with §35.1325 during the course of physical improvements conducted under the modernization.

(b) In all housing where abatement of all lead-based paint and lead-based paint hazards required in paragraph (a) of this section has not yet occurred, each PHA shall conduct interim controls, in accordance with §35.1330, of the lead-based paint hazards identified in the most recent risk assessment.

(1) Interim controls of dwelling units in which any child who is less than 6 years of age resides and common areas servicing those dwelling units shall be completed within 90 days of the evaluation under §35.1330. If a unit becomes newly occupied by a family with a child of less than 6 years of age or such child moves into a unit, interim controls shall be completed within 90 days after the new occupancy or move-in if they have not already been completed.

(2) Interim controls in dwelling units not occupied by families with one or more children of less than 6 years of age, common areas servicing those units,

and the remaining portions of the residential property shall be completed no later than 12 months after completion of the evaluation conducted under §35.1115.

(c) The PHA shall incorporate ongoing lead-based paint maintenance and reevaluation activities into regular building operations in accordance with §35.1355. In accordance with §35.115(a) (6) and (7), this requirement does not apply to a development or part thereof if it is to be demolished or disposed of in accordance with disposition requirements in part 970 of this title, provided the dwelling unit will remain unoccupied until demolition, or if it is not used and will not be used for human habitation.

§ 35.1125. Evaluation and hazard reduction before acquisition and development.

(a) For each residential property constructed before 1978 and proposed to be acquired for a family project (whether or not it will need rehabilitation) a lead-based paint inspection and risk assessment for lead-based paint hazards shall be conducted in accordance with §35.1320.

(b) If lead-based paint is found in a residential property to be acquired, the cost of evaluation and abatement shall be considered when making the cost comparison to justify new construction, as well as when meeting maximum total development cost limitations.

(c) If lead-based paint is found, compliance with this subpart is required, and abatement of lead-based paint and lead-based paint hazards shall be completed in accordance with §35.1325 before occupancy.

§ 35.1130. Child with an environmental intervention blood lead level.

(a) *Risk assessment.* Within 15 days after being notified by a public health department or other medical health care provider that a child of less than 6 years of age living in a public housing development has been identified as having an environmental intervention blood lead level, the PHA shall complete a risk assessment of the dwelling unit in which the child lived at the time the blood was last sampled and of common areas servicing the dwelling unit, the provisions of §35.1115(b) notwithstanding. The risk assessment shall be conducted in accordance with §35.1320(b) and is considered complete when the PHA receives the risk assessment report. The requirements of this paragraph apply regardless of whether the child is or is not still living in the unit when the PHA receives the notification of the environmental intervention blood lead level. The requirements of this paragraph shall not apply if the PHA conducted a risk assessment of the unit and common areas servicing the unit between the date the child's blood was last sampled and the date when the PHA received the notification of the environmental intervention blood lead level. If the public health department has already conducted an evaluation of the dwelling unit, the requirements of this paragraph shall not apply.

(b) *Verification.* After receiving information from a person who is not a medical health care provider that a child of less than 6 years of age living in a public housing development may have an environmental intervention blood lead level, the PHA shall immediately verify the information with the public health department or other medical health care provider. If that department or provider verifies that the child has an environmental intervention blood lead level, such verification shall constitute notification, and the housing agency shall take the action required in paragraphs (a) and (c) of this section.

(c) *Hazard reduction.* Within 30 days after receiving the report of the risk assessment conducted pursuant to paragraph (a) of this section or the evaluation from the public health department, the PHA shall complete the reduction of lead-based paint hazards identified in the risk assessment in accordance with §35.1325 or §35.1330. Hazard reduction is considered complete when clearance is achieved in accordance with §35.1340 and the clearance report states that all lead-based paint hazards identified in the risk assessment have been treated with interim controls or abatement or the local or State health department certifies that lead-based paint hazard reduction is complete. The requirements of this paragraph do not apply if the PHA, between the date the child's blood was last sampled and the date the owner received the notification of the environmental intervention blood lead level, already conducted a risk assessment of the unit and common areas servicing the unit and completed reduction of identified lead-based paint hazards.

(d) *Notice of evaluation and hazard reduction.* The PHA shall notify building residents of any evaluation or hazard reduction activities in accordance with §35.125.

(e) *Reporting requirement.* The PHA shall report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 working days of being so notified by any other medical health care professional. The PHA shall also report each known case of a child with an environmental intervention blood lead level to the HUD field office.

(f) *Other units in building.* If the risk assessment conducted pursuant to paragraph (a) of this section identifies lead-based paint hazards and previous evaluations of the building conducted pursuant to §35.1320 did not identify lead-based paint or lead-based paint hazards, the PHA shall conduct a risk assessment of other units of the building in accordance with §35.1320(b) and shall conduct interim controls of identified hazards in accordance with the schedule provided in §35.1120(c).

§ 35.1135. Eligible costs.

A PHA may use financial assistance received under the modernization program (CIAP or CGP) for the notice, evaluation and reduction of lead-based paint hazards in accordance with §968.112 of this title. Eligible costs include:

(a) *Evaluation and insurance costs.* Evaluation and hazard reduction activities, and costs for insurance coverage associated with these activities.

(b) *Planning costs.* Planning costs are costs that are incurred before HUD approval of the CGP or CIAP application and that are related to developing the CIAP application or carrying out eligible modernization planning, such as planning for abatement, detailed design work, preparation of solicitations, and evaluation. Planning costs may be funded as a single work item. Planning costs shall not exceed 5 percent of the CIAP funds available to a HUD Field Office in a particular fiscal year.

(c) *Architectural/engineering and consultant fees.* Eligible costs include fees for planning, identification of needs, detailed design work, preparation of construction and bid documents and other required documents, evaluation, planning and design for abatement, and inspection of work in progress.

(d) *Environmental intervention blood lead level response costs.* The PHA may use its operating reserves and, when necessary, may request reimbursement from the current fiscal year CIAP funds,

or request the reprogramming of previously approved CIAP funds to cover the costs of evaluation and hazard reduction.

§ 35.1140. Insurance coverage.

For the requirements concerning the obligation of a PHA to obtain reasonable insurance coverage with respect to the hazards associated with evaluation and hazard reduction activities, see §965.215 of this title.

Subpart M— Tenant-Based Rental Assistance

§ 35.1200. Purpose and applicability.

(a) *Purpose.* The purpose of this subpart M is to establish procedures to eliminate as far as practicable lead-based paint hazards in housing occupied by families receiving tenant-based rental assistance. Such assistance includes tenant-based rental assistance under the Section 8 certificate program, the Section 8 voucher program, the HOME program, the Shelter Plus Care program, the Housing Opportunities for Persons With AIDS (HOPWA) program, and the Indian Housing Block Grant program. Tenant-based rental assistance means rental assistance that is not attached to the structure.

(b) Applicability.

(1) This subpart applies only to dwelling units occupied or to be occupied by families or households that have one or more children of less than 6 years of age, common areas servicing such dwelling units, and exterior painted surfaces associated with such dwelling units or common areas. Common areas servicing a dwelling unit include those areas through which residents pass to gain access to the unit and other areas frequented by resident children of less than 6 years of age, including on-site play areas and child care facilities.

(2) For the purposes of the Section 8 tenant-based certificate program and the Section 8 voucher program:

(i) The requirements of this subpart are applicable where an initial or periodic inspection occurs on or after September 15, 2000; and

(ii) The PHA shall be the designated party.

(3) For the purposes of formula grants awarded under the Housing Opportunities for Persons with AIDS Program (HOPWA) (42 U.S.C. 12901 et seq.):

(i) The requirements of this subpart shall apply to activities for which program funds are first obligated on or after September 15, 2000; and

(ii) The grantee shall be the designated party.

(4) For the purposes of competitively awarded grants under the HOPWA Program and the Shelter Plus Care program (42 U.S.C. 11402 to 11407) tenant-based rental assistance component:

(i) The requirements of this subpart shall apply to grants awarded pursuant to Notices of Funding Availability published on or after September 15, 2000; and

(ii) The grantee shall be the designated party.

(5) For the purposes of the HOME program:

(i) The requirements of this subpart shall not apply to funds which are committed in accordance with §92.2 of this title before September 15, 2000; and

(ii) The participating jurisdiction shall be the designated party.

(6) For the purposes of the Indian Housing Block Grant program:

- (i) The requirements of this subpart shall apply to activities for which funds are first obligated on or after September 15, 2000; and
- (ii) The IHBG recipient shall be the designated party.

(7) The housing agency, grantee, participating jurisdiction, or IHBG recipient may assign to a sub-recipient or other entity the responsibilities of the designated party in this subpart.

§ 35.1205. Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.1210. Notices and pamphlet.

(a) *Notice.* In cases where evaluation or paint stabilization is undertaken, the owner shall provide a notice to residents in accordance with §35.125. A visual assessment alone is not considered an evaluation for purposes of this part.

(b) *Lead hazard information pamphlet.* The owner shall provide the lead hazard information pamphlet in accordance with §35.130.

§ 35.1215. Activities at initial and periodic inspection.

(a) (1) During the initial and periodic inspections, an inspector acting on behalf of the designated party and trained in visual assessment for deteriorated paint surfaces in accordance with procedures established by HUD shall conduct a visual assessment of all painted surfaces in order to identify any deteriorated paint.

(2) For tenant-based rental assistance provided under the HOME program, visual assessment shall be conducted as part of the initial and periodic inspections required under §92.209(i) of this title.

(b) The owner shall stabilize each deteriorated paint surface in accordance with §35.1330(a) and (b) before commencement of assisted occupancy. If assisted occupancy has commenced prior to a periodic inspection, such paint stabilization must be completed within 30 days of notification of the owner of the results of the visual assessment. Paint stabilization is considered complete when clearance is achieved in accordance with §35.1340. If the owner does not complete the hazard reduction required by this section, the dwelling unit is in violation of Housing Quality Standards (HQS) until the hazard reduction is completed or the unit is no longer covered by this subpart because the unit is no longer under a housing assistance payment (HAP) contract with the housing agency.

(c) The owner shall provide a notice to occupants in accordance with §35.125(b)(1) and (c) describing the results of the clearance examination.

(d) The designated party may grant the owner an extension of time to complete paint stabilization and clearance for reasonable cause, but such an extension shall not extend beyond 90 days after the date of notification to the owner of the results of the visual assessment.

§ 35.1220. Ongoing lead-based paint maintenance activities.

Notwithstanding the designation of the PHA, grantee, participating jurisdiction, or Indian Housing Block Grant (IHBG) recipient as the designated party for this subpart, the owner shall incorporate ongoing lead-based paint maintenance activities into regular building operations in accordance with §35.1355(a).

§ 35.1225. Child with an environmental intervention blood lead level.

(a) Within 15 days after being notified by a public health department or other medical health care provider that a child of less than 6 years of age living in an assisted dwelling unit has been identified as having an environmental intervention blood lead level, the designated party shall complete a risk assessment of the dwelling unit in which the child lived at the time the blood was last sampled and of the common areas servicing the dwelling unit. The risk assessment shall be conducted in accordance with §35.1320(b). When the risk assessment is complete, the designated party shall immediately provide the report of the risk assessment to the owner of the dwelling unit. If the child identified as having an environmental intervention blood lead level is no longer living in the unit when the designated party receives notification from the public health department or other medical health care provider, but another household receiving tenant based rental assistance is living in the unit or is planning to live there, the requirements of this section apply just as they do if the child still lives in the unit. If a public health department has already conducted an evaluation of the dwelling unit, or the designated party conducted a risk assessment of the unit and common areas servicing the unit between the date the child's blood was last sampled and the date when the designated party received the notification of the environmental intervention blood lead level, the requirements of this paragraph shall not apply.

(b) *Verification.* After receiving information from a source other than a public health department or other medical health care provider that a child of less than 6 years of age living in an assisted dwelling unit may have an environmental intervention blood lead level, the designated party shall immediately verify the information with a public health department or other medical health care provider. If that department or provider verifies that the child has an environmental intervention blood lead level, such verification shall constitute notification to the designated party as provided in paragraph (a) of this section, and the designated party shall take the action required in paragraphs (a) and (c) of this section.

(c) *Hazard reduction.* Within 30 days after receiving the risk assessment report from the designated party or the evaluation from the public health department, the owner shall complete the reduction of identified lead-based paint hazards in accordance with §35.1325 or §35.1330. Hazard reduction is considered complete when clearance is achieved in accordance with §35.1340 and the clearance report states that all lead-based paint hazards identified in the risk assessment have been treated with interim controls or abatement or when the public health department certifies that the lead-based paint hazard reduction is complete. If the owner does not complete the hazard reduction required by this section, the dwelling unit is in violation of Housing Quality Standards (HQS).

(d) *Notice of evaluation and hazard reduction.* The owner shall notify building residents of any evaluation or hazard reduction activities in accordance with §35.125.

(e) *Reporting requirement.* The designated party shall report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 working days of being so notified by any other medical health care professional.

(f) *Data collection and record keeping responsibilities.* At least quarterly, the designated party shall attempt to obtain from the public health department(s) with area(s) of jurisdiction similar to that of the designated party the names and/or addresses of children of less than 6 years of age with an identified environmental intervention blood lead level. At least quarterly, the designated party shall also report an updated list of the addresses of units receiving assistance under a tenant-based rental assistance program to the same public health department(s), except that the report(s) to the public health department(s) is not required if the health department states that it does not wish to receive such report. If it obtains names and addresses of environmental intervention blood lead level children from the public health department(s), the designated party shall match information on cases of environmental intervention blood lead levels with the names and addresses of families receiving tenant-based rental assistance, unless the public health department performs such a matching procedure. If a match occurs, the designated party shall carry out the requirements of this section.

Subparts N-Q— [Reserved]

Subpart R— Methods and Standards for Lead-Paint Hazard Evaluation and Hazard Reduction Activities

§ 35.1300. Purpose and applicability.

The purpose of this subpart R is to provide standards and methods for evaluation and hazard reduction activities required in subparts B, C, D, and F through M of this part.

§ 35.1305. Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.1310. References.

Further guidance information regarding evaluation and hazard reduction activities described in this subpart is found in the following:

- (a) The HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (Guidelines);
- (b) The EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead Contaminated Soil;
- (c) Guidance, methods or protocols issued by States

and Indian tribes that have been authorized by EPA under 40 CFR 745.324 to administer and enforce lead-based paint programs.

§ 35.1315. Collection and laboratory analysis of samples.

All paint chip, dust, or soil samples shall be collected and analyzed in accordance with standards established either by a State or Indian tribe under a program authorized by EPA in accordance with 40 CFR part 745, subpart Q, or by the EPA in accordance with 40 CFR 745.227, and as further provided in this subpart.

§ 35.1320. Lead-based paint inspections, paint testing, risk assessments, lead-hazard screens, and reevaluations.

(a) *Lead-based paint inspections and paint testing.* Lead-based paint inspections shall be performed in accordance with methods and standards established either by a State or Tribal program authorized by the EPA under 40 CFR 745.324, or by the EPA at 40 CFR 745.227(b) and (h). Paint testing to determine the presence or absence of lead-based paint on deteriorated paint surfaces or surfaces to be disturbed or replaced shall be performed by a certified lead-based paint inspector or risk assessor.

(b) *Risk assessments, lead-hazard screens and reevaluations.*

(1) Risk assessments and lead-hazard screens shall be performed in accordance with methods and standards established either by a state or tribal program authorized by the EPA, or by the EPA at 40 CFR 745.227(c), (d), and (h) and paragraph (b)(2) of this section. Reevaluations shall be performed by a certified risk assessor in accordance with §35.1355(b) and paragraph (b)(2) of this section.

(2) Risk assessors shall use standards for determining dust-lead hazards and soil lead hazards that are at least as protective as those promulgated by the EPA at 40 CFR 745.227(h) or, if such standards are not in effect, the following levels for dust or soil:

(i) *Dust.* A dust-lead hazard is surface dust that contains a mass-per-area concentration (loading) of lead, based on wipe samples, equal to or exceeding the applicable level in the following table:

Dust Lead Standards

Evaluation method	Surface		
	Floors, g/ft ² (mg/m ²)	Interior window sills, g/ft ² (mg/m ²)	Window troughs, g/ft ² (mg/m ²)
Risk Assessment	40 (0.43)	250 (2.7)	Not Applicable.
Lead Hazard Screen	25 (0.27)	125 (1.4)	Not Applicable.
Reevaluation	40 (0.43)	250 (2.7)	Not Applicable.
Clearance	40 (0.43)	250 (2.7)	400 (4.3).

PLEASE SEE FINAL RULE CHANGE FOR LEAD DUST SAMPLES AT END OF REGULATIONS:

Note 1: "Floors" includes carpeted and uncarpeted interior floors.

Note 2: A dust-lead hazard is present or clearance fails when the weighted arithmetic mean lead loading for all single-surface or composite samples is equal to or greater than the applicable standard. For composite samples of two to four sub-samples, the standard is determined by dividing the standard in the table by one-half the number of sub-samples. See EPA regulations at 40 C.F.R. 745.63 and 745.227(h)(3)(i).

(ii) *Soil.*

(A) A soil-lead hazard for play areas frequented by children under six years of age is bare soil with lead equal to or exceeding 400 parts per million (micrograms per gram).

(B) For the rest of the yard, a soil-lead hazard is bare soil that totals more than 9 square feet (0.8 square meters) per property with lead equal to or exceeding an average of 1,200 parts per million (micrograms per

gram).

(3) Lead-hazard screens shall be performed in accordance with the methods and standards established either by a state or Tribal program authorized by the EPA, or by the EPA at 40 CFR 745.227(c), and paragraphs (b)(1) and (b)(2) of this section. If the lead-hazard screen indicates the need for a follow-up risk assessment (e.g., if dust-lead measurements exceed the levels established for lead-hazard screens in paragraph (b)(2)(i) of this section), a risk assessment shall be conducted in accordance with paragraphs (b)(1) and (b)(2) of this section. Dust, soil, and paint samples collected for the lead-hazard screen may be used in the risk assessment. If the lead hazard screen does not indicate the need for a follow-up risk assessment, no further risk assessment is required.

(c) It is strongly recommended, but not required, that lead-based paint inspectors, risk assessors, and sampling technicians provide a plain-language summary of the results suitable for posting or distribution to occupants in compliance with §35.125.

§ 35.1325. Abatement.

Abatement shall be performed in accordance with methods and standards established either by a State or Indian tribe under a program authorized by EPA, or by EPA at 40 CFR 745.227(e), and shall be completed by achieving clearance in accordance with §35.1340. If encapsulation or enclosure is used as a method of abatement, ongoing lead-based paint maintenance activities shall be performed as required by the applicable subpart of this part in accordance with §35.1355. Abatement of an intact, factory-applied prime coating on metal surfaces is not required unless the surface is a friction surface.

§ 35.1330. Interim controls.

Interim controls of lead-based paint hazards identified in a risk assessment shall be conducted in accordance with the provisions of this section. Interim control measures include paint stabilization of deteriorated paint, treatments for friction and impact surfaces where levels of lead dust are above the levels specified in §35.1320, dust control, and lead-contaminated soil control. As provided by §35.155, interim controls may be performed in combination with, or be replaced by, abatement methods.

(a) General requirements.

(1) Only those interim control methods identified as acceptable methods in a current risk assessment report shall be used to control identified hazards, except that, if only paint stabilization is required in accordance with subparts F, H, K or M of this part, it shall not be necessary to have conducted a risk assessment.

(2) Occupants of dwelling units where interim controls are being performed shall be protected during the course of the work in accordance with §35.1345.

(3) Clearance testing shall be performed at the conclusion of interim control activities in accordance with §35.1340.

(4) A person performing interim controls must be trained in accordance with the hazard communication standard for the construction industry issued by the Occupational Safety and Health Administration of the U.S. Department of Labor at 29 CFR 1926.59, and either be supervised by an individual certified as a lead-based paint abatement supervisor or have completed successfully one of the following lead-safe work practices courses, except that this supervision or lead-safe work practices training requirement does not apply to work that disturbs painted surfaces less than the *de minimis* limits of §35.1350(d):

(i) A lead-based paint abatement supervisor course accredited in accordance with 40 CFR 745.225;

(ii) A lead-based paint abatement worker course accredited in accordance with 40 CFR 745.225; or

(iii) Another course approved by HUD for this purpose after consultation with the EPA. A current list of approved courses is available on the Internet at <http://www.hud.gov/offices/lead>, or by mail or fax from the HUD Office of Healthy Homes and Lead Hazard Control at (202) 755-1785, extension 104 (this is not a toll-free number). Persons with hearing or speech impediments may access the above telephone number via phone or TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

(iv) "The Remodeler's and Renovator's Lead-Based Paint Training Program," prepared by HUD and the National Association of the Remodeling Industry; or

(v) Another course approved by HUD for this purpose after consultation with EPA.

(b) Paint stabilization.

(1) Interim control treatments used to stabilize deteriorated lead-based paint shall be performed in accordance with the requirements of this section. Interim control treatments of intact, factory applied prime coatings on metal surfaces are not required. Finish coatings on such surfaces shall be treated by interim controls if those coatings contain lead-based paint.

(2) Any physical defect in the substrate of a painted surface or component that is causing deterioration of the surface or component shall be repaired before treating the surface or component. Examples of defective substrate conditions include dry-rot, rust, moisture-related defects, crumbling plaster, and missing siding or other components that are not securely fastened.

(3) Before applying new paint, all loose paint and other loose material shall be removed from the surface to be treated. Acceptable methods for preparing the surface to be treated include wet scraping, wet sanding, and power sanding performed in conjunction with a HEPA filtered local exhaust attachment operated according to the manufacturer's instructions.

(4) Dry sanding or dry scraping is permitted only in accordance with §35.140(e) (i.e., for electrical safety reasons or for specified minor amounts of work).

(5) Paint stabilization shall include the application of a new protective coating or paint. The surface substrate shall be dry and protected from future moisture damage before applying a new protective coating or paint. All protective coatings and paints shall be applied in accordance with the manufacturer's recommendations.

(6) Paint stabilization shall incorporate the use of safe work practices in accordance with §35.1350.

(c) Friction and impact surfaces.

(1) Friction surfaces are required to be treated only if:

(i) Lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill, window trough, or floor) are equal to or greater than the standards specified in §35.1320(b);

(ii) There is evidence that the paint surface is subject to abrasion; and

(iii) Lead-based paint is known or presumed to be present on the friction surface.

(2) Impact surfaces are required to be treated only if:

- (i) Paint on an impact surface is damaged or otherwise deteriorated;
- (ii) The damaged paint is caused by impact from a related building component (such as a door knob that knocks into a wall, or a door that knocks against its door frame); and
- (iii) Lead-based paint is known or presumed to be present on the impact surface.

(3) Examples of building components that may contain friction or impact surfaces include the following:

- (i) Window systems;
- (ii) Doors;
- (iii) Stair treads and risers;
- (iv) Baseboards;
- (v) Drawers and cabinets; and
- (vi) Porches, decks, interior floors, and any other painted surfaces that are abraded, rubbed, or impacted.

(4) Interim control treatments for friction surfaces shall eliminate friction points or treat the friction surface so that paint is not subject to abrasion. Examples of acceptable treatments include re-hanging and/or planing doors so that the door does not rub against the door frame, and installing window channel guides that reduce or eliminate abrasion of painted surfaces. Paint on stair treads and floors shall be protected with a durable cover or coating that will prevent abrasion of the painted surfaces. Examples of acceptable materials include carpeting, tile, and sheet flooring.

(5) Interim control treatments for impact surfaces shall protect the paint from impact. Examples of acceptable treatments include treatments that eliminate impact with the paint surface, such as a door stop to prevent a door from striking a wall or baseboard.

(6) Interim control for impact or friction surfaces does not include covering such a surface with a coating or other treatment, such as painting over the surface, that does not protect lead-based paint from impact or abrasion.

(d) *Chewable surfaces.*

(1) Chewable surfaces are required to be treated only if there is evidence of teeth marks, indicating that a child of less than six years of age has chewed on the painted surface, and lead-based paint is known or presumed to be present on the surface.

(2) Interim control treatments for chewable surfaces shall make the lead-based paint inaccessible for chewing by children of less than 6 years of age. Examples include enclosures or coatings that cannot be penetrated by the teeth of such children.

(e) *Dust-lead hazard control.*

(1) Interim control treatments used to control dust-lead hazards shall be performed in accordance with the requirements of this section. Additional information on dust removal is found in the HUD Guidelines, particularly Chapter 11 (see §35.1310).

(2) Dust control shall involve a thorough cleaning of all horizontal surfaces, such as interior window sills, window troughs, floors, and stairs, but excluding ceilings. All horizontal surfaces, such as floors, stairs, window sills and window troughs, that are rough, pitted, or porous shall be covered with a smooth, cleanable covering or coating, such as metal coil stock, plastic, polyurethane, or linoleum.

(3) Surfaces covered by a rug or carpeting shall be cleaned as follows:

- (i) The floor surface under a rug or carpeting shall be cleaned where feasible, including

upon removal of the rug or carpeting, with a HEPA vacuum or other method of equivalent efficacy.

(ii) An unattached rug or an attached carpet that is to be removed, and padding associated with such rug or carpet, located in an area of the dwelling unit with dust-lead hazards on the floor, shall be thoroughly vacuumed with a HEPA vacuum or other method of equivalent efficacy. Protective measures shall be used to prevent the spread of dust during removal of a rug, carpet or padding from the dwelling. For example, it shall be misted to reduce dust generation during removal. The item(s) being removed shall be wrapped or otherwise sealed before removal from the worksite.

(iii) An attached carpet located in an area of the dwelling unit with dust-lead hazards on the floor shall be thoroughly vacuumed with a HEPA vacuum or other method of equivalent efficacy if it is not to be removed.

(f) *Soil-lead hazards.*

(1) Interim control treatments used to control soil-lead hazards shall be performed in accordance with this section.

(2) Soil with a lead concentration equal to or greater than 5,000 µg/g of lead shall be abated in accordance with 40 CFR 745.227(e).

(3) Acceptable interim control methods for soil lead are impermanent surface coverings and land use controls.

(i) Impermanent surface coverings may be used to treat lead-contaminated soil if applied in accordance with the following requirements. Examples of acceptable impermanent coverings include gravel, bark, sod, and artificial turf.

(A) Impermanent surface coverings selected shall be designed to withstand the reasonably-expected traffic. For example, if the area to be treated is heavily traveled, neither grass or sod shall be used.

(B) When loose impermanent surface coverings such as bark or gravel are used, they shall be applied in a thickness not less than six inches deep.

(C) The impermanent surface covering material shall not contain more than 400 µg/g of lead.

(D) Adequate controls to prevent erosion shall be used in conjunction with impermanent surface coverings.

(ii) Land use controls may be used to reduce exposure to soil-lead hazards only if they effectively control access to areas with soil-lead hazards. Examples of land use controls include: fencing, warning signs, and landscaping.

(A) Land use controls shall be implemented only if residents have reasonable alternatives to using the area to be controlled.

(B) If land use controls are used for a soil area that is subject to erosion, measures shall be taken to contain the soil and control dispersion of lead.

§ 35.1335. Standard treatments.

Standard treatments shall be conducted in accordance with this section.

(a) *Paint stabilization.* All deteriorated paint on exterior and interior surfaces located on the residential property shall be stabilized in accordance with §35.1330(a)(b), or abated in accordance with

§35.1325.

(b) *Smooth and cleanable horizontal surfaces.* All horizontal surfaces, such as uncarpeted floors, stairs, interior window sills and window troughs, that are rough, pitted, or porous, shall be covered with a smooth, cleanable covering or coating, such as metal coil stock, plastic, polyurethane, or linoleum.

(c) *Correcting dust-generating conditions.* Conditions causing friction or impact of painted surfaces shall be corrected in accordance with §35.1330(c)(4) to (6).

(d) *Bare residential soil.* Bare soil shall be treated in accordance with the requirements of §35.1330, unless it is found not to be a soil-lead hazard in accordance with §35.1320(b).

(e) *Safe work practices.* All standard treatments described in paragraphs (a) through (d) of this section shall incorporate the use of safe work practices in accordance with §35.1350.

(f) *Clearance.* A clearance examination shall be performed in accordance with §35.1340 at the conclusion of any lead hazard reduction activities.

(g) *Qualifications.* An individual performing standard treatments must meet the training and/or supervision requirements of §35.1330(a)(4).

§ 35.1340. Clearance.

Clearance examinations required under subparts B, C, D, F through M, and R, of this part shall be performed in accordance with the provisions of this section.

(a) *Clearance following abatement.* Clearance examinations performed following abatement of lead-based paint or lead-based paint hazards shall be performed in accordance with 40 CFR 745.227(e) and paragraphs (c) to (f) of this section. Such clearances shall be performed by a person certified to perform risk assessments or lead-based paint inspections.

(b) *Clearance following activities other than abatement.* Clearance examinations performed following interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation shall be performed in accordance with the requirements of this paragraph (b) and paragraphs (c) through (g) of this section. Clearance is not required if the work being cleared does not disturb painted surfaces of a total area more than that set forth in §35.1350(d).

(1) *Qualified personnel.* Clearance examinations shall be performed by:

- (i) A certified risk assessor;
- (ii) A certified lead-based paint inspector;
- (iii) A person who has successfully completed a training course for sampling technicians (or a discipline of similar purpose and title) that is developed or accepted by EPA or a State or tribal program authorized by EPA pursuant to 40 CFR part 745, subpart Q, and that is given by a training provider accredited by EPA or a State or Indian Tribe for training in lead-based paint inspection or risk assessment, provided a certified risk assessor or a certified lead-based paint inspector approves the work of the sampling technician and signs the report of the clearance examination; or
- (iv) A technician licensed or certified by EPA or a State or Indian Tribe to perform clearance examinations without the approval of a certified risk assessor or certified lead-based paint inspector, provided that a clearance examination by such a licensed or certified technician shall be performed only for a single-family property or individual dwelling units and associated common areas in a multi-unit property, and provided further that a clearance examination by such a licensed or certified sampling technician shall not be performed using random sampling of dwelling units or common areas in

multifamily properties, except that a clearance examination performed by such a licensed or certified sampling technician is acceptable for any residential property if the clearance examination is approved and the report signed by a certified risk assessor or a certified lead-based paint inspector.

(2) *Required activities.*

(i) Clearance examinations shall include a visual assessment, dust sampling, submission of samples for analysis for lead in dust, interpretation of sampling results, and preparation of a report. Soil sampling is not required. Clearance examinations shall be performed in dwelling units, common areas, and exterior areas in accordance with this section and the steps set forth at 40 CFR 745.227(e)(8). If clearance is being performed after lead-based paint hazard reduction, paint stabilization, maintenance, or rehabilitation that affected exterior surfaces but did not disturb interior painted surfaces or involve elimination of an interior dust-lead hazard, interior clearance is not required if window, door, ventilation, and other openings are sealed during the exterior work. If clearance is being performed for more than 10 dwelling units of similar construction and maintenance, as in a multifamily property, random sampling for the purpose of clearance may be conducted in accordance with 40 CFR 745.227(e)(9).

(ii) The visual assessment shall be performed to determine if deteriorated paint surfaces and/or visible amounts of dust, debris, paint chips or other residue are still present. Both exterior and interior painted surfaces shall be examined for the presence of deteriorated paint. If deteriorated paint or visible dust, debris or residue are present in areas subject to dust sampling, they must be eliminated prior to the continuation of the clearance examination, except elimination of deteriorated paint is not required if it has been determined, through paint testing or a lead-based paint inspection, that the deteriorated paint is not lead-based paint. If exterior painted surfaces have been disturbed by the hazard reduction, maintenance or rehabilitation activity, the visual assessment shall include an assessment of the ground and any outdoor living areas close to the affected exterior painted surfaces. Visible dust or debris in living areas shall be cleaned up and visible paint chips on the ground shall be removed.

(iii) Dust samples shall be wipe samples and shall be taken on floors and, where practicable, interior windowsills and window troughs. Dust samples shall be collected and analyzed in accordance with §35.1315 of this part.

(iv) Clearance reports shall be prepared in accordance with paragraph (c) of this section.

(c) *Clearance report.* When clearance is required, the designated party shall ensure that a clearance report is prepared that provides documentation of the hazard reduction or maintenance activity as well as the clearance examination. When abatement is performed, the report shall be an abatement report in accordance with 40 CFR 745.227(e)(10). When another hazard reduction or maintenance activity

requiring a clearance report is performed, the report shall include the following information:

(1) The address of the residential property and, if only part of a multifamily property is affected, the specific dwelling units and common areas affected.

(2) The following information on the clearance examination:

- (i) The date(s) of the clearance examination;
- (ii) The name, address, and signature of each person performing the clearance examination, including certification number;
- (iii) The results of the visual assessment for the presence of deteriorated paint and visible dust, debris, residue or paint chips;
- (iv) The results of the analysis of dust samples, in $\mu\text{g}/\text{sq. ft.}$, by location of sample; and
- (v) The name and address of each laboratory that conducted the analysis of the dust samples, including the identification number for each such laboratory recognized by EPA under section 405(b) of the Toxic Substances Control Act (15 U.S.C. 2685(b)).

(3) The following information on the hazard reduction or maintenance activity for which clearance was performed:

- (i) The start and completion dates of the hazard reduction or maintenance activity;
- (ii) The name and address of each firm or organization conducting the hazard reduction or maintenance activity and the name of each supervisor assigned;
- (iii) A detailed written description of the hazard reduction or maintenance activity, including the methods used, locations of exterior surfaces, interior rooms, common areas, and/or components where the hazard reduction activity occurred, and any suggested monitoring of encapsulates or enclosures; and
- (iv) If soil hazards were reduced, a detailed description of the location(s) of the hazard reduction activity and the method(s) used.

(d) *Standards.* The clearance standards in §35.1320(b)(2) shall apply. If test results equal or exceed the standards, the dwelling unit, worksite, or common area represented by the sample fails the clearance examination.

(e) *Clearance failure.* All surfaces represented by a failed clearance sample shall be re-cleaned or treated by hazard reduction, and retested, until the applicable clearance level in §35.1320(b)(2) is met.

(f) *Independence.* Clearance examinations shall be performed by persons or entities independent of those performing hazard reduction or maintenance activities, unless the designated party uses qualified in-house employees to conduct clearance. An in-house employee shall not conduct both a hazard reduction or maintenance activity and its clearance examination.

(g) *Worksite clearance.* Clearance of only the worksite is permitted after work covered by §§35.930, 35.1330, 35.1335, or 35.1355, when containment is used to ensure that dust and debris generated by the work is kept within the worksite. Otherwise, clearance must be of the entire dwelling unit, common area, or outbuilding, as applicable. When clearance is of an interior worksite that is not an entire dwelling unit, common area, or outbuilding, dust samples shall be taken for paragraph (b) of this section as follows:

- (1) Sample, from each of at least four rooms, hallways, stairwells, or common areas within the dust containment area:
 - (i) The floor (one sample); and
 - (ii) Windows (one interior sill sample and one trough sample, if present); and
- (2) Sample the floor in a room, hallway, stairwell, or common area connected to the dust

containment area, within five feet outside the area (one sample).

§ 35.1345. Occupant protection and worksite preparation.

This section establishes procedures for protecting dwelling unit occupants and the environment from contamination from lead-contaminated or lead-containing materials during hazard reduction activities.

(a) Occupant protection.

(1) Occupants shall not be permitted to enter the worksite during hazard reduction activities (unless they are employed in the conduct of these activities at the worksite), until after hazard reduction work has been completed and clearance, if required, has been achieved.

(2) Occupants shall be temporarily relocated before and during hazard reduction activities to a suitable, decent, safe, and similarly accessible dwelling unit that does not have lead-based paint hazards, except if:

- (i) Treatment will not disturb lead-based paint, dust-lead hazards or soil-lead hazards;
- (ii) Only the exterior of the dwelling unit is treated, and windows, doors, ventilation intakes and other openings in or near the worksite are sealed during hazard control work and cleaned afterward, and entry free of dust-lead hazards, soil-lead hazards, and debris is provided;
- (iii) Treatment of the interior will be completed within one period of 8-daytime hours, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, and treatment does not create other safety, health or environmental hazards (e.g., exposed live electrical wiring, release of toxic fumes, or onsite disposal of hazardous waste); or
- (iv) Treatment of the interior will be completed within 5 calendar days, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, treatment does not create other safety, health or environmental hazards; and, at the end of work on each day, the worksite and the area within at least 10 feet (3 meters) of the containment area is cleaned to remove any visible dust or debris, and occupants have safe access to sleeping areas, and bathroom and kitchen facilities.

(3) The dwelling unit and the worksite shall be secured against unauthorized entry, and occupants' belongings protected from contamination by dust-lead hazards and debris during hazard reduction activities. Occupants' belongings in the containment area shall be relocated to a safe and secure area outside the containment area, or covered with an impermeable covering with all seams and edges taped or otherwise sealed.

(b) Worksite preparation.

(1) The worksite shall be prepared to prevent the release of leaded dust, and contain lead-based paint chips and other debris from hazard reduction activities within the worksite until they can be safely removed. Practices that minimize the spread of leaded dust, paint chips, soil and debris shall be used during worksite preparation.

(2) A warning sign shall be posted at each entry to a room where hazard reduction activities are conducted when occupants are present; or at each main and secondary entryway to a building from which occupants have been relocated; or, for an exterior hazard reduction activity, where it is easily read 20 feet (6

meters) from the edge of the hazard reduction activity worksite. Each warning sign shall be as described in 29 CFR 1926.62(m), except that it shall be posted irrespective of employees' lead exposure and, to the extent practicable, provided in the occupants' primary language.

§ 35.1350. Safe work practices.

(a) *Prohibited methods.* Methods of paint removal listed in §35.140 shall not be used.

(b) *Occupant protection and worksite preparation.* Occupants and their belongings shall be protected, and the worksite prepared, in accordance with §35.1345. A person performing this work shall be trained on hazards and either be supervised or have completed successfully one of the specified courses, in accordance with §35.1330(a)(4).

(c) *Specialized cleaning.* After hazard reduction activities have been completed, the worksite shall be cleaned using cleaning methods, products, and devices that are successful in cleaning up dust-lead hazards, such as a HEPA vacuum or other method of equivalent efficacy, and lead specific detergents or equivalent.

(d) *De minimis levels.* Safe work practices are not required when maintenance or hazard reduction activities do not disturb painted surfaces that total more than:

- (1) 20 square feet (2 square meters) on exterior surfaces;
- (2) 2 square feet (0.2 square meters) in any one interior room or space; or
- (3) 10 percent of the total surface area on an interior or exterior type of component with a small surface area. Examples include windowsills, baseboards, and trim.

§ 35.1355. Ongoing lead-based paint maintenance and reevaluation activities.

(a) *Maintenance.* Maintenance activities shall be conducted in accordance with paragraphs (a)(2) to (6) of this section, except as provided in paragraph (a)(1) of this section.

(1) Maintenance activities need not be conducted in accordance with this section if a lead-based paint inspection indicates that no lead-based paint is present in the dwelling units, common areas, and on exterior surfaces, or a clearance report prepared in accordance with §35.1340(a) indicates that all lead-based paint has been removed.

(2) A visual assessment for deteriorated paint, bare soil, and the failure of any hazard reduction measures shall be performed at unit turnover and every twelve months.

(3) (i) *Deteriorated paint.* All deteriorated paint on interior and exterior surfaces located on the residential property shall be stabilized in accordance with §35.1330(a)(b), except for any paint that an evaluation has found is not lead-based paint.

(ii) *Bare soil.* All bare soil shall be treated with standard treatments in accordance with §35.1335(d) through (g), or interim controls in accordance with §35.1330(a) and (f); except for any bare soil that a current evaluation has found is not a soil-lead hazard.

(4) Safe work practices, in accordance with §35.1350, shall be used when performing any maintenance or renovation work that disturbs paint that may be lead-based paint.

(5) Any encapsulation or enclosure of lead-based paint or lead-based paint hazards which has failed to maintain its effectiveness shall be repaired, or abatement or interim controls shall be performed in accordance with §35.1325 or §35.1330, respectively.

(6) Clearance testing of the worksite shall be performed at the conclusion of repair, abatement or interim controls in accordance with §35.1340.

(7) Each dwelling unit shall be provided with written notice asking occupants to report deteriorated paint and, if applicable, failure of encapsulation or enclosure, along with the name, address and telephone number of the person whom occupants should contact. The language of the notice shall be in accordance with §35.125(c)(3). The designated party shall respond to such report and stabilize the deteriorated paint or repair the encapsulation or enclosure within 30 days.

(b) *Reevaluation.* Reevaluation shall be conducted in accordance with this paragraph (b), and the designated party shall conduct interim controls of lead-based paint hazards found in the reevaluation.

(1) Reevaluation shall be conducted if hazard reduction has been conducted to reduce lead-based paint hazards found in a risk assessment or if standard treatments have been conducted, except that reevaluation is not required if any of the following cases are met:

- (i) An initial risk assessment found no lead-based paint hazards;
- (ii) A lead-based paint inspection found no lead-based paint; or
- (iii) All lead-based paint was abated in accordance with §35.1325, provided that no failures of encapsulations or enclosures have been found during visual assessments conducted in accordance with §35.1355(a)(2) or during other observations by maintenance and repair workers in accordance with §35.1355(a)(5) since the encapsulations or enclosures were performed.

(2) Reevaluation shall be conducted to identify:

- (i) Deteriorated paint surfaces with known or suspected lead-based paint;
- (ii) Deteriorated or failed interim controls of lead-based paint hazards or encapsulation or enclosure treatments;
- (iii) Dust-lead hazards; and
- (iv) Soil that is newly bare with lead levels equal to or above the standards in §35.1320(b)(2).

(3) Each reevaluation shall be performed by a certified risk assessor.

(4) Each reevaluation shall be conducted in accordance with the following schedule if a risk assessment or other evaluation has found deteriorated lead-based paint in the residential property, a soil-lead hazard, or a dust-lead hazard on a floor or interior windowsill.

(Window troughs are not sampled during reevaluation). The first reevaluation shall be conducted no later than two years from completion of hazard reduction. Subsequent reevaluation shall be conducted at intervals of two years, plus or minus 60 days. To be exempt from additional reevaluation, at least two consecutive reevaluations conducted at such two-year intervals must be conducted without finding lead-based paint hazards or a failure of an encapsulation or enclosure. If, however, a reevaluation finds lead-based paint hazards or a failure, at least two more consecutive reevaluations conducted at such two year intervals must be conducted without finding lead-based paint hazards or a failure.

(5) Each reevaluation shall be performed as follows:

- (i) Dwelling units and common areas shall be selected and reevaluated in accordance with §35.1320(b).
- (ii) The worksites of previous hazard reduction activities that are similar on the basis of their original lead-based paint hazard and type of treatment shall be grouped. Worksites within such groups

shall be selected and reevaluated in accordance with §35.1320(b).

(6) Each reevaluation shall include reviewing available information, conducting selected visual assessment, recommending responses to hazard reduction omissions or failures, performing selected evaluation of paint, soil and dust, and recommending response to newly found lead-based paint hazards.

(i) *Review of available information.* The risk assessor shall review any available past evaluation, hazard reduction and clearance reports, and any other available information describing hazard reduction measures, ongoing maintenance activities, and relevant building operations.

(ii) *Visual assessment.* The risk assessor shall:

(A) Visually evaluate all lead-based paint hazard reduction treatments, any known or suspected lead-based paint, any deteriorated paint, and each exterior site, and shall identify any new areas of bare soil;

(B) Determine acceptable options for controlling the hazard; and

(C) Await the correction of any hazard reduction omission or failure and the reduction of any lead-based paint hazard before sampling any dust or soil the risk assessor determines may reasonably be associated with such hazard.

(iii) *Reaction to hazard reduction omission or failure.* If any hazard reduction control has not been implemented or is failing (e.g., an encapsulates is peeling away from the wall, a paint-stabilized surface is no longer intact, or gravel covering an area of bare soil has worn away), or deteriorated lead-based paint is present, the risk assessor shall:

(A) Determine acceptable options for controlling the hazard; and

(B) Await the correction of any hazard reduction omission or failure and the reduction of any lead-based paint hazard before sampling any dust or soil the risk assessor determines may reasonably be associated with such hazard.

(iv) *Selected paint, soil and dust evaluation.*

(A) The risk assessor shall sample deteriorated paint surfaces identified during the visual assessment and have the samples analyzed, in accordance with 40 CFR 745.227(b)(3)(4), but only if reliable information about lead content is unavailable.

(B) The risk assessor shall evaluate new areas of bare soil identified during the visual assessment. Soil samples shall be collected and analyzed in accordance with 40 CFR 745.227(d)(8) to (11), but only if the soil lead levels have not been previously measured.

(C) The risk assessor shall take selected dust samples and have them analyzed. Dust samples shall be collected and analyzed in accordance with §35.1320(b). At least two composite samples, one from floors and the other from interior windowsills, shall be taken in each dwelling unit and common area selected. Each composite sample shall consist of four individual samples, each collected from a different room or area. If the dwelling unit contains both carpeted and

uncarpeted living areas, separate floor samples are required from the carpeted and uncarpeted areas. Equivalent single-surface sampling may be used instead of composite sampling.

(7) The risk assessor shall provide the designated party with a written report documenting the presence or absence of lead-based paint hazards, the current status of any hazard reduction and standard treatment measures used previously and any newly-conducted evaluation and hazard reduction activities. The report shall include the information in 40 CFR 745.227(d)(11), and shall:

(i) Identify any lead-based paint hazards previously detected and discuss the effectiveness of any hazard reduction or standard treatment measures used, and list those for which no measures have been used.

(ii) Describe any new hazards found and present the owner with acceptable control options and their accompanying reevaluation schedules.

(iii) Identify when the next reevaluation, if any, must occur, in accordance with the requirements of paragraph (b)(4) of this section.

(c) *Response to the reevaluation.*

(1) *Hazard reduction omission or failure found by a reevaluation.* The designated party shall respond in accordance with paragraph (b)(6)(iii)(A) of this section to a report by the risk assessor of a hazard reduction control that has not been implemented or is failing, or that deteriorated lead-based paint is present.

(2) *Newly-identified lead-based paint hazard found by a reevaluation.* The designated party shall treat each:

(i) Dust-lead hazard or paint lead hazard by cleaning or hazard reduction measures, which are considered completed when clearance is achieved in accordance with §35.1340.

(ii) Soil-lead hazard by hazard reduction measures, which are considered completed when clearance is achieved in accordance with §35.1340.

**INTERPRETIVE GUIDANCE
ON HUD'S
LEAD SAFE HOUSING RULE:**

**THE HUD REGULATION ON CONTROLLING LEAD-BASED PAINT HAZARDS
IN HOUSING RECEIVING FEDERAL ASSISTANCE AND
FEDERALLY OWNED HOUSING BEING SOLD
(24 CFR Part 35)**

**U.S. Department of Housing and Urban Development
Office of Healthy Homes and Lead Hazard Control
Washington, DC 20410**

www.hud.gov/offices/lead

Revised June 21, 2004

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INTRODUCTION

On September 15, 1999, The U.S. Department of Housing and Urban Development (HUD) published a final regulation, "Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance," known as the Lead Safe Housing Rule. The purpose of the regulation is to protect young children from lead-based paint hazards in housing that is either receiving assistance from the Federal government or is being sold by the government. The regulation establishes procedures for evaluating whether a hazard may be present, controlling or eliminating the hazard, and notifying occupants of what was found and what was done in such housing. The Lead Safe Housing Rule took effect on September 15, 2000. The regulation does not have any substantive effect on the lead-based paint disclosure rule, which was issued jointly by HUD and the U.S. Environmental Protection Agency in 1996.

As required by Title X of the Housing and Community Development Act of 1992, the EPA published lead hazard standards in its final rule, Identification of Dangerous Levels of Lead (66 FR 1206; January 5, 2001). These EPA standards, which became effective March 6, 2001, are available from the Internet at www.epa.gov/lead/leadhaz.htm. Therefore, in accordance with Title X, HUD amended the Lead Safe Housing Rule on June 21, 2004, to incorporate the new EPA dust-lead and soil-lead standards as HUD's final standards. In addition, other minor technical corrections were made at that time.

The purpose of this document is to provide answers to many of the questions that HUD has received since the publication of the regulation. The questions and answers begin with general information and then are organized according to the subpart of the regulation to which they most closely apply.

The regulation is at part 35 of title 24 of the Code of Federal Regulations (24 CFR part 35). It implements sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992. Sections 1012 and 1013 amend the Lead-Based Paint Poisoning Prevention Act of 1971.

A. GENERAL INFORMATION

A1. *PURPOSE OF THE REGULATION:* What is the purpose of this regulation?

HUD issued this regulation to protect young children from lead-based paint hazards in housing that is financially assisted by the Federal government or sold by the government. The regulation establishes requirements that control lead-based paint hazards in such housing. It applies only to housing that was built before 1978; in that year, lead-based paint was banned nationwide for consumer use.

A2. *NEW & EXISTING REGULATIONS:* I thought HUD already had lead paint regulations. What's new about this?

HUD did have existing lead paint regulations. This new regulation consolidated all of the Department's existing regulations in one part of the Code of Federal Regulations (CFR). Now you can easily find HUD's lead paint policies in one place, instead of having to look through each program-specific part of the CFR.

More importantly, this regulation implemented the new requirements, concepts and terminology established by the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X ("ten") of the Housing and Community Development Act of 1992. The new regulation retained the existing fundamental requirement of repairing deteriorated paint, but it also required control of lead-contaminated dust associated with the presence of lead-based paint. Research has found lead in dust to be the most common pathway of childhood exposure to lead. The "clearance" requirement in the regulation is the best example of the emphasis on dust resulting from these research findings. Clearance involves testing settled dust for lead contamination after hazard control work. It ensures that fine particles of lead in dust have been cleaned up and the unit is safe for re-occupancy. The old regulations did not require cleanup or clearance. (See Question B8, below, for further information on clearance.) Also, this regulation uses the framework of trained and certified lead paint professionals to assure that lead hazard control work is done safely. The Department believes that these changes resulted in a much more effective national program that has reduced childhood lead poisoning.

A3. *EFFECTIVE DATE:* When does the regulation take effect?

Prohibitions against using dangerous methods of removing paint took effect on November 15, 1999, but most of the regulation was scheduled to take effect on September 15, 2000, one year after publication. The purpose of the one-year phase-in period was to provide time for owners and managers of housing, and local program administrators to learn about the requirements and plan and budget for compliance. HUD provided training and technical assistance on the new requirements.

A4. *EFFECT ON DISCLOSURE REGULATION:* How does this regulation affect the lead paint disclosure requirements that were issued jointly by HUD and EPA in 1996?

It had no effect whatsoever on the disclosure requirements. However, it restructured the subpart of 24 CFR Part 35 where the HUD-published disclosure requirements are found from subpart H to subpart A. The section numbers and the text of the disclosure requirements stayed the same.

A5. *EXEMPTIONS:* What kinds of properties and activities are exempted from the regulation?

The following properties are not covered by this regulation, either because lead paint is unlikely to be present, or because children will not occupy the house in the future:

- Housing built on or after January 1, 1978 (when lead paint was banned for residential use)
- Housing exclusively for the elderly or persons with disabilities, unless a child under age 6 is expected to reside there for prolonged periods of time
- Zero bedroom dwellings, including efficiency apartments, single-room occupancy housing, dormitories, or military barracks
- Property that has been found to be free of lead-based paint by a certified inspector
- Property from which all lead-based paint has been removed, and clearance has been achieved
- Unoccupied housing that will remain vacant until it is demolished
- Non-residential property
- Any rehabilitation or housing improvement that does not disturb a painted surface.

Also, emergency repair actions, which are those needed to safeguard against imminent danger to human life, health or safety, or to protect property from further structural damage, are exempted.

Finally, the requirements do not apply to emergency housing assistance (such as for the homeless), unless the assistance lasts more than 100 days, in which case the rule does apply.

A6. **SUMMARY OF REQUIREMENTS:** *What are the requirements of the regulation?*

In accordance with the Statute (Title X of the 1992 Housing and Community Development Act), the requirements vary, depending on the nature of the Federal involvement (e.g., whether the housing is being disposed of or assisted by the Federal government); the type, amount and duration of financial assistance; the age of the structure (which is associated with the amount of lead in the paint); and whether the dwelling is rental or owner-occupied.

A summary of requirements for each type of housing assistance is at the end of the answer to this question. Details are in the regulation itself. If you are responsible for compliance with the regulation, you should become familiar with the specific requirements for your particular program or programs by reading the regulation itself.

To illustrate the nature of the requirements, below is a brief description of two of the more common sets of hazard evaluation and control requirements.

One set of hazard control requirements that applies to several HUD programs is:

- Stabilization of any deteriorated paint, including correction of any moisture leaks or other obvious causes of paint deterioration, as well as repainting (paint stabilization is not required if the paint is tested and found not to be lead-based paint);
- "Clearance" following paint stabilization to ensure that the work has been completed, that dust, paint chips and other debris have been satisfactorily cleaned up, and that settled dust has low levels of lead; and
- Ongoing maintenance of the paint and periodic reevaluation to ensure that the housing remains lead safe.

Another set of requirements found in the regulation is:

- a risk assessment to identify lead-based paint hazards;
- interim control measures to eliminate any hazards that are identified;
- clearance; and
- on-going maintenance and periodic reevaluation to ensure that lead-based paint hazards do not reappear.

The terms, "risk assessment," "lead-based paint hazards," and "interim controls" are explained below in questions C1-C3.

SUMMARY OF HUD LEAD-BASED PAINT (LBP) REQUIREMENTS

Sub-part	Type of Program	Construction Period	Requirements^{1, 2, 3}
A	Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards	Pre-1978	<ul style="list-style-type: none"> See www.hud.gov/offices/lead for Lead Disclosure Rule requirements for sale or lease of residential property.
B	General Lead-Based Paint Requirements and Definitions	Pre-1978	<ul style="list-style-type: none"> All properties covered by the Lead Safe Housing Rule.⁴
C	Disposition by Federal Agency Other Than HUD	Pre-1960	<ul style="list-style-type: none"> LBP inspection and risk assessment. Abatement of LBP hazards. Notice to occupants.
		1960-1977	<ul style="list-style-type: none"> LBP inspection and risk assessment. Notice to occupants of results.
D	Project-Based Assistance by Federal Agency Other Than HUD	Pre-1978	<ul style="list-style-type: none"> Provision of pamphlet. Risk assessment. Interim controls. Notice to occupants. Response to child with EIBLL.⁵
F	HUD-Owned Single Family Sold With a HUD-Insured Mortgage	Pre-1978	<ul style="list-style-type: none"> Visual assessment. Paint stabilization. Notice to occupants of clearance.
G	Multifamily Mortgage Insurance:		
	1. For properties that are currently residential	Pre-1960	<ul style="list-style-type: none"> Provision of pamphlet. Risk assessment. Interim controls. Notice to occupants. Ongoing LBP maintenance.
		1960-1977	<ul style="list-style-type: none"> Provision of pamphlet. Ongoing LBP maintenance.
	2. For conversions and major renovations.	Pre-1978	<ul style="list-style-type: none"> Provision of pamphlet. LBP inspection. Abatement of LBP. Notice to occupants.
H	Project-Based Assistance by HUD		
	For all properties	Pre-1978	<ul style="list-style-type: none"> Provision of pamphlet. Notice to occupants. Ongoing LBP maintenance and re-evaluation. Response to child with EIBLL.⁵
	1. Multifamily property receiving more than \$5,000 per unit per year	Pre-1978	<ul style="list-style-type: none"> Risk assessment. Interim controls.
	2. Multifamily property receiving less than or equal to \$5,000 per unit per year, and single family properties	Pre-1978	<ul style="list-style-type: none"> Visual assessment. Paint stabilization.
I	HUD-Owned Multifamily Property	Pre-1978	<ul style="list-style-type: none"> Provision of pamphlet. LBP inspection and risk assessment. Interim controls. Notice to occupants. Ongoing LBP maintenance and re-evaluation. Response to child with EIBLL.⁵
J	Rehabilitation Assistance:		
	For all Properties	Pre-1978	<ul style="list-style-type: none"> Provision of pamphlet. Paint testing of surfaces to be disturbed, or presume LBP. Notice to occupants. Ongoing LBP maintenance if HOME rental.
	1. Property receiving less than or equal to \$5,000 per unit	Pre-1978	<ul style="list-style-type: none"> Safe work practices in rehab. Repair disturbed paint. Clearance of the worksite.
	2. Property receiving more than \$5,000 and up to \$25,000	Pre-1978	<ul style="list-style-type: none"> Risk assessment. Interim controls.
	3. Property receiving more than \$25,000 per unit	Pre-1978	<ul style="list-style-type: none"> Risk assessment. Abatement of LBP hazards. Interim controls allowed for exterior.
K	Acquisition, Leasing, Support Services, or Operation	Pre-1978	<ul style="list-style-type: none"> Provision of pamphlet. Visual assessment. Paint stabilization. Notice to occupants. Ongoing LBP maintenance for on-going assistance.
SUMMARY OF HUD LEAD-BASED PAINT (LBP) REQUIREMENTS (continued)			

Sub part	Type of Program	Construction Period	Requirements ^{1, 2, 3}
L	Public Housing	Pre-1978	<ul style="list-style-type: none"> • Provision of pamphlet. • LBP inspection. • Risk assessment if LBP not yet abated. • Interim controls if LBP not yet abated. • Abatement of LBP during modernization. • Notice to occupants. • Ongoing LBP maintenance and re-evaluation. • Response to child with EIBLL.⁵
M	Tenant-Based Rental Assistance for units to be occupied by children under 6 years of age	Pre-1978	<ul style="list-style-type: none"> • Provision of pamphlet. • Visual assessment. • Paint stabilization. • Notice to occupants. • Ongoing LBP maintenance. • Response to child with EIBLL.⁵

1. Safe work practices and occupant protection are always required. Clearance is required after abatement, interim controls, paint stabilization, or standard treatments, except when the amount of deteriorated paint is below the de minimis levels specified in Subpart R of the rule.
2. Notice to occupants must include results of evaluations (paint testing, inspection, and risk assessment) and clearance, where applicable.
3. Training requirements (see www.hud.gov/offices/lead for information; see www.epa.gov/lead about certification):
 - Evaluation: Visual assessment: Web-based HUD visual assessment course, or risk assessment certification.
 - Inspection: LBP inspection certification.
 - Risk assessment, or re-evaluation: Risk assessment certification.
 - Clearance: LBP inspection or risk assessment certification, or sampling technician course.
 - Hazard Control (except for small ("de minimis") amounts of paint disturbance; see 24 CFR 35.1350(d)):
 - Repair of paint, paint stabilization, or interim control: Lead-safe work practices course.
 - Abatement: Abatement certification.
4. [See 24 CFR 35.115 for exemptions.](#)
5. Environmental intervention blood lead level: At least 20 micrograms of lead per deciliter (µg/dL) for a single test, or 15-19 µg/dL in two tests taken at least 3 months apart.

A7. ORGANIZATION OF THE REGULATION: *How is the regulation organized?*
The regulation is divided into "subparts" of 24 CFR Part 35. Three subparts apply to all programs. Subpart A is the existing disclosure regulation that requires sellers and lessors of most pre-1978 housing to disclose known information on lead-based paint and/or lead-based paint hazards to prospective buyers and renters. Subpart B describes the scope of coverage of the new regulation and provides definitions and general requirements for all programs. Subpart R describes methods and standards for lead-based paint hazard evaluation and reduction activities. (Subparts E, and N through Q, are reserved for future use.)

Each of the other subparts (C through M) contains the requirements for a particular type of housing program or housing assistance, such as multifamily mortgage insurance, project-based assistance, rehabilitation, public housing, tenant-based assistance, or acquisition, leasing, support services or operation. The lead-hazard control requirements depend on the type of assistance provided. As programs are modified and new programs come into existence, the list will be amended, as appropriate.

A8. LOW-INCOME HOUSING TAX CREDITS: *Does the Lead Safe Housing Rule apply to the Internal Revenue Service's Low-Income Housing Credit program?*

Yes, when the HUD Uniform Physical Conditions Standards (UPCS) are used by the state housing credit agency to monitor for compliance in the low-income housing credit program. (The Lead Safe Housing Rule is part of the UPCS [24 CFR 5.703(f)]. The IRS' monitoring regulation became effective January 1, 2001 [26 CFR 1.42-5(d)(2)(ii)].)

A9. OTHER FEDERAL AGENCIES: *Where can I find the requirements under this regulation for housing programs of a Federal agency other than HUD?*

Subpart C of the regulation covers disposition (which means sale) to a non-Federal entity by Federal agencies other than HUD of housing built before 1978. Subpart D of the regulation covers project-based assistance provided by those agencies for housing built before 1978.

Each other Federal agency may establish its own regulations, policies and procedures for implementing the Act, in addition to the requirements of this regulation. You should directly contact the Federal agency you are interested in for information on its programs and practices.

A10. PROGRAMS RECEIVING MORE THAN ONE TYPE OF FEDERAL ASSISTANCE: *What subpart do I use if the program I administer at the local level provides more than one type of assistance?*

Some HUD programs can be used for several different types of housing assistance. Such programs include the Community Development Block Grant (CDBG) program, the HOME Investment Partnerships program, and the Indian Housing Block Grant program. If you are administering such a program for a city, county, State or Indian tribe, you will have to determine which subpart of the regulation applies to the type of assistance being provided to a particular unit or property. For example, if rehabilitation assistance is being provided, use subpart J, which applies to rehabilitation. If tenant-based rental assistance is being provided, use subpart M, which applies to all tenant-based rental assistance.

A11. HOUSING UNITS RECEIVING MORE THAN ONE TYPE OF FEDERAL ASSISTANCE: *What if a dwelling unit receives more than one type of assistance? Which subpart applies?*

The types of assistance provided to a dwelling unit determine what subparts of the regulation apply to that dwelling unit. If more than one type of assistance is being provided to the same dwelling unit, and two or more sets of lead paint requirements apply, the most protective requirements apply. Section 35.100 of the regulation includes a table listing HUD programs from the most protective to the least protective hazard reduction requirements. Section 35.100 also provides additional guidance on how to use the table.

A12. NUMBER OF DWELLINGS AFFECTED: *How many dwelling units will be affected by this regulation?*

HUD estimates that about 2.8 million HUD-associated dwelling units containing lead-based paint will be covered by 2005. The Economic Analysis accompanying the rule explains how these numbers were developed.

A13. **COSTS AND BENEFITS:** *What are the benefits and costs of the regulation?*
 The Economic Analysis accompanying the rule, as published in the Federal Register, contains a full description of costs and benefits. The benefits of the rule are primarily the increased lifetime earnings of children whose exposure to lead is reduced by living in housing made lead-safe as a result of the regulation. The estimate of increased lifetime earnings is from scientific studies of links between lead exposure and lost IQ, and between IQ and lifetime earnings. Other benefits include avoided costs of medical treatment and special education. In addition, benefits that have not been estimated in monetary terms include improving children's stature, hearing, and vitamin D metabolism; reducing juvenile delinquency and the burden on the educational system; avoiding the parental and family time, expenses and emotional costs involved in caring for lead poisoned children; and reducing personal injury claims and associated court costs.

HUD estimates that the present value of total benefits associated with the first five years of the regulation is \$2.65 billion for HUD-associated dwellings, using a three percent discount rate. The present value of the costs associated with the first five years of the regulation is estimated to be \$564 million. Therefore, estimated net benefits are \$2.08 billion.

The average cost of compliance per HUD-associated dwelling unit is estimated at approximately \$200 (\$564 million/2.8 million units). The costs will range from the many units that will have no costs at all (because they have been well maintained and have no deteriorated lead paint) to other units that may have significant costs.

A14. **OBTAINING COPIES OF THE REGULATION:** *How can I get a copy of the regulation?*
 You can obtain the regulation, including its "preamble" (an explanation of the issues and policies), by downloading from the Internet at www.hud.gov/offices/lead, or by mail from the National Lead Information Center at 1-800-424-LEAD.

HUD published the regulation in the Federal Register, on September 15, 1999, starting on page 50410. Also, HUD published three corrections to the regulation: one on January 21, 2000, starting on page 3386, one on March 30, 2000, starting on page 16818, and one on June 21, 2004, starting on page 34262. You can obtain copies of these issues by downloading from the HUD web site, shown above, from the Federal Register web site, www.gpoaccess.gov/fr/, or by mail, for a fee, from the Government Printing Office toll-free at (888) 293-6498 or at 1-202-512-1530 (this is a toll call). There is no difference between the copies available from the HUD web site, the National Lead Information Center, the Federal Register web site, or the Government Printing Office. If you are a hearing- or speech-impaired person, you may reach the above telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

Subpart B. GENERAL REQUIREMENTS

B1. **EFFECTIVE DATE FOR EPA-CERTIFIED INDIVIDUALS:** *The regulation published on September 15, 1999 states, in section 35.165, that: (1) lead-based paint inspections, risk assessments and abatements conducted after August 29, 1999 must be performed by individuals certified to perform such activities by EPA or an EPA-authorized State or tribal program, and (2) such activities conducted prior to August 30, 1999 are acceptable under the regulation if the performing individuals were approved by a State or tribal program, regardless of whether the program was authorized by EPA. The "preamble" to the regulation indicates that HUD chose the date, August 30, 1999, because that was the effective date of the certification requirements promulgated by the U.S. Environmental Protection Agency (EPA) at 40 CFR 745.226 and 745.239. However, EPA has since changed that date to March 1, 2000. Which date now applies to the HUD regulation: August 30, 1999 or March 1, 2000?*

March 1, 2000. HUD amended its regulation on January 21, 2000 and MMM DD, 2004 to make the dates in 24 CFR 35.165 conform to the effective date of the EPA certification requirements in 40 CFR 745.226 and 745.239.

B2. **ADEQUATE VENTILATION:** *Section 35.140(f) states that "paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the Consumer Product Safety Commission . . . and/or . . . the Occupational Safety and Health Administration . . ." is prohibited. What is an adequately ventilated space?*
 Adequately ventilated means conditions that prevent occupational exposures from exceeding the Permissible Exposure Limit of the Occupational Safety and Health Administration for the hazardous substance. (For more information, see OSHA's rules at 29 CFR parts 1910 and 1926). These rules can be found at OSHA's web site at www.osha.gov, which also contains OSHA's published guidance; or from OSHA's regional and area offices (phone numbers can be obtained from OSHA toll-free at 1-800-321-OSHA (6742); or, for a fee, from the Government Printing Office at (888) 293-6948 (toll-free) or 1-202-512-1530 (this is a toll call).) Paint strippers should not be used in spaces that have no fresh air supply. If you are a hearing- or speech-impaired person, you may reach the above telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

B3. **PAMPHLET:** *Is the pamphlet that must be provided under the new HUD regulation the same pamphlet that must be provided under the 1996 HUD-EPA regulation on disclosure of lead-based paint hazards? If so, why do I need to provide it again, and if I do how do I get copies of the pamphlet?*

The two pamphlets are the same. It is not necessary to provide the pamphlet again if you can show that it has already been provided (see section 35.130). Also, the first edition, dated 1995, is still valid; you do not need to provide a more recent edition if you have provided a copy of the first edition. There is a third regulation that requires provision of the same pamphlet: the EPA pre-renovation hazard education rule at 40 CFR part 745, subpart E. All three pamphlet-provision requirements are called for in the basic statute, the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992. If you can show that the pamphlet has already been provided in compliance with the disclosure rule or the pre-renovation education rule, you need not provide it again.

A black and white version of the pamphlet can be downloaded from the web site of the HUD Office of Lead Hazard Control at www.hud.gov/lead. Click on "Lead Info Pamphlet." A printed, color version of the pamphlet, "Protect Your Family From Lead In Your Home," can be purchased from the U.S. Government Printing Office (\$24.00 for packages of 50) by calling (888) 293-6948 (toll-free) or 1-202-512-1530 (this is a toll call). The GPO stock number is 055-000-00507-9. [Check for the Spanish version stock number.] Individual copies of the printed, color version, in either English or Spanish ("Proteja a Su Familia del Plomo en Su Casa"), can be obtained at no cost from the National Lead Information Center at 1-800-424-LEAD or electronically at www.epa.gov/opptintr/lead/nlicdocs.htm. The Center also has a black and white version that can be photocopied. If you are a hearing- or speech-impaired person, you may reach the above telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

B4. **POSTED NOTICE:** *Section 35.125(c)(4) says that one method of notifying occupants of evaluation and hazard reduction activities is to post a notice in centrally located common areas. How long should such a notice remain posted?*
 HUD did not specify a minimal duration for the posting of a notice, but four weeks should be adequate to allow for the possibility that some occupants may temporarily not be in residence.

- B5. NOTICE OF VISUAL ASSESSMENT AND HAZARD CONTROL BELOW THE DE MINIMIS:** *As stated in section 35.1010, a visual assessment alone is not considered an evaluation for the purposes of this regulation. Therefore no notice of evaluation is required after a visual assessment to identify deteriorated paint, even though it may result in a hazard reduction activity. Is this correct? Also, if hazard reduction is necessary, are any notice requirements triggered?*
 Yes, this is correct. It is not necessary to provide a notice to occupants after a visual assessment alone is completed. However, if the visual assessment results in paint stabilization and clearance, the owner must provide occupants with a Notice of Lead Hazard Reduction Activity describing the work that was done and the results of clearance. The clearance examination involves the testing of samples for the presence of lead in dust and another visual assessment, this time to see if any deteriorated surfaces remain, and whether there are any visible amounts of dust, debris, paint chips, or residue. This is new information that must be provided to the occupants, regardless of the level of Federal assistance. If paint stabilization was completed on surfaces with areas below the de minimis threshold, no clearance, safe work practices, safe work practices training, or notification is required.
- B6. COMPLETION OF HAZARD REDUCTION NOTICE:** *The regulation, at section 35.125(b), requires that the notice of hazard reduction activity must be provided to occupants no more than 15 calendar days after the hazard reduction activities have been completed. What constitutes "completion?"*
 The completion date is the date on which clearance is achieved, that is, when the subject property has passed the visual assessment and the dust samples are all below the levels indicated in section 35.1320(b)(2)(i).
- B7. CLEARANCE FAILURE:** *What happens if clearance is not achieved at first?*
 If clearance is not achieved at first, you should re-clean the spaces represented by the dust samples that failed and take new samples. Sometimes, multiple small work areas will be isolated within a structure to protect building occupants and their belongings. In these circumstances, a single set of samples may be collected from the floor and other horizontal surfaces, such as windows and troughs, to represent up to four isolated areas. If that set of samples fails, all unsampled areas represented by those samples must be re-cleaned and re-cleared. (Areas represented by samples that passed clearance do not have to be re-cleaned.) Usually that is sufficient, unless the surfaces are so cracked or pitted that they cannot be effectively cleaned. If clearance is not achieved after two attempts, it is recommended that you make sure that failing horizontal surfaces (floors, interior window sills, or window troughs) are smooth and cleanable before the third sampling. It is not necessary to issue a notice of hazard reduction activity until after clearance has been achieved. The notice must include information regarding any failed clearance sampling, however, because that is important information indicating that there has been lead-contaminated dust in the property. It is also important to note that this information must be disclosed in compliance with the HUD-EPA lead-based paint disclosure rule.
- B8. CLEARANCE AND COMPLIANCE:** *What happens if clearance is never achieved?*
 Clearance can always be achieved. If the property owner decides not to achieve clearance, the property or unit is not in compliance with the regulation. Where possible, local program administrators may find it expedient to provide program funds to assist owners in making horizontal surfaces smooth and cleanable if clearance proves difficult.
- B9. CHILD OCCUPIED FACILITIES:** *Are child-occupied facilities covered by this regulation?*
 Child-occupied facilities, such as child care centers, serving children under 6 years old, are covered by this regulation only if they located in a common area or a dwelling unit in a residential property that is covered by this regulation. The EPA regulates the use of certified personnel to conduct lead-related work in child occupied facilities, but does not require that any work be done. The EPA's lead training and certification rule may be found at 40 CFR 745.
- B10. ZERO-BEDROOM UNITS:** *Why are zero-bedroom dwelling units exempt from the regulation?*
 Zero-bedroom dwelling units are exempt because the statute states clearly that they are not to be covered by the implementing regulations. The definition of target housing in the statute excludes "any 0-bedroom dwelling" (42 U.S.C. §4851b).
- B11. CHILDREN LIVING IN ELDERLY HOUSING:** *A property that is designated exclusively for occupancy by the elderly or persons with disabilities is exempt from the regulation, but it is not exempt if a child of less than 6 years of age resides or is expected to reside there. If the management of a property designated for occupancy by the elderly or persons with disabilities makes an exception that allows a young child to live there, what parts of the property are covered by the regulation?*
 If the dwelling unit is assisted by a Federal housing program, the regulation applies to the dwelling unit in which the child resides, any common areas servicing such dwelling unit, and exterior painted surfaces associated with such dwelling unit or common areas. HUD expects that, if numerous exceptions are made to allow young children to reside in a property designated for occupancy by the elderly or persons with disabilities, (such as the Living Equitably: Grandparents Aiding Children and Youth Act of 2003, P.L. 108-186) the exemption from the regulation would no longer be available and the regulation would apply to the entire property. If the exception is for temporary residence for emergency rental assistance or foreclosure prevention assistance, the regulation does not apply, but this exemption expires for a dwelling unit no later than 100 days after the initial occupancy.
- B12. DETERMINATION OF ELDERLY PROPERTIES:** *How does one determine whether a property is designated exclusively for occupancy by the elderly or persons with disabilities?*
 The lease or other residency agreement should so state. The term "housing for the elderly" is defined in the regulation as "retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more, or other age if recognized as elderly by a specific Federal housing assistance program." A person with a disability is defined in the Americans With Disabilities Act (ADA) and the Rehabilitation Act of 1973 as any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of an impairment, or is regarded by others as having such an impairment. It is not necessary that the lease or residency agreement include these precise definitions.
- B13. CHILD VISITS TO ELDERLY HOUSING:** *If a child visits an elderly housing facility or a facility for persons with disabilities for more than 10 hours a week, would this trigger lead paint requirements for a single unit in the facility?*
 No. It is triggered only if the child resides there. HUD recognizes that the meaning of the term "reside" may be subject to different interpretations, especially for young children, and may vary in different communities. As general guidance it may be useful to think of residence as the place where one sleeps most of the time and keeps most of one's clothing. Also, residence is a relatively permanent (as opposed to temporary) concept, and therefore it may be appropriate to consider that residence is a condition that lasts longer than 100 days.
- B14. HOSPICE:** *Does the regulation apply to a hospice?*
 No, so long as the occupants are terminally ill or if occupancy is limited to adults at least 18-years of age.

- B15. DEMOLITION:** *Section 35.115(a)(6) says that an unoccupied property that is to be demolished is exempt from the regulation, provided the property remains unoccupied until demolition. Can't demolition generate lead hazards? Shouldn't the soil be tested after demolition and, if lead-contaminated, be remediated?*
The regulation does not apply to demolition, but parties planning demolition should determine first whether other Federal, State or local environmental requirements apply. Federal Occupational Safety and Health Administration (OSHA) standards (or, where applicable, State or local occupational safety and health standards) must be observed, and, in the case of Base Realignment and Conversion (BRAC) properties of the Department of Defense, EPA regulations pertaining to soil may apply. (If you are involved with a BRAC property, you should contact the Department of Defense office for the property.) It is possible that lead hazards may be generated in the act of demolition of residential properties with lead-based paint. Soil remediation following demolition depends on the level of lead in the soil and the planned reuse of the site (e.g., whether residential or another use, and whether the soil will be covered). Remediation of lead-contaminated soil may be required by other environmental laws and regulations. You may contact the EPA's Regional Lead Coordinator for more information on EPA's regulations and policies. (The phone number of your region's Coordinator is available from an EPA hotline, 1-202-554-1404 (this is not a toll-free number), or on the Internet at www.epa.gov/lead.) If you are a hearing- or speech-impaired person, you may reach the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.
- B16. ENFORCEMENT:** *How will the regulation be enforced?*
Monitoring and enforcement of compliance with this regulation will be integrated into the administrative procedures for each affected HUD program.
- B17. BLOOD TESTING REQUIREMENT:** *Can a program require that children have a blood test for lead as a prerequisite for program participation?*
No. Children cannot be required to have their blood tested as a prerequisite for program participation. However, parents should be encouraged to have their children tested.
- B18. HISTORIC PRESERVATION:** *How is HUD reconciling lead hazard reduction requirements with the requirements for preservation of historic resources, such as windows and exterior paint?*
The regulation includes an exception at section 35.115(a)(13) that allows designated parties to use interim controls instead of abatement methods, if requested by the State Historic Preservation Office, on properties listed or determined to be eligible for listing in the National Register of Historic Places or contributing to a National Register Historic District. This policy is explained in the preamble to the regulation at III.A.5.j at page 50150 of the Federal Register version.
- B19. COMMERCIAL PORTIONS OF RESIDENTIAL PROPERTIES:** *In a mixed-use building receiving assistance, is the commercial portion exempt from the lead paint regulation?*
Yes, the commercial part is exempt from the lead paint regulation. However, common areas servicing the residential units are covered by the lead regulation. Therefore, entryways and hallways serving the residential units are subject to the requirements even if they are also located in the commercial space. Exterior areas are also covered by the lead regulation.
- B20. FANNIE MAE AND FREDDIE MAC:** *Are there any lead paint requirements that apply to a property if the mortgage is purchased by Fannie Mae or Freddie Mac?*
The new HUD regulation regarding lead hazard control in federally assisted housing has no separate requirements that pertain strictly to Fannie Mae or Freddie Mac. However, the lead-based paint disclosure rule applies to almost all of the pre-1978 residential properties with which those organizations are involved. Also, Fannie Mae and Freddie Mac have certain additional lead paint requirements of their own for multifamily properties.
- B21. FHA SINGLE FAMILY MORTGAGE INSURANCE:** *What lead paint requirements apply to a property covered by an application for FHA single-family mortgage insurance in general and especially for Rehabilitation Home Mortgage Insurance Under Section 203(k)?*
Until further notice, the new HUD lead paint regulation does not change existing requirements for pre-1978 housing covered by an application for any FHA single family mortgage insurance programs, such as Rehabilitation Home Mortgage Insurance under Section 203(k), unless it is for a HUD-owned property that is being sold. HUD-owned single-family properties that are being sold with FHA mortgage insurance are covered by subpart F of the new regulation, which became effective September 15, 2000. For buildings that HUD does not own, the existing requirements, which are at 24 CFR 200.800-810, state that any defective paint must be treated by covering or removal. "Covering may be accomplished by such means as adding a layer of wallboard to the wall surface. Depending on the wall condition, wall coverings which are permanently attached may be used. Covering or replacing trim surfaces is also permitted. Paint removal may be accomplished by such methods as scraping, heat treatment (infra-red or coil type heat guns) or chemicals. Machine sanding and use of propane or gasoline torches (open flame methods) are not permitted. Washing and repainting without thorough removal or covering does not constitute adequate treatment." Defective paint spots can be treated by "scraping and repainting." Treatment is not required if the paint is found not to be lead-based paint by a certified lead paint inspector or risk assessor. Until a new subpart E is promulgated, these existing requirements will continue to apply to properties insured under section 203(b), 203(k), and other single-family mortgage insurance programs, except for HUD-owned properties.

Subpart C. DISPOSITION OF RESIDENTIAL PROPERTY BY FEDERAL AGENCIES OTHER THAN HUD

- C1. BUYER'S RESPONSIBILITY:** *Under subpart C of the regulation, can the responsibility for the initial lead paint inspection and risk assessment be passed on to the buyer?*
No. For properties built after 1959 and before 1978, the statute explicitly states that "the results of such inspections shall be made available to prospective purchasers" (42 U.S.C. 4822(a)(3)(B)). HUD interprets that provision to mean that it is the intent of the legislation that the inspection and risk assessment be conducted by the Government before the sale. For properties built before 1960, the statute requires "the inspection and abatement of lead-based paint hazards" (emphasis added). The regulation permits the Federal agency to pass the responsibility for abatement on to the buyer, if the agency takes the responsibility for assuring that abatement is carried out by the purchaser before occupancy; but it does not permit the agency to pass on the responsibility for the inspection and risk assessment. If abatement work must be conducted on the outside of a building where weather conditions are unsuitable for conventional construction activities, the owner may occupy the living space once all required interior abatement and final clearance has been completed. Prospective buyers who are expected to conduct abatement need to estimate the cost of abatement based on the results of the inspection/risk assessment before preparing their offers. See the answer to the next question for further discussion of this issue.

- C2. **UPDATING RISK ASSESSMENTS IN SUBPART C:** *The regulation states, at section 35.165(b)(1) and at section 35.210(b), that a risk assessment must be no more than 12 months old to be considered current. For pre-1960 properties covered by subpart C, who is responsible for updating the risk assessment if the Federal agency conducts a risk assessment but assigns responsibility for abatement to the buyer, and then more than 12 months expire after the risk assessment before the buyer starts abatement?*
 The Federal agency may require the buyer to conduct an update of the risk assessment if it has expired. The agency has complied with subpart C if it has done an inspection and risk assessment, given a copy of the report(s) to the buyer, and has written an agreement with the buyer that ensures that the buyer will abate lead-based paint hazards prior to occupancy. Such an agreement should also include a condition that the risk assessment will be made current by the buyer if more than 12 months have elapsed from the date of the Government's risk assessment to the time when abatement work will begin. HUD recommends that the date that is considered to be the beginning of abatement is when on-site preparation activities start, rather than when the abatement contract is issued.
- C3. **NO LEAD PAINT HAZARDS:** *What if Government's risk assessment finds no lead-based paint hazards?*
 If the risk assessment conducted by the Federal agency finds no lead-based paint hazards, the regulation does not require the agency to conduct any abatement of hazards. Therefore the Federal agency has no responsibility under the regulation to require the buyer to conduct such abatement. If the buyer is not required to conduct abatement of lead-based paint hazards, there is no need under the regulation for an updated risk assessment. Of course, if there is a significant amount of lead-based paint on the property, the agency may choose to recommend to the buyer that if more than 12 months pass after the Government's risk assessment before the property is put into residential use, it would be advisable prior to occupancy to conduct a reevaluation and control any lead-based paint hazards found.
- C4. **CONVERSION OF NON-RESIDENTIAL PROPERTY TO RESIDENTIAL PROPERTY:** *If a federally-owned, pre-1978 property is nonresidential at the time of sale but the Federal agency knows or suspects the structure is going to be used as housing by the buyer, does subpart C apply?*
 No. In HUD's opinion, subpart C of the regulation does not apply to property that is not housing at the time of sale. However, if the agency knows the property is going to be used as housing, HUD recommends that at the very least the agency inform the buyer that lead-based paint hazards may be present and remind the buyer that subpart A of the regulation (disclosure) will apply when the property becomes housing.
- C5. **CONVERSION OF RESIDENTIAL PROPERTY TO NON-RESIDENTIAL PROPERTY:** *If a federally-owned, pre-1978 property is residential at the time of sale but the Federal agency knows the structure is going to be used for nonresidential purposes, does subpart C apply?*
 Subpart C applies in this case, except when the building or buildings are to be demolished, are unoccupied at time of sale, and will remain unoccupied until demolition. If these conditions are met, subpart C does not apply, except that the Federal agency is responsible for assuring that the conditions are followed.
- C6. **FRICTION, IMPACT AND CHEWABLE SURFACES:** *Do the limitations on when friction, impact and chewable surfaces are considered lead-based paint hazards (found in Sec. 35.1330(c) and (d)) apply to risk assessments conducted in compliance with subpart C?*
 Risk assessments performed to comply with subpart C are not subject to the limitations in section 35.1330, paragraphs (c)(1), (c)(2) and (d)(1). However, HUD recommends that risk assessors follow such limitations.
- C7. **CLEARANCE FOR ABATEMENT PROJECTS:** *Do the clearance requirements at §35.1340 apply to abatements conducted in compliance with subpart C?*
 No. Abatements conducted in compliance with subpart C must comply with EPA requirements at 40 CFR 745.227.

Subpart H. PROJECT-BASED ASSISTANCE

- H1. **SECTION 236 MORTGAGE INTEREST SUBSIDIES:** *Does subpart H apply to housing with a mortgage interest subsidy under section 236 of the National Housing Act if such housing has no rental assistance?*
 Yes. Title X defines "federally assisted housing" as "residential dwellings receiving project-based assistance under programs including – (A) section 221(d)(3) or 236 of the National Housing Act; . . ." Therefore HUD has determined that section 236 housing is covered by subpart H of the regulation.

Subpart J. REHABILITATION ASSISTANCE PROGRAMS

- J1. **EFFECTIVE DATE AND GRANT PAYMENT DATABASE:** *What are the lead-based paint rule effective dates for the HOME, CDBG, and State & Small Cities CDBG programs?*
- HOME Program**
 The regulation states that the new requirements apply to funds committed to a specific local project on or after September 15, 2000. The date of commitment to a specific project would coincide with the execution of a written agreement to acquire, rehabilitate or construct a project or to provide TBRA. (Commitment to a specific local project is a defined term under 24 CFR 92.2(2)). At this point, no CHDO reservations or commitments to State or sub-recipients from before that date should be carried over. Therefore all projects should be subject to these new requirements.
- CDBG Entitlement**
 As with the HOME Program, the effective date of the lead-based paint rule is September 15, 2000. At this point, no CDBG reservations or commitments from before that date should be carried over. Therefore all projects should be subject to these new requirements.
- CDBG State Program**
 The effective date is the date the State or HUD (as applicable) awards funds to a local government. In the State program, the new regulatory provisions should apply to grants which the State awards to units of local government on or after September 15, 2000. At this point, no State award from before that date should be carried over. Therefore all projects should be subject to these new requirements.
- CDBG Insular Areas Program and HUD-Administered Small Cities Program in Hawaii**
 In the Insular Areas program and the HUD Administered Small Cities Program in Hawaii, the new regulatory provisions apply to grants which HUD awards on or after September 15, 2000. HUD-Administered Small Cities grants awarded by HUD in FY1999 and earlier are not subject to the requirements of the new rule, unless a community is jointly funding activities using a combination of HUD Small Cities grant funds and funds from other programs which would be subject to the new provisions.

J1a. **STATE CDBG AND REHABILITATION FUNDED WITH CDBG PROGRAM INCOME:** *If a grantee uses program income from a State CDBG grant awarded before September 15, 2000, does the new Lead Safe Housing Rule apply?*

It depends. For State CDBG grantees who operate CDBG rehabilitation programs:

- Program income generated from and used to continue rehabilitation activities for which funds were awarded by the state prior to September 15, 2000 is not subject to the new rule, as long as the state grant recipient does not receive additional funding for the same activities from the state after September 15, 2000.
- Program income generated from activities for which funds were awarded by the state prior to September 15, 2000, but which are subsequently attributed to or used in conjunction with/to continue activities for which funding was awarded by the state on or after September 15, 2000 is covered by the new rule as of the date of award of the subsequent state funding.
- Program income generated from activities which are not subject to the Lead Safe Housing Rule requirements, but for which the state grants approval on or after September 15, 2000 to use for activities which are subject to LBP requirements is subject to the new rule as of the date of state approval to use them for covered activities.

<u>Source of Funding for Activity:</u>	<u>Subject to LSH Rule?</u>
a. State CDBG grant for rehab awarded before September 15, 2000:	No
b. State CDBG grant for rehab awarded after September 15, 2000:	Yes
c. Program income from a pre-September 15 award used to continue an activity that was originally funded before September 15, 2000:	No
d. Program income from a pre-September 15, 2000, award that is subsequently rolled into a post-Sept. 15, 2000 award activity: (This includes revolving loan fund program income that is transferred to the newly-funded activity)	Yes
e. Program income from a post-September 15, 2000, award:	Yes
f. Program income generated from an activity which was not subject to the LSH Rule, for which a state approves an amendment to use it for an LBP -subject activity. (If state approval occurs on/after 9/15/2000).	Yes

J2. ***If I am conducting rehabilitation with Federal assistance covered by Subpart J of the regulation, is it necessary that the rehabilitation work be done by a certified lead paint abatement contractor?***

Those parts of the rehabilitation that are conducted with the express intent to permanently eliminate lead-based paint hazards, particularly those documented in HUD regulations, job specifications, cost allocation document, or local agency or court order requiring abatement, must be done by a certified lead-based paint abatement contractor. HUD also requires abatement when the hard costs of Federal rehabilitation assistance exceed \$25,000 per unit, and interim controls when costs are between \$5,000 and \$25,000. Costs are calculated as described in question J3 below. Abatement is an option when costs are less, but is not required by HUD. Regardless of whether or not abatement or interim controls is conducted, occupant protection, lead-safe work practices, and clearance are required whenever lead-based paint hazards are above de minimis levels (see the joint HUD/EPA letter of April 19, 2001 at www.hud.gov/offices/lead).

J3. ***Calculation of Average Federal Assistance and Average Rehabilitation Costs:*** *In the instructions in section 35.915 for calculating the Federal rehabilitation assistance per unit for a given project, what is “rehabilitation assistance?” Does it include Federal funds to acquire a property that is to be rehabilitated? If so, please explain how the calculation is made for a multifamily property.*
 Section 1012(a)(3) of Title X amended the Lead Based Paint Poisoning Prevention Act to require, among other things, that procedures established by HUD require “reduction of lead-based paint hazards in the course of rehabilitation projects receiving less than \$25,000 per unit in Federal funds” and “abatement of lead-based paint hazards in the course of substantial rehabilitation projects receiving more than \$25,000 per unit in Federal funds” (emphasis added). This statutory language allows for the fact that Federal funds are used to assist various costs associated with rehabilitation projects. For example, Federal assistance is often used for acquisition or soft costs associated with rehabilitation. Such projects are considered rehabilitation projects for program purposes, regardless of the specific costs paid with Federal funds. To ensure that both the level of average Federal assistance per unit and the extent of rehabilitation are accurately measured for purposes of triggering lead-based paint requirements, the regulation calls for a dual-threshold method of the applicable set of lead-based paint requirements for a rehabilitation project.

Under the dual-threshold approach to calculating the level of rehabilitation assistance, the designated party makes two calculations and uses the lesser of the two to determine the applicable requirements. One calculation is of average Federal assistance per unit; the other is of average rehabilitation hard costs per unit, regardless of whether the source of funds is Federal or non-Federal.

For the purpose of calculating average Federal assistance per dwelling unit, Federal assistance per unit includes all Federal funds, including program income generated by Federal funds are counted. (Note: Proceeds of the sale of Low-Income Housing Tax Credits and proceeds from rehabilitation mortgage insurance, such as a 203(k) loan are not considered Federal assistance for this purpose. Funds provided under the Department of Energy’s Weatherization Program are not counted as Federal assistance or covered by this regulation because it is not considered a housing assistance program. However, Weatherization performed with CDBG and HOME funds is covered by the regulation and therefore should be included when calculating average Federal assistance). All Federal funds must be included in this calculation regardless of how the Federal funds are used in the project. For example, in a project involving acquisition and rehabilitation, all Federal funds received by the project are included in the calculation even if the Federal funds were used to pay for the acquisition or other non-rehabilitation costs.

The average Federal assistance per unit is the total Federal assistance divided by the total number of federally assisted dwelling units in the project.

The average rehabilitation hard costs per dwelling unit are the actual costs, regardless of the source of funds, associated with the physical development of a unit (i.e., total per unit project costs minus “soft” costs, administrative costs, relocation costs, environmental review costs, acquisition costs, etc.), not including lead hazard evaluation and reduction costs. Soft costs include financing fees, credit reports, title binders and insurance, recordation fees, transaction taxes, impact fees, legal and accounting fees, appraisals, architectural and engineering fees.

Lead hazard evaluation and reduction costs include costs associated with site preparation, occupant protection, relocation, interim controls, abatement, clearance, and waste handling attributable to lead-based paint hazard reduction.

If all the units in a multi-unit project are Federally-assisted, the average rehabilitation hard cost per unit is calculated as follows:

Average Per Unit Rehab Hard Cost = Total rehab hard costs for project / Total number of units

For multi-unit projects with both Federally-assisted and non-assisted units, calculate the total rehabilitation hard costs per unit using the following formula:

$a/c + b/d$, where:

a = Rehabilitation hard costs, as defined above, for all assisted dwelling units (not including common areas and exterior surfaces),

b = Rehabilitation hard costs, as defined above, for common areas and exterior surfaces,

c = Number of federally assisted dwelling units in the project, and

d = Total number of dwelling units in the project.

Example: A 20-unit property is undergoing rehabilitation. Total rehabilitation hard costs for the project are \$650,000, including \$150,000 for repairs to the exterior and common areas of the building, \$250,000 to rehabilitate 10 HOME-assisted dwelling units, and \$250,000 for repairs to the unassisted units. The average rehabilitation hard costs per unit are:

$$\$250,000/10 \text{ units} + \$150,000/20 \text{ units} = \$25,000 + \$7,500 = \$32,500 \text{ per unit.}$$

(Remember that the above formula applies to the calculation of the average rehabilitation hard costs per unit, not to the Federal funds per unit.)

The category into which a rehabilitation job falls is determined by the lesser of the two threshold numbers (i.e., average Federal assistance per unit or average the rehabilitation hard costs per unit.)

If, in the example above, total Federal assistance to the project is \$200,000, then the applicable requirements would be those for the \$5,000 - \$25,000 category (average Federal assistance per unit (\$20,000) would be the lesser number and would determine the applicable requirements).

If in the example, total Federal assistance to the project is \$300,000, then the applicable requirements would be those for the over \$25,000 category (average Federal assistance per unit (\$30,000) is again the lesser number and would determine the applicable requirement).

J3a. **CALCULATING AVERAGE REHABILITATION HARD COSTS FOR SINGLE-FAMILY PROPERTIES:** *Can you clarify the average Federal assistance and average rehabilitation cost for single-family properties. How do I use the dual threshold approach if I'm only rehabilitating one unit?*

Average Federal assistance per unit

For the purpose of calculating Federal assistance per dwelling unit, Federal assistance includes all Federal funds, including program income generated by Federal funds.

The per-unit Federal assistance is the total Federal assistance divided by the total number of federally assisted dwelling units in the project.

Example 1: The city spends \$40,000 of CDBG funds to rehabilitate a single-family home. The city is rehabilitating one home. The per-unit federal assistance for this project will be \$40,000 divided by 1, or \$40,000.

$$\text{Total Federal Assistance/Number of dwelling units} = \text{Average Federal Assistance/Unit}$$

$$\$40,000/1 = \$40,000$$

Average rehabilitation cost per unit

Example 1a: Using the same example of the city rehabilitating a single family home, the hard costs of rehabilitation for the home is \$35,000. The average rehabilitation cost per unit will be \$35,000 divided by 1, or \$35,000.

$$\text{Total Rehabilitation Hard costs for project/Total number of units} = \text{Average rehabilitation cost per unit}$$

$$\$35,000/1 = \$35,000$$

Applying the Dual Threshold Calculation

The category into which a rehabilitation job falls is determined by the lesser of the two threshold numbers (i.e., Federal assistance per unit or the rehabilitation hard costs per unit.)

In the single family home example, the total federal assistance to the project was \$40,000; the average per unit rehabilitation hard cost was \$35,000. The average per unit rehabilitation hard cost (\$35,000) is the lesser of the two numbers and therefore the lead-based paint rehabilitation requirements for projects with greater than \$25,000 of rehabilitation assistance apply.

J4. **CHANGE ORDERS:** *How does a change order affect the level of assistance in a rehabilitation project for the purposes of the regulation?* HUD recognizes that unanticipated change orders are common in rehabilitation projects. Therefore, the Department will not require a recalculation of the level of assistance for the purposes of the lead-based paint regulation, and thus will not require a change in the category of lead-based paint requirements, as a result of a change order; except that if a pattern is found that indicates an obvious abuse of this policy to avoid the more protective requirements, the Department will find the designated party in noncompliance.

J5. **SUBTRACTION OF LEAD HAZARD REDUCTION COSTS:** *To what extent can designated parties subtract the cost of lead-based paint hazard reduction activities in calculating the "hard costs of rehabilitation," which are used to determine which category of Federal rehabilitation*

assistance a particular project belongs to (i.e., up to and including \$5,000, more than \$5,000 and up to and including \$25,000, or more than \$25,000 per unit)?

Designated parties can subtract costs of lead-based paint hazard reduction from the total cost of a project to determine the category of rehabilitation assistance in which the project belongs, but they should not subtract costs of rehabilitation they would have done anyway, in the absence of the regulation. To be subtracted, costs should be clearly and reasonably attributable to lead-based paint hazard reduction.

Section 35.915(b)(2) states that, “the amount of rehabilitation assistance is the average per unit amount of Federal funds for the hard costs of rehabilitation, excluding lead-based paint hazard evaluation and hazard reduction activities. Costs of site preparation, occupant protection, relocation, interim controls, abatement, clearance and waste handling attributable to lead-based paint hazard reduction are not to be included in the hard costs of rehabilitation.” The intent of this provision is explained in the “preamble” to the regulation, where it states that “determination of the category of assistance . . . will be based on the hard costs of ordinary rehabilitation, not including the additional costs of complying with this rule” (64 FR 50174, emphasis added). The term “lead-based paint hazard reduction” does not include rehabilitation activities that would have been conducted in the absence of the regulatory requirements.

For each lead-based paint hazard reduction activity for which costs are subtracted, designated parties should:

- (1) document what the activity is, its scale or extent, and where in the building it is conducted,
- (2) document that the surface affected is a known or presumed lead-based paint hazard prior to the rehabilitation,
- (3) document that the activity is a reasonable and acceptable method of eliminating or controlling the hazard, and
- (4) determine that the cost of the activity is reasonable.

The most authoritative way to provide documentation of items 1 through 3 above is to conduct a risk assessment of the subject property before the rehabilitation. The risk assessment report should document the nature and location of the hazard and should indicate acceptable methods for controlling the hazard. Paint testing results may also be helpful.

If the standard treatments option is taken, the designated party should record the results of a visual assessment that documents the conditions being treated, e.g., deteriorated paint; rough, pitted or porous horizontal surfaces; and bare soil. These conditions become presumed lead-based paint hazards. Remember that standard treatments must be conducted throughout the assisted part of the property, including common areas, because the option is in lieu of a risk assessment and interim controls, which is a property-wide requirement.

The most questionable way to establish the existence of lead-based paint hazards is to presume their existence without any risk assessment, paint testing or lead-based paint inspection, and without taking the standard treatments option. Much old paint is not lead-based paint. However, a presumption may be acceptable if a designated party has a sound factual basis for it, such as positive paint testing data from similar surfaces on the same property or on structures of a similar construction period in the same neighborhood, combined with a documented visual assessment finding deteriorated paint on the subject surfaces. Guidance on this approach is given in the HUD *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* (www.hud.gov/offices/lead).

In deciding whether activities qualify as lead-based paint hazard reduction activities, remember that intact lead-based paint is generally not considered a hazard. Therefore, if you are, for example, removing an interior partition on which the paint is intact, you should not classify that activity as lead-based paint hazard reduction even if the partition has lead-based paint on it. It is also important to apply the reasonableness test to activities in which paint disturbance is only ancillary to the task. For example, do not allocate the cost of a furnace replacement to lead hazard reduction because it happens to include repair and repainting a partition with deteriorated lead-based paint. Do not allocate the cost of roof repair to lead hazard reduction because the job includes replacement of fascia or soffits with deteriorated lead-based paint.

Window replacement or repair is a rehabilitation activity that can sometimes be attributable to lead-based paint hazard reduction, but only if the windows would not be replaced as part of the rehabilitation project. If the windows are deteriorated and would have been replaced regardless of the presence or absence of lead-based paint, they are rehabilitation costs, not lead hazard reduction costs, and cannot be subtracted in calculating the level of assistance for the purposes of the regulation.

- J6. **ROOF REPAIR AND LEAD HAZARD CONTROL COSTS:** *A leaky roof is causing damage to lead-based paint. Since controlling the lead hazard involves fixing the roof, does the roof repair count as a lead hazard control cost? Can that be subtracted from the rehabilitation hard costs?*
A leaky roof has many other code implications beyond lead safety. Fixing the roof, while it contributes to controlling the lead hazards, does not constitute hazard reduction in and of itself.
- J7. **DE MINIMIS AREAS AND PAINT TESTING/CLEARANCE/NOTIFICATION REQUIREMENTS:** *The regulation states, at section 35.1350(d), that if the area of painted surfaces being disturbed totals no more than a specified de minimis level, safe work practices are not required. Does this mean that paint testing, clearance, and notice of hazard reduction activity are also not required?*
There is no need to perform paint testing if the job is exempt from safe work practices. Clearance is not required in this situation (see either section 35.930(b)(3) or 35.1340(g)). Similarly, provision of a notice of hazard reduction is not required if a clearance examination is not required (see § 35.125(b)(3)).
- J8. **DE MINIMIS AREA OF PAINT DISTURBANCES:** *If the average Federal rehabilitation assistance for a project is \$10,000, but the amount of paint being disturbed is minor, affecting an area of less than the de minimis threshold for safe work practices stated at section 35.1350(d), is it still necessary to conduct a risk assessment and interim controls?*
Yes. If paint is being disturbed, the project is covered by the regulation, and then the requirements for lead-based paint hazard evaluation and reduction are based on the level of assistance, not the amount of paint being disturbed. Work on surfaces where the amount of paint disturbed is below the de minimis threshold need not follow safe work practices, although HUD recommends that caution be used to minimize the dispersal of lead in dust, paint chips, or debris.
- J9. **PAINT TESTING FOR REHABILITATION OVER \$5,000:** *Why does the regulation require a risk assessment and paint testing for rehabilitation projects over \$5,000? Isn't paint testing included as part of a risk assessment?*
The statute requires an inspection to determine the presence of lead-based paint. A risk assessment is required to identify lead-based paint hazards which the law requires to be abated. A risk assessment usually includes paint testing of a sampling of deteriorated painted surfaces, plus dust and soil testing. The paint testing requirement is for all deteriorated painted surfaces plus all painted surfaces to be disturbed or replaced during rehabilitation. However, there is no need to retest painted surfaces that have already been tested to comply with the risk assessment or paint testing requirements of the rehabilitation subpart.
- J10. **EXEMPTIONS AND PROJECT REHABILITATION COSTS:** *Does the exemption for rehabilitation that does not disturb a painted surface (at section 35.115(a)(8)) apply regardless of the project cost?*
Yes.

J11. **FUNDS FROM FEDERAL AGENCIES OTHER THAN HUD:** *When calculating average Federal assistance per unit, should I include funds from all Federal agencies?*

Yes, but only if the Federal program is considered a housing assistance program. For example the Department of Energy Weatherization program is not considered a housing assistance program since the intent is to conserve energy, not change the housing conditions. As with other construction activities, HUD and DOE recommends that weatherization activities disturbing more than the de minimis threshold use lead-safe work practices and clearance examinations, unless the paint is known to be non-lead-based paint.

J12. **VOLUNTEER PAINT PROGRAM APPLICABILITY:** *Does subpart J apply to "paint programs," in which paint is distributed, or funds are provided to purchase the paint, so homeowners or volunteers can paint their homes? What if the program provides only \$250 worth of paint in-kind?*

Paint programs are rehabilitation programs as specified in the CPD memo on "Classification of Paint Programs," dated July 13, 1992. Therefore, they are subject to the requirements of subpart J if the paint is being purchased with funds provided under a program covered by subpart J, such as the Community Development Block Grant program, and if painted surfaces are being disturbed by scraping, sanding or other abrasive methods during preparation of the surfaces for repainting. (HUD does not consider washing of painted surfaces, by itself, to constitute disturbance of painted surfaces, unless the treatment is water *blasting*.)

Because \$250 in funds is less than \$5,000, the threshold for interim controls, the lead-based paint requirements for this work include safe work practices and clearance of the worksite. It makes no difference if the program provides the paint in-kind or the funds to purchase the paint.

Surface preparation before repainting is an activity that can generate a significant amount of lead dust if the paint is lead-based paint. Occupants as well as workers can be exposed to significant levels of dust, and interior and exterior environments can be contaminated. It is important, therefore, that safe work practices, as set forth in §35.1350, be used and that worksite clearance be achieved to assure that the site is not left contaminated with lead dust or contaminated debris. See HUD's Fact Sheet of March 2000 on Federal Requirements for Volunteer Paint and Rehabilitation programs, which can be found at HUD's web site at www.hud.gov/offices/lead, or obtained from HUD at 1-202-755-1785 ext. 104 (this is a toll call). If you are a hearing- or speech-impaired person, you may reach the above telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

J13. **VOLUNTEER PAINT PROGRAM REQUIREMENTS:** *What are the requirements that apply to paint programs and how does HUD recommend that homeowners and volunteers carry out these requirements?*

Most, if not all, of the repainting assisted by paint programs will have a Federal assistance cost of no more than \$5,000 per dwelling unit, so the requirements of section 35.930(b) will apply. Those requirements are basically that safe work practices must be followed in the course of the surface preparation and repainting and that clearance of the worksite must be achieved. However, safe work practices and clearance are not required if the area of paint being disturbed is no more than 20 square feet on exterior surfaces, 2 square feet in any one interior room, or 10 percent of the total surface area on an interior or exterior component with a small surface area (such as window sills, baseboards or trim). If the area of paint disturbance is expected to be greater than those areas, there is a requirement that either surfaces to be disturbed must be tested for the presence of lead or the presence of lead-based paint must be presumed.

If the paint to be disturbed is tested and found not to be lead-based paint, safe work practices and clearance are not required, although safe work practices are always good practice because there may be some lead in the paint even if it is not above the defined level of "lead-based paint." If the paint is tested and found to be lead-based paint or if it is presumed to be lead-based paint, safe work practices must be implemented during the surface preparation and repainting, and a clearance examination must be conducted of the area where the surface preparation and repainting occurred and clearance must be achieved.

Safe work practices are as follows (as listed at section 35.1350): (1) prohibited methods of paint removal (listed in section 35.140) shall not be used, (2) occupants and their belongings shall be protected in accordance with section 35.1345, and (3) specialized cleaning shall be conducted after completion of the work to assure that clearance will be achieved.

The regulation requires that persons performing repainting or other rehabilitation activities that are covered by section 35.930(b) (which is the up-to-\$5,000 category) be supervised or formally trained in accordance with the requirements for interim controls workers at section 35.1330(a)(4), only when the activities are intended to control lead hazards. Nevertheless, safe work practices must be followed and clearance of the worksite must be achieved, regardless of the intent of the work, if the area of disturbed paint exceeds the small areas described above, and designated parties are responsible for assuring compliance with these requirements. (For rehab in the up-to-\$5,000 category that is not intended to control lead hazards, HUD recommends that contractors and employees take a short course on safe work practices for the type of work they will do, take the HUD-approved interim controls training, or be supervised by a certified abatement supervisor.)

However, HUD recommends that designated parties (i.e., grantees, participating jurisdictions, sub-recipients) arrange for homeowners and volunteers to take a short course on safe work practices for the type of work they will do. Adaptations can be made from the approved courses listed in section 35.1330(a)(4) (see Question S5 for information on availability of course materials), or a course can be adapted from the booklet, "Lead Paint Safety: A Field Guide for Painting, Home Maintenance, and Renovation Work," which can be obtained by calling 1-800-424-LEAD, or downloaded from the HUD web site, www.hud.gov/offices/lead. The objectives of such brief training should be to acquaint people with the following topics: (1) why one should be concerned about lead-based paint hazards; (2) how to prepare surfaces for repainting without using the prohibited practices of paint removal; (3) how to protect occupants, their belongings, the worksite, and the rest of the home from lead contamination by using polyethylene ("poly") or other floor coverings; (4) how to clean up after the work in order to achieve clearance; and (5) the importance of achieving clearance.

Persons performing rehabilitation activities intended to control lead hazards must be trained in safe work practices or, if the work is abatement, as abatement workers (see question R5).

With regard to clearance, HUD suggests that designated parties arrange for persons who are certified to perform clearance examinations to be available for clearance of participating homes, with the cost being paid by the program. There are several ways this could work. The local housing or public health agency could have certified personnel on staff who could perform the clearance for free. Alternatively, owners or volunteers might be provided with a list of clearance examiners; they could arrange for the clearance examination directly and then present the clearance examiner's bill to the designated party, along with a copy of the clearance report showing that the worksite passed clearance.

- J14. FUNDING OF PAINT PROGRAM COORDINATORS:** *If a grantee is using CDBG funds to support a project coordinator to oversee volunteers who are doing rehabilitation work, is the project subject to the regulation? If so, how are the costs covered, since no funds flow to the rehabilitation project?*
If the project coordinator has hands on, day-to-day control over the actual work being performed by volunteers at a project site, then Federal funds would be deemed to be used for rehabilitation activities and 24 CFR 35, Subpart J would apply. However, if the project coordinator only performs rehabilitation services (24 CFR 570.202(b)(9)), such as the general administration of a volunteer program or the preparation of work specifications, then 24 CFR Part 35, Subpart J would not apply because these are considered soft costs.
- J15. SWEAT EQUITY PROGRAMS:** *Are sweat equity programs covered by the regulation?*
Yes, if Federal funds are being used to pay for labor and materials (hard costs). In such a case, sweat equity workers must meet the same requirements as other workers and must use safe work practices.
- J16. GRAFFITI REMOVAL:** *Is a graffiti removal program considered rehabilitation? Is it residential? What if the homeowner does it him/herself?*
Graffiti removal is rehabilitation, although some removal may be exempted from the rule, as discussed below. The exterior of a home, fences, and out buildings are all considered part of the residential property and therefore, they are covered by the lead-based paint rule. Even if the homeowner does the work personally, the work is still subject to the lead-based paint requirements if it is supported by Federal assistance. See the question above on sweat equity.

However, most graffiti removal may be exempted because it disturbs no painted surfaces (such as when simply painting over graffiti), or the surface can be tested to show that the graffiti (and paint underneath the graffiti) is not lead-based paint. If the work is not exempt for those reasons, the area of paint being disturbed in graffiti removal will often be no more than 2 square feet or 20 square feet, on large interior or exterior surfaces, respectively, which are the de minimis levels for safe work practices, so safe work practices and clearance would not be required for such work.
- J17. FACADE RENOVATIONS:** *If CDBG or HOME funds are used to renovate the façade and the sign of a mixed-use building, is this covered by the regulation?*
Yes. If the façade is the exterior of the residential units, then this would be considered residential rehabilitation and would be subject to the requirements of Subpart J. If the sign is in an area accessible to residents of the building, it too would be covered.
- J18. USE OF CDBG AND HOME FUNDS FOR TRAINING AND OTHER LEAD-RELATED EXPENSES:** *Can grantees use CDBG and HOME funds to train contractors or landlords to perform lead hazard evaluation or reduction? Can CDBG and HOME funds be used to purchase and XRF analyzer?*
Training contractors or landlords is eligible as a rehabilitation service under the CDBG regulations at 24 CFR 570.202(b)(9) or as an administrative expense under 24 CFR 570.206. Under the HOME program, landlord or contractor training is eligible as an administrative expense under 24 CFR 92.207 or as a project delivery cost under 92.206(d).

CDBG and HOME funds can also be used to pay for an XRF analyzer (a device used to measure the lead content in paint) under the eligibility category of 24 CFR 570.202(b)(9), Rehabilitation Services for CDBG, and 24 CFR 92.206(d) for the HOME program.
- J19. HOME MATCH ELIGIBLE HOUSING:** *If a project is not receiving Federal assistance, but contributions toward the project are being counted as match for HOME Program purposes, do the lead-based paint rules apply?*
No. While HOME-match eligible projects are subject to the HOME property standards, Part 35 does not apply. HOME match contributions are required by statute to be non-federal and are, therefore, not counted as Federal assistance for the purpose of determining the applicable requirements for rehabilitation projects.
- J20. PARTIALLY HOME-ASSISTED PROJECTS:** *In a project that includes both HOME-assisted and non-assisted units, do the lead-based paint rules apply to the non-assisted units?*
Yes. If a project receives HOME funds, the lead-based paint requirements apply to the entire project, irrespective of the designation of individual units. In addition, if a project receives CDBG assistance, the entire project is considered assisted and the lead-based paint requirements apply to all units.
- J21. PROJECT ACQUISITION AND REHABILITATION COSTS:** *If a developer acquires a property with HOME or CDBG funds and uses non-Federal funds for rehabilitation, would the project be subject to the acquisition (Subpart K) requirements of the rule, rather than the rehabilitation requirements?*
No. In both the HOME and CDBG programs, this project would be considered a rehabilitation project because rehabilitation is the ultimate activity. Consequently, the rehabilitation (subpart J) requirements would apply.
- J22. ADMINISTRATIVE COSTS AND HARD COSTS:** *If an Entitlement Community provides administrative funds to a nonprofit to operate a rehabilitation program but no money for construction, does it have to comply with the lead-based paint regulation?*
No, administrative costs are not included in "hard costs of rehabilitation," as defined in section 35.110.
- J23. ANNUAL INSPECTIONS AND LEAD PAINT MAINTENANCE:** *The HOME regulations require annual physical inspections only for rental projects with more than 25 HOME-assisted units. However, the lead-based paint rule calls for annual lead-based paint maintenance. Please clarify.*
The HOME program requires periodic monitoring (i.e., every 1, 2 or 3 years, depending on project size) of the physical condition of an assisted rental property. This is distinct from the ongoing maintenance requirement for HOME rental projects under the lead-based paint rule. Under the latter requirement, the Participating Jurisdiction must require a project owner who received HOME rehabilitation assistance to perform lead-based paint maintenance as a part of regular building maintenance. This means that the owner must perform a visual assessment for deteriorated paint surfaces, stabilization of deteriorated paint surfaces and clearance, annually and at unit turnover. During periodic physical inspections of the property required by the HOME regulations, the Participating Jurisdiction is required to determine whether the owner has been following the required protocol, as well as perform a physical inspection for compliance with property standards it has adopted for its HOME program.
- J24. RELOCATION AND REHABILITATION PROGRAMS:** *Is relocation required when performing lead-based paint hazard reduction or rehabilitation covered by subpart J of the regulation?*
As stated in section 35.1345, temporary relocation is required unless: (1) the work will not disturb lead-based paint or lead-based paint hazards; (2) only exterior work is being conducted and openings to the interior are closed during the work and lead-hazard-free entry to the dwelling is provided; (3) the interior work will be completed in 8 hours, the work sites are contained to prevent dust release into other areas, and no other health or safety hazards are created; or (4) interior work will be completed in 5 consecutive days, work sites are contained, no

other health or safety hazards are created, work sites and areas 10 feet from the containment are cleaned at the end of each work day, and occupants have safe access to sleeping, kitchen and bathroom facilities. Safe access to sleeping areas, and bathroom and kitchen facilities does not require that such facilities be provided in the same unit. Such facilities can be provided in another convenient location in many instances, thereby avoiding an unnecessary relocation of residents. The term "interior work" refers to work in a single room. At no time can occupants be permitted into the work sites, unless they are employed in the work, until after work is complete and clearance, if required, has been achieved.

Relocation of elderly occupants is not typically required, so long as complete disclosure of the nature of the work is provided and informed consent of the elderly occupant(s) is obtained before commencement of the work.

- J25. PROGRAM ADMINISTRATION:** *If CDBG funds are used for program administration costs only and not for any project costs, does the regulation apply?*
No, because these are considered to be soft costs. Program administration costs, in the CDBG program, are those costs which involve the overall program management, coordination, monitoring, and evaluation of the program. Project delivery costs include staff and overhead costs directly involved in carrying out an eligible activity. In neither case are such costs included in the "hard costs" of rehabilitation.
- J26. LONG-TERM EMERGENCY REHABILITATION:** *If an emergency rehabilitation program does \$7,000-\$10,000 worth of work on a property over a two-to-five year period, how is it classified?*
First, if it takes two-to-five years to complete "emergency" work, such work does not qualify for the emergency exemption at 35.115(a)(9), which only applies to "actions immediately necessary to safeguard against imminent danger to human life, health or safety, or to protect property from further structural damage (such as when a property has been damaged by a natural disaster, fire, or structural collapse)." Second, a program of rehabilitation that is expected to extend over several years for a single property must be considered as one project for the purposes of determining the category of requirements in subpart J. Therefore the category would be \$5,000-\$25,000 per unit in this case.
- J27. FUNDING BEFORE THE EFFECTIVE DATE:** *Does Subpart J apply to a project receiving rehabilitation assistance from a HOME, IHBG or CDBG Entitlement, HOPWA, Supportive Housing Program, or Indian CDBG program before the effective date of the rule, September 15, 2000, to which funds are added on or after the effective date, and if so, to what part of the project?*
Yes, Subpart J does apply to funds from those programs, whether to a new project or a modification of an existing project. You must also determine whether a project is receiving over \$5,000 or over \$25,000 per unit.
- J28. APPLICABILITY TO SECTION 203(k) PROGRAM:** *Does subpart J apply to rehabilitation being conducted on a single family home being purchased with a loan insured under the Section 203(k) Rehabilitation Mortgage Insurance program?*
The 203(k) program, commonly known as single-family rehabilitation mortgage insurance, involves rehabilitation loans and the provision of mortgage insurance by HUD. The mortgage insurance covers, at a minimum, the indebtedness resulting from the loan. HUD provides the mortgage insurance, but not the original rehabilitation loan. As such, the 203(k) program is treated as any other single-family mortgage insurance program.

At the current time, 24 CFR Part 35, Subpart E has been reserved for the coverage of all HUD single-family mortgage or guarantee programs. Until further notice, these programs are covered at 24 CFR 200.800-810 as revised at 64 FR 50226, published on September 15, 1999, with no change in applicable requirements.

Subpart K. ACQUISITION, LEASING, SUPPORT SERVICES, OR OPERATION

- K1. EMERGENCY SHELTERS:** *If HUD funds are being used to operate an emergency shelter, is the shelter subject to the lead-based paint regulation?*
The answer to this question depends on the configuration of the shelter. Most emergency shelters are exempt, because they fall under the definition of zero-bedroom dwellings, which are exempt under the Title X statute. If the shelter does not qualify for the zero-bedroom exemption, it is covered by the regulation.

A zero-bedroom dwelling is defined in section 35.110 as "any residential dwelling in which the living areas are not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory or single room occupancy housing, military barracks, and rentals of individual rooms in residential dwellings." The term "single room occupancy housing" is defined as "housing consisting of zero-bedroom dwelling units that may contain food preparation or sanitary facilities or both." Group homes are exempt if they consist of "rentals of individual rooms in residential dwellings."

If you provide funds for a shelter with units having one or more bedrooms, and that receive assistance for more than 100 days, it is required that you adopt and implement a policy that assures that the child-occupied spaces will be lead safe. If you provide funds for a shelter with zero-bedroom units, or a shelter receiving assistance for up to, but not more than, 100 days, the units are exempt from the regulation, but HUD recommends that you adopt and implement a policy that assures that the child-occupied spaces will be lead safe, when the units are occupied by children of less than 6 years of age.
- K2. SUPPORT SERVICES (E.G. "MEALS ON WHEELS"):** *Does Subpart K apply to homes in which support services, such as meals on wheels, are provided to residents?*
The regulation applies to support services that can be considered to be housing assistance. Programs that provide services such as medical care, education, or food service are not considered housing assistance programs and are not covered by the regulation. However, similar to the guidance provided in K1 above, HUD recommends that efforts be made to assure that facilities providing these types of support services are lead-safe, if they are frequented by children less than 6 years of age. Programs that assist in buying, renting, improving, operating or maintaining housing are covered. Therefore meals on wheels is not covered, but housing operation assistance is covered, except when the facility is otherwise exempt (e.g., because of the zero-bedroom exemption). The lead-based paint regulation applies only to residential properties.
- K3. COUNSELING AND DEFAULT FUNDING:** *Does default and delinquency funding trigger lead-based paint requirements? What about counseling?*
If, as is usually the case, the default and delinquency funding is emergency rental assistance or foreclosure prevention assistance, it qualifies for the 100-day exemption provided at section 35.115(a)(11). Counseling does not trigger requirements under the regulation.

- K4. SECURITY DEPOSIT ASSISTANCE:** *If McKinney Homeless funds are used to provide security deposits to homeless persons to assist them in obtaining housing, what lead-based paint requirements apply to the unit?*
The requirements of subpart K apply to this unit. (If the activity involves the placement of a person in a unit that will be used for housing purposes for more than 100 days, the exemption for emergency rental assistance does not apply.)
In the HOME Program, security deposit assistance is categorized as a form of tenant-based rental assistance (see M.5). In the CDBG program, grantees can provide security deposit assistance as a public service activity eligible under 24 CFR 570.201(c).
- K5. HOMELESS SHELTERS:** *At section 35.115(a)(11), a 100-day exemption from the requirements of subpart K is provided for emergency rental assistance or foreclosure prevention assistance. Does this apply to homeless shelters?*
Usually not. First, most shelters are exempt from the regulation, because they fall under the definition of zero-bedroom dwellings (see question K1). Second, as stated in section 35.115(a)(11), the 100-day exemption applies to the dwelling unit, not the family. Therefore, if a shelter is covered by the rule, it is likely to be assisted for more than 100 days. The purpose of the 100-day exemption is to allow local agencies to conduct short-term assistance to help prevent homelessness. As stated in the preamble to the regulation in the Federal Register, "HUD does not intend that multiple households receiving emergency assistance can be recycled through a unit without subjecting the unit to the requirements of subpart K."
- K6. EMERGENCY RENTAL ASSISTANCE AND THE 100 DAY EXEMPTION:** *In the case of the exemption for emergency rental assistance (section 35.115(a)(11)), do the 100 days accumulate with a family over a period of time, or do you count from day one each time you help the same family? If they do accumulate, over what period of time?*
The 100-day time period applies to the dwelling unit, not the family. The clock begins at the time the emergency assistance is first provided in a given unit and runs for 100 cumulative days. After that, if the designated party wishes to assist a family (any family) in that unit on an emergency basis using HUD funds, the exemption has expired and the requirements of subpart K apply, unless another exemption applies. As stated in K5 above, HUD does not intend that multiple households receiving emergency rental assistance can be recycled through a unit without subjecting the unit to the requirements of subpart K.
- K7. EMERGENCY RENTAL ASSISTANCE AND TENANT-BASED ASSISTANCE:** *If the 100-day exemption applies to emergency rental assistance, why doesn't it apply to subpart M, which is the subpart that pertains to tenant-based rental assistance?*
Emergency rental assistance for homelessness prevention falls under the category of leasing assistance that is covered by subpart K. Subpart M applies to programs that provide assistance that is expected to continue for much longer than 100 days.
Under the Community Development Block Grant program, funds may be used to provide emergency payments to providers of housing (landlords) for up to three consecutive months on behalf of a family facing homelessness. Such emergency assistance should not exceed 100 days, so the assistance would be exempt from subpart K unless the affected dwelling unit was being used for more than one 100-day period, as explained in the answer to the previous question.
- K8. MOBILE HOME PADS:** *If HUD program funds are used to help a family rent a pad for a mobile home, what lead-based paint requirements apply?*
The requirements of Subpart K apply if the home was manufactured before 1978. If rehabilitation of the unit is also being undertaken, then the lead-based paint requirements is the stricter of the subpart K requirements or the applicable subpart J (rehabilitation) requirements.
- K9. ONGOING MAINTENANCE AND DURATION OF ASSISTANCE:** *Section 35.1015(c) states that ongoing lead-based paint maintenance is required of properties covered by subpart K. Does this requirement apply to all such properties, regardless of the duration of assistance?*
Ongoing lead-based paint maintenance is required only when there is a continuing, active programmatic relationship for more than one year between the property and the federally funded program, such as continuing financial assistance, ownership, or periodic inspections or certifications. Generally, the ongoing maintenance requirement in subpart K applies to transitional housing, shelters and group homes that are not exempt from the regulation and which have a continuing programmatic relationship. The ongoing lead-based paint maintenance requirement normally does not apply to one-time assistance, such as mortgage insurance or loan guarantees, to owner-occupants or to renters. If a homebuyer receives a loan to purchase a home, this is considered one-time assistance, even though the homebuyer is making monthly payments on the loan. One-time down payment assistance and security-deposit assistance are other types of assistance to which the ongoing maintenance requirement does not apply. The existence of a federally assisted land trust that is designed to keep home prices affordable does not create a continuing relationship with buyers of homes on the land for the purposes of this regulation, so the ongoing maintenance requirement does not apply.
- K10. DELEGATING RESPONSIBILITY FOR ONGOING MAINTENANCE:** *If the grantee or participating jurisdiction is not the owner or operator of the property, can the grantee or participating jurisdiction assign the responsibilities of ongoing lead-based maintenance to the owner or operator of the property?*
Yes. For properties subject to subpart K, "The grantee or participating jurisdiction may assign to a sub-recipient or other entity the responsibilities set forth in this subpart." (section 35.1000(b))

Subpart L. PUBLIC HOUSING PROGRAMS

- L1. REVIEW OF PREVIOUS LEAD PAINT INSPECTIONS:** *Section 35.1115(a) of the regulation requires public housing agencies to review the quality of prior lead-based paint inspections that were not performed by persons certified in accordance with EPA regulations. The review is to be done in accordance with quality control procedures established by HUD. What are those procedures, and how does one obtain them?*
In 1995 HUD issued Notice PIH 95-8 (HA) on "Quality Control Procedures for On-Site Lead-Based Paint (LBP) Testing Activities." That document is current until revised and can be obtained from www.hud.gov/offices/lead or from lead_regulations@hud.gov, by calling 1-202-755-1785, ext. 104, or by writing Lead Regulations, HUD Office of Healthy Homes and Lead Hazard Control, 451 Seventh Street, SW, Room P-3206, Washington, DC 20410. If you are a hearing- or speech-impaired person, you may reach the above telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.
- L2. NUMBER OF UNITS TO INSPECT:** *In performing the quality control review of prior lead-based paint inspections, will I have to do more testing?*
It depends on the results of the review. If the inspection was done in accordance with HUD's 1991 *Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing*, or its *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*, for which the lead-based paint inspection chapter was revised 1997, it is unlikely that further testing will be needed. The chapter can be obtained from the sources listed in question L1.

L3. **RISK ASSESSMENTS AND PREVIOUSLY COMPLETED ABATEMENT:** Section 35.1115(b) states that, "if a lead-based paint inspection has found the presence of lead-based paint, or if no lead-based paint inspection has been conducted, the PHA shall conduct a risk assessment . . . What if a lead-based paint inspection has been conducted and has identified lead-based paint, but all lead-based paint has been abated? Is it still necessary to conduct a risk assessment? What if the abatement was done with methods that did not remove all the lead-based paint (i.e., with encapsulation or enclosure)? In this case, should there be a risk assessment, or should there be a reevaluation? Section 35.115(a)(5) provides an exemption from the regulation if all lead-based paint has been identified and removed in accordance with EPA regulations at 40 CFR 745.227(b) and (e) if the work was done before September 15, 2000, or in accordance with sections 35.1320, 35.1325, and 35.1340 of the new HUD regulation if the work was done on or after September 15, 2000. If these conditions are met, the property is exempt from the regulation, and a risk assessment is not required.

If, however, the abatement used encapsulation or enclosure methods for some or all of the abatement, the lead-based paint has not been entirely removed; so further evaluation is required. The correct evaluation in this situation is a reevaluation, not a new risk assessment, because the reevaluation includes a survey of prior lead hazard reductions to determine whether such treatments are intact and functioning as intended.

Subpart M. TENANT-BASED RENTAL ASSISTANCE

M1. **PREGNANT WOMEN:** Section 35.1200(b) states that subpart M "applies only to dwelling units occupied or to be occupied by families or households that have one or more children of less than 6 years of age." Does this mean that the subpart applies to a unit with a family that includes a pregnant woman but no other children?

Yes. If the designated party knows that the family includes a pregnant woman, the regulation applies, because it is known that the unit is "to be occupied" by a family with a child of less than 6 years of age. This interpretation is consistent with the definition of the term "expected to reside" (in section 35.110), where the regulation states that, "if a resident woman is known to be pregnant, there is actual knowledge that a child will reside in the dwelling unit."

M2. **RESPONSIBILITIES OF OWNERS AND DESIGNATED PARTIES:** Under the new HUD lead-based paint regulation, what are the responsibilities of the designated party administering tenant-based rental assistance versus the owner of the property?

Below is a list of: (1) activities that may be required in housing occupied or to be occupied by families with children of less than 6 years of age under subpart M of the regulation and (2) the corresponding responsible party. According to 35.1200(b)(2)(ii), for purposes of the Section 8 tenant-based certificate and voucher programs the PHA shall be the designated party. For purposes of the HOPWA and Shelter Plus Care programs, the grantee shall be the designated party. For the purposes of the HOME program, the participating jurisdiction shall be the designated party. For the Indian Housing Block Grant program, the IHBG recipient shall be the designated party.

Activity.	Responsible Party.
Visual assessment at initial and periodic inspections.	Designated party.
Paint stabilization.	Owner.
Clearance.	Designated party.
Notice of clearance.	Owner.
Incorporation of ongoing lead-based paint maintenance into regular building operations.	Owner must perform the ongoing lead-based paint maintenance. Designated party must ensure that an owner incorporates ongoing maintenance into regular building operations.
Attempt to obtain from health department names and/or addresses of children with environmental intervention blood lead level.	Designated party.
Report to health department addresses of assisted units, unless health department states it does not want such a report.	Designated party.
Match information from health department on names and/or addresses of children with names or addresses of assisted families.	Designated party, unless health department does it.

The following is a list of activities that are required in a dwelling unit occupied by a child of less than 6 years of age with an environmental intervention blood lead level:

Activity	Responsible Party
Risk assessment within 15 days after notification.	Designated party, unless public health department has already done it.
Verification of blood lead level, if initial source of information is not a medical health care provider.	Designated party must obtain written documentation of the child's blood lead level from the health department or other medical health care provider.
Hazard reduction of lead-based paint hazards identified in the risk assessment.	Owner.
Clearance.	Designated party.
Notice of evaluation and hazard reduction.	Owner.
Reporting to health department the presence of child with environmental intervention blood lead level if health department is not source of information.	Designated party.

Note: For purposes of the Section 8 tenant-based certificate and voucher programs initial clearance testing and risk assessments will be reimbursed by HUD in the form of an administrative fee.

M3. **FAMILIES WITH CHILDREN:** The regulation states that the requirements of subpart M apply only to units that are occupied by families with a child of less than 6 years of age. It further states, in section 35.1225, that if a child living in a unit subject to subpart M is found to have an environmental intervention blood lead level and then that child moves out before any lead hazard evaluation or reduction work is done, the

requirements of section 35.1225 still apply if another family with tenant-based rental assistance moves into the unit. Does this mean any assisted family, or only one with a child under 6?

The requirements apply to the unit regardless of whether or not the new assisted family has a child under 6. If HUD funds continue to assist the unit, a risk assessment must be conducted and if lead hazards are found they must be corrected.

- M4. **LONG-TERM AND SHORT-TERM RENTAL ASSISTANCE:** Section 33.115(a)(11) provides an exemption for emergency assistance lasting less than 100 days. It specifically mentions rental assistance but exempts it only from the requirements of Subpart K. However, rental assistance is discussed in Subpart M. This seems inconsistent.
Short-term, emergency rental assistance is covered by subpart K. The rental assistance to which subpart M applies is longer term assistance, usually involving a one-year lease. The same is true with project-based rental assistance, which is covered by subpart H (see K7).
- M5. **HOME SECURITY DEPOSIT ASSISTANCE:** *If a Participating Jurisdiction uses HOME funds for a security deposit assistance program, what lead-based paint requirements apply?*
In the HOME Program, security deposit assistance is a form of tenant-based rental assistance. Consequently, it might be expected that subpart M of the lead-based paint regulation would apply to these programs. However, Subpart M is intended to apply to housing that receives ongoing tenant-based rental assistance rather than limited, one-time assistance such as security deposit assistance. Because security deposit assistance does not constitute an ongoing relationship with a Federal housing program, the requirements of subpart K apply. The applicable requirements are visual assessment for deteriorated paint and stabilization of any deteriorated paint, followed by clearance and notice of clearance results.
- M6. **CONFIDENTIAL MEDICAL INFORMATION:** *In some States the public health department is not able to provide the public housing agency or other designated party with the addresses of children with environmental intervention blood lead levels because of privacy concerns. In such cases, how will the housing agency be able to comply with the requirement to search for a match of such addresses with the addresses of housing receiving tenant-based rental assistance?*
If the health department is unable to provide addresses to the housing agency, the housing agency should send the addresses of housing with tenant-based assistance to the health department and request that the health department perform the match and notify the housing agency or other designated party of the presence of any children with such blood lead levels. (A list of pre-1978 units occupied by children of less than 6 years old is acceptable.) That will meet the information exchange requirements at section 35.1225(f) of the regulation.
HUD and the Centers for Disease Control and Prevention (CDC) strongly urge public health departments and housing agencies to work together to assure that children who have environmental intervention blood lead levels and are living in housing with tenant-based rental assistance receive the assistance from the public agencies and housing owners that is called for in the regulation. The requirement for information exchange between health and housing agencies stems from a finding in 1994 by the United States General Accounting Office that many children living in housing with Section 8 certificates or vouchers were not being adequately protected from lead-based paint hazards because health agencies often did not know that the home of a child with an elevated blood lead level was federally assisted and therefore did not ask the housing agency to require a response from the owner pursuant to HUD's regulations (see report number GAO/RCED-94-137, May 1994).
- M7. **EXTENSIONS FOR STABILIZING DETERIORATED PAINT:** *May a Public Housing Agency extend the period for stabilizing deteriorated paint, normally before assisted occupancy commences, or within 30 days of notification of the presence of deteriorated paint after assisted occupancy has commenced?*
For consistency with provisions that give PHAs the authority to grant reasonable time extensions to owners for correcting other housing quality standards violations, the PHA may grant the owner an extension of time, for reasonable cause, of up to 90 days of the period to complete paint stabilization and clearance (See section 35.1215(d).)
- M8. **PAINT STABILIZATION AFTER THE FAMILY RECEIVING ASSISTANCE LEAVES:** *Is paint stabilization of deteriorated painted surfaces required for housing receiving tenant-based rental assistance to meet housing quality standards?*
Owners of housing receiving tenant-based rental assistance must complete paint stabilization of deteriorated paint found by visual assessment. The completion of the paint stabilization is required for the unit to meet Housing Quality Standards (HQS) (see 24 CFR 982.401(a)(3) and (j)). The unit remains in non-compliance with the HQS until the paint stabilization is completed or the unit is no longer covered by this subpart because the unit is no longer under a housing assistance payment (HAP) contract with the housing agency. Once the unit leaves the program, such as by the assisted family leaving, the process starts anew if and when another family is requesting the unit. (See section 35.1215(b).)

Subpart R. METHODS AND STANDARDS

- R1. **EXTERIOR SURFACES:** *Are there dust-lead clearance standards for exterior surfaces, like there are in the HUD Guidelines?*
Neither the Guidelines nor the regulation has dust-lead clearance standards for porches or balconies or other horizontal exterior surfaces, such as railings.
- R2. **PAINT TESTING AND CERTIFIED PERSONS:** *Can paint testing of deteriorated paint or paint to be disturbed by rehabilitation or maintenance be conducted by someone who is not a certified lead-based paint inspector or risk assessor?*
No. Paint testing must be performed by a certified lead-based paint inspector or risk assessor.
- R3. *If paint testing is achieved through laboratory analysis of a paint chip, instead of with an X-ray fluorescence (XRF) analyzer, is a certified person required?*
Yes. For the paint testing results to be considered valid under the regulation, the sample must be taken and the laboratory results interpreted and reported by a certified lead-based paint inspector or certified risk assessor.
- R4. **DEFINITION OF LEAD-BASED PAINT:** *Is the definition of lead-based paint the same for HUD and EPA regulations as it is for the Consumer Product Safety Commission (CPSC)?*
No. The terms and definitions are different, because they have different purposes and have different meanings. The HUD/EPA term "lead-based paint" addresses the layers of paint on an applicable surface having lead equal to or greater than 1.0 mg/cm² or 0.5% by weight. The CPSC term is "lead-containing paint," which may not be sold for consumer purposes. The maximum amount of lead in paint that may be sold for consumer use is 0.06% of the dry weight of the paint. (The CPSC rule is published at 16 CFR 1303.) The CPSC rule does not use the term "lead-based paint."

R5. **TRAINING:** *The regulation has several training requirements and options. How does one get the training required for performance of a visual assessment for deteriorated paint and/or for the performance of interim controls?*

HUD has made visual assessment training available in the form of an Internet-based module. It is accessible via the HUD Office of Lead Hazard Control web site (www.hud.gov/offices/lead) and from the National Lead Information Clearinghouse toll-free at 1-800-424-LEAD. Designated parties are responsible for assuring that persons performing visual assessment have completed the training.

With regard to training for interim controls, including paint stabilization, there are several options, all of which are designed to ensure that workers performing interim controls do so with safe work practices. Designated parties are responsible for assuring that workers complete the training. Training of contractors or landlords is eligible as a rehabilitation service under the CDBG regulations at 24 CFR 570.202(b)(9) or as an administrative expense under 24 CFR 570.206. Under the HOME program, landlord or contractor training is eligible as an administrative expense under 24 CFR 92.207 or as a project delivery cost under 24 CFR 92.206(d).

Training for lead-based paint abatement supervisors and lead-based paint abatement workers that is accredited in accordance with EPA regulations at 40 CFR part 745 is one acceptable option for training in interim controls. A list of accredited trainers can be obtained from the National Lead Information Center at 1-800-424-LEAD. Certified abatement supervisors and workers have been appropriately trained.

If an otherwise untrained interim controls worker is to be supervised by a certified lead-based paint abatement supervisor, it is the responsibility of the abatement supervisor to ensure that safe work practices are followed, and the worker must be trained in accordance with the OSHA hazard communication standard at 29 CFR 1926.59. It is the responsibility of the employer to provide the worker with training in the OSHA standard.

If an untrained interim controls worker is not to be supervised by a certified abatement supervisor, he or she must still be trained in the OSHA standard and, in addition, must also successfully complete a lead safe work practices course approved by HUD for this purpose. A current list of approved courses is available on the Internet at www.hud.gov/offices/lead, or by mail or fax from the HUD Office of Healthy Homes and Lead Hazard Control at (202) 755-1785, extension 104 (this is not a toll-free number). Persons with hearing or speech impediments may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

For rehabilitation in the up-to-\$5,000 category, see question J13 for HUD's training requirements for work that is intended to control lead hazards, and HUD's recommendations for work that is not intended to control lead hazards,

If the amount of paint being disturbed by work other than abatement (that is, by rehabilitation, interim controls, standard treatments, or ongoing maintenance) is at or below the de minimis threshold, no training in safe work practices is required, although HUD recommends such training.

R6. **EXTENT OF SUPERVISION:** *What is the extent of supervision required when an interim controls worker is being supervised by a certified abatement supervisor and has not taken one of the optional training courses listed in section 35.1330?*

HUD has no requirements concerning the amount or extent of supervision. It is the responsibility of the certified lead-based paint abatement supervisor to ensure that the work is being performed safely and effectively.

R7. **SOIL TESTING:** *Must a lead hazard screen include soil testing?*

Lead hazard screens must be done in accordance with EPA standards at 40 CFR 745.227(c) and the HUD interim standards at 24 CFR 35.1330(b)(2). At the time of this writing (June 21, 2004), the EPA standards do not require soil testing, so HUD does not require it. However, HUD recommends soil testing as a part of lead hazard screens in neighborhoods known to have soil-lead hazards.

R8. **WORKSITE AND UNIT-WIDE CLEARANCE:** *Must the clearance examination be of the entire dwelling unit or only of the worksite?*

Clearance must be of the entire dwelling unit, common area or residential property (as applicable) unless the regulation specifically permits clearance of only the worksite. Clearance of only the worksite is permitted after rehabilitation, interim controls, standard treatments, and ongoing maintenance work, when containment is used to ensure that dust and debris generated by the work is kept within the worksite. (See section 35.1340(g).) Otherwise, clearance must be of the entire dwelling unit, common area or outbuilding, as applicable.

R9. **CLEARANCE AND DE MINIMIS:** *Is clearance required when the area of painted surfaces being disturbed is no more than the de minimis levels for safe work practices?*

No. (See section 35.1340(b).)

R10. **SOIL TESTING AND CLEARANCE:** *The definition of "clearance examination" in section 35.110 states that clearance is "to determine that the hazard reduction activities are complete and that no soil-lead hazard or settled dust-lead hazards . . . exist." Section 35.1340 does not explicitly require the clearance examiner to determine whether all the hazard reduction activities are complete and does not require soil testing. Which part of the regulation should I follow?*

The two sections are not contradictory. The visual assessment by the clearance examiner, together with the dust sampling, will enable a determination to be made that no interior lead-based paint hazards exist, which is essentially the same thing as ensuring that all hazard reduction activities have been completed. Soil testing is not required, but section 35.1340(b)(2)(ii) calls for a visual assessment of the ground and any outdoor living areas close to any exterior painted surfaces that have been disturbed by the hazard reduction, and it requires that visible dust or debris in living areas be cleaned up and visible paint chips on the ground removed.

R11. **CLEARANCE AFTER EXTERIOR-ONLY PAINT STABILIZATION:** *If only exterior work is done, such as exterior paint stabilization or reduction of soil-lead hazards, is clearance required? If so, is it necessary to do a visual assessment of the interior and take dust samples?*

Under section 35.1340(a), when the exterior work is abatement, a clearance examination is done by a certified risk assessor or lead-based paint inspector using EPA's procedures. After exterior lead-based paint abatement, the EPA requires (in its regulation at 40 CFR 745.227(e)(8)(v)(C)) a visual assessment of the outdoor living area closest to the abated surface, and of the dripline or next to the foundation below the abated surface.

If the exterior work is other than abatement, a clearance examination by a certified risk assessor, lead-based paint inspector or clearance technician is required by HUD, in accordance with section 35.1340(b). The clearance examination includes a visual assessment for visible dust and debris at the work site and on the outdoor living area closest to the treated surface, and for paint chips on the drip line or next to the foundation below any exterior surface where work was performed. Soil sampling is not required. Interior clearance is not required if affected window, door, ventilation and other openings are sealed during the exterior work. When the exterior work is distant from the building, unit-wide clearance is not required.

R12. **NOTIFICATION OF CLEARANCE FAILURE:** *If a unit fails initial clearance, is it necessary to notify occupants of those results and to disclose them to future tenants/purchasers?*

Yes. You must notify occupants of the initial as well as final clearance results, within 15 calendar days after the hazard reduction activity has been completed, in accordance with section 35.125 and related requirements of the new HUD regulation. You must also disclose the results

of the initial as well as final clearance to comply with the EPA-HUD lead-based paint disclosure rule, which calls for disclosure of all reports pertaining to lead-based paint or lead-based paint hazards. Note that if the final clearance test shows that the unit passed clearance, you must include those results as part of the notification and disclosure processes to show that the problem was corrected.

- R13. **CLEARANCE BEFORE COMPLETION OF WORK:** *Can clearance be performed before all the work in a unit is complete?*
No. Clearance must be performed after all the rehabilitation and/or hazard reduction work is complete. You should wait at least one hour after the cleaning to allow dust to settle. It is permissible to perform interim clearance. However, a final clearance would still be required when all work was complete.
- R14. **LONGEVITY OF INTERIM CONTROL TRAINING:** *Section 35.1330(a)(4) specifies the supervision and training requirements for workers performing interim controls. Is there a limit on how long ago a worker may have taken one of these courses?*
There are no HUD requirements regarding the age or date of the course taken. However, the abatement supervisor and abatement worker courses must be accredited in accordance with EPA requirements (40 CFR part 745, subparts L and/or Q) and there may be refresher-course requirements to maintain certification. Consult the EPA-authorized program in your state, or, if it does not have an EPA-authorized program, call the EPA regional lead coordinator in your EPA regional office. (The phone number of your region's Coordinator's is available from an EPA hotline, 1-202-554-1404 (this is not a toll-free number) or on the Internet at www.epa.gov/lead.) If you are a hearing- or speech-impaired person, you may reach the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.
- R15. **CERTIFICATION OF SPEC WRITERS:** *Does the person who writes specifications for lead-based paint hazard control work have to be certified?*
No, but training in lead hazard reduction methods and safe work practices is recommended. The most useful course for spec writers is the abatement supervisor course. State and local regulations may apply as well.
- R16. **INSPECTIONS AND LEAD HAZARD REDUCTION:** *Does a lead-based paint inspection (using an XRF) provide all of the information and documentation necessary to implement lead hazard evaluation and reduction?*
A lead-based paint inspection will identify all the lead based paint in the unit but it will not tell you whether lead-based paint hazards (such as dust-lead and soil-lead hazards) are present and, if so, where they are. A combination risk assessment/inspection will provide complete information on lead-based paint and lead-based paint hazards.
- R17. **DE MINIMIS LEVELS:** *How does the de minimis level, defined at section 35.1350(d)(3) as "10 percent of the total surface area on an interior or exterior type of component with a small surface area" interact with the other de minimis definitions of "20 square feet on exterior surfaces" and "2 square feet in any one interior room or space?"*
To be exempt from safe work practices, the area of deteriorated paint in an interior room cannot exceed a total of 2 square feet or 10% of a component with a small surface area, such as interior window sills, baseboards and trim. In other words, both thresholds apply at all times. For example, living room baseboards with 3 square feet of deteriorated paint cannot be exempted on the grounds that the 3 square feet constitutes less than 10% of the component. Similarly, deteriorated paint of an area of less than 2 square feet is not considered below the de minimis level if the area exceeds 10% of a small component, such as a window sill.
- R18. **RELOCATION:** *Is temporary relocation required in all cases where there is a pregnant woman or a young child present?*
No. Relocation depends on the size of the work area and the duration of the work. See section 35.1345(a) for details. All occupants (except those who are employed in the work) must be kept out of the work area while work is under way.
- R19. **RELOCATION AND CLEARANCE:** *Section 35.1345(a)(2) provides an exception to the general requirement for temporary relocation if "treatment of the interior will be completed within one period of 8 daytime hours and the worksite is contained" or if "treatment will be completed within 5 calendar days, the worksite is contained . . . and, at the end of work on each day, the worksite and the area within at least 10 feet of the containment area is cleaned to remove any visible dust or debris, and occupants have safe access to sleeping areas and bathroom and kitchen facilities." If it is necessary to achieve clearance in order to "complete" treatment, how can treatment be completed in 8 hours?*
If clearance results cannot be obtained and clearance achieved within the 8-hour time period, consider the job to be similar to a 5-day project, maintain the containment, clean the area outside the containment, and allow residents to occupy all parts of the dwelling outside the containment.
- R20. **MONITORING:** *Is monitoring required when ongoing lead-based paint maintenance is not?*
No.
- R21. **STANDARD TREATMENTS AND REEVALUATION:** *Section 35.1355(b)(4) says reevaluation is required, when required by the applicable subpart, if a risk assessment or other evaluation found lead-based paint hazards. What if standard treatments were used and there was no evaluation?*
If standard treatments were used, reevaluation is required if it is required by the applicable subpart. Use of standard treatments presumes the existence of hazards.
- R22. **CHEWABLE SURFACES:** *Section 35.1330(d) says that a chewable surface is to be treated if there is evidence that a child has chewed on a painted surface. If the child has moved away or is not 6 years old or more, do I still have to treat the surface?*
No.
- R23. **HAIRLINE CRACKS:** *Are hairline cracks and nail holes considered deteriorated paint?*
No.
- R24. **INTERIM CONTROLS AND ABATEMENT:** *Is removal of chipping, peeling, or flaking paint on a deteriorated lead-based paint surface considered "abatement" of the hazard?*
No. Removal of deteriorated paint to prepare the surface for repainting is part of paint stabilization, which is an interim control.
- R25. **When is the use of certified abatement personnel required?**
Those activities that are conducted with the express intent to permanently eliminate lead-based paint hazards must be done by certified abatement personnel. Intent would in virtually all circumstances be established when HUD regulations require abatement, when abatement is specified in job specifications, job write-ups, cost allocation or similar documents, or when abatement is expressly ordered by a responsible state or local agency or court order. HUD requires abatement when Federal rehabilitation assistance covered by subpart J exceeds \$25,000 per unit, and interim controls when costs are between \$5,000 and \$25,000. Costs are calculated as described in question J3 above. Abatement is an option when costs are less, but is not required by HUD. Abatement is also required in conventional public housing during modernization covered by subpart L and for conversions covered by subpart G. Regardless of whether or not abatement or interim controls is

conducted, occupant protection, lead-safe work practices, and clearance are required whenever lead-based paint hazards are above de minimis levels (see the joint HUD/EPA letter of April 19, 2001 at www.hud.gov/offices/lead).

R26. **What is the difference between composite samples and representative samples?**
A composite sample is one where two to four samples of dust, paint, or soil are put together by the clearance examiner to be analyzed as a whole. When comparing the analytical result with the dust standards in section 35.1320(b)(2)(i), you divide the appropriate standard in the table by one-half the number of sub samples that are composited. For example, for a floor clearance composite sample of four sub samples put together into a single sample, the standard is $40 \mu\text{g}/\text{ft}^2 / (4 / 2) = 40 \mu\text{g}/\text{ft}^2 / 2 = 20 \mu\text{g}/\text{ft}^2$. (This calculation is the same as the alternative of multiplying the clearance standard by 2 and dividing the product by the number of sub samples that the clearance examiner. In the example above, $2 \times 40 \mu\text{g}/\text{ft}^2 / 4 = 80 \mu\text{g}/\text{ft}^2 / 4 = 20 \mu\text{g}/\text{ft}^2$.)

A representative set of samples is collected for clearance purposes when the work site is a collection of up to four work areas that are contained in a room or series of rooms. (If there are more than four contained areas, an additional representative set of samples must be collected for every four additional areas.) The representative set of samples is comprised of at least one floor sample, plus at least one window sill and one window trough, if present in the contained work area (and from different windows if possible), plus at least one floor sample near the contained area (within five feet outside of an entrance). If the representative set of samples includes a sample that fails clearance (the dust-lead level is at or above the clearance dust standard in section 35.1320(b)(2)(i)), every part of the contained area represented by the clearance failure (that is, floors, or sills, or troughs that were not sampled) must be recleaned and re-cleared.

S. QUESTIONS PERTAINING TO MORE THAN ONE SUBPART

- S1. **VISUAL ASSESSMENT AND CLEARANCE:** *In housing for which the requirement is a visual assessment for deteriorated paint followed by stabilization of any deteriorated paint and clearance, if the visual assessment finds no deteriorated paint, is clearance still required?*
No, because no paint stabilization work will be done.
- S2. **MOVE-IN BY A LEAD-POISONED CHILD:** *If the designated party knows that a family moving into an assisted unit has a child with an environmental intervention blood lead level, is it necessary to take any special action before the child moves in?*
Yes. For the purposes of subparts H, I, L, and M, a designated party (i.e., owner, HUD, public housing agency or participating jurisdiction) must conduct a risk assessment and control any lead-based paint hazards before a child with an environmental intervention blood lead level moves into the unit. This will ensure that the child will be protected from further exposure. Also, normally it is easier to conduct the risk assessment and, if required, hazard reduction before rather than after the family is in residence.
- S3. **VERIFICATION OF BLOOD LEAD LEVEL:** *What exactly is a designated party expected to do to verify a report that a child has an environmental intervention blood lead level?*
If a designated party (e.g., property owner or housing agency) receives a report from a source that is not a public health department or another medical health care provider that a resident child has an environmental intervention blood lead level, the designated party must verify the report. This verification is typically obtained by asking the person who provided the report to obtain written documentation of the child's blood lead level from the health department or another medical health care provider (a physician, licensed medical clinic, certified doctor's assistant, registered nurse, or similarly qualified person). Such documentation should include the date when the blood lead analysis was performed and/or reported by the laboratory.
- S4. **LEAD-SAFETY DURING TEMPORARY RELOCATION:** *If tenant-based rental assistance is being provided to a family to assist them to relocate temporarily while work is being done on their home, does the temporary dwelling have to meet the lead-based paint requirements for TBRA?*
The requirements that apply are actually those of Section 35.1345(a)(2), which states that temporary relocation must be to a "unit that does not have lead-based paint hazards." This requirement can be met by ensuring that the unit does not have deteriorated paint (or deteriorated lead-based paint if paint testing is conducted) and by conducting dust sampling to determine that the unit does not have dust-lead hazards. A unit built after January 1, 1978 can be presumed to meet the requirement.
- S5. **TRAINING:** *Where may I obtain information about training for lead hazard management and control activities related to the rule?*
Information on types of training related to the rule, and contact information for training providers, can be obtained from the Lead Listing, www.leadlisting.org. Additional information is also available from the National Lead Information Center at 1-800-424-LEAD, HUD's web site at www.hud.gov/offices/lead, or HUD at 1-202-755-1785 ext. 104 (this is a toll call). If you are a hearing- or speech-impaired person, you may reach the above telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.
- S6. *Does a State law defining "child" as a person under 16 years old generate any obligations under the HUD rule for children 6 to 15 years old?*
No obligation is created under the HUD rule. Compliance with the State law, which is outside the scope of the HUD rule, is unaffected by the rule, as discussed in section 35.150(b).

T. TRANSITION ASSISTANCE

The transition assistance period in certain jurisdictions that HUD provided after the effective date of the Lead Safe Housing Rule to address the lack of capacity of trained or licensed professionals to meet the requirements of the regulation in those jurisdictions has closed. Full compliance should be achievable for all parties.

ATTENTION

Are you giving INFORMATION about LEAD-BASED PAINT before beginning RENOVATION?

Iowa law requires you to give information to the owner and occupant in homes built before 1978. You must do this before you renovate, remodel, or repair.

WHERE CAN YOU GET MORE INFORMATION?

To find out more about rules or to obtain copies of pamphlets and/or notification forms:

Iowa Department of Public Health
Lead Poisoning Prevention
Lucas State Office Building
Des Moines, IA 50319-0075
Call **1-800-972-2026**
<http://idph.iowa.gov/lpp>

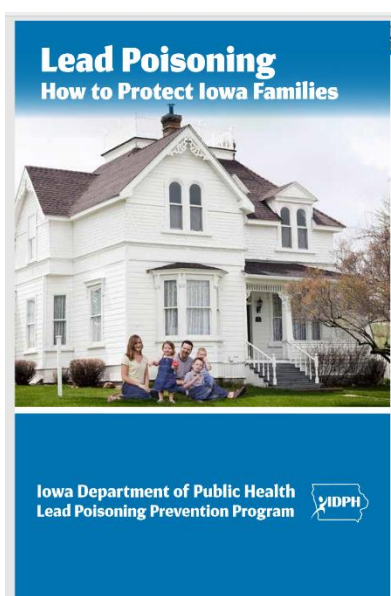
US EPA / Lead Paint Program
Office of Pollution Prevention & Toxics
1200 Pennsylvania Avenue N.W.
Mail Code 7404T
Washington, DC 20460
<https://www.epa.gov/lead>

Links to EPA and IDPH Lead-Based Paint Documents

- EPA Pamphlet - "Protect Your Family From Lead in Your Home"
Available on the web at:
<https://www.epa.gov/lead/protect-your-family-lead-your-home-real-estate-disclosure>
(Available in English, Spanish, Vietnamese, Russian, Arabic and Somali)



- IDPH Pamphlet - "Lead Poisoning - How to Protect Iowa's Families"
Available on the web at:
https://idph.iowa.gov/Portals/1/Files/LPP/protect_iowa_families.pdf
(Available in English)



EPA PAMPHLET – ACKNOWLEDGEMENT OF RECEIPT

I hereby acknowledge receiving a copy of the Environmental Protection Agency (EPA) pamphlet entitled **Protect Your Family from Lead in Your Home**. I understand this pamphlet is being conveyed to me in conjunction with the:

_____ project/program and/or in connection with any rehabilitation work performed on my dwelling unit that will disturb painted surfaces or in connection with any lead hazard reduction activity that may be performed on my dwelling unit as a part of a rehabilitation project or as required by applicable U.S. Department of Housing and Urban Development (HUD) regulations.

Owner's/Tenant's Name: _____
(Please print clearly or type)

Property Address: _____

City, State, Zip: _____

Phone Number: _____
(Area Code)

Owner/Tenant's Signature: _____

Date Pamphlet Received: _____
Month Day Year

Name of Person

Conveying EPA Pamphlet to the Property Owner/Tenant:

Signature of Person

Conveying EPA Pamphlet to the Property Owner/Tenant:

IDPH PAMPHLET – ACKNOWLEDGEMENT OF RECEIPT

I hereby acknowledge receiving a copy of the Iowa Department of Public health (IDPH) pamphlet entitled **Lead Poisoning-How to Protect Iowa’s Families**. I understand this pamphlet is being conveyed to me in conjunction with the (*Your Community’s Name*) owner-occupied rehabilitation program and in connection with any rehabilitation work that will disturb painted surfaces or in connection with any lead hazard reduction activity that may be performed on my dwelling unit as a part of a rehabilitation project.

Owner’s Name: _____

Property Address: _____

City, State, Zip: _____

Phone Number: _____
Area Code

Owner’s Signature: _____

Date Pamphlet Received: _____

Name of Person Conveying
IDPH Pamphlet to Property Owner: _____

Signature of Person Conveying
IDPH Pamphlet to Property Owner: _____

NOTIFICATION OF LEAD-BASED PAINT INSPECTION AND RISK ASSESSMENT

Date of Inspection/Risk Assessment: _____

Address/Location of Property Inspected/Evaluated:
(Include apartment# if applicable)

Summary results of Lead-Based Paint Inspection and Risk Assessment:
(Check One)

_____ No lead-based paint or lead-based paint hazards were found.

_____ Lead-based paint was found, but no lead-based paint hazards were found.

_____ Lead-based paint and lead-based paint hazards were found.

See page(s) _____ of the attached report for a summary of the results of this lead-based Paint inspection and risk assessment.

To receive more information about this lead-based paint inspection and risk assessment, please contact:

Name: _____
(Please print)

Agency: _____

Address: _____

Phone Number: _____
(Area Code)

This Notice was Prepared by:

Name: _____
(Please print)

Signature: _____

Certification#: _____

NOTIFICATION THAT LEAD-BASED PAINT OR LEAD-BASED PAINT HAZARDS ARE PRESUMED TO BE PRESENT AND NOTIFICATION OF A VISUAL RISK ASSESSMENT

Date of Presumption/Visual Risk Assessment: _____

Address/Location of Property Evaluated: _____
Street Address

City, State, Zip

Summary Results of Presumption/Visual Risk Assessment:
(Check One)

_____ Lead-based paint is presumed to be present, but no lead-based hazards were identified.

_____ Lead-based paint and paint hazards are presumed to be present.

See page(s) _____ of the attached report for a summary of the results of this visual risk assessment/presumption of lead-based paint or lead-based paint hazards.

For additional information about this visual risk assessment/presumption of lead-based paint or lead-based paint hazards, please contact:

Name: _____
Print Clearly

Agency Name: _____

Address: _____

City State Zip

Phone Number: _____
(Area Code)

This Notice was Prepared by:

Name: _____

Signature: _____

Certification#: _____

NOTIFICATION OF LEAD-BASED PAINT HAZARD REDUCTION COMPLETION AND FINAL VISUAL RISK ASSESSMENT AND CLEARANCE TESTING RESULTS

Date of Final Visual Risk Assessment/Clearance: _____

Address/Location of Property: _____
(Include apartment# if applicable)

City State Zip

Property Owner Name(s): _____

Property Owner Address: _____

Property Owner Phone#: _____
(Area Code)

Start Date of Rehabilitation and/or Lead Hazard Reduction Activities: _____

Completion Date of Rehabilitation and/or Lead Hazard Reduction Activities: _____

Firm or Organization Conducting Rehabilitation and/or Lead Hazard Reduction Activities:

Name: _____

Address: _____

City State Zip
Phone#: _____
(Area Code)

**STATE OF IOWA NOTIFICATION PRIOR TO RENOVATION, REMODELING, OR REPAINTING
FORM #1**

WORK DONE IN A DWELLING UNIT

Address: _____

General nature of work: _____

Location of work: _____

Expected starting date: _____ Expected ending date: _____

*I have received the pamphlet entitled **Lead Poisoning: How to Protect Iowa Families** and am aware of the potential health risk associated with remodeling, renovation, or repainting housing containing lead-based paint or lead-based paint hazards.*

Printed Name of Owner	Signature of Owner	Date
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Printed Name of Occupant	Signature of Occupant	Date
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Printed Name of Contractor	Signature of Contractor	Date
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Contractor Address	City	State	Phone
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Note Regarding Certificate of Mailing Option

As an alternative to delivery in person, you may mail the pamphlet to the owner and/or tenant via certified mail with return receipt or its equivalent at least 7 days before the work begins.

On _____, I sent the pamphlet to the owner and/or tenant by _____.

(Attach receipt for certified mail or its equivalent.)

Printed Name of Contractor	Signature of Contractor	Date
----------------------------	-------------------------	------

Contractor Address	City	State	Phone
--------------------	------	-------	-------

If the pamphlet was delivered, but adult occupant signature could not be obtained, check the appropriate box below:

- I certify I have made a good-faith effort to deliver the pamphlet, *Lead Poisoning: How to Protect Iowa Families*, to the unit listed below at the dates and times indicated, and an adult occupant was unavailable to sign the acknowledgment. I further certify I left a copy of the pamphlet at the unit with the occupant.
- I certify I have made a good-faith effort to deliver the pamphlet, *Lead Poisoning: How to Protect Iowa Families*, to the unit listed below at the dates and times indicated, and the occupant refused to sign the acknowledgement. I further certify I left a copy of the pamphlet at the unit.

Printed Name of Person Certifying Lead Pamphlet Delivery	Attempted Delivery Date and Time
--	----------------------------------

Signature of Person Certifying Lead Pamphlet Delivery _____

Where Pamphlet was Left at Unit (example: taped to the door, slipped under the door, etc.) _____

Printed Name of Contractor	Signature of Contractor	Date
----------------------------	-------------------------	------

Contractor Address	City	State	Phone
--------------------	------	-------	-------

**Disclosure Form for Target Housing Rentals and Leases
Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards**

Lead Warning Statement Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure (initial)

- _____ (a) Presence of lead-based paint or lead-based paint hazards (check one below):
- Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

- Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

- _____ (b) Records and reports available to the lessor (check one below):
- Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

- Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgment (initial)

- _____ (c) Lessee has received copies of all information listed above.
_____ (d) Lessee has received the pamphlet Protect Your Family From Lead in Your Home

Agent's Acknowledgment (initial)

_____ (e) Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by the signatory is true and accurate.

Lessor Date

Lessee Date

Agent Date

Lessor Date

Lessee Date

Agent Date

CDBG HOUSING PROGRAM LINKS

ALL HOUSING PROGRAMS:

INCOME:

24 CFR 5.609 Annual Income:

<https://www.govinfo.gov/content/pkg/CFR-2017-title24-vol1/pdf/CFR-2017-title24-vol1-sec5-609.pdf>

CPD Income Eligibility Calculator:

<https://www.hudexchange.info/incomecalculator/>.

Technical Guide on Determining Income and Allowances under the HOME Program:

<https://www.hudexchange.info/resources/documents/HOMEGuideForIncomeAndAllowances.pdf>.

LEAD REGULATIONS:

24 CFR 35 Lead-Based Paint Poisoning Prevention in Certain Residential Structures (HUD)

<https://www.govinfo.gov/content/pkg/CFR-2019-title24-vol1/xml/CFR-2019-title24-vol1-part35.xml>

Iowa Administrative Code 641 (Public Health) Chapter 70 (07/14/2021)

[641.70.pdf \(iowa.gov\)](#)

40 CFR 745 Lead-Based Paint Poisoning Prevention in Certain Residential Structures (EPA)

[https://www.ecfr.gov/cgi-](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=79d9123c529d8f8ca792833afe6b664f&ty=HTML&h=L&n=pt40.31.745&r=P)

[bin/retrieveECFR?gp=1&SID=79d9123c529d8f8ca792833afe6b664f&ty=HTML&h=L&n=pt40.31.745&r=P](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=79d9123c529d8f8ca792833afe6b664f&ty=HTML&h=L&n=pt40.31.745&r=P)
[ART](#)

HOUSING SUSTAINABILITY:

Architectural Barrier Removal:

The AARP Home Fit Guide

https://assets.aarp.org/www.aarp.org_/articles/families/HousingOptions/200590_HomeFit_rev011108.pdf

Architectural Barrier Removal:

CDBG Architectural Barrier Removal Eligible/Ineligible Activities Sheet:

<https://www.iowaeda.com/userdocs/programs/resources/2021-hsg-rehab-architectural-barrier-removal-eligible-and-ineligible.pdf>

Energy Efficiency Improvements:

CDBG Home Energy Efficiency Eligible Activities Sheet:

<https://www.iowaeda.com/userdocs/programs/resources/2021-hsg-rehab-energy-improvements-eligible-activities-checklist.pdf>

Energy Efficiency Improvements:

Energy Efficiency Improvements Window and Exterior Door Selection Guide:

<https://www.iowaeda.com/userdocs/programs/resources/2021-hsg-rehab-energy-improvements-window-and-exterior-door-selection-guide.pdf>

Exterior Home Improvements:

CDBG Exterior Home Improvements Eligible/Ineligible Activities Sheet:

<https://www.iowaeda.com/userdocs/programs/resources/2021-hsg-rehab-exterior-eligible-and-ineligible-activity-checklist.pdf>

Exterior Home Improvements:

Exterior Home Improvements Window and Exterior Door Selection Guide:

<https://www.iowaeda.com/userdocs/programs/resources/2021-hsg-rehab-exterior-window-and-exterior-door-selection-guide.pdf>

SELF CERTIFICATION OF ANNUAL INCOME BY BENEFICIARY

INSTRUCTIONS: This is a written statement from the beneficiary documenting the definition used to determine “Annual (Gross) Income”, the number of beneficiary members in the family or household (as applicable based on the activity), and the relevant characteristics of each member for the purposes of income determination. To complete this statement, select the definition of income used, fill in the blank fields below, and check only the boxes that apply to each member. Adult beneficiary members must then sign this statement to certify that the information is complete and accurate, and that source documentation will be provided upon request.

For Period _____ : _____

Definition of Income

HUD 24 CFR Part 5

Beneficiary Information

Last Name: _____

Member Information

First Names:	Member IDs (if applicable):	HH	CH	DIS	62+	S≥18	<18	<15
	1							
	2							
	3							
	4							
	5							
	6							

HH = Head of Household; CH = Co-Head of Household; DIS = Person with disabilities; 62+ = Person 62 years of age or older; S≥18 = Fulltime student, age 18 or over; <18 = Child under the age of 18 years; <15 = Minor under the age of 15 years (Mark all boxes that apply to the individual).

Contact Information

Address Line 1:	City:
Address Line 2:	State: Zip Code:

Income Information

Annual gross income (total of all members) = \$ _____

Certification

I/we certify that this information is complete and accurate. I/we agree to provide, upon request, documentation on all income sources to the HUD Grantee/Program Administrator. **COMPLETE**

SIGNATURES ON SECOND PAGE

I/we certify that this information is complete and accurate. I/we agree to provide, upon request, documentation on all income sources to the HUD Grantee/Program Administrator.

SELF CERTIFICATION OF ANNUAL INCOME BY BENEFICIARY

Address: _____

HEAD OF HOUSEHOLD

Signature	Printed Name	Date
------------------	---------------------	-------------

OTHER BENEFICIARY ADULTS*

Signature	Printed Name	Date
Signature	Printed Name	Date
Signature	Printed Name	Date
Signature	Printed Name	Date
Signature	Printed Name	Date
Signature	Printed Name	Date
Signature	Printed Name	Date
Signature	Printed Name	Date

* Attach another copy of this page if additional signature lines are required.

WARNING: The information provided on this form is subject to verification by HUD at any time, and Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony and assistance can be terminated for knowingly and willingly making a false or fraudulent statement to a department of the United States Government.