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COURSE OVERVIEW

This course was developed by HUD's Office of Healthy Homes and Lead Hazard Control, in conjunction with the Office of Community Planning and Development, to train recipients of HUD funds to effectively address lead-based paint.

PURPOSE OF THE COURSE

- The purpose of this course is to:
  - Explain the provisions of HUD's new lead-based paint regulation that apply to housing activities supported by funding administered by HUD's Office of Community Planning and Development (CPD).
  - Help grantees, participating jurisdictions, and their subrecipients prepare to meet the changes in Federal lead-based paint requirements.
- The following groups have primary responsibility for implementing the new lead-based paint regulation.

Who is Responsible for Implementing Lead-Based Paint Requirements?

- **Grantees.** For the purposes of this course, grantees are the original recipients of direct HUD funding and are the entities responsible for administering and drawing down funds. Their administrative duties include assuring compliance with lead-based paint requirements.
- **Subrecipients.** Subrecipients are public, private, and nonprofit agencies selected by a grantee to administer all or a portion of HUD funds. Their administrative duties also include assuring compliance with lead-based paint requirements.
- **HUD Field Staff.** HUD field staff has ultimate responsibility for ensuring that grantees have the systems in place to carry out all of their duties, including their lead-based paint responsibilities.

COURSE OBJECTIVES

- By the end of this course, participants will be able to:
  - Understand the changes in Federal lead-based paint requirements for State and local housing programs using CPD-administered funds.
  - Identify the changes needed in their programs and operating procedures to comply with the new lead-based paint requirements.
  - Develop an action plan to meet these requirements.

AUDIENCE FOR THIS COURSE

- The primary audience for this course is grantees and subrecipients, as summarized below.
- Participants do not need prior training about lead-based paint

COURSE AUDIENCE

- Grantee and subrecipient staff, such as:
  - Housing Program Directors
  - Housing Program Staff
  - Rehabilitation Specialists
  - Inspection Staff
  - Environmental Staff
  - Lead Hazard Control Grantee Staff

to understand the material presented in this course.

- The programs addressed in this course are summarized in the sidebar.

MAJOR TOPICS

- Exhibit 1 provides a brief overview of the key topics covered in the course.

THIS COURSE IS NOT ABOUT ....

- This course is not a technical "how to" course for lead-based paint professionals. It will not train participants to:
  - Perform lead evaluations, risk assessments, or paint tests; nor
  - Perform lead-based paint treatments that require special technical skills.
- Technical information is covered in other training and resource materials. Contact the National Lead Information Center (1-800-424-LEAD) for a list of the State contacts who have this information.

Federal Housing Programs Covered in this Course

CPD Programs

- HOME Investment Partnership Program (HOME)
- Community Development Block Grant (CDBG)
- Emergency Shelter Grants (ESG)
- Housing Opportunities for Persons With AIDS (HOPWA)
- Shelter Plus Care (S+C)
- Supportive Housing Program (SHP)
- Youthbuild

Other HUD Programs

- HOPE for Homeownership of Single Family Homes (HOPE 3)
- Homeownership of Multifamily Units (HOPE 3)
- Indian Housing Block Grant Program
- Indian Community Development Block Grant Program
- Interest Reduction Payment Grants (IRP)
- Flexible Subsidy-Capital Improvement Loan Program (CILP)
- Mark-to-Market Program
- Section 8 of the US Housing Act of 1937

- For participants who want more detailed information about the technical aspects of lead-based paint activities, references to resources on these subjects are presented throughout the training. An initial list of reference documents and resource materials is provided in Chapter 1, Section 1.5.

EXHIBIT 1

A COURSE OVERVIEW

- **Chapter 1: Introduction**.
- **Chapter 2: Lead-Based Paint – A Foundation**. This chapter explains the effects of lead poisoning, who is affected, and the different ways that lead can enter the body. The chapter then discusses the nature and the extent of the threat posed by lead-based paint, and the conditions that cause lead poisoning. The chapter also traces lead's legislative history and introduces key terms used in discussing lead-based paint.
- **Chapter 3: Lead-Based Paint Requirements**. This chapter discusses HUD's lead-based paint requirements that apply to CPD-funded programs. This chapter will summarize the current regulations and provide an overview of the new regulation.
- **Chapter 4: Rehabilitation Programs**. This chapter describes how to integrate lead-based paint issues into rehabilitation planning and implementation. It gives an overview of the rehabilitation requirements and then assists course participants through the rehabilitation process by emphasizing the points at which lead-based paint requirements apply.
- **Chapter 5: Tenant-Based Rental Assistance (TBRA) Programs**. This chapter describes how to integrate lead-based paint issues into TBRA program implementation. It gives an overview of the TBRA requirements and then walks the participant through a standard TBRA program, emphasizing the points at which lead-based paint requirements apply.
- **Chapter 6: Homebuyer Programs**. This chapter discusses the requirements for homebuyer programs and describes how and when the new lead-based paint requirements fit in the process.
- **Chapter 7: Special Needs Housing Programs**. This chapter explains how the new lead-based paint regulation will affect special needs housing programs that use CPD funds for projects involving the acquisition, leasing, operations assistance, or property support services.
- **Chapter 8: Implementing Lead Hazard Evaluation and Reduction**. This chapter includes tools and exercises for implementing the requirements discussed in this course.
- **Chapter 9: Putting It All Together — An Action Plan**. This chapter includes an action plan that each jurisdiction or organization can tailor to its own activities. It describes how to begin planning for the requirements establish by the new lead-based paint regulation.

CHAPTER 1

INTRODUCTION

> *Childhood lead poisoning is "the most common environmental disease of young children and is entirely preventable."*
>
> Centers for Disease Control, 1991

1.1 BACKGROUND

- **The Health Risks of Lead-Based Paint**. The health risks to young children posed by lead-based paint in residential dwellings remains an important issue for both the housing industry and the public health community to address.
  - More than 890,000 children have too much lead in their bodies (as reported in the third National Health and Nutrition Examination Survey, 1997).[1]
  - According to the *HUD National Survey of Lead and Allergens in Housing* (January, 2001), an estimated 38 million homes (40 percent of all homes) have lead-based paint somewhere in the building.
  - The survey also found that 25 million homes (26 percent) have significant hazardous conditions that are likely to expose families to unsafe levels of lead.
- **Our Understanding of the Problem**. Progress in research and technology during the past 25 years has improved our understanding of how children are poisoned and our knowledge of better ways to protect them, yet childhood lead poisoning is still a significant problem. Many homes continue to have lead-based paint hazards that expose young children to unsafe levels of lead.
- **The Challenge**. While advances have improved our knowledge and understanding of the problem, housing providers still face important challenges in addressing lead-based paint in their properties. They are faced with:
  - Competing needs for scarce housing resources;
  - Federal, State, and local laws that may conflict; and
  - Difficult decisions about how to integrate appropriate protections into their programs.

[1] *Morbidity and Mortality Weekly Report (V46, No 7, February 21, 1997) reports the NHANES III results.*

- **This Course**. In spite of these challenges, program administrators and housing providers are learning how to effectively manage the risks associated with lead-based paint. This course is designed to help grantees and others working with local housing programs to incorporate sound lead-based paint management practices into their programs.

1.2 IMPORTANCE OF ADDRESSING LEAD-BASED PAINT

- **Protecting Children**. The primary reason why HUD and its grantees need to address the presence of lead-based paint and lead-based paint hazards is to protect children and families. A housing provider has a responsibility to provide decent, safe, and sanitary housing to its residents. Part of this responsibility is to protect residents from the health risks of lead hazards.

  - Children under the age of six are particularly at risk of lead poisoning (as explained in Chapter 2 — Lead-Based Paint — A Foundation).

  - The households most likely to be affected by lead poisoning are the households most often served by local housing programs. Recent studies have shown that more than 16 percent of young children from low-income families living in older housing had levels of lead in their blood above the level of concern set by the Centers for Disease Control and Prevention (CDC), compared with only one percent of young children from high-income families.

  - By taking proper precautions when maintenance, repairs, and renovation work is performed in homes known or assumed to contain lead-based paint, children can be protected.

Renovation Work and Lead Poisoning: Two Stories

A painter was hired to repaint the exterior of an old Vermont home occupied by a couple expecting the birth of their first child. The painter used a power grinder to remove the old paint from the exterior siding. While the painter worked, the window to the baby's nursery was left open and the entire room, including the crib became covered with dust. Fortunately, the couple noticed the dust and understood the potential risks from lead-based paint. They called in another painter who was qualified to control lead hazards. He cleaned up the paint dust and the newborn baby moved into a clean, safe home.

Renovation of a two story, 19th century house included removing paint from floors and woodwork using power sanders, hand sanders, scrapers, torches, heat guns, and chemical paint strippers. Ceilings were also repaired, and wallpaper and paint were removed from several walls. The family that owned the home moved out of the house temporarily. They returned when the work was only partly completed. There was dust throughout the house. The family discovered that something was wrong when one of the family's dogs began to have seizures. A veterinarian found that the dog had been lead poisoned. The mother and children had their blood tested, and found that all of them had very high levels of lead in their blood. All three were admitted to the hospital for severe lead poisoning.

- There are a number of other reasons why HUD and its grantees need to address the presence of lead-based paint and lead-based paint hazards, including:
  - **Reducing Liability.** Like any property owner, grantees can face lawsuits for failing to address lead-based paint hazards in a unit if a young child is poisoned. By taking action to reduce lead-based paint hazards, grantees can demonstrate that they are working to provide safe, suitable housing, thereby reducing the risk that courts will find them negligent when deciding lawsuits.
  - **Reducing Insurance Costs**. Grantees who take action to address lead-based paint may be able to obtain more favorable premiums for insurance coverage.
  - **It's Required**. Title X of the 1992 Housing and Community Development Act mandated that HUD take action to address lead-based paint in housing receiving Federal assistance. HUD published its final consolidated rule on September 15, 1999. This rule requires actions by HUD grantees.

Does Lead-Based Paint in Homes Really Pose a Risk to Families? — Some Facts

1. Common maintenance, repair and renovation practices, such as scraping and repainting, can easily create harmful levels of lead in dust when work is done in homes that contain lead-based paint.
2. Studies have found strong ties between children with harmful lead levels in their blood and lead contaminated dust in their homes.
3. Lead-contaminated dust is not an obvious hazard. A room may look clean, but still contain lead dust levels that are harmful to children.

1.3 WHY THE NEW REGULATION?

- The 1992 Housing and Community Development Act included Title X ("Title Ten"). This statute represented a sweeping new approach to the lead-based paint problem that required a comprehensive rethinking of HUD's lead-based paint regulations.
  - Former lead-based paint regulations for CPD-funded housing projects focused on the existence of deteriorated paint. Control of identified lead-based paint and lead-based paint hazards did not occur unless a poisoned child was found to live in the unit.
  - Title X called for a three-pronged approach to target conditions that pose health risks to housing occupants and avoid cases of lead poisoning:
    - Notification of occupants about the existence of these hazards so that they can take proper precautions;

- Identification of lead-based paint hazards before a child can be poisoned; and
- Control of these lead-based paint hazards, to limit lead exposure to residents.

- In responding to Title X, HUD had several goals in mind, as described below.

  - **Streamline and Consolidate Lead Regulations.** In the spirit of the Federal government's current reinvention activities, HUD revised and consolidated its lead-based paint regulations throughout its programs. Redundant regulation was eliminated, and different programs now have consistent requirements. This consolidation eliminates redundant lead-based paint regulations and achieves consistency among the lead-based paint requirements for different HUD programs.

    - Before this regulation, many HUD clients received funding from several HUD programs with separate and sometimes inconsistent sets of lead regulations.
    - This regulation groups HUD programs by types of assistance provided. For example, a grantee receiving HUD funds from several different sources to conduct a rehabilitation project will find the lead-based paint requirements for rehabilitation under one subpart of the lead regulation.

  - **Update Lead-Based Paint Requirements to Better Protect Children and Families**. In rewriting its lead-based paint regulations, HUD took advantage of new knowledge.

    - The new requirements are based on the practical experience of cities, states, and others who have been controlling lead-based paint hazards in housing.
    - The new requirements reflect the results of new scientific and technological research and innovation on the sources, effects, costs, and methods of evaluating and controlling lead-based paint hazards. This knowledge allowed the new regulation to target those conditions that pose the greatest risk to human health.
    - The new regulation also reflects improved lead hazard evaluation techniques. Because we understand more, decisions about lead hazard reduction activities can be more fully informed, and available resources can be better targeted to reduce lead exposures.

  - **Balance the Need for Cost-Effective Action with the Duty to Protect Children.** The new regulation balances the practical need for cost-effective, affordable lead-based paint hazard notification, evaluation, and reduction measures with Title X's statutory requirements and HUD's duty to protect children living in property that is owned or assisted by the Federal government. By targeting lead-based paint hazards, the new regulation strives to use limited resources for those conditions that pose the greatest risk to housing residents.

1.4 TAKING ACTION

- **Many Jurisdictions Are Already Taking Action.** Many States and communities are already taking steps to protect families from the health risks of lead-based paint.

  - State and city housing agencies are already incorporating activities that reduce risk of lead-based paint hazards in homes receiving assistance through rehabilitation and other housing assistance programs.

    Example: The City of Milwaukee's Single Family Rehabilitation program has successfully trained its crews to use work practices and other protections that reduce the risk of creating lead-based paint hazards during jobs. Today, it is a successful and productive program that better protects the families that it serves.

  - States and cities are offering training to property owners and contractors about how to work safely when performing maintenance and renovation work in homes likely to contain lead-based paint.

    Example: The State of Vermont has set up a half-day "Essential Maintenance Practices" training for property owners and contractors that has successfully reached thousands of participants. During the course, students learn cost-effective work practices that reduce the risk that lead-based paint hazards will be created during common maintenance and repair jobs.

- **Help is Available - HUD Lead Hazard Control Grantees.** State and city agencies across the country have received grants from HUD to fund demonstration programs working to identify successful ways of reducing the risks of lead-based paint hazards in housing.

  - Many HUD Lead Hazard Control grantees are community development agencies, or partners with these agencies. These grantees have often developed successful and cost-effective approaches to incorporating lead-based paint protections into rehabilitation and other housing programs.

  - HUD Lead Hazard Control Grantees can serve as valuable resources for other State and local agencies working to meet the new regulation and improve the lead safety of their housing programs.

  - State and local housing agencies can also apply to HUD for a Lead Hazard Control Grant by responding to the Notice of Funding Availability published annually by HUD's Office of Healthy Homes and Lead Hazard Control.

1.5 RESOURCES: AVAILABLE GUIDANCE ON LEAD-BASED PAINT

- Throughout this course we will refer to a number of resources on lead-based paint. The most relevant one, the HUD regulation, is found at 24 CFR Part 35. This includes:
  - Requirements for Notification, Evaluation, and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Final Regulation (September 15, 1999) [*24 CFR Part 35*].
  - Lead: Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing; Final Regulation (March 6, 1996) [FR Vol. 61, No. 45, p. 9064].
- A copy of the regulation can be found in Appendix A of this manual.
- Questions about the regulation can be answered by calling the regulation hotline at (202) 755-1822, ext. 104 or by sending an e-mail to lead_regulations@HUD.gov.
- Additional resources are listed in Attachment 1-A.

ATTACHMENT 1-A

LEAD-BASED PAINT RESOURCES

JOINT AGENCY EFFORT

- **The Lead Clearinghouse and Hotline, 1(800) 424-LEAD.**
  HUD, EPA and CDC jointly created and funded The National Lead Information Center (NLIC) to provide general lead information, testing, laboratory, contractor, training resources and copies of publications by phone or fax. This central lead information service is also referred to as the Lead Information Clearinghouse. It offers you the opportunity to speak with an Information Specialist, or if you are hearing impaired, you may call the Federal Information Relay Service at (800) 877-8339 and ask for the National Lead Information Center at (800) 424-LEAD. They are located at 8601 Georgia Avenue, Suite 503, Silver Spring, MD 20910, with a website at http://www.epa.gov/lead/nlic.htm. Contact them with a specific document request or a comprehensive list of the documents available for distribution. Due to budget constraints, the Clearinghouse provides single copies of documents free of charge. Multiple copies can be purchased from the U.S. Government Printing Office (GPO) at (202) 512-1800, fax (202) 512-2250.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OFFICE OF HEALTHY HOMES AND LEAD HAZARD CONTROL (HUD OHHLHC)

Office of Healthy Homes and Lead Hazard Control (OHHLHC)
U.S. Department of Housing and Urban Development
451 Seventh Street, SW, Room P-3206
Washington, DC 20410
(202) 755-1785
Regulation questions: Extension 104 or e-mail: hud_regulations@hud.gov
http://www.hud.gov/offices/lead

- **Important HUD Lead Regulations.**
  - 24 CFR 35, Lead-Based Paint Hazards in Federally Owned and Assisted Housing (Lead Safe Housing Rule), effective September 15, 2000. Contains lead hazard evaluation and hazard reduction requirements for Federally owned and assisted housing (Title X, Sections 1012/1013).

  - 40 CFR 745 (EPA) and 24 CFR 35 (HUD), published jointly. Regulations for disclosure of known lead-based paint and lead-based paint hazards by home sellers and landlords (Title X, Section 1018).

- **How to Obtain Information From HUD.**
  - For questions about HUD's Lead Safe Housing Rule or Transition Assistance, call the HUD 1012 Hotline at (866) HUD-1012 or e-mail HUD at: lead_regulations@hud.gov. You can also leave a voicemail message for the HUD Office of Healthy Homes and Lead Hazard Control at (202) 755-1785, Extension 104, or e-mail them at lead_reg@hud.gov.

  - Call the Leadlisting at (888) LEADLIST or (888) 532-3547 to locate qualified lead professionals including inspectors, risk assessors, abatement contractors and analytical laboratories nationwide. You can also obtain information on training providers and some of their course schedules on the Leadlisting either by phone, website, http://www.leadlisting.org, or from HUD's OHHLHC website, http://www.hud.gov/offices/lead.

  - HUD's Healthy Homes Hotline – (800) HUDS-FHA specializes in keeping homes healthy and protected from molds, allergens and other harmful substances.

- **Recommended Publications/Resources from http://www.hud.gov/offices/lead.**
  - "Protect Your Family from Lead in Your Home" (May 1995). This important pamphlet provides basic information about addressing and preventing lead-based paint hazards. It is available in English (Clearinghouse document #055-000-00507-9) and in Spanish (Clearinghouse document #055-000-00537-1) versions. One copy is free; cost from GPO is $26.00 for a package of 50 copies.

  - "Interpretive Guidance on the Lead Safe Housing Rule including Questions and Answers" (September 21, 2000).

  - Lead Training Courses and documents posted on OHHLHC's website include.
    - Addressing Lead-Based Paint in Section 8 Housing Course
    - Lead-Based Paint Training for CPD Grantees
    - Sampling Technician Course
    - HUD Visual Assessment Course – self-paced, web-based
    - HUD Interim Controls, Lead-Safe Work Practices and Awareness Training
    - HUD Renovation and Remodeling Course
    - HUD Interim Criteria for Evaluating Courses in Lead-Safe Work Practices
    - Information on purchasing Maintenance Training Course from the National Environmental Training Association (NETA)
    - List of State- and EPA-Accredited Lead Training Providers providing training and certification under 40 CFR 745 (TSCA 402/404)

  - HUD, EPA, CDC: Lead Paint Safety, A Field Guide for Painting, Home Maintenance and Renovation Work, June 1999, HUD-1779-LHC.

  - Sample Disclosure Forms for Target Housing Sales and for Target Housing Rentals and Leases (March 1996).

  - "Questions and Answers on the EPA and HUD Real Estate Notification and Disclosure Rule," (Title X, Section 1018), EPA-747-F-96-001.

  - "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing," (July1995) ("HUD Guidelines"). Technical guidance on methods for identifying and controlling lead-based paint and lead-based paint hazards. The 750-page guidelines can be downloaded from the HUD OHHLHC website, http://www.hud.gov/offices/lead.

  - "Moving Toward a Lead-Safe America: A Report to the Congress of the United States" (February 1997).

  - "Eliminating Childhood Lead Poisoning: A Federal Strategy Targeting Lead Paint Hazards, President's Task Force on Environmental Health Risks and Safety Risks to Children" (February 2000).

  - "The Economics of Lead-Based Paint Hazards in Housing," (September/October) and "The Health Effects of Lead on the Human Body," (November/December) Lead Perspectives Magazine, 1996. Articles written by David E. Jacobs, Deputy Director, HUD Office of Healthy Homes and Lead Hazard Control.

- **Lead Hazard Control Grant information and list of grantees.**
  - "The Lead Post," a quarterly newsletter.

U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA)

Office of Pollution Prevention and Toxics (OPPT)
U.S. Environmental Protection Agency
401 M Street, SW (7401)
Washington, DC 20460
(202) 260-3810
http://www.epa.gov/lead

- **Important EPA Lead Regulations.**
  - 40 CFR 745 (EPA) and 24 CFR 35 (HUD), published jointly. Regulations for disclosure of known lead-based paint and lead-based paint hazards by home sellers and landlords. Final Rule Federal Register, March 6, 1996. (26 pages).
  - 40 CFR 745, Lead-Based Paint Poisoning Prevention in Certain Residential Structures. Contains the Federal regulations for the disposal of lead waste and contractor notification requirements.
  - 40 CFR 745.80, Residential Pre-Renovation Education Rule – TSCA 406(b). Federal rule requires contractors to provide notification before the start of any work that disturbs a painted surface in pre-1978 homes. Final Rule Federal Register, June 1, 1998 (15 pages).
  - 40 CFR 745, Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities: Final Rule, August, 1996 (EPA Toxic Substances Control Act, Title IV, Sections 402 and 404). Includes training and certification requirements for individuals and training providers.

- **Recommended Publications/Resources.**
  - "Protect Your Family from Lead in Your Home" (May 1995). This important pamphlet provides basic information about addressing and preventing lead-based paint hazards. It is available in English (Clearinghouse document #055-000-00507-9) and Spanish (Clearinghouse document #055-000-00537-1) versions. One copy is free; cost from GPO is $26.00 for a package of 50 copies.
  - "Reducing Lead Hazards When Remodeling Your Home," Pamphlet EPA- 747-R-94-002.
  - "Disclosure of Lead-Based Paint Hazards in Housing" (March 1996). This fact sheet provides information on how to meet Federal disclosure requirements.
  - "Interpretive Guidance for the Real Estate Community on the Requirements for Disclosure of Information Concerning Lead-Based Paint in Housing, Parts I and II" (1996). In-depth guidance on the disclosure requirements for real estate professionals (27 pages).
  - "Questions and Answers on the EPA and HUD Real Estate Notification and Disclosure Rule," (Title X, Section 1018), EPA-747-F-96-001.
  - "Questions and Answers on the Pre-Renovation Lead Education Rule, TSCA 406(b)" (5 pages).
  - EPA FACT SHEET: "Identifying Lead Hazards in Your Home" (November 1996, EPA-747-F-96-007).
  - EPA FACT SHEET: "EPA and HUD Move to Protect Children from Lead-Based Paint Poisoning, Disclosure of LBP Hazards in Housing" (March 1996).
  - EPA FACT SHEET: "Lead Hazard Prevention in Homes Pamphlet Released," March 1996.
  - "Finding a Qualified Lead Professional for Your Home," Pamphlet EPA-747-F-96-006.

- "Lead in Your Home, A Parent's Reference Guide," Guidance Document EPA-747-B-99-003.

U.S. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)

Occupational Safety and Health Administration
U.S. Department of Labor, OSHA Publications Office
200 Constitution Avenue, NW, Room N3101
Washington, D.C. 20210
(202) 693-1999 (Public Affairs)
http://www.osha.gov

- **Important OSHA Lead Regulations.**
  - 29 CFR 1926.62, Lead in Construction
  - 29 CFR 1926.59, Hazard Communication
  - 29 CFR 1910.1025, Lead in General Industry

These regulations cover Federal worker protection requirem ents for workers in general industry, construction, remodeling and renovation. OSHA provides information on regulations, technical and educational documents, including training courses and links to other lead resources. Lead website: http://www.osha-slc.gov/SLTC/lead.index.html. Respirator website: http://www.osha-slc.gov/SLTC/respiratory_advisor.

- **Recommended Publications/Resources.**
  - "Lead Exposure in the Construction Industry" (1993), set of 6 Fact Sheets that describe worker protection measures needed to meet OSHA requirements for lead including respiratory protection and protective clothing.
  - "Lead in Construction," Pamphlet (1993), OSHA #3142.

U.S. NATIONAL INSTITUTE OF OCCUPATIONAL SAFETY AND HEALTH (NIOSH)

National Institute of Occupational Safety and Health
Hubert H. Humphrey Building, Room 7154
200 Independence Avenue, SW
Washington, DC 20201
(800) 35-NIOSH (800) 356-4674
http://www.cdc.gov/niosh

NIOSH provides lead information and resources for workplace safety and health, including reports on occupational exposures to lead and guidance on respiratory protection issues.

U.S. CONSUMER PRODUCT SAFETY COMMISSION (CSPC)

U.S. Consumer Product Safety Commission
Washington, DC 20207-0001
1-800-638-2772
Hotline - TTY for the Hearing Impaired: 1-800-638-8270
http://www.cpsc.gov

This independent agency helps keep American families safe by preventing risk of harm from lead in consumer products, including paint, public playground equipment, crayons, mini-blinds, candles, toys, etc.

- **Bulletin**
  - "What You Should Know About Lead Based Paint in Your Home: Safety Alert." CPSC Document #5054

NON-GOVERNMENT RESOURCES

- **Alliance to End Childhood Lead Poisoning**, (202) 543-1147, provides information on federal laws and regulations and distributes several publications on the topics of lead poisoning prevention, lead program design and lead issues, by phone or their website at http://www.aeclp.org. Their address is 227 Massachusetts Avenue, NE, Suite 200, Washington, DC 20002. Publications include: "Directory of State and Local Lead Poisoning Prevention Advocacy Organizations," (1998), listing state and local non-profit organizations that are working to prevent lead poisoning (about 300 pages); and "Resource Handbook on Lead Disclosure for Homes and Apartments," (1996), a comprehensive reference book on disclosure procedures, including copies of disclosure documents (approximately 300 pages).

- **The National Center for Lead-Safe Housing** can help with technical questions about lead poisoning prevention, real estate, property rehabilitation, finance or insurance issues. They can be reached at 10227 Wincopin Circle, Suite 205, Columbia, MD 21044, (410) 992-0712 or http://www.leadsafehousing.org. They offer: "Guide to Working Safely with Residential Lead Paint," (1999), a pamphlet with key lead safety precautions to follow during repainting and home improvement; and "Lead Safety for Nonprofit Property Owners, Developers and Managers," (July 1998), a practical guide to developing policies and activities that incorporate lead safety in property management.

- **The National Conference of State Legislatures**, (303) 830-2200, has lists of local health department contacts for lead poisoning services, state regulatory agency contacts and other publications. They are located in Denver, Colorado and have a website: http://www.ncsl.org. They offer the following publications, "Summary of Lead Poisoning Prevention Statutes," (February 1999), a state-by-state listing of local lead-related regulations including waste disposal, and "Lead Poisoning Prevention: Directory of State Contacts," (1977-78), a booklet that contains profiles of state programs to reduce lead hazards (about 150 pages).

- **National Institute of Building Sciences (NIBS)** has two documents available at 1201 L Street, NW, Suite 400, Washington DC 20005-4014. They can be reached by calling (202) 289-7800 or through their website, http://www.nibs.org. NIBS has published:
  - "Lead-Based Paint: Operations and Maintenance Work Practices Manual for Homes and Buildings," (1995). This training and reference manual provides instructions for performing many common maintenance practices in a lead-safe way.

  - "Guide Specifications for Reducing Lead-Based Paint (LBP) Hazards" (May 1995). This guide covers lead-based paint abatement specifications.

- **Parents Against Lead (PAL)** is an organization dedicated to parents of lead-poisoned children. Their address is: 1438 E. 52nd Street, Chicago, IL 60615-4122 and their phone number is (773) 324-7824.

CHAPTER 2

LEAD-BASED PAINT — A FOUNDATION

2.1 OVERVIEW

- To address lead-based paint hazards effectively, it is important to understand how lead-based paint can poison children, residents, and workers, and the evolution of Federal lead-based paint requirements.
- As a foundation for this course, this chapter will explain:
  - *Lead and its health effects.* How does lead poisoning occur, what are the effects, and who is at risk?
  - *Lead-based paint and lead-based paint hazards*. What are the physical conditions that allow people to be poisoned?
  - *The scope of the problem*. How much lead-based paint is there in residential housing? Which homes are most likely to have lead-based paint?
  - *Key concepts in addressing lead-based paint.* What are the two key concepts used in the lead poisoning prevention field to talk about the problem and its solution?
- Lead is a poison with serious health effects. However, lead-based paint in homes is a problem that can be solved through targeted action. Knowledge of the problem is the first step in addressing lead-based paint hazards.

2.2 LEAD AND ITS HEALTH EFFECTS

- Lead is a naturally occurring element that is harmful to people when taken into the body through ingestion or inhalation. Lead accumulates within various organs of the body; it is stored for extended periods in the bones; and can cause serious and long-lasting physical and neurological problems.
- Children are the most vulnerable to exposure to lead-based paint because their bodies and nervous systems are still developing rapidly. The effects of lead poisoning are most severe for children under age six and in the womb.
- Lead poisoning can also be a significant health concern for adults.

EFFECTS OF LEAD POISONING

- Lead can enter the body quickly in large doses or slowly, over time.
  - **Chronic Exposure**. A constant low level of exposure to lead often results in symptoms that are not immediately recognizable because they are similar to the effects of other illnesses, such as the flu.

    > Lead poisoning may have no obvious symptoms. Testing is critical!

  - **Acute Exposure**. Exposure to a large amount of lead in a short period of time (e.g., persistent ingestion of lead-based paint chips) can have dramatic symptoms, such as abdominal pain, vomiting, or seizures that are immediately obvious.
- Even though there may be no symptoms, there are serious health effects of lead poisoning.
  - For children, this may mean:
    - Damage to brain and nervous system
    - Loss of intelligence
    - Learning disability
    - Slowed growth
    - Coma, convulsions, and even death
  - For adults, this may mean:
    - High blood pressure
    - Kidney problems
    - Problems conceiving and having children
- Because lead poisoning often occurs without any obvious symptoms, it is recommended that children, women of childbearing age, and adults who may be exposed to lead in the workplace be tested if there is a possibility of lead in their environment.

> **Lead Poisoning Scenario: Recognizing the Problem**
>
> Sarah had been one of the brightest students in her kindergarten class, but by the first grade, she was easily distracted, never seemed alert, and was not understanding simple projects. Her teacher met with the parents and learned that she was often tired at home and complained of stomachaches. At her next physical, the doctor tested Sarah for lead poisoning and found she had an elevated level of lead in her blood. Upon inspection, the apartment Sarah lived in was found to have extremely high levels of lead-contaminated dust from deteriorating interior and exterior paint.

LEAD POISONING

- When lead enters the human body, the lead becomes an improper part of the body's chemistry and start to inhibit normal bodily functions.

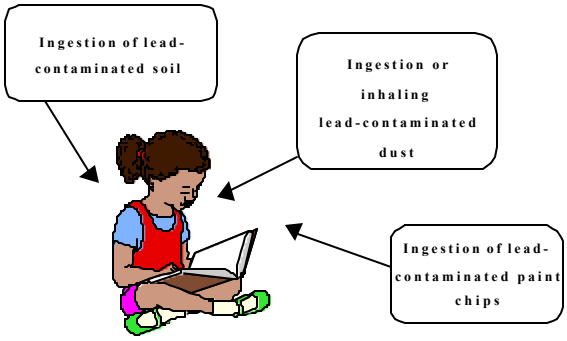
- The body cannot process the lead, and excess amounts can be stored in the bones for decades after the initial exposure.
- The amount of lead in a person's blood is a measure of lead poisoning.

- **Elevated Blood Lead Level (EBL).** The higher the concentration of lead in a person's blood, the greater its toxicity and health effects. People with high concentrations of lead in their blood are described as having an elevated blood lead level. An EBL for a child under age six is defined as a blood lead level of 10 µg/dL (micrograms per deciliter) or more.

> - **Elevated Blood Lead (EBL) Level** is a term used in the former regulations to designate poisoned children.
> - The new regulation uses the term **Environmental Intervention Blood Lead Level** to specify the level of lead in blood that requires intervention.

- **Environmental Intervention Blood Lead Level.** While all children with elevated levels of lead in their blood require monitoring and follow up, children with higher blood lead levels trigger environmental interventions, such as evaluation of their homes and lead hazard reduction. The level at which this intervention takes place is called the environmental intervention blood lead level and is defined as:
  - A blood lead level of 20 µg/dL (micrograms per deciliter) of whole blood or above for a single test, or
  - Blood lead levels of 15-19 µg/dL in two tests taken at least three months apart.

HOW LEAD ENTERS THE HUMAN BODY



- Lead enters the body through a number of different pathways. Three of the major pathways are lead-contaminated dust, lead-based paint chips and debris, and lead-contaminated soil.
  - **Ingesting or Inhaling Lead-Contaminated Dust**. This is a primary pathway by which lead enters the body. Poisoning can occur when lead-contaminated dust particles are ingested or inhaled. Children are likely to ingest dust through normal hand-to-mouth activities. Adults are

likely to ingest or inhale it when proper precautions are not taken during renovation or rehabilitation activities.

- **Ingestion of Lead-Contaminated Paint Chips**. Poisoning can occur when paint chips containing lead are eaten. Children in particular may ingest lead-contaminated paint chips through normal hand-to-mouth activity.

- **Ingestion of Lead-Contaminated Soil**. Lead-contaminated soil can be ingested when children play outside and engage in normal hand-to-mouth activity or when people track soil inside where it mixes with household dust.

Lead Poisoning Scenarios

Lead-Contaminated Dust. Sally is three years old and lives in an older apartment in the city. Her playroom has three windows that are often open to get the breeze. Sally plays near the window and often puts her toys and hands in her mouth. Neither she nor her parents can see the lead dust that is collecting in her room from the deteriorating lead paint on her windows.

Lead-Contaminated Paint Chips. Bobby is two years old and often sits on the floor by the radiator to watch television. He knows better than to touch the radiator when it is hot, but recently his little hands have discovered that the paint comes off the back side of the radiator when he rubs it. He has put some of the paint chips into his mouth.

Lead-Contaminated Soil. Joey is four years old. He loves to play in the yard where he digs holes and makes mud pies. It is not unusual for Joey to sample a mud pie or put his hands in his mouth.

- **Other Exposure Pathways**. Lead from other sources can result in lead poisoning.

  - **Water**. Water can be contaminated at the point of supply from lead pipes, lead solder, and lead fixtures in the plumbing. Lead in water can easily be absorbed into the body.

  - **Air**. Years of lead use in industry have resulted in lead particles being released into the air. Leaded gasoline has also contributed to the lead in air. Restrictions on the use of lead in gasoline and industry, and more stringent clean air requirements, have achieved low levels of airborne lead particles.

  - **Food**. Previously, lead was used in the cans for some food products that were packaged in the U.S. or imported from other countries, and as an ingredient for pottery glazing. Lead leached from these sources into the food stored in the containers and was ingested. While both leaded cans and leaded pottery have been banned, the risk still exists from antique pottery and some imported items.

- **Other sources**. Other sources include: smelters or other industries that use lead; non-glossy vinyl mini-blinds; ceramics, lead crystal, and pewter antiques; lead brought home from a parent's workplace; some home and folk remedies; cosmetics; and hobbies (such as stained glass, ammunition loading, fishing sinkers, and soldering).

AT-RISK GROUPS

- Anyone exposed to lead can suffer from lead poisoning. However, there are certain groups that face higher risks from lead poisoning than others. These groups include:
  - Children;
  - Pregnant women; and
  - People working with lead in their jobs.

Who is Most at Risk?

Of the 20 million children under age six, an estimated 890,000 had blood levels at or above the "level of concern," in 1990, according to the Centers for Disease Control and Prevention.

- A child living in poverty is four times more likely to suffer from lead poisoning than a child from a wealthier family.
- An African-American child is four times more likely to suffer from lead poisoning than a white child.
- Nationwide, more than one out of five African-American children living in large central cities suffer from lead poisoning.

The Decline in Blood Lead Levels in the United States, J.L. Pirkle, et al., Journal of the American Medical Association, 1994.

- **Children.** Children are more vulnerable to the health effects of lead poisoning because their bodies and their nervous systems are still developing. Children's bodies also absorb lead faster than adults' bodies do.
  - Children under the age of six are most susceptible. Even low levels of lead can have a great impact on a child's developing brain and nervous system, causing reductions in IQ and attention span, reading and learning disabilities, hyperactivity, and behavioral problems.
  - Statistics show that some young children are in higher risk categories than others. Children who are poor, live in central cities, or belong to racial and ethnic minority groups are at higher risk because:
    - The condition of the unit in which they live is more likely to be in deteriorated physical condition. This leads to higher incidence of lead dust.
    - Poorer nutrition among children in poverty increases the lead absorption rate.
- **Women.** Pregnant women and women of childbearing age face higher risks because of lead's ability to be stored in bones for an extended period of time. Changes that occur in a woman's body during pregnancy may result in

the stored lead being released into her blood. Lead can then be passed from the mother to the fetus.

- Lead poisoning can cause:
  - Miscarriages;
  - Premature births; and
  - Low birth weight.
- Research indicates that prenatal exposure is more likely to result in developmental problems in infancy than postnatal exposure.

- **Workers.** Workers who perform rehabilitation, renovation, and abatement activities have higher risks of lead poisoning, particularly if they work without the proper protection. Workers can also unknowingly carry lead-contaminated dust into their homes on their work clothes, thus exposing their families. Workers at risk include but are not limited to:
  - Painters;
  - Maintenance workers;
  - Renovators and remodelers; and
  - Abatement contractors.

2.3 LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS

- The foremost source of lead in a child's environment is lead-based paint. This section will describe lead-based paint and lead-based paint hazards.

LEAD-BASED PAINT

- Lead was first used in paint in the U.S. prior to the 1800s. It became a popular ingredient for paint because of its durability, pigmentation, and its ability to act as a drying agent. Other important qualities that made it popular for use in homes, particularly exteriors, bathrooms, and kitchens, was its resistance to mildew.

Federal Definition of Lead-Based Paint*

- At least 1 milligrams per centimeters square (mg/cm^2) of lead, or
- At least 0.5 percent (5,000 parts per million lead by dry weight)

* In 1978 the Consumer Product Safety Commission banned the residential use of lead-based paint that contained greater than or equal to 0.06 percent or 600 ppm of lead.

- Through the 1940s, paint contained lead concentrations of up to 80 percent by weight. The use of lead in paint decreased over the years until its ban in 1978. As a result, older units tend to have paint with higher concentrations of lead, more coats or layers of lead-based paint, and larger surface areas covered with lead-based paint.

- Lead-based paint is still available for industrial, military, and marine usage.

Lead's History

Lead occurs naturally in small quantities. However, the use of lead in the United States, which dates back prior to the 1800s, throughout industrialization has created unsafe levels of lead in the environment.

- Virtually all hazardous levels of lead are a result of human use of lead.
- Use of lead has declined significantly since the 1950s, thus reducing the creation of new lead hazards.
- In the United States, the use of lead in residential paint was banned in 1978. The phase-out of leaded gasoline for use in automobiles began in the 1980s and was complete in January 1996.

LEAD-BASED PAINT HAZARDS

A lead-based paint hazard is a condition that causes exposure to lead sufficient to cause adverse human health effects. Title X defines "lead-based paint hazards" as including the following:

- **Deteriorated Lead-Based Paint**. As paint ages or is damaged, it deteriorates and may create hazardous conditions including lead-based paint chips, and lead-contaminated dust and soil (defined below).
- **Friction, Impact, and Chewable Surfaces**. Certain surfaces are subject to damage and, therefore, likely to generate lead-contaminated dust, soil, and paint chips. These include:
  - Friction surfaces, such as stair treads and window sashes, are subject to abrasion or friction.
  - Impact surfaces, such as door frames, are subject to repeated impacts.
  - Chewable surfaces are painted surfaces that contain lead and are available to children to mouth or chew. Surfaces that pose the greatest concern include window sills and door frames.
- **Lead-Contaminated Dust**
  - Lead-contaminated dust can come from lead-based paint that is deteriorated, disturbed, or abraded; or from lead-contaminated soil.
  - This dust is often created by friction between moving parts such as doors or windows, or by impact with surfaces such as floors, steps, and protruding corners.
  - Lead-contaminated dust is not always visible to the naked eye and is difficult to clean up.

Federal Standards for Lead-Contaminated Dust [*40 CFR 745.223*]

Above 40 $\mu g/ft^2$ on floors
Above 250 $\mu g/ft^2$ on window sills
Above 400 $\mu g/ft^2$ for window troughs (trough standards are for clearance only)*

*Until EPA's final rule on lead-based paint hazards goes into effect, HUD's standards of 800$\mu g/ft^2$ for clearance of window troughs will remain in effect.

- **Lead-Contaminated Soil**
  - Lead-contaminated soil is bare soil around residences that has lead concentrations exceeding Federal standards.
  - Deteriorating exterior paint that contains lead and past emissions of lead gasoline are the primary sources of lead in soil. Other sources include leaded paint from bridges and other structures, and industrial sources such as smelter emissions.

Federal Standards for Lead-Contaminated Bare Soil [40 CFR 745.65]
Above 400 µg/g by weight in high-traffic play areas. Above 1,200 µg/g by weight in building perimeter and yard.* *Until EPA's final rule on lead-based paint hazards goes into effect, HUD's standards of 2000 µg/g for risk assessment of other areas of bare soil will remain in effect.

  - Lead-based paint particles can mix with soil that can then be ingested. Lead-contaminated soil can be tracked into a residential unit by people or pets and become dust that is ingested.

2.4 THE SCOPE OF THE PROBLEM

- Forty percent of the U.S. housing stock and more than half (54%) of the homes built before 1978 are believed to contain some lead-based paint.
- The *Comprehensive and Workable Plan for Abatement of Lead-Based Paint in Privately Owned Housing* estimated that 20 million housing units contain lead hazards, as defined in section 2.3 above.

Lead-Based Paint Hazards in Housing

- Approximately 38 million pre-1978 units may contain lead-based paint (although this is often in small amounts);
- An estimated 14 million units contain deteriorating lead-based paint;
- Fifteen million units have dust lead hazards;
- Approximately 400,000 pre-1979 units are economically distressed, in poor condition, and occupied by a child under six years old.

National Survey of Lead and Allergens in Housing, Department of Housing and Urban Development, January, 2001.

HOMES LIKELY TO CONTAIN LEAD-BASED PAINT HAZARDS

- The following types of housing units are more likely to have lead-based paint hazards. In general, the older the housing the greater the amount of lead-based paint.
  - **Older Units**. Lead-based paint used prior to 1950 is likely to contain higher concentrations of lead and older units are more likely to have deteriorated paint surfaces.

- **Units in Poor Condition.** Housing in poor condition due to substantial deferred maintenance is more likely to have deteriorated paint surfaces.
- **Units Renovated or Maintained Unsafely.** Housing maintained or renovated with unsafe work practices (e.g., dry sanding of lead-based paint surfaces) can generate high levels of lead-contaminated dust.
- **Units with Exterior Lead-Contaminated Soil.** In areas with high levels of exterior lead-contaminated soil, lead can be tracked into the units.
- **Common Components with Lead-Based Paint.** Lead-based paint is found more often on exteriors than interiors, and more on trim than on walls and ceilings.

2.5 KEY CONCEPTS IN ADDRESSING LEAD-BASED PAINT

- This section briefly explains two key concepts, lead hazard evaluation and lead hazard reduction.

LEAD HAZARD EVALUATION

- Lead hazard evaluation serves to identify lead-based paint and lead hazards. The regulation defines five types of evaluations — 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. These methods will be described in Chapter 3 (Requirements).
  - They are also described in the List of Key Terms found in Appendix B.
  - A short summary is provided as Attachment 2-A.

LEAD HAZARD REDUCTION

- Lead hazard reduction represents a means to minimize the risks presented by lead-based paint and lead-based paint hazards. This course discusses four methods of lead hazard reduction:
  - Interim controls;
  - Paint stabilization;
  - Standard treatments; and
  - Abatement.

  They will be discussed in detail in Chapter 3 (Requirements). See Attachment 2-A and Appendix B for definitions of these terms.

ATTACHMENT 2-A

"LEAD SPEAK" – A BRIEF GLOSSARY

Lead-Based Paint: 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 Hazards: 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.

Visual Assessment: A visual inspection of interior and exterior surfaces to identify specific conditions that may be lead-based paint hazards. A visual inspection does not identify lead-based paint. The assessment may be performed by a person trained in visual assessment. Training for visual assessment is available on HUD's website at www.hud.gov/offices/lead.

LEAD HAZARD EVALUATION

Paint Testing: Testing of specific surfaces, by XRF (x-ray fluorescence) or lab analysis, to determine the lead content of these surfaces, performed by a certified lead-based paint inspector or certified risk assessor.

Lead-Based Paint Inspection: 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. It is performed by a certified paint inspector or risk assessor.

Risk Assessment: A comprehensive evaluation for lead-based paint hazards that includes paint testing, dust and soil sampling, and a visual evaluation. The risk assessment report identifies lead hazards and appropriate lead hazard reduction methods. A certified risk assessor must conduct the assessment.

Lead Hazard Screen: A limited risk assessment activity that can be performed instead of a risk assessment in units that meet certain criteria (e.g. good condition). The screen must be performed by a certified risk assessor. If the unit fails the lead hazard screen, a full risk assessment must be performed.

Clearance Examination: Clearance is performed after hazard reduction, rehabilitation or maintenance activities to determine if a unit is safe for occupancy. It involves a visual assessment, analysis of dust samples, and preparation of report. The certified risk assessor, paint inspector, or lead sampling technician (called a clearance technician in the HUD regulation) performing clearance must be independent from the entity/individual conducting paint stabilization or hazard reduction.

LEAD HAZARD REDUCTION

Paint Stabilization: An interim control method that stabilizes painted surfaces and addressed the underlying cause of deterioration. Steps include repairing defective surfaces, removing loose paint and applying new paint.

Interim Controls: Set of measures to temporarily control lead-based paint hazards. Interim control methods must be completed by qualified workers using safe work practices. Follow-up monitoring is needed.

Standard Treatments: A complete set of interim control methods that when used together temporarily control all potential lead hazards in a unit. Because they address all conditions, a risk assessment or other evaluation is not needed. Standard treatments must be completed by qualified workers using safe work practices. As with interim controls, follow-up monitoring is needed.

Abatement: Measures to permanently control (i.e., 20 years or more) lead-based paint or lead-based paint hazards. EPA regulations exclude from the definition of abatement "renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but instead are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards." [*40 CFR 745.223*]

LEAD POISONING

Environmental Intervention Blood Lead Level: The level of lead in blood that requires intervention in a child under age six. This is defined as a blood lead level of 20 µg/dL (micrograms per deciliter) of whole blood or above for a single test, or blood lead levels of 15-19 µg/dL in two tests taken at least three months apart.

KEY UNITS OF MEASUREMENT

µg (Microgram): A microgram is 1/1000th of a milligram (or one millionth of a gram). To put this unit into perspective, a penny weighs 2 grams. To get a microgram, you would need to divide the penny into 2 million pieces. A microgram is one of those two million pieces.

ft² (Square foot): One square foot is equal to an area that has a length of one foot (12 inches) and a width of one foot (12 inches).

µg/dL: Micrograms per deciliter used to measure the level of lead in children's blood to establish whether intervention is needed. A deciliter (1/10th of liter) is a little less than half a cup. As noted above, a microgram is the same weight as one penny divided into two million parts.

mg/gram: Micrograms per gram of sample, equivalent to parts per million (ppm) by weight. Used to measure lead in soil.

µg/ft²: Micrograms per square feet is the measurement used to measure levels of lead in dust samples. The clearance report should have the dust sampling results listed in µg/ft² (micrograms per square foot).

mg/cm²: Milligrams per square centimeter. Used to measure lead in paint.

percent: Percent by weight, used usually for lead-based paint (1 percent = 10,000 µg/gram)

ppm: Parts per million by weight, equivalent to µg/gram (10,000 ppm = 1 percent). Used to measure lead in paint and soil.

LEAD-BASED PAINT STANDARDS

Paint – Definition of Lead-Based Paint

Paint or other surface coatings that contain at least:

- 1 milligram per centimeters square (mg/cm²) of lead;
- 0.5 percent lead; or 5,000 parts per million lead by dry weight.

*In 1978 the Consumer Product Safety Commission banned the residential use of lead-based paint that contained greater than or equal to 0.06 percent or 600 ppm of lead.

Dust – Federal Thresholds for Lead-Contamination (Risk Assessment/Clearance)

- Floors — 40 µg/ft²
- Interior window sills — 250 µg/ft²
- Window troughs (Clearance only) — 400 µg/ft²

Soil – Federal Thresholds for Bare Soil Contamination

- Play areas used by children under age 6 — 400 µg/gram
- Other areas, if more than 9ft² in total area of bare soil per property — 2000 µg/gram
- Abatement required by HUD — 5,000 µg/gram

ATTACHMENT 2-B

"LEAD ALERT!" PARENTS MAGAZINE, MARCH 1997

CHAPTER 3

LEAD-BASED PAINT REQUIREMENTS

3.1 INTRODUCTION

- This chapter will help participants understand the requirements of HUD's consolidated lead-based paint regulation, published on September 15, 1999 at 24 CFR 35. This chapter will describe the lead-based paint requirements that apply to programs administered by HUD's Office of Community Planning and Development (CPD). The new regulation affects the following types of housing assistance:
  - Rehabilitation;
  - Tenant-based rental assistance; and
  - Acquisition, leasing, support services, and operations.
- The CPD programs affected by the new regulation are shown in Exhibit 3-1.

EXHIBIT 3-1

HUD PROGRAMS AFFECTED BY THE LEAD-BASED PAINT REGULATION

CPD Programs

- HOME Investment Partnership Program (HOME)
- Community Development Block Grant (CDBG)
- Emergency Shelter Grants (ESG)
- Housing Opportunities for Persons With AIDS (HOPWA)
- Shelter Plus Care (S+C)
- Supportive Housing Program (SHP)
- Youthbuild

Other HUD Programs

- HOPE for Homeownership of Single Family Homes (HOPE 3)
- Homeownership of Multifamily Units (HOPE 3)
- Indian Housing Block Grant Program
- Indian Community Development Block Grant Program
- Interest Reduction Payment Grants (IRP)
- Flexible Subsidy-Capital Improvement Loan Program (CILP)
- Mark-to-Market Program
- Section 8 of the US Housing Act of 1937

- In this chapter and throughout the course, the following terms will be used:

- "Grantee" refers to any entity that is the original recipient of HUD funding, such as States, HOME participating jurisdictions (PJs), CDBG grantees, and nonprofit recipients of supportive housing grants.
  - Grantees are responsible for ensuring compliance with lead-based paint requirements, but they may delegate functions to subrecipients.
- "Subrecipients" refers to public or private nonprofit agencies or authorities selected by the grantee to administer all or a portion of the financial assistance.
- "Recipients" refers to owners and occupants.
  - Owners are responsible for, among other things, documenting and disclosing the presence of lead-based paint and lead based-paint hazards on their property. Under the TBRA-requirements, owners are also responsible for stabilizing deteriorated paint.
  - Occupants are responsible for notifying the grantee or owner of deteriorated paint in their dwellings.

- This chapter provides a summary of the former regulations and a detailed discussion of the changes that took effect under the new regulation. The organization of the chapter is shown in Exhibit 3-2.

EXHIBIT 3-2

ORGANIZATION OF CHAPTER 3

3.1 Introduction

Part 1: Overview of Lead-Based Paint Requirements

3.2 Summary of Former Regulations
3.3 Introduction to the New Lead-Based Paint Regulation

Part 2: General Requirements – New Lead-Based Paint Regulation

3.4 Key Changes Under the New Regulations
3.5 Types of Requirements
3.6 Notification
3.7 Lead Hazard Evaluation
3.8 Lead Hazard Reduction: Methods
3.9 Lead Hazard Reduction: Safe Work Practices
3.10 Lead Hazard Reduction: Clearance
3.11 Four Approaches to Implementing Lead Hazard Evaluation and Reduction
3.12 Ongoing Maintenance
3.13 Response to Children with Environmental Intervention Blood Lead Levels
3.14 Property Exemptions Under the New Regulation
3.15 Standards for Prior Lead Hazard Evaluation and Reduction Work
3.16 Compliance with Other Regulations
3.17 Recordkeeping

Part 3: Program Activity Requirements – New Lead-Based Paint Regulation

3.18 Overview of Regulations by Activity
3.19 Rehabilitation Requirements
3.20 Tenant-Based Rental Assistance Requirements
3.21 Acquisition, Leasing, Support Services, and Operations Requirements

Attachment 3-A – Summary of Lead-Based Paint Requirements by Activity
Attachment 3-B – Four Approaches to Implementing Lead Hazard Evaluation and Reduction
Attachment 3-C – Summary of Major Regulation Changes by Activity
Attachment 3-D – Special Requirements for Insular Areas [24 CDR 35.940]
Attachment 3-E – Legislative History of Lead-Based Paint
Attachment 3-F – Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X): Summary of Requirements, Responsible Agents, and Status of Requirements
Attachment 3-G – Addressing Lead-Based Paint in Local Housing Programs – Key Lessons
Attachment 3-H – Researching State Requirements
Attachment 3-I – HUD/EPA Letter About Abatement

PART 1: OVERVIEW OF LEAD-BASED PAINT REQUIREMENTS

3.2 SUMMARY OF FORMER REGULATIONS [24 CFR 35, 24 CFR 570.608, 24 CFR 982.401]

- Before discussing the new lead-based paint regulation, it is helpful to summarize the former regulation. Later sections of this chapter will discuss the new regulation and identify the key differences. This section reviews the lead-based paint requirements under former regulations. The major types of requirements were as follows:
  - Notification
  - Identification of defective paint surfaces
  - Treatment of defective paint surfaces
  - Response to EBL children
  - Other lead-based paint requirements
    - Occupant protection
    - Worker protection
    - Work area containment
    - Document maintenance
- Exhibit 3-3 on the next page describes the requirements in more detail.
- Former CPD lead-based paint regulations required that grantees ensure that occupants, homeowners, and homebuyers were notified of the hazards of lead-based paint and that defective paint was identified and treated. If a child with an elevated blood lead level (EBL) was identified, additional steps were required to check for lead-based paint and treat it.
- All State and local housing programs supported with funds from CPD were required to meet these basic requirements, but additional requirements varied depending on the program. For example, the lead-based paint requirements that applied to the CDBG program differed in specific ways from those of other CPD programs.

EXHIBIT 3-3

FORMER LEAD-BASED PAINT REQUIREMENTS

NOTIFICATION

- **Lead Hazard Information Pamphlet**. Grantees were, and still are, required to ensure that all purchasers, occupants, and owner-occupants of pre-1978 housing receive the brochure "Protect Your Family from Lead in Your Home" issued by EPA, HUD, and the Consumer Product Safety Commission (CPSC).
  - **Note:** Grantees are not required to obtain evidence that the brochure was distributed, but HUD strongly recommends that they obtain written acknowledgement from each household receiving a brochure.
- **Disclosure**. Under the HUD-EPA lead-based paint disclosure rule, which implements Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, all property owners (both subsidized and market rate) were required to, and must still, disclose prior to sale or lease, the presence of known lead-based paint or lead-based paint hazards. In addition, they must provide prospective homebuyers/ occupants with any existing documentation on known lead-based paint or lead-based paint hazards in pre-1978 dwelling units.

IDENTIFICATION OF DEFECTIVE PAINT SURFACES

- Grantees were required to ensure that visual inspections for defective paint surfaces (interior and exterior) were conducted in properties constructed prior to 1978.
  - All interior and exterior surfaces were required to be examined.
  - This visual inspection checked for deteriorated, cracked, peeling, or chipped paint.
  - **Note:** A visual inspection differs from a lead-based paint inspection. A lead paint inspection is a surface-by-surface investigation of painted surfaces (using a tool such as an XRF analyzer) to determine the presence of lead-based paint and a written report of the results.
- The specific units that were to be examined varied based on the program used.
  - **CDBG.** CDBG program regulations required inspection of units built before 1978 that were proposed for rehabilitation assistance and were occupied by families with children under age seven.
  - **HOME.** Under the HOME program, all assisted and non-assisted units in HOME-funded, pre-1978 multifamily properties received a visual inspection.
  - **Other Programs.** All other CPD program regulations required a visual inspection of all assisted units.
- Grantees were required to ensure that owners were notified of defective paint surfaces discovered during the inspection.

TREATMENT OF DEFECTIVE PAINT SURFACES

- Treatment of defective paint surfaces must have been performed prior to final inspection and approval by HUD of the renovation, rehabilitation, conversion, or reoccupancy.
- Treatment of defective paint surfaces involved either covering defective paint surfaces, such as with a layer of wallboard or other permanently attached wall covering, or by removing defective paint surfaces.

RESPONSE TO EBL CHILDREN

- If a child with an elevated blood lead level (EBL) under the age of six (seven for CDBG) was to reside in a unit, the grantee was required to test chewable surfaces for lead-based paint and treat surfaces found to contain lead-based paint.
  - Testing must have been performed by a state or local health or housing agency, an inspector certified or regulated by a state or local health agency, or an organization recognized by HUD.
  - Former regulations did not require that a specific testing method be used, but it strongly recommended that grantees have their inspectors follow the testing methods outlined in the 1995 HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (HUD Guidelines).
- Chewable surfaces that tested positive for lead-based paint must have been treated in the same manner as defective paint.

OTHER LEAD-BASED PAINT REQUIREMENTS

- CPD programs also required steps to protect occupants, protect workers, contain the work area, and maintain documents, however the specificity of the requirements differed across programs. Generally, the requirements were based on the practices outlined in the HUD Guidelines.

3.3 INTRODUCTION TO THE NEW LEAD-BASED PAINT REGULATION

TITLE X (TITLE TEN) AND THE NEW REGULATION

- **Statute**. The Residential Lead-Based Paint Hazard Reduction Act of 1992, also known as Title X of the Housing and Community Development Act of 1992, amended the Lead-Based Paint Poisoning Prevention Act of 1971 (Lead Act), which established the former Federal lead-based paint requirements. The new lead-based paint regulation implements sections 1012 and 1013 of Title X. For more information on the legislative history of lead-based paint and Title X, see Attachments 3-E and 3-F.

- **New Regulation**. The new lead-based paint regulation takes a new approach to the problem of lead-based paint hazards.

  - It replaces the general language of the previous lead-based paint regulations with specific requirements. It emphasizes the evaluation of dwellings, the reduction of lead-based paint hazards followed by a clearance examination, and the notification of occupants.

  - The new regulation also uses current knowledge about the causes of lead-based paint hazards and current technology that more accurately identifies the existence, nature, severity, and location of lead-based paint hazards.

- The new regulation makes important changes in Federal lead-based paint requirements for CPD programs.

  - It modernizes the terminology used, the work practices deemed acceptable, and the activities required. It also expands requirements to protect occupants and workers from lead-based paint hazards until lead hazard reduction work is completed.

  - Many of these changes involve work that is quite similar to activities grantees already perform.

  - A number of grantees have already successfully implemented actions similar to these requirements.

EFFECTIVE DATE [*24 CFR 35.105*]

- The new regulation was published on September 15, 1999. Most of its requirements took effect on September 15, 2000. The effective dates for programs that provide funding through a national competitive awards process may differ from this date (e.g. HOPWA).

KEY FACTORS

- Requirements under the new regulation differ depending on the type of housing assistance, amount of Federal funding, and the duration of the Federal government's relationship with the property.

- **Type of Housing Assistance**. The new regulation organizes the requirements by type of housing assistance, rather than by specific programs as done under former regulations. This change eliminates conflicts when funds from more than one CPD program are used simultaneously. The three types of assistance addressed in this course include:
  - Rehabilitation;
  - Tenant-based rental assistance; and
  - Acquisition, leasing, support services, and operations.
- **Amount of Federal Funding**. In the case of rehabilitation, the new lead-based paint regulation bases requirements on the amount of Federal funding. For example, because rehabilitation may create or exacerbate lead-based paint hazards, more extensive rehabilitation projects using larger amounts of Federal money require more intensive lead-based paint activities than smaller rehabilitation projects with fewer Federal funds.
- **Duration of the Relationship with the Recipient**. The new regulation distinguishes activities that have an ongoing relationship with HUD and those that do not. When Federal involvement is limited to a one-time payment of program funds, the new lead-based paint regulation requires protections that are performed only at the time the assistance is provided.

FOUR APPROACHES TO ADDRESS LEAD-BASED PAINT

- The preamble to the regulation describes several "approaches" (or strategies) that HUD used in structuring the requirements in the regulation. In some situations, HUD requires that grantees conduct their work in a manner that prevents more lead-based paint hazards from being created. In other situations, HUD wants grantees to create environments that are free of lead-based paint hazards.
- The requirements for CPD programs follow four specific approaches:
  - **Approach 1: Do No Harm.** This approach is intended to allow low-cost repairs and other work to proceed without costly lead-based paint requirements, yet, at the same time, to prevent lead-based paint hazards from being created while that work is being done. It does not address the condition of the whole dwelling unit or property.
  - **Approach 2: Identify and Stabilize Deteriorated Paint.** This approach provides assurance that lead-based paint has been stabilized. However, it does not prevent the reappearance of deteriorated paint. Thus, ongoing maintenance is required when there is an ongoing relationship with HUD.
  - **Approach 3: Identify and Control Lead-Based Paint Hazards.** This approach provides assurance that lead-based paint hazards have been eliminated. Ongoing maintenance is still required when there is an ongoing relationship with HUD because interim controls are not permanent.

- **Approach 4: Identify and Abate Lead-Based Paint Hazards.** This approach is used when Federal funds are used to make a substantial investment in the property. Long-term hazard control measures (abatement) are implemented to help ensure that the unit remains lead-safe.

PART 2: GENERAL REQUIREMENTS UNDER THE NEW LEAD-BASED PAINT REGULATION

3.4 KEY CHANGES UNDER THE NEW REGULATION

- Lead-based paint requirements under the former and new regulations are different, but they are not sweeping changes. Grantees will be familiar with many elements of the new regulation. For example, grantees already provide brochures, disclose lead, identify and treat paint, and respond to lead-poisoned children.

- Exhibit 3-4, on the following page, highlights the major changes in requirements between former regulations and the new regulation. New requirements have been added under the new regulation, but requirements have also been modified to more appropriately address specific situations.

- **Note**: The requirements for insular areas under the new regulation differ slightly from the requirements for all other locations. Attachment 3-D describes the requirements for insular areas.

3.5 TYPES OF REQUIREMENTS

- The lead-based paint requirements established by the new regulation fall into the five major categories shown in Exhibit 3-4.

  - **Notification.** Grantees must meet four notification requirements: disclosure of lead-based paint and lead-based paint hazards prior to selling or leasing a residence; provision of EPA/HUD/Consumer Product Safety Commission (CPSC) lead hazard information pamphlet, or an EPA-approved equivalent; provision of a notice of presumption/evaluation results; and the provision of a notice of reduction activity results. See Section 3.6 for further discussion on these requirements.

  - **Lead Hazard Evaluation.** The evaluation activity required depends on the type of housing assistance and the amount of Federal funding. Lead hazard evaluation methods described in this course include paint testing and risk assessments. In some cases, only a visual assessment is required. A visual assessment is not considered a lead hazard evaluation method.

EXHIBIT 3-4

A COMPARISON OF MAJOR CHANGES UNDER THE NEW LEAD-BASED PAINT REGULATION

Former Regulations	New Regulation
Notification. Distribute the "Protect Your Family" lead-based paint hazard brochure to all purchasers, occupants, and owner-occupants of pre-1978 housing. Property owners must disclose the presence of lead-based paint and provide prospective buyers/occupants with any existing documentation on known lead-based paint hazards in the dwelling unit, in accordance with Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992.	**Notification**. The former requirements regarding disclosure and the lead-based paint hazard brochure continue to apply. The new regulation also requires written notice to occupants informing them of the results of lead hazard evaluation or reduction activities.
Identification of Defective Paint. Conduct a visual inspection for defective paint surfaces.	**Lead Hazard Evaluation.** Conduct a visual assessment, paint testing, or risk assessment, depending on the activity. May choose to presume the presence of lead-based paint and/or lead hazards.
Treatment of Defective Paint. Cover surfaces with wallboard or other permanent wall covering, or scrape the surface.	**Lead Hazard Reduction**. Conduct lead hazard reduction activities including paint stabilization, interim controls, standard treatments, or abatement depending on the requirements for the activity type. Safe work practices must be used when performing lead hazard reduction or rehabilitation work that disturbs painted surfaces known or assumed to contain lead-based paint.* Conduct clearance to confirm that no lead-based paint hazards remain when work is complete.* Conduct ongoing maintenance in some situations.
Ongoing Maintenance. No ongoing maintenance requirements.	**Ongoing Maintenance**. Ongoing maintenance is required for some program activities that have an ongoing relationship with the Federal government.
EBL Children. EBL requirements apply to all programs. If an EBL child under age six (seven for CDBG) will reside in a unit, test chewable surfaces and treat by: (1) permanently covering surfaces; or (2) removing the paint surface.	**Child with Environmental Intervention Blood Lead Level**. Tenant-based rental assistance activities require a risk assessment and interim controls or abatement if a child with an environmental intervention blood lead level is identified. Grantees must communicate with state and local health agencies to provide and receive addresses of children with environmental intervention blood lead levels. They must compare information on environmental intervention blood lead level cases with addresses of families receiving Federal assistance. Rehabilitation and acquisition, leasing, support service and operations activities have no requirements for children with environmental intervention blood lead levels.

***** *Safe work practices and clearance are not required if the amount of paint being disturbed is below the de minimis level defined in the rule at 24 CFR 35.1350(d). See Section 3.9 for the definition of de minimis.*

- **Lead Hazard Reduction.** The reduction activity required depends on the type of housing assistance and the amount of Federal funding. Reduction methods described in this course include paint stabilization, interim controls, standard treatments, and abatement.
- **Ongoing Maintenance.** Ongoing maintenance depends on the grantee's relationship with the Federal government. Ongoing maintenance includes periodic visual assessments to determine if lead-based paint hazards have reappeared.
- **Response to Children with Environmental Intervention Blood Lead Levels (EIBLL).** When a child with an environmental intervention blood lead level is identified in some types of properties, the new regulation prescribes certain activities.

❑ Exhibit 3-5 provides an overview of the new lead-based paint requirements. This "summary of required activities" provides the structure this student manual uses to explain the new requirements in more detail.

EXHIBIT 3-5

SUMMARY OF REQUIRED ACTIVITIES TO ADDRESS LEAD-BASED PAINT

Category	Required Activities
Notification *(See Section 3.6)*	All of the following apply: • Disclosure (in compliance with Disclosure Rule) • Pamphlet • Notice of Lead Hazard Evaluation or Presumption • Notice of Lead Hazard Reduction Activity
Lead Hazard Evaluation *(See Sections 3.7 and 3.11)*	One or more of the following may apply: • Visual Assessment* • Paint Testing • Risk Assessment (or Lead Hazard Screen)
Lead Hazard Reduction *(See Sections 3.8-3.11)*	One or more of the following may apply: • Paint Stabilization • Interim Controls (or Standard Treatments) • Abatement The following always apply: • Safe Work Practices** • Clearance**
Ongoing Maintenance *(See Section 3.12)*	This requirement may apply. • Inspect and maintain lead hazard reduction work.
Response to Children with Environmental Intervention Blood Lead Level (EIBLL) *(See Section 3.13)*	These requirements may apply. If they do, all of the following apply: • Sharing and Comparing Information • Risk Assessment • Interim Controls or Abatement • Notices and Disclosure

* A visual assessment is not considered a form of evaluation in the regulation. Therefore, there is no requirement for a Notice of Lead Hazard Evaluation associated with this procedure.

** Safe work practices and clearance are not required if the amount of paint being disturbed is below the *de minimis* level defined in the rule at 24 CFR 35.1350(d). See Section 3.9 for the definition of *de minimis*.

3.6 NOTIFICATION

- Grantees must meet four notification requirements:
  - Disclosure of lead-based paint and lead-based paint hazards (in compliance with the Disclosure Rule);
  - Distribution of a lead hazard information pamphlet;
  - Notices of Lead Hazard Evaluation or Presumption; and
  - Notice of Lead Hazard Reduction Activity.
- **Disclosure. [*24 CFR 35 Subpart A*] [See also Appendix D in this student manual.]** The disclosure regulations, published in 1996, are not affected by the new regulation. Prior to leasing or selling a dwelling unit, the lessor/seller must provide to the lessee/buyer any available information or knowledge regarding the presence of lead-based paint and lead-based paint hazards and a copy of the lead hazard information pamphlet (described below). Grantees should ensure that property owners provide purchasers and lessees with this information. Appendix D contains an example of a disclosure form that, when signed by the property owner and the lessee/buyer, satisfies the requirements of the Disclosure Rule.
  - Before completing a transaction, sellers and lessors of pre-1978 housing must disclose all known information about the presence of lead-based paint or lead-based paint hazards and provide purchasers and lessees with any available record or reports pertaining to the presence of lead-based paint or lead-based paint hazards.
  - In the contract or lease, sellers and lessors of pre-1978 housing must include disclosure and acknowledgement language and a warning statement about the dangers of lead-based paint.
  - Sellers must allow purchasers 10 days to inspect the dwelling for lead-based paint or lead-based paint hazards.
  - **Note:** The signature on the disclosure form is required to acknowledge receipt of the lead hazard information pamphlet.
- **Lead Hazard Information Pamphlet. [*24 CFR 35.130*] [See also Appendix C in this student manual.]** As under the former regulation, grantees must provide residents and purchasers of a residential property the EPA/HUD/Consumer Product Safety Commission (CPSC) lead hazard information pamphlet, or an EPA-approved equivalent. EPA, HUD, and CPSC developed this pamphlet to inform the public of residential lead hazards. Grantees are not required to keep a record of receipts, but they are encouraged to do so.
  - **Exception.** It is not necessary to provide the pamphlet if it has already been provided in accordance with the disclosure requirements (described above) or the EPA lead-based paint pre-renovation education rule (Lead PRE Rule) *[24 CFR 745.80]*. The Lead PRE-Rule, which became effective in June 1999, requires that persons

performing renovation for compensation on most pre-1978 housing provide the same pamphlet, *Protect Your Family From Lead in Your Home* or an EPA-approved equivalent, to owners and occupants before starting any work that disturbs more than 2 ft^2 or paint in any room.

- **Note:** The Disclosure Rule and Lead PRE Rule require written acknowledge of receipt of the lead hazard information pamphlet.

- **Notice of Lead Hazard Evaluation or Presumption (24 CFR 35.125)**. Under the new regulation, a grantee must provide or post a notice no later than 15 days after a lead hazard evaluation report has been received and lead-based paint or lead-based paint hazards found. A posted notice must be placed in a public area, such as the mailroom in an apartment building, where residents can read the results of the evaluation. A notice of presumption is required if the grantee chooses the option of presuming that lead-based paint exists. Exhibit 3-6 lists the requirements of each notice. See Appendix E for an example.

  - **Note:** A Notice of Evaluation or Presumption is not required if only a visual assessment is conducted. A visual assessment is not considered a method of lead hazard evaluation under the regulation.

- **Notice of Lead Hazard Reduction Activity (24 CFR 35.125)**. Under the new regulation, a grantee must provide or post a notice of lead hazard reduction activities no later than 15 days after lead hazard reduction activities have been completed. The notice must contain the clearance results. A posted notice must be placed in a public area, such as the mailroom in an apartment building, where residents can read the results. Exhibit 3-6 lists the requirements for notices of lead hazard reduction activity. See Appendix E for an example.

EXHIBIT 3-6

REQUIREMENTS REGARDING NOTICE OF LEAD HAZARD EVALUATION/PRESUMPTION AND NOTICE OF LEAD HAZARD REDUCTION ACTIVITY

- **Notice of Lead Hazard Evaluation**. The notice must include:
  - The date of the notice;
  - A summary of the nature and scope of the evaluation (or presumption);
  - A contact name, address, and phone number for more information;
  - A summary of the results of the evaluation; and
  - A contact name, address, and phone number to obtain the actual report (may be the same as the first contact).
- **Notice of Lead Hazard Presumption.** If lead-based paint is presumed, the notice needs only to include the following three items:
  - The date of the notice;
  - A summary of the nature and scope of the presumption; and
  - A contact name, address, and phone number for more information.
- **Notice of Lead Hazard Reduction Activity**. The notice must include:
  - A summary of the nature, scope, and results of the hazard reduction activities;
  - Clearance results;
  - A contact name, address, and phone number for more information; and
  - Available information on the location of remaining lead-based paint on a surface-by-surface basis.
- The **Notices of Lead Hazard Evaluation and Reduction Activity** must be:
  - Updated if additional evaluations or hazard reductions are conducted;
  - In a readable size and type;
  - Provided upon request in a format readable for persons with disabilities;
  - Provided in the occupant's primary language or the language of their contract or lease; and
  - Distributed either by posting in a central location or by delivering to each affected unit.

3.7 LEAD HAZARD EVALUATION

- Lead hazard evaluation methods involve an examination of a dwelling to check for existing or potential lead-based paint hazards.
- Lead hazard evaluation methods discussed in this course include paint testing, and risk assessment. Also described here, for ease of presentation, are visual assessments. HUD does not consider a visual assessment to be a method of lead hazard evaluation because it does not include any testing form the presence of lead. These activities are further described below in Exhibit 3-7.

- **Visual Assessment**.* A visual assessment for deteriorated paint consists of a visual search for cracking, scaling, peeling, or chipping paint. (A visual assessment does not provide any information about whether or not there is lead-based paint.) HUD recommends that visual assessments also include a search for visible dust and debris, including paint chips.
- **Paint Testing**. Paint testing, as this term is used in the regulation, entails testing selected painted surfaces to determine if they contain lead-based paint using methods such as an XRF analyzer or laboratory analysis.
  [**Note**: Paint testing differs from a lead-based paint inspection, which is a surface-by-surface investigation to determine the presence of lead-based paint. Typically the XRF analyzer is used for an inspection. Because an inspection evaluates all painted surfaces, it is more comprehensive than paint testing.]
- **Risk Assessment**. A risk assessment is a comprehensive investigation of a dwelling to identify lead-based paint hazards. It includes paint testing, dust and soil sampling, and a visual evaluation. Risk assessment results are summarized in a written report with recommendations for actions.
- **Lead Hazard Screen**. A lead hazard screen is similar to a risk assessment. The sampling is less extensive, but the requirements are more stringent. If the screen fails, a full risk assessment must be conducted.

* A visual assessment is not considered a method of lead hazard evaluation in the regulation. Therefore, there is no requirement for a Notice of Lead Hazard Evaluation associated with this procedure.

- **For Technical Information** about these methods, consult:
  - HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing;
  - Your state or local health department; and
  - National Lead Information Center 800-424-LEAD (800-424-5323).
- Nothing precludes the grantee from conducting additional lead hazard evaluation measures beyond the minimum established for each activity.

QUALIFICATIONS TO PERFORM LEAD HAZARD EVALUATION

- **Visual Assessments**. Visual assessments must be conducted by people trained to identify deteriorated paint. (HUD has a one-hour course on its website, www.hud.gov/offices/lead.)
- **Paint Testing**. Paint testing must be conducted by certified paint inspectors or risk assessors.
- **Risk Assessments and Lead Hazard Screens**. Risk assessments and lead hazard screens must be conducted by risk assessors certified under a State program authorized by EPA, or a program conducted by EPA.

OPTIONS FOR IMPLEMENTING THE NEW LEAD HAZARD EVALUATION REQUIREMENTS

- The new regulation provides options for implementing lead hazard evaluation requirements to allow grantees the flexibility to implement the most cost-effective method. These options are discussed further in each of the program activity chapters (Chapters 4 through 7).
- **Paint Testing. [*24 CFR 35.120(d)*]**. When paint stabilization or interim controls are required, the designated party may conduct paint testing on all surfaces with non-intact paint. If there is no lead-based paint present, lead hazard reduction activities are not required. If a surface contains lead-based paint, the specified treatment must be conducted.
- **Lead Hazard Screen [*24 CFR 35.120(c) and 35.1320(b)*]**. When a risk assessment is required to identify lead-based paint hazards and a building is in good condition, a lead hazard screen may be used to determine whether a complete risk assessment is required. A lead hazard screen requires fewer samples than a risk assessment but uses more stringent evaluation criteria. If the results of the screen indicate that lead-based paint hazards are or may be present, a full risk assessment must then be conducted.

  Note: If the unit is in poor condition, the screen may be used but it is not recommended and generally will not be cost effective, especially in pre-1960 housing.
- **Presumption of Lead-Based Paint and/or Lead-Based Paint Hazards. [24 CFR 35.120(a)]**. An alternative to performing lead hazard evaluation activities is to presume that lead-based paint and/or lead based paint hazards are present. In this situation, a grantee must conduct one of the following lead hazard reduction methods that are further discussed in the next section, Section 3.8:
  - If interim controls are required, conduct standard treatments in lieu of interim controls on all applicable surfaces, including bare soil, to control lead-based paint hazards that may be present; or
  - If abatement is required, abate all applicable surfaces, including bare soil, to control lead-based paint hazards that may be present.

3.8 LEAD HAZARD REDUCTION: METHODS

- Lead hazard reduction methods refer to specific types of treatments to control lead-based paint hazards.
- Under the new regulation, there is a requirement for lead hazard reduction for every activity. Lead hazard reduction methods include paint stabilization, interim controls, standard treatments, and abatement. These methods are further described below in Exhibit 3-8.
- Nothing precludes the grantee from conducting additional lead hazard reduction measures beyond the minimum established for each activity.
- For **Technical Information** about these methods, consult:
  - HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.
  - Your state or local health department.
  - National Lead Information Center 800-424-LEAD (800-424-5323).
- **Note**: When abatement is required on a property listed or eligible for listing in the National Register of Historic Places, the grantee may instead conduct interim controls if such action is requested by the State Historic Preservation Office.

- **Paint Stabilization**. Paint stabilization reduces exposure to deteriorated paint on exterior and interior surfaces through repairs, safe paint removal, and repainting.
- **Interim Controls**. Interim controls temporarily reduce exposure to lead-based paint hazards through repairs, painting, maintenance, special cleaning, occupant protection measures, clearance, and education programs. Interim control methods require safe practices and include:
  - Paint stabilization. All deteriorated lead-based paint on exterior and interior surfaces must be stabilized through repairs, safe paint removal, and repainting.
  - Treatment for friction and impact surfaces. If abraded lead-based paint is found and associated dust lead levels exceed or are presumed to exceed acceptable levels, the conditions creating friction or impact with surfaces with lead-based paint such as those that rub, bind, or crush must be corrected. Examples of this work include rehanging binding doors, installing door stops, or reworking windows.
  - Treatment for chewable surfaces. If a child under age six has chewed surfaces known or presumed to contain lead-based paint, these surfaces must be enclosed or coated so they are impenetrable.
  - Lead-contaminated dust control. All horizontal surfaces that are rough, pitted, or porous such as bare floors, stairs, window sills, and window troughs must be covered with a smooth, cleanable covering or coating such as metal coil stock, plastic, polyurethane, or linoleum. Carpeting must be vacuumed or rugs must be removed and vacuumed on both sides. Vacuuming must be done using HEPA vacuums, or equivalent.
  - Lead-contaminated soil control. If bare soil is lead-contaminated, interim controls that may be used include impermanent surface coverings such as gravel, bark, and sod as well as land use controls such as fencing, landscaping, and warning signs.
- **Standard Treatments [*24 CFR 35.120(a) and 35.1335*]**. Standard treatments may be conducted in lieu of a risk assessment and interim controls. Standard treatments must be performed on all applicable surfaces, including bare soil, to control lead-based paint hazards that may be present. All standard treatment methods must follow the same safe work practice and clearance requirements that apply to interim control activities. Standard treatments consist of a full set of treatments that include:
  - Paint Stabilization. All deteriorated paint on exterior and interior surfaces must be stabilized through repairs, safe paint removal, and repainting or abatement.
  - Creating Smooth and Cleanable Horizontal Surfaces. All horizontal surfaces that are rough, pitted, or porous such as bare floors, stairs, window sills, and window troughs must be covered with a smooth, cleanable covering or coating such as metal coil stock, plastic, polyurethane, or linoleum.
  - Correcting Dust-Generating Conditions. All conditions that generate dust from paint such as those that rub, bind, or crush surfaces with paint must be corrected. Examples include rehanging doors, installing door stops, or reworking windows.
  - Addressing Bare Residential Soil. Soil is addressed using interim control methods including impermanent surface coverings such as gravel, bark, and sod as well as land use controls such as fencing, landscaping, and warning signs.
- **Abatement**. Abatement permanently removes or controls lead-based paint and lead-based paint hazards by removing lead-based paint and its dust, or permanently encapsulating or enclosing the lead-based paint, replacing components with lead-based paint, and removing or permanently covering lead-contaminated soil. Encapsulation and enclosure require ongoing maintenance to check their effectiveness. "Permanent" is defined as a 20 year expected effective life. For a letter that clarifies HUD and EPA's policy on abatement please see Attachment 3-I.-

QUALIFICATIONS TO PERFORM LEAD HAZARD REDUCTION

- **Paint Stabilization, Interim Controls, and Standard Treatments**. A person performing paint stabilization, interim controls, or standard treatments must be trained in accordance with the OSHA Hazard Communication requirements (29 CFR 1926.59) and either be supervised by an individual certified as a lead-based paint abatement supervisor, or must have successfully completed one of the following courses.
  - A lead-based paint abatement supervisor course accredited in accordance with *40 CFR 745.225*;
  - A lead-based paint abatement worker course accredited in accordance with *40 CFR 745.225*;
  - The Lead-Based Paint Maintenance Training Program – "Work Smart, Work Wet, and Work Clean to Work Lead Safe," prepared by the National Environmental Training Association for EPA and HUD;
  - The "Lead-Based Paint Training Program for Remodelers and Renovators" (available on HUD's website at www.hud.gov/offices/lead); or
  - An equivalent course approved by HUD with consultation by EPA. (The criteria for approval and a full list of approved courses are on the HUD website, www.hud.gov/offices/lead.)
- No training is necessary to perform work that involves surfaces below the *de minimis* levels defined in Section 3.9.
- **Abatement**. Abatement must be conducted by certified abatement workers who successfully completed a lead-based paint abatement worker course accredited by EPA. These workers must be supervised by a lead-based paint abatement supervisor certified under a State program authorized by EPA, or by EPA in a State without an authorized program.

OPTIONS FOR IMPLEMENTING THE NEW LEAD HAZARD REDUCTION REQUIREMENTS

- The new regulation provides options for implementing lead hazard reduction requirements to allow grantees the flexibility to implement the most cost-effective method. These options are discussed further in Chapter 4 (Rehabilitation).
- **Standard Treatments [*24 CFR 35.120(a) and 35.1335*]**. When an activity requires a risk assessment followed by interim controls, the designated party may opt to simply presume that lead-based paint hazards exist rather than incurring the cost of the risk assessment. In such a case, standard treatments will be conducted in lieu of interim controls on all applicable surfaces, including soil, to control lead-based paint hazards that may be present. All standard treatment methods must follow the same safe work

practice and clearance requirements that apply to interim control activities. Standard treatment methods are described in Exhibit 3-8.

- **Abatement [*24 CFR 35.120 (b)*].** When a risk assessment and abatement are required, the designated party again may presume that lead-based paint and/or lead-based paint hazards exist rather than conducting the evaluation. In such a case, abatement must then be conducted on all applicable surfaces, including bare soil, to permanently control lead-based paint hazards that may be present. Applicable paint surfaces include any surface to be disturbed, as well as friction, impact, chewable, and deteriorated paint surfaces.

3.9 LEAD HAZARD REDUCTION: SAFE WORK PRACTICES [*24 CFR 35.1350*]

- This section describes the safe work practice requirements established by the new regulation. It covers work practices that must be conducted during lead hazard reduction work that involves surfaces with presumed or identified lead-based paint.
- It covers:
  - How to protect occupants during such work;
  - How to prepare the worksite;
  - Work methods that are prohibited;
  - How to clean up the worksite; and
  - When exemptions are made.

SAFE WORK PRACTICE EXEMPTIONS [*24 CFR 35.1350(d)*]

- Safe work practices are not required:
  - If paint being disturbed has been tested and found not to be lead-based paint; or
  - If maintenance or lead hazard reduction activities disturb a total surface area that is less than the following *de minimis* standards:
    - 20 ft.^{2} (2 m^2) on exterior surfaces;
    - 2 ft.^{2} (0.2 m^2) in any one interior room or space; or
    - 10 percent of the total surface area on an interior or exterior type of component with a small surface area like window sills, baseboards, and trim.

OCCUPANT PROTECTION [*24 CFR 35.1345*]

- Appropriate actions must be taken to protect occupants from lead-based paint hazards associated with lead hazard reduction, paint stabilization, maintenance, or rehabilitation activities.

- Occupants may not enter the worksite during lead hazard reduction activities. Reentry is permitted only after lead hazard reduction, paint stabilization, maintenance, or rehabilitation activities are completed and the dwelling has passed a clearance examination.
- Occupants of the unit must be temporarily relocated to a suitable unit that is decent, safe, sanitary, and free of lead-based paint hazards during lead hazard reduction activities. Relocation must be done before lead hazard reduction activities begin. (See exceptions in Exhibit 3-9.)
- Property owners must protect occupants' belongings from lead contamination during lead hazard reduction activities by relocating or covering and sealing them and ensure that the worksite is secured against entry during non-working hours until the unit passes a clearance examination.

❑ Under certain conditions, occupant relocation is not required. These conditions are described in Exhibit 3-9.

EXHIBIT 3-9

CIRCUMSTANCES WHEN OCCUPANT RELOCATION IS NOT REQUIRED

- ❑ Treatment will not disturb lead-based paint, dust lead hazards, or soil lead hazards.
- ❑ Treatment of the interior will be completed within one period in eight daytime hours, the site will be contained, and the work will not create other safety, health, or environmental hazards.
- ❑ Only the building's exterior is treated; the windows, doors, ventilation intakes, and other openings near the worksite are sealed during hazard reduction activities and cleaned afterward; and a lead-free entry is provided.
- ❑ Treatment will be completed within five calendar days; the work area is sealed; at the end of each day, the area within 10 feet of the containment area is cleared of debris and cleaned; at the end of each day, occupants have safe access to sleeping areas, bathroom, and kitchen facilities; and treatment does not create other safety, health, or environmental hazards.
- ❑ HUD has advised that the 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. (See "Interpretive Guidance—The HUD Regulation on Controlling Lead-Based Paint Hazards in Housing Receiving Federal Assistance and Federally Owned Housing Being Sold," 9/21/00 edition.)

WORKSITE PREPARATION AND CONTAINMENT [*24 CFR 35.1345*]

❑ The worksite must be prepared to prevent the release of leaded dust and debris.

- Workers must use practices that minimize the spread of leaded dust, paint chips, soil, and debris.

- Warning signs are required at each entry to a room where lead hazard reduction activities are conducted when occupants are present; at the main and secondary entryways to a building from which occupants have been relocated; and at exterior worksites at a size and type readable from 20 feet (six meters) from the edge of the worksite. Signs need to be in the occupants' primary language to the extent practicable.

PROHIBITED METHODS [24 CFR 35.140]

- The methods shown in Exhibit 3-10 may not be used at any time to remove paint that is or may be lead-based paint.

EXHIBIT 3-10

PROHIBITED METHODS OF PAINT REMOVAL [*24 CFR 35.140]*

- Open flame burning or torching.
- Machine sanding or grinding without a high-efficiency particulate air (HEPA) local exhaust control.
- Abrasive blasting or sandblasting without HEPA local exhaust control.
- Heat guns operating above 1,100 degrees Fahrenheit, or those that that operate high enough to char the paint.
- Dry sanding or dry scraping.

  Note: Four exceptions to this prohibition are:

  (1) dry scraping in conjunction with heat guns;

  (2) dry scraping within 1.0 ft (0.20 m.) of electrical outlets;

  (3) treating deteriorated paint spots that total no more than 2 $ft.^2$ (0.2 m^2) in any one interior room or space; or

  (4) treating deteriorated paint spots that total no more than 20 $ft.^2$ (2.0 m^2) on exterior surfaces.
- 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 at *29 CFR 1010.1200* or *1926.59*, as applicable to the work.

  Note: Methylene chloride paint strippers may cause cancer and should be avoided. Use of these strippers is prohibited by some jurisdictions.

WORKSITE CLEANUP [*24 CFR 35.1350(c)*]

- Worksite cleanup removes dust and debris from the work area. Good cleanup is critical to passing clearance and leaving the unit safe for habitation.

- Worksite cleanup must be done using methods, products, and devices that are successful in cleaning lead-contaminated dust, such as vacuum cleaners with HEPA filters or equivalent equipment, and household or lead-specific detergents or equivalent products.

3.10 LEAD HAZARD REDUCTION: CLEARANCE [*24 CFR 35.1340*]

- **Clearance**. A clearance examination involves a visual assessment and dust testing to determine if the unit or worksite is safe for occupancy.
- Clearance must be performed by a certified risk assessor, certified lead-based paint inspector, or certified lead sampling technician (called a clearance technician in the HUD regulation). Sampling technicians are currently not authorized by EPA to perform clearance examinations after abatement but HUD regulations permit them to perform clearance after interim controls or maintenance or renovation activities.
- In cases where a grantee, subrecipient, or property owner uses in-house employees to perform lead hazard reduction work, in-house employees may conduct both lead hazard reduction activities and clearance, as long as the same employees do not conduct both. If an outside party is hired, the parties conducting the lead hazard reduction activities and clearance must be independent of each other.
- **Exemption**. Clearance is not required:
  - If a maintenance, rehabilitation, or lead hazard reduction activity at a worksite does not disturb painted surfaces or disturbs only paint that is known <u>not</u> to be lead-based paint; or
  - If the total area of painted surfaces disturbed does not exceed the following:
    - 20 $ft.^2$ (2 m^2) on exterior surfaces;
    - 2 $ft.^2$ (0.2 m^2) in any one interior room or space; or
    - 10 percent of the total surface area on an interior or exterior type of component with a small surface area like window sills, baseboards, and trim.
- **Clearance Standards**. If the test results equal or exceed the designated standards, the dwelling unit, worksite, or common area fails the clearance examination. The clearance standards are listed in Exhibit 3-11.

EXHIBIT 3-11

FEDERAL LEAD CLEARANCE STANDARDS
[*35 CFR 745.227(e)(8)(viii)*]

	Floors (µg/ft.^{2})	Interior Windows Sills (µg/ft.^{2})	Window Troughs (µg/ft.^{2})
Lead in Dust *(as measured by a dust wipe sample)*	40	250	400

- **Report**. If abatement is conducted, a certified supervisor or project designer must prepare an abatement report in accordance with *40 CFR 745.227(e)(10)* as described in Exhibit 3-12, under "Abatement Report." If lead hazard reduction activities other than abatement are performed, a clearance report [*24 CFR Part 35.1340*] must be prepared as described in Exhibit 3-12, under "Clearance Report."

- The clearance examiner must prepare the first part of the report, "Clearance examination information." However, in many cases, the clearance examiner will not have the information necessary to prepare the second part, "Hazard reduction or maintenance information." Therefore, the grantee or subrecipient must prepare the second part of the report.

- **Unit Fails Clearance**. If a unit fails a clearance examination, the unit must be recleaned and retested until clearance is achieved.

EXHIBIT 3-12

CONTENTS OF ABATEMENT AND CLEARANCE REPORTS

Clearance Report	Abatement Report
Property address.	Property address.
Clearance examination information: ❑ Date of the clearance examination. ❑ Name, address, and signature of each person performing the clearance examination including certification number. ❑ Visual assessment results. ❑ Dust sample analysis, in µg/sq.ft., by location of sample. ❑ Name and address of each laboratory that conducted the dust sample analysis, including their identification number.	Clearance examination information: ❑ Date of clearance testing. ❑ Name, address, and signature of each certified risk assessor or inspector conducting clearance sampling. ❑ Clearance testing results and all soil analyses (if applicable) and the name of each recognized laboratory that conducted the analysis.
Hazard reduction or maintenance information: ❑ Start and completion dates of the hazard reduction or maintenance activity. ❑ Name and address of each firm or organization conducting the hazard reduction or maintenance activity, and the name of each supervisor assigned. ❑ A detailed, written description of the hazard reduction or maintenance activity, to include: ➢ Methods; ➢ Locations of exterior surfaces or soil; ➢ Interior rooms; ➢ Common areas; and/or ➢ Components where the hazard reduction activity occurred, and any suggested monitoring of encapsulants or enclosures.	Abatement information: ❑ Start and completion dates of abatement. ❑ Name and address of each certified firm conducting the abatement, and the name of each supervisor assigned to the abatement project. ❑ Occupant protection plan. ❑ A detailed, written description of the abatement, to include: ➢ Methods used; ➢ Locations of rooms; and/or ➢ Components where abatement occurred, the reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures.

3.11 FOUR APPROACHES TO IMPLEMENTING LEAD HAZARD EVALUATION AND REDUCTION

- ❑ Under Section 3.3, four approaches are described that provide a framework for understanding how HUD determined which requirements were suitable for different work activity scenarios. This section, Section 3.11, uses this framework to discuss how the lead hazard evaluation and reduction methods (described in Sections 3.9 and 3.10) can be implemented together.
- ❑ Part 3 of Chapter 3 will again refer to this framework to explain the lead hazard evaluation and reduction methods that are required under the rehabilitation, tenant-based rental assistance, and acquisition, leasing, support services, and operations program activities.
- ❑ Exhibit 3-13 describes which lead hazard evaluation and reduction methods are applied under each approach. It also provides the options available under each approach.

EXHIBIT 3-13

FOUR APPROACHES TO IMPLEMENTING LEAD HAZARD EVALUATION AND REDUCTION

APPROACH 1. DO NO HARM		
Lead Hazard Evaluation	**Lead Hazard Reduction**	**Options**
Paint testing performed on surfaces to be disturbed.	Repair paint surfaces disturbed during work. **Safe work practices** used when working on areas identified as lead-based paint. **Clearance** performed.	**Forego paint testing and presume lead-based paint** is present and use safe work practices on all surfaces being disturbed.
APPROACH 2. IDENTIFY AND STABILIZE DETERIORATED PAINT		
Lead Hazard Evaluation	**Lead Hazard Reduction**	**Options**
Visual assessment performed to identify deteriorated paint.	**Paint stabilization** of identified deteriorated paint. **Safe work practices** used. **Clearance** performed.	**Perform paint testing** on deteriorated paint. Paint stabilization, safe work practice, and clearance requirements only apply if paint is lead-based paint.
APPROACH 3. IDENTIFY AND CONTROL LEAD HAZARDS		
Lead Hazard Evaluation	**Lead Hazard Reduction**	**Options**
Paint testing performed on surfaces to be disturbed. **Risk assessment** performed on entire dwelling.	**Interim controls** performed on identified hazards. **Safe work practices** used. **Clearance** performed.	Forego risk assessment, presume lead based paint and/or lead based paint hazards are present, and perform **standard treatments**.
APPROACH 4. IDENTIFY AND ABATE LEAD HAZARDS		
Lead Hazard Evaluation	**Lead Hazard Reduction**	**Options**
Paint testing performed on surfaces to be disturbed. **Risk assessment** performed on entire dwelling.	**Abatement** performed on identified hazards. **Interim controls** performed on identified hazards on the exterior that are not disturbed by rehabilitation. **Safe work practices** used. **Clearance** performed.	Forego paint testing and risk assessment, presume lead-based paint and/or lead-based paint hazards are present, and perform **abatement on all applicable surfaces** – deteriorated, impact, friction, chewable surfaces, and surfaces to be disturbed.

3.12 ONGOING MAINTENANCE [*24 CFR 35.1355*]

- In cases where the assistance provided by the grantee involves an ongoing relationship with a property (for example, TBRA programs and HOME rental programs), the grantee is responsible for ensuring that owners perform ongoing maintenance to ensure that lead hazard reduction measures are maintained. In other cases, ongoing maintenance is encouraged.
  - The ongoing maintenance requirement does not apply to owner-occupied housing, but owners should be encouraged to maintain paint surfaces and keep dwellings clean.
- Grantees or property owners, depending on program design, must ensure that maintenance activities are conducted that minimize the threat of lead-based paint hazards. Exhibit 3-14 outlines specific activities that must be performed.

EXHIBIT 3-14

MAINTENANCE ACTIVITIES

- Conduct visual assessments for deteriorating paint and the failure of any lead hazard reduction measures at unit turnover and every 12 months.
- Address deteriorated paint through paint stabilization unless an evaluation states that there is no lead-based paint.
- Repair enclosures or encapsulations.
- Perform other lead hazard reductions, as necessary.
- If the initial reduction activity required the treatment of soil, identify and treat bare soil. **Exception:** Maintenance treatment of soil not required if an evaluation indicates that there is no exterior lead-based paint.
- Provide a notice of lead hazard reduction activity.
- Provide a written notice in the language of the occupant, to the extent feasible, to occupants asking them to report deteriorated paint or failed encapsulation or enclosure. Include the contact name, address, and telephone number. CPD recommends that the notice be provided every 12 months or at unit turnover.

- **Safe Work Practices.** Safe work practices must be used with all subsequent maintenance or renovation work that disturbs paint that may be lead-based paint.
- **Clearance**. Clearance must be conducted at the conclusion of repair, interim controls, or abatement performed as a part of ongoing maintenance unless the work performed was below the *de minimis* level (see Section 3.10 for this exception).
- **Maintenance Records**. The grantee must keep records of inspections, repairs, and any other lead hazard evaluation and reduction activities for three years after the activities cease or for the period required by the

program regulations. The HOME program requires that records be kept five years. Grantees should consider keeping the records indefinitely.

- **Maintenance Exemptions**. Maintenance activities are not required if:
  - A clearance report indicates that all building components with lead-based paint have been removed; or
  - A current risk assessment indicates that no lead-contaminated soil or lead-contaminated dust is present.

3.13 RESPONSE TO CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVELS

- The new regulation modifies the requirements for responding to lead-poisoned children. It changes who must respond and clarifies the blood lead level that triggers the lead hazard reduction measures.
- The new regulation clarifies that action is required when a child's blood lead level is found to have a confirmed concentration of lead in whole blood equal to or greater than 20 µg/dL for a single test or of 15 µg/dL in two tests taken at least three months apart. Because the standard for an elevated blood lead level (EBL) child is different, the term "environmental intervention blood lead level" is used instead. Further explanation of this change can be found in the preamble to the new regulation.
- The new regulation requires grantees administering tenant-based rental assistance activities to conduct a risk assessment, and it requires the owner to conduct either interim controls or abatement when a child with an environmental intervention blood lead level is identified.
  - Identification may be made either by the grantee or a State or local health agency.
  - Grantees must notify their State and local health agencies if they identify a child with an environmental intervention blood lead level. They must also ask State and local health agencies to keep them notified of new identifications.
  - If the unit continues to receive assistance, this requirement applies even if the family decides to move.
- The requirements for responding to children with environmental intervention blood lead levels are discussed further under Section 3.20 (TBRA).

3.14 PROPERTY EXEMPTIONS UNDER THE NEW REGULATION [24 CFR 35.115 and 35.165]

- The former regulation provides exemptions for certain types of units, such as those that do not contain lead-based paint. The new regulation refines and expands the list of possible exemptions to include units that are unoccupied

and will be demolished, and dwellings where it is unlikely that children will be exposed to lead-based paint hazards, such as zero-bedroom units and housing for the elderly.

- A summary of the new property exemptions can be found in Exhibit 3-15. The exemptions are discussed below.

Under *24 CFR 35.115*

- Residential structures built after January 1, 1978.
- Areas where state and local governments banned lead-based paint prior to January 1, 1978.
- Emergency action activities.
- Properties found not to have lead-based paint during current testing and earlier testing that meets the requirements of prior evaluations.
- Properties where all lead-based paint has been identified and removed using approved methods.
- Zero-room dwelling units.
- Elderly and disabled housing.
- Rehabilitation that does not disturb paint.
- Unoccupied units that will be demolished.
- Property not used for human residential habitation.

Under *24 CFR 35.165*

- Hazard *evaluation* activities conducted prior to the effective date of the new regulation will exempt grantees from conducting further evaluations if they meet certain requirements.
- Hazard *reduction* activities conducted prior to the effective date of the new regulation will exempt grantees from conducting further reduction activities if they meet certain requirements.

- **Post-1977 Housing.** Residential structures built (completed) after January 1, 1978 are exempt from lead-based paint requirements because the Consumer Product Safety Commission banned the use of lead-based paint for residences after this date.

- **State and Local Ban Prior to 1978.** Some State and local governments banned lead-based paint prior to January 1, 1978, so residential structures built prior to that date in areas where lead-based paint was banned may be exempt from lead-based paint requirements. To receive this exemption, grantees must apply to HUD for approval.

- **Emergency Action.** Activities that occur during emergency action are exempt, provided the action is "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

natural disaster, fire, or structural collapse)…" This exemption applies only to repairs necessary to respond to the emergency. The lead-based paint requirements apply to any work undertaken after the emergency action.

- **No Lead-Based Paint.** Properties found by a certified lead-based paint inspector not to have lead-based paint are exempt. Also, properties found to be lead-based paint free by an earlier testing that was not by a certified lead-based paint inspector but meets the requirements of prior evaluations are exempt.

- **All Lead-Based Paint Removed.** Properties where all lead-based paint has been identified and removed are exempt from lead-based paint requirements. At these properties, the removal must be established in accordance with sections *40 CFR 745.227(b) and (e)* before the date of this regulation, and sections *24 CFR 35.340, .342, and .345* for work completed on and after the date of this regulation.

  - **Note**: This exemption does not apply to properties where encapsulation or enclosure was used because lead-based paint is still present.

- **Zero-Bedroom Units.** Zero-room dwelling units, including efficiencies, dormitories, studio apartments, and rental of individual rooms, are exempt.

- **Housing for the Elderly or Disabled.** Housing <u>specifically designated</u> exclusively for the elderly or the disabled is exempt unless a child under age six resides or is expected to reside in the unit. HUD defines "expected to reside" as meaning there is "actual knowledge" that a child will reside.

- **Rehabilitation That Does Not Disturb Paint.** Rehabilitation that does not disturb painted surfaces is exempt, although the pamphlet is still required.

- **Unoccupied Properties To Be Demolished.** Unoccupied units that will be demolished are exempt.

- **Non-Residential Property.** Property not used for human residential habitation is exempt.

  - Common areas shared with covered residences are not exempt, however.

- **Pre-Regulation Hazard Evaluations.** If a lead-based paint inspection or risk assessment was conducted at a residential property or dwelling unit prior to the effective date of the new regulation, evaluations that meet the criteria listed under the next section (Section 3.15 Standards for Prior Lead Hazard Evaluation and Reduction Work) are acceptable under the new regulation.

- **Pre-Regulation Hazard Reduction.** If interim controls or abatement were conducted at a residential property or dwelling unit prior to the effective date of the new regulation, work that meets the criteria listed under the next section (Section 3.15 Standards for Prior Lead Hazard Evaluation and Reduction Work) is acceptable under the new regulation.

OTHER SPECIAL CONDITIONS

- **Permissible Delays**. *[24 CFR 35.115(A)(12)]* A required lead hazard evaluation or reduction activity may be delayed for a reasonable time when weather conditions are unsuitable for conventional construction activities.

- **Historic Properties.** When abatement is required on a property listed or eligible for listing in the National Register of Historic Places, the grantee may conduct interim controls instead of abatement if such action is requested by the State Historic Preservation Office.

3.15 STANDARDS FOR PRIOR LEAD HAZARD EVALUATION AND REDUCTION WORK

- This section describes the conditions that must be met by evaluations and treatments conducted prior to the effective date of the regulation in order to be considered valid.

PRIOR LEAD HAZARD EVALUATION [*24 CFR 35.165*]

- **Prior Lead Hazard Evaluation**. If a paint inspection or risk assessment was conducted at a residential property or dwelling unit prior to the effective date of the new regulation, evaluations that meet the following criteria are acceptable under the new regulation.

  - **Lead-Based Paint Inspection**.

    - A lead-based paint inspection conducted before March 1, 2000 meets the requirements of this regulation if it was conducted by a lead-based paint inspector certified under a State certification program or if it was conducted in accordance with the EPA requirements at *40 CFR 745.227*.

    - A lead-based paint inspection conducted after March 1, 2000 must meet the requirements of the State in which the property is located or it must meet EPA requirements in non-authorized States.

  - **Risk Assessment**. A risk assessment is current if it is less than 12 months old.

    - A risk assessment conducted before March 1, 2000 meets the requirements of this regulation if it was conducted by a risk assessor certified under a State certification program, or in accordance with the EPA requirements at *40 CFR 745.227*.

    - A risk assessment conducted after March 1, 2000 must meet the requirements of the State in which the property is located or it must meet EPA requirements in non-authorized States.

  - **Note**: If a child under age six with an environmental intervention blood lead level is present, the requirements for responding to these children still apply.

PRIOR LEAD HAZARD REDUCTION [*24 CFR 35.165*]

- **Prior Lead Hazard Reduction**. If interim controls or abatement were conducted at a residential property or dwelling unit prior to the effective date of the new regulation, work that meets the following criteria is acceptable under the new regulation.
  - **Interim Controls**. Interim controls meet the requirements of this regulation if they were conducted pursuant to a risk assessment that met the requirements above and passed clearance by a certified lead-based paint risk assessor.
  - **Abatement.** Abatement conducted before March 1, 2000 meets the requirements of this regulation if it was conducted by a State-approved lead-based paint abatement supervisor and performed in accordance with applicable state and local laws.

3.16 COMPLIANCE

PENALTIES [*24 CFR 35.170*]

- Failure to comply with the lead-based paint requirements under the new regulation will be subject to sanctions authorized under the Federal funding programs providing assistance to the property, and violations may be subject to other penalties available under state or local law.
- Notifying owners, purchasers, or occupants of possible lead-based paint hazards does not relieve grantees of the responsibilities under the new regulation.

ADDRESSING OTHER REGULATIONS AND LAWS [*24 CFR 35.145*]

- Grantees must comply with other regulations – Federal, State, tribal, and local – that apply to lead-based paint hazard evaluation and reduction. When multiple regulations cover a program activity, grantees must comply with the most stringent requirement.
- All lead-based paint activities must be performed in accordance with other applicable Federal laws and authorities. For example, the National Environmental Policy Act of 1969 (*42 U.S.C. 4321* et seq.), OSHA worker safety regulations (29 CFR 1910.1200 and 29 CFR 1926.62), and other environmental laws and authorities cover activities related to lead-based paint evaluation and hazard reduction.
- HUD may modify or waive its lead-based paint requirements if it determines that the requirement duplicates a Federal, State, or local requirement and provides a comparable level of protection from lead-based paint hazards.

3.17 RECORDKEEPING [*24 CFR 35.175*]

- There are numerous records that grantees must keep to verify that they conducted the required lead hazard response activities.
- **Lead Hazard Information Pamphlet**. A record of the distribution of the lead hazard information pamphlet is recommended, but not required.
- **Notification, Evaluation, and Reduction Reports**. The grantee must keep a copy of each notification, lead hazard evaluation report, lead hazard reduction documentation (such as job specifications), and clearance or abatement report for at least three years, or for such other period as specified in the program regulations.
- **Ongoing Maintenance Records**. Grantees must keep ongoing maintenance records and records of relevant building operations for use during reevaluations.
- **Reporting to HUD**. The grantee will provide a copy of any of the above records to HUD upon request.

PART 3: LEAD-BASED PAINT REQUIREMENTS BY PROGRAM ACTIVITY

3.18 OVERVIEW OF REGULATIONS BY ACTIVITY

- This section discusses the lead-based paint requirements under the new regulation pertaining to each type of program activity:
  - Rehabilitation (Subpart J);
  - Tenant-based rental assistance (Subpart M); and
  - Acquisition, leasing, support services, and operations (Subpart K).
- Attachment 3-A contains a summary of the notification, lead hazard evaluation, lead hazard reduction, ongoing maintenance, and environmental intervention blood lead level requirements for each of these three program activities.
- Attachment 3-C provides a series of tables that address the requirements for each of the program activities in more detail.

3.19 REHABILITATION REQUIREMENTS (SUBPART J)

- This section describes the basic requirements for all rehabilitation activities and the specific requirements based on the amount of Federal assistance per unit.
- The programs affected by the lead-based paint regulations for rehabilitation are shown in Exhibit 3-16.
- Chapter 4 describes in detail the requirements under the new regulation for rehabilitation activities.
- The new lead-based paint regulation bases requirements on the degree of Federal involvement and level of disturbance of painted surfaces. For example, because rehabilitation may create or exacerbate lead-based paint hazards, more extensive rehabilitation projects using larger amounts of Federal money require more intensive lead-based paint activities than smaller rehabilitation projects or projects without rehabilitation.
- Rehabilitation activity requirements fall into three categories as follows:
  - Requirements for Federal assistance up to and including $5,000 per unit;
  - Requirements for Federal assistance from $5,000 up to and including $25,000 per unit; and
  - Requirements for Federal assistance over $25,000.

EXHIBIT 3-16

REHABILITATION FUNDING SOURCES

CPD Funding Sources

- HOME Investment Partnership Program (HOME)
- Community Development Block Grant (CDBG)
- Emergency Shelter Grants (ESG)
- Housing Opportunities for Persons With AIDS (HOPWA)
- Supportive Housing Program (SHP)

Other HUD Funding Sources

- HOPE for Homeownership of Single Family Homes (HOPE 3)
- Homeownership of Multifamily Units (HOPE 3)
- Indian Housing Block Grant Program
- Indian Community Development Block Grant Program
- Interest Reduction Payment Grants (IRP)
- Flexible Subsidy-Capital Improvement Loan Program (CILP)
- Mark-to-Market Program

- An explanation of how rehabilitation assistance is calculated is provided in Chapter 4. The amount of rehabilitation assistance is calculated by taking the lesser of:
  - the per unit rehabilitation hard costs (regardless of source of funds); or
  - the per unit Federal assistance for the project (regardless of the use of the funds).

  Rehabilitation hard costs do not include the costs of complying with lead hazard evaluation or reduction requirements.

LEAD HAZARD EVALUATION AND REDUCTION REQUIREMENTS FOR ALL REHABILITATION ACTIVITIES

- Grantees involved in rehabilitation activities must meet the requirements in the following areas:
  - Notification;
  - Lead hazard evaluation;
  - Lead hazard reduction; and
  - Ongoing maintenance.
- **Notification.** Notification is comprised of four requirements: the pamphlet, disclosure, and two notices. Disclosure has been discussed in detail in Section 3.6. The other requirements are reiterated below.

- **Lead Hazard Information Pamphlet**. The lead hazard information pamphlet must be provided to occupants of all units in a property receiving rehabilitation assistance (unless it is documented that the occupants have already received the pamphlet, for example, under the disclosure requirements or the Lead PRE-Rule discussed under Section 3.6).

- **Notices**. Posting or delivering Notices of Lead Hazard Evaluation or Presumption and Lead Hazard Reduction Activity must be completed within 15 calendar days of the date when the grantee receives the evaluation report or the date the lead hazard reduction work is completed.

- **Lead Hazard Evaluation.** The type of lead hazard evaluation activities required depends on the level of Federal assistance. For specific information, see the sections that describe the requirements for Federal assistance that follow this section.

- **Lead Hazard Reduction**. The type of lead hazard reduction activities required depends on the level of Federal assistance. For specific information, see the sections that describe the requirements for Federal assistance that follow this section.

  - **Safe Work Practices**. Safe work practices are required for all work to repair paint, paint stabilization, interim controls, standard treatments, and abatement activities conducted during rehabilitation, including those that are described as options. (See Section 3.9.)

  - **Clearance**. Clearance is required after lead hazard reduction activities have been completed to ensure that the unit is safe for occupancy. Clearance procedures must be performed by a certified risk assessor, paint inspector, or lead sampling technician. These procedures must include a visual inspection and sampling and testing for lead-contaminated dust. The grantee must conduct any required post-abatement cleanup. (See Section 3.10.)

  - **Permissible Delays**. *[24 CFR 35.115(A)(12)]* A required lead hazard evaluation or reduction activity may be delayed for a reasonable time when weather conditions are unsuitable for conventional construction activities.

- **Ongoing Maintenance**. Ongoing maintenance is required only for HOME-funded rehabilitation of rental housing projects. (See Section 3.12.)

- **Environmental Intervention Blood Lead Level Requirements.** No environmental intervention blood lead level requirements apply to rehabilitation activities.

REQUIREMENTS FOR FEDERAL ASSISTANCE UP TO AND INCLUDING $5,000 PER UNIT

- **Lead Hazard Evaluation.** Paint testing must be conducted to identify lead-based paint on painted surfaces that will be disturbed or replaced, or grantees may assume that these surfaces contain lead-based paint.

- **Lead Hazard Reduction.** Grantees must repair all paint that will be disturbed during rehabilitation, unless such paint is found not to be lead-based paint.
  - If lead-based paint is detected or assumed, safe work practices must be used during rehabilitation.
  - Clearance is required only for the work area.
- **Option**. When paint testing is required, the grantee is permitted to presume that lead-based paint exists and skip paint testing. The grantee must then repair all paint disturbed during rehabilitation using safe work practices.

REQUIREMENTS FOR FEDERAL ASSISTANCE BETWEEN $5,000-$25,000 PER UNIT

- **Lead Hazard Evaluation.** There are two requirements, as follows:
  - Paint testing must be conducted to identify lead-based paint on painted surfaces that will be disturbed or replaced, or grantees may presume that these surfaces contain lead-based paint.
  - A risk assessment must be conducted prior to rehabilitation to find lead-based paint hazards in assisted units, in common areas that service those units, and on exterior surfaces, or grantees may assume that lead-based paint hazards exist.
- **Lead Hazard Reduction.** If lead-based paint or lead-based paint hazards are detected during the evaluations on interior surfaces in the dwelling units and the common areas that service those units or on exterior surfaces, including soil, to be disturbed by rehabilitation or are presumed, interim controls must be implemented to reduce lead-based paint hazards, including any hazards created as a result of the rehabilitation work.
  - If lead-based paint is detected or presumed, safe work practices must be used during lead hazard reduction and rehabilitation.
  - Clearance is required when lead hazard reduction activities are complete.
- **Options.** There are two options, as follows:
  - The grantee is permitted to presume that lead-based paint is present or that lead-based paint hazards exist or both. In such cases, evaluation is not required. The grantee must perform standard treatments in lieu of interim controls on all applicable painted surfaces and presumed lead-based paint hazards.
  - The grantee is permitted to conduct a lead hazard screen instead of a risk assessment. The lead hazard screen has more stringent requirements and is only recommended in units in good condition. If the lead hazard screen indicates that there is no lead contamination, no lead hazard reduction is required. If the lead hazard screen

indicates the presence of lead hazards, the grantee/subrecipient must then conduct a risk assessment.

- **Note:** Passing a lead hazard screen, or a risk assessment, does not eliminate the requirement to perform interim controls on lead-based paint hazards created as a result of the rehabilitation work.

REQUIREMENTS FOR FEDERAL ASSISTANCE OVER $25,000 PER UNIT

- **Lead Hazard Evaluation.** There are two requirements, as follows:
  - Paint testing must be conducted to identify lead-based paint on painted surfaces that will be disturbed or replaced, or grantees may assume that these surfaces contain lead-based paint.
  - A risk assessment must also be conducted prior to rehabilitation to find lead-based paint hazards in assisted units, in common areas that service those units, and on exterior surfaces, or grantees may assume that lead-based paint hazards are present.
- **Lead Hazard Reduction.** There are numerous requirements, as follows:
  - If lead-based paint or lead-based paint hazards are detected during the evaluations on interior surfaces in the dwelling units and the common areas that service those units or on exterior surfaces, including soil, to be disturbed by rehabilitation or are presumed, abatement must be implemented to reduce lead-based paint hazards, including any hazards created as a result of the rehabilitation work.
  - If lead-based paint hazards are detected during the risk assessment on the exterior surfaces that are not to be disturbed by rehabilitation, interim controls may be completed instead of abatement to reduce these hazards.
  - If lead-based paint is detected or presumed, safe work practices must be used during lead hazard reduction and rehabilitation.
  - Clearance is required when lead hazard reduction activities are complete.
- **Options.** There are two options, as follows:
  - The grantee is permitted to presume that lead-based paint is present or that lead-based paint hazards exist or both. In such cases, evaluation is not required. The grantee must abate all applicable painted surfaces that will be disturbed during rehabilitation and all presumed lead hazards.
  - The grantee is permitted to conduct a lead hazard screen instead of a risk assessment. The lead hazard screen has more stringent requirements and is only recommended in units in good condition. If the lead hazard screen indicates that there is no lead contamination, no lead hazard reduction is required. If the lead hazard screen

indicates the presence of lead hazards, the grantee/subrecipient must then conduct a risk assessment.

- **Note:** Passing a lead hazard screen, or a risk assessment, does not eliminate the requirement to perform abatement on lead-based paint hazards created as a result of the rehabilitation work.

3.20 TENANT-BASED RENTAL ASSISTANCE REQUIREMENTS (SUBPART M)

- Chapter 5 describes in detail the requirements under the new regulation for tenant-based rental assistance activities.
- Tenant-based rental assistance (TBRA) provides rental assistance to qualified persons who may then live in a rental unit of their choosing, as long as the unit meets certain basic program requirements. This method of Federal assistance differs from project-based rental assistance that provides rental assistance to qualified persons who live in a specific assisted property.
- CPD programs affected by the lead-based paint requirements for this activity are shown in Exhibit 3-17.

EXHIBIT 3-17

TENANT-BASED RENTAL ASSISTANCE FUNDING SOURCES

CPD Funding Sources
- HOME Investment Partnership Program
- Housing Opportunities for Persons With AIDS (HOPWA)
- Shelter Plus Care (S+C)

Other HUD Funding Sources
- Section 8 of the US Housing Act of 1937
- Indian Housing Block Grant Program

- TBRA requirements apply to dwelling units occupied or to be occupied by families or households that have **one or more children under age six**, the common areas servicing the units, exterior painted surfaces associated with such units, and other areas used by unit residents and frequented by children under age six.

EXEMPTIONS

- Units with tenant-based rental assistance and households with no children under the age of six are exempt from the requirements, except families and households in all tenant-based rental assistance pre-1978 units must receive the lead hazard information pamphlet and disclosure information.

REQUIREMENTS FOR ALL TBRA ACTIVITIES

- All grantees using CPD funds for tenant-based rental assistance activities for units with families or households that have one or more children under age six must meet requirements in the following areas:
  - Notification;
  - Lead hazard evaluation;
  - Lead hazard reduction;
  - Ongoing maintenance; and
  - Responding to children with environmental intervention blood lead levels.
- **Notification.** Notification is comprised of four requirements: the pamphlet, disclosure, and two notices. Disclosure has been discussed in detail in Section 3.6. The other requirements are reiterated below.
  - **Lead Hazard Information Pamphlet**. The lead hazard information pamphlet must be provided to the household prior to their renting a house or unit that was built prior to 1978. (See Section 3.6.)
    - **Note:** If the pamphlet has been provided under the disclosure rule or under the Lead PRE rule, it is not necessary to provide it again.
  - **Notices.** Posting or delivering Notices of Lead Hazard Evaluation or Presumption and Lead Hazard Reduction Activity must be completed within 15 calendar days of the date when the lead hazard reduction work is completed.
- **Lead Hazard Evaluation.** A visual assessment for deteriorated paint must be conducted during initial and periodic inspections by a person who is trained to detect deteriorated paint. The visual assessment must be completed prior to occupancy.
- **Lead Hazard Reduction.** Deteriorated paint must be corrected using paint stabilization methods, such as covering the surface with a permanent wall covering or wet scraping and repainting the surface using appropriate methods. Paint stabilization is complete when clearance is achieved. The stabilization of any deteriorated paint must be completed prior to occupancy. If the unit is already occupied, paint stabilization must be completed within 30 days of notification of the results of the visual assessment.
  - **Safe Work Practices.** Safe work practices are required for all lead-based paint hazard reduction activities in tenant-based rental assistance units. (See Section 3.9.)
  - **Clearance**. Clearance procedures must be performed by a certified risk assessor, lead-based paint inspector, or lead sampling technician. These procedures must include a visual inspection and sampling and testing for lead-contaminated dust. A notice regarding the clearance results must be provided to occupants. (See Section 3.10.)

Applicability of Notice Requirement

A visual assessment is not considered a method of lead hazard evaluation under this regulation. Therefore, a Notice of Lead Hazard Evaluation is not required after a visual assessment. However, grantees must provide a Notice of Lead Hazard Evaluation if they perform any paint testing or a risk assessment (for example, in response to a lead-poisoned child).

- **Ongoing Maintenance**. The owner is required to incorporate ongoing maintenance into regular building operations if occupants receive tenant-based rental assistance. (See Section 3.12.)

- **Environmental Intervention Blood Lead Level Requirements**

  - **Share and Compare Information Quarterly.** The grantee must communicate with the State or local public health agency to provide and receive identification information about children with environmental intervention blood lead levels.

    - The grantee must notify the public health department(s), which have area(s) of jurisdiction similar to that of the grantee, of a child with an environmental intervention blood lead level within five days of notification by any other medical health care provider.

    - Quarterly, the grantee must attempt to obtain from the public health department(s) the addresses of children under the age of six with environmental intervention blood lead levels.

    - Quarterly, the grantee must report an updated list of units receiving assistance to the public health department(s), except that the report is not required if the public health department states that it does not wish to receive it.

    - The grantee must match information on environmental intervention blood lead level cases of children under six with names and addresses of families receiving Federal assistance for rental assistance under the grantee's program.

    - If there is a match in address, the grantee must follow the evaluation and lead hazard reduction procedures as if it had received the name of a child under age six with an environmental intervention blood lead level.

  - **Respond to Notification of a Child With an Environmental Intervention Blood Lead Level.** If the grantee administering the local program receives notice of a child under the age of six with an **environmental intervention blood lead level**, it must conduct lead hazard evaluation and reduction measures. The steps for responding to this notification are described in Exhibit 3-18.

  - **If the Grantee Began Activities Before Notification.** If the grantee begins evaluation and lead hazard reduction activities after a child's blood level is tested but before being notified of the child with an environmental intervention blood lead level, the grantee must finish these activities but does not need to repeat them.

  - **If the Child Moves Before Activities Are Complete.** If a child with an environmental intervention blood lead level moves before the grantee has completed the risk assessment and lead hazard reduction measures, the grantee must ensure that these measures are completed, and the unit must be certified free of lead-based paint hazards before the unit will be assistance-eligible.

EXHIBIT 3-18

REQUIREMENTS FOR RESPONDING TO A NOTIFICATION OF A CHILD WITH AN ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL

- **Verify the Information.** Notification must be received from a medical health care provider. If the grantee receives information about a child under age six with an environmental intervention blood lead level from a non-medical health care provider, it must verify with a public health department or other health department that the child has an environmental intervention blood lead level. If so, this information constitutes notification by the grantee.
- **Conduct a Risk Assessment.** The grantee must conduct a risk assessment of the unit in which the child lived at the time of the last blood lead test and common areas servicing that unit within 15 days of notification. They must also immediately provide the results of the risk assessment to the owner of the dwelling unit.

  Note: Evaluation is completed when the risk assessment report is received.
- **Respond to the Evaluation Results.** Within 30 days after receiving the risk assessment report, the owner of the dwelling must complete lead hazard reduction activities–interim controls or abatement–on identified lead-based paint hazards.

  Note: Lead hazard reduction is completed when clearance is achieved.

  Note: If interim controls, encapsulation, and/or enclosure are the methods used, the owner must conduct ongoing maintenance, and the grantee must continue periodic inspections.
- **Provide Notices.** Notices of Lead Hazard Evaluation and Lead Hazard Reduction Activity must be provided or posted for the residents.

3.21 ACQUISITION, LEASING, SUPPORT SERVICES, AND OPERATIONS REQUIREMENTS (SUBPART K)

- The lead-based paint requirements presented in this section apply to residential property with Federal assistance under programs for acquisition and leasing services or for support or operation services provided for a residential property.
  - Implementation of these requirements for State and local homeownership programs is covered in Chapter 6.
  - Implementation of these requirements for local special needs housing programs is covered in Chapter 7.
- Programs affected by the lead-based paint requirements for this activity are shown in Exhibit 3-18.

EXHIBIT 3-19

ACQUISITION, LEASING, SUPPORT SERVICES, AND OPERATIONS PROGRAMS

CPD Funding Sources

- ❑ HOME Investment Partnership Program (HOME)
- ❑ Community Development Block Grant (CDBG)
- ❑ Emergency Shelter Grants (ESG)
- ❑ Housing Opportunities for Persons With AIDS (HOPWA)
- ❑ Supportive Housing Program (SHP)

Other HUD Funding Sources

- ❑ Indian Housing Block Grant Program
- ❑ Indian Community Development Block Grant Program

COST RESPONSIBILITIES

- ❑ The grantee can decide whether the cost of lead hazard evaluation and reduction is to be borne by the owner/developer, the grantee, or a combination of both, based on program requirements and local program design.

REQUIREMENTS FOR ALL PROGRAMS

- ❑ All grantees involved in acquisition, leasing, support service, and operations activities must meet the requirements in the following areas:
  - ➢ Notification;
  - ➢ Lead hazard evaluation;
  - ➢ Lead hazard reduction; and
  - ➢ Ongoing maintenance.
- ❑ **Notification.** Notification is comprised of four requirements: the pamphlet, disclosure, and two notices. Disclosure has been discussed in detail in Section 3.6. The other requirements are reiterated below.
  - ➢ **Lead Hazard Information Pamphlet**. The lead hazard information pamphlet must be provided prior to selling or providing leasing, support services, or operations activities to a house or unit that was built prior to 1978. Grantees do not have to provide the pamphlet if they can document that it has already been received. (See Section 3.6.)
  - ➢ **Notices**. Posting or delivering Notices of Lead Hazard Evaluation or Presumption and Lead Hazard Reduction Activity must be completed within 15 calendar days of the date when the lead hazard evaluation or reduction work is completed.

Applicability of Notice Requirement

A visual assessment is not considered a method of lead hazard evaluation under this regulation. Therefore, a Notice of Lead Hazard Evaluation is not required after a visual assessment. However, grantees must provide a Notice of Lead Hazard Evaluation if they perform any paint testing or a risk assessment.

- **Lead Hazard Evaluation**. A visual assessment must be conducted during initial and periodic inspections by a person who is trained to detect deteriorated paint. Lead hazard evaluation activities must be completed prior to occupancy, or if the unit is already occupied, immediately after receipt of Federal assistance.

- **Lead Hazard Reduction**. Deteriorated paint must be corrected using paint stabilization methods. Lead hazard reduction activities must be completed prior to occupancy, or if the unit is already occupied, immediately after receipt of Federal assistance.

  - **Safe Work Practices**. Safe work practices are required for all lead-based paint hazard reduction activities during acquisition, leasing, support service, or operational activities. (See Section 3.9.)

  - **Clearance**. Clearance is required after lead hazard reduction activities have been completed to ensure that the unit is safe for occupancy. Clearance procedures must be performed by a certified risk assessor, lead-based paint inspector, or lead sampling technician. These procedures must include a visual inspection and sampling and testing for lead-contaminated dust. A notice regarding the clearance results must be provided to occupants. (See Section 3.10.)

- **Ongoing Maintenance**. Ongoing maintenance is required for all acquisition, leasing, support service, or operational activities where there is an ongoing relationship with the Federal government. (See Section 3.12.)

- **Environmental Intervention Blood Lead Level Requirements.** This section of the regulation has no environmental intervention blood lead level requirements.

ACTION PLAN

- Chapter 9 includes a planning exercise that will help jurisdictions develop an action plan to implement the lead-based paint requirements.

ATTACHMENT 3-A

SUMMARY OF LEAD-BASED PAINT REQUIREMENTS BY ACTIVITY

	Rehabilitation (Subpart J) Chapter 4			**TBRA** (Subpart M) Chapter 5	**A,L,SS,O** (Subpart K) Chapters 6 & 7
	≤$5,000	**$5,000 - $25,000**	**>$25,000**		**Homebuyer and Special Needs***
Approach to Lead Hazard Evaluation and Reduction	1. Do no harm	3. Identify and control lead hazards	4. Identify and abate lead hazards	2. Identify and stabilize deteriorated paint	2. Identify and stabilize deteriorated paint
Notification	Yes	Yes	Yes	Yes	Yes
Lead Hazard Evaluation	Paint Testing (of surfaces to be disturbed)	Paint Testing and Risk Assessment	Paint Testing and Risk Assessment	Visual Assessment	Visual Assessment
Lead Hazard Reduction	Repair surfaces disturbed during rehabilitation	Interim Controls	Abatement (Interim Controls on exterior surfaces not disturbed by rehabilitation)	Paint Stabilization	Paint Stabilization
	Safe work practices Clearance	Safe work practices Clearance	Safe work practices Clearance	Safe work practices Clearance	Safe work practices Clearance
Ongoing Maintenance	For HOME rental only	For HOME rental only	For HOME rental only	Yes	Yes (if ongoing relationship)
EIBLL Requirements	No	No	No	Yes	No
Options	Presume lead-based paint Use safe work practices on all surfaces	Presume lead-based paint and/or hazards Use standard treatments	Presume lead-based paint and/or hazards Abate all applicable surfaces	Test deteriorated paint. Use safe work practices only on lead-based paint surfaces.	Test deteriorated paint. Use safe work practices only on lead-based paint surfaces.

* Special Needs Housing may be subject to the requirements of Subpart J, M, or K depending on the nature of the assistance provided. However, since most special needs housing involves acquisition, leasing, support services, and operations, for the purposes of this table, it has been placed in this column. Chapter 7 explains how other requirements may also apply.

ATTACHMENT 3-B

FOUR APPROACHES TO IMPLEMENTING LEAD HAZARD EVALUATION AND REDUCTION

APPROACH 1. DO NO HARM		
Lead Hazard Evaluation	**Lead Hazard Reduction**	**Options**
Paint testing performed on surfaces to be disturbed.	Repair paint surfaces disturbed during work. **Safe work practices** used when working on areas identified as lead-based paint. **Clearance** performed.	**Forego paint testing and presume lead-based paint** is present and use safe work practices on all surfaces being disturbed.
APPROACH 2. IDENTIFY AND STABILIZE DETERIORATED PAINT		
Lead Hazard Evaluation	**Lead Hazard Reduction**	**Options**
Visual assessment performed to identify deteriorated paint.	**Paint stabilization** of identified deteriorated paint. **Safe work practices** used. **Clearance** performed.	**Perform paint testing** on deteriorated paint. Paint stabilization, safe work practice requirements, and clearance only apply if paint is lead-based paint.
APPROACH 3. IDENTIFY AND CONTROL LEAD HAZARDS		
Lead Hazard Evaluation	**Lead Hazard Reduction**	**Options**
Paint testing performed on surfaces to be disturbed. **Risk assessment** performed on entire dwelling.	**Interim controls** performed on identified hazards. **Safe work practices** used. **Clearance** performed.	Forego risk assessment and presume lead based paint and/or lead based paint hazards are present and perform **standard treatments**.
APPROACH 4. IDENTIFY AND ABATE LEAD HAZARDS		
Lead Hazard Evaluation	**Lead Hazard Reduction**	**Options**
Paint testing performed on surfaces to be disturbed. **Risk assessment** performed on entire dwelling.	**Abatement** performed on identified hazards. **Interim controls** performed on identified hazards on the exterior that are not disturbed by rehabilitation. **Safe work practices** used. **Clearance** performed.	Forego paint testing and risk assessment and presume lead-based paint and/or lead-based paint hazards are present and perform **abatement on all applicable surfaces** – deteriorated, impact, friction, chewable surfaces, and surfaces to be disturbed.

ATTACHMENT 3-C: SUMMARY OF MAJOR REGULATION CHANGES BY ACTIVITY

TABLE 1: REHABILITATION ACTIVITIES

<table>
<tr><th>FORMER REQUIREMENTS</th><th colspan="3">NEW REQUIREMENTS</th></tr>
<tr><td>(All activities)</td><td>≤ $5000/unit</td><td>$5000 - $25,000/unit</td><td>> $25,000/unit</td></tr>
<tr><td>Applicability
Under the former regulation, the lead-based paint requirements for rehabilitation were the same as those for other activities. Each CPD program had its own lead-based paint regulations.
Lead-based paint requirements were similar across CPD programs (most simply refer to 24 CFR 35). The HOME program had the most extensive guidance on requirements. CDBG applied lead requirements only to rehabilitation activities and only to units with children under the age of seven. HOME requirements applied to all assisted units.</td><td colspan="3">Applicability
The new regulation outlines lead-based paint requirements specifically for Federally funded rehabilitation work. These requirements apply to HUD programs that provide assistance for rehabilitation, including CPD-funded rehabilitation activities.
The lead-based paint requirements for rehabilitation work, as described in this part of the regulation, are the same regardless of the source of program funding, but they differ based on the level of funding to a property. Requirements apply to all assisted units.</td></tr>
<tr><td>Notification
Occupants, owner occupants, and purchasers of assisted properties must have received notification of the potential presence and hazards of lead-based paint. Notification is achieved through the distribution of the EPA/HUD/CPSC lead-based paint hazard information pamphlet.
All property owners (both subsidized and market rate) must have disclosed available information about the presence of lead-based paint and provided prospective buyers/occupants with any existing documentation on known lead-based paint hazards in the dwelling unit.</td><td colspan="3">Notification
Same as former requirements.
The new regulation also requires two written notices to occupants informing them of lead hazard evaluation and reduction activities.</td></tr>
<tr><td rowspan="2">Visual Inspection
Visual inspections must have been performed on properties constructed prior to 1978 to identify defective paint surfaces.</td><td>Paint Testing
Painted surfaces that will be disturbed during rehabilitation must be tested for lead-based paint, unless a surface is assumed to contain lead-based paint.</td><td colspan="2">Paint Testing and Risk Assessment
Rehabilitation assistance greater than $5000 per unit requires a higher level of lead hazard evaluation.
• Paint Testing – Test surfaces that will be disturbed by the rehabilitation for lead-based paint. For surfaces assumed to contain lead-based paint, testing is not required.
• Risk Assessment – An assessment of a dwelling to check for the presence of lead-based paint hazards. It includes a visual assessment and testing of dust, soil, and deteriorated paint and a written report of the results, including acceptable actions.
• Option for units receiving assistance between $5,000 and $25,000 - The grantee may assume that lead-based paint and lead hazards are present, forego the paint testing and risk assessment, and conduct standard treatments.
• Option for units receiving more than $25,000 – The grantee may assume that lead-based paint and lead hazards are present, forego paint testing and risk assessment, and abate all painted surfaces disturbed during rehabilitation that are presumed to have lead-based paint and all presumed hazards.</td></tr>
</table>

ATTACHMENT 3-C: SUMMARY OF MAJOR REGULATION CHANGES BY ACTIVITY

TABLE 1: REHABILITATION ACTIVITIES (Continued)

FORMER REQUIREMENTS	NEW REQUIREMENTS		
(All activities)	**≤ $5000/unit**	**$5000 - $25,000/unit**	**> $25,000/unit**
Treatment Any defective paint surfaces must have been safely treated during rehabilitation. Under the former regulations, this required removal or covering of the defective surface.	**Paint Repair** Use safe work practices during rehabilitation and the repair of paint surfaces that are disturbed by rehabilitation.	**Lead Hazard Reduction** Any lead-based paint hazards found during the risk assessment must be controlled using interim controls or abatement methods. Standard treatments must be performed when no evaluation is conducted and the presence of lead-based paint hazards is assumed.	**Abatement** Any lead-based paint hazards found in units and common areas or created as a result of rehabilitation must be controlled using abatement methods. Lead-based paint hazards on exterior surfaces that are not disturbed during rehabilitation must be controlled using either interim controls or abatement.
Safe Work Practices Former regulations established some provisions regarding safe and prohibited methods for work.	**Safe Work Practices** Rehabilitation work that disturbs surfaces known or assumed to contain lead-based paint must be performed using safe work practices. Safe work practices are not required for work that disturbs surfaces below *de minimis* levels. The new regulation establishes more extensive requirements for safe work practices, including an updated list of prohibited methods. There are additional safety precautions for occupant protection, worksite preparation, and cleanup activities.		
Clearance Not required.	**Clearance** Once hazard reduction work is completed, a clearance examination must be performed by a certified professional to ensure that no lead-based paint hazards remain. Clearance is required for all categories of rehabilitation activities. For rehabilitation assistance ≤$5,000 per unit, clearance is required only for the worksite. For rehabilitation assistance >$5,000 per unit, clearance is required for the unit, common areas, and exterior areas where rehabilitation took place. Clearance involves a visual assessment and dust testing after cleanup is complete. A clearance report must be prepared. If abatement is conducted, an abatement report is required in place of a clearance report.		
Ongoing Maintenance and Monitoring None required.	**Ongoing Maintenance** Owners of rental properties receiving rehabilitation assistance through the HOME program must incorporate ongoing lead-based paint maintenance activities into regular building operations.		
EBL Requirements If an EBL child is identified, chewable surfaces must have been tested for lead-based paint and treated as necessary.	**Environmental Intervention Blood Lead Level Requirements** The new regulation does not require action by grantees when a child with an environmental intervention blood lead level is found to be living in a unit that has received rehabilitation assistance.		

ATTACHMENT 3-C (Continued)

TABLE 2: TENANT-BASED RENTAL ASSISTANCE ACTIVITIES

FORMER REQUIREMENTS	NEW REQUIREMENTS
Applicability Lead-based paint requirements applied only to units with children under age six. Under the former regulation, the lead-based paint requirements for tenant-based rental assistance activities were the same as those for other program activities. Each CPD program had its own lead-based paint regulation. Lead-based paint requirements were similar across CPD programs (most simply referred to 24 CFR 35). The general requirements that applied to all these programs are described below.	**Applicability** Lead-based paint requirements apply only to units with children under age six. The new regulation outlines lead-based paint requirements specifically for Federally funded tenant-based rental assistance work. These requirements apply to HUD programs that provide assistance for tenant-based rental assistance, including HOME-funded tenant-based rental assistance activities.
Notification Occupants must have received notification about the potential presence and hazards of lead-based paint. Notification could have been achieved through the distribution of the EPA/HUD/CPSC lead-based paint hazard information pamphlet. All property owners (both subsidized and market rate) must have disclosed available information about the presence of lead-based paint and provide prospective buyers/occupants with any existing documentation of known lead-based paint hazards in the dwelling unit.	**Notification** Same as former requirement. The new regulation also requires written notice to occupants informing them of lead hazard evaluation or reduction activities.
Visual Inspection Units occupied by families with children under age six must have been visually inspected for defective paint surfaces prior to occupancy and on an ongoing basis.	**Visual Assessment** Under the new regulation, units occupied by families with children under age six must be inspected for deteriorated paint surfaces. A visual assessment is a visual search for cracking, scaling, peeling, or chipping paint.
Treatment Defective paint surfaces must have been safely treated within 30 days of the inspection either by covering the surface with permanent wall covering (such as wallboard) or by removal and repainting the surface.	**Paint Stabilization** All deteriorated paint surfaces in a dwelling must undergo paint stabilization. Safeguards must be implemented to reduce the risk of creating leaded dust.
Safe Work Practices Former regulations established some provisions regarding safe and prohibited methods for work.	**Safe Work Practices** Paint stabilization must be performed using safe work practices. The new regulation has more extensive requirements for safe work practices, including an updated list of prohibited methods. There are additional safety precautions for occupant protection, worksite preparation, and cleanup activities.
Clearance Not required.	**Clearance** After paint stabilization, a clearance examination must be performed by a certified professional to ensure that all required work was done and no lead-based paint hazards remain. Clearance involves a visual assessment and dust testing after cleanup is complete.
Ongoing Maintenance and Monitoring None required.	**Ongoing Maintenance** Owners of all tenant-based rental assistance properties must incorporate ongoing lead-based paint maintenance activities into regular building operations.
EBL Requirements If an EBL child was identified, chewable surfaces must have been tested. If lead-based paint was present, the surfaces must have been abated.	**Environmental Intervention Blood Lead Level Requirements** If child with an environmental intervention blood lead level is identified, the grantee must complete a risk assessment of the dwelling unit where the child resides within 15 calendar days, and the owner must conduct interim controls or abatement within 15 calendar days of risk assessment to control the identified lead hazards. The grantee must communicate with State and local health agencies to provide and receive identification information about children with environmental intervention blood lead levels. Quarterly, grantees must match information on environmental intervention blood lead level cases with names and addresses of families receiving Federal assistance.

ATTACHMENT 3-C (Continued)

TABLE 3: ACQUISITION, LEASING, SUPPORT SERVICES, AND OPERATIONS ACTIVITIES

FORMER REQUIREMENTS	NEW REQUIREMENTS
Applicability Under the former regulation, the lead-based paint requirements for acquisition, leasing, support services, and operations activities were the same as those for other program activities. Each CPD program had its own lead-based paint regulation. Lead-based paint requirements were similar across CPD programs (most simply referred to 24 CFR 35). However, the HOME program had the most extensive guidance on requirements, but it differed from other programs by specifying activities that were exempt. The general requirements that applied to all these programs are described below.	**Applicability** Types of assistance to which the requirements apply include homebuyer assistance and transitional housing. Most emergency shelters are exempt because of the zero-bedroom exemption. Support services that are not housing assistance are exempt.
Notification Purchasers and occupants of properties constructed prior to 1978 must have received a notification about the potential presence and hazards of lead-based paint. This could be achieved through the distribution of the EPA/HUD/CPSC lead-based paint hazard information pamphlet. All property owners (both subsidized and market rate) must have disclosed available information about the presence of lead-based paint and provided prospective buyers/occupants with any existing documentation on known lead-based paint hazards in the dwelling unit.	**Notification** Same as former requirement. The new regulation also requires written notice to occupants informing them of lead hazard evaluation or reduction activities.
Visual Inspection Properties constructed prior to 1978 must have been visually inspected for defective paint surfaces.	**Visual Assessment** Under the new regulation, visual assessments for deteriorated paint surfaces are required in properties constructed prior to 1978. A visual assessment is a visual search for cracking, scaling, peeling, or chipping paint.
Treatment Defective paint surfaces must have been safely treated either by covering the surface with permanent wall covering (such as wallboard) or by removal and repainting the surface.	**Paint Stabilization** All deteriorated paint surfaces must undergo paint stabilization. Safeguards must be implemented to reduce the risk of leaded dust.
Safe Work Practices Former regulations established some provisions regarding safe and prohibited methods for work.	**Safe Work Practices** Paint stabilization must be performed using safe work practices. The new regulation has more extensive requirements for safe work practices, including an updated list of prohibited methods. There are additional safety precautions for occupant protection, worksite preparation, and cleanup activities.
Clearance Not required.	**Clearance** After paint stabilization, a clearance examination must be performed by a certified professional to ensure that all required work was done and no lead-based paint hazards remain. Clearance involves a visual assessment and dust testing after cleanup is complete.
Ongoing Maintenance and Monitoring None required.	**Ongoing Maintenance** Grantees of acquisition, leasing, support services, and operations activities must incorporate ongoing lead-based paint maintenance activities into regular building operations if there is a continuing programmatic relationship with a rental property.
EBL Requirements If an EBL child is identified, chewable surfaces must have been tested for lead-based paint and treated as necessary.	**Environmental Intervention Blood Lead Level Requirements** The new regulation does not require action by grantees when a child with an environmental intervention blood lead level is found to be living in a unit that has received acquisition, leasing, support services, or operations assistance.

ATTACHMENT 3-D

SPECIAL REQUIREMENTS FOR INSULAR AREAS [24 CFR 35.940]

Insular areas are U.S. territories, including American Samoa, Guam, Mariana Islands, Micronesia, Republic of the Marshall Islands, Republic of Palau, Puerto Rico, and Virgin Islands. These areas face conditions that make it an unreasonable burden to meet some of the new lead-based paint rehabilitation requirements. Special provisions in the new regulation establish less stringent rehabilitation requirements for grantees in insular areas. Grantees must still meet the new requirements for tenant-based rental assistance and other program activities (e.g. acquisition, leasing, support service, and operations activities) that must be met by all grantees. The rehabilitation requirements are as follows:

Federal funding up to and including $5,000 per unit. There are no lead hazard evaluation requirements in insular area projects rec eiving this level of funding. However, the lead hazard reduction requirements are the same. Any paint disturbed during rehabilitation must be repaired, and safe work practices must be used during rehabilitation and the repair of disturbed paint. After the work is completed, the worksite must pass a clearance examination before occupants are allowed to return to areas where work was performed.

Federal funding over $5,000 per unit. Reduced lead hazard evaluation and reduction requirements are established for projects in insular areas for rehabilitation greater than $5,000. Before rehabilitation work starts, a visual assessment must be conducted by someone trained to identify deteriorated paint. (There is no paint testing or risk assessment requirements.) Grantees must conduct paint stabilization on all deteriorated paint and all surfaces that will be disturbed during rehabilitation. (There are no interim controls or abatement requirements.) The dwelling units and common areas that service those units must pass a clearance examination before occupants are allowed to occupy rooms or spaces where paint stabilization took place.

ATTACHMENT 3-E

LEGISLATIVE HISTORY OF LEAD-BASED PAINT

- Historically, approaches to lead-based paint have been reactive — responding to a lead-poisoned child — rather than the current preventive focus. Further, they focused on the ingestion of paint chips, ignoring lead-contaminated dust and soil.
- While some cities enacted legislation on lead-based paint as early as the 1950s, it was not until 1971 that there was national legislation. During this period, there was little understanding about the effects of lead dust.
- Early legislation evolved around the following concepts:
  - React — take action when a lead-poisoned child is identified;
  - Test and treat chewable surfaces (fixtures, window sills, etc.); and
  - Cover defective paint.
- Key legislation from the period prior to Title X is described in the box on the following page.

TITLE X (TITLE TEN) OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992

- Title X represents a new strategy to reduce lead-based paint hazards that affects all HUD and other Federal housing programs. Some of the key features of Title X are that it:
  - Emphasizes the prevention of lead-based paint hazards *before* children are poisoned;
  - Shifts focus away from abating intact lead-based paint to controlling lead-based paint hazards and allows for new technology for evaluating and reducing those hazards;
  - Redefines the concept of lead-based paint hazards to include lead-contaminated dust and soil;
  - Acknowledges that some lead-based paint hazards are of more immediate concern than others; and
  - Recognizes that resources are limited and allows for the tailoring of lead-based paint hazard programs to fit the financial and environmental conditions of specific properties.

MAJOR PLAYERS AND THEIR RESPONSIBILITIES

- To facilitate the change in our nation's approach to addressing lead-based paint, Title X requires several Federal agencies to establish new standards and requirements that will aid in identifying and reducing lead-based paint hazards. These new requirements are described in detail in Attachment 3-F.

LEGISLATIVE HISTORY OF LEAD-BASED PAINT

Year	Legislation	Focus
1971	**Lead-Based Paint Poisoning Prevention Act (LBPPPA)**	Required the Secretary of Health, Education, and Welfare (now Health and Human Services) to prohibit lead-based paint in residential structures constructed or rehabilitated by the Federal government or with Federal assistance. Major components included: Defining lead-based paint chips as the primary health hazard of lead-based paint; Setting the level of lead in blood warranting concern at 60 µg/dL; Requiring abatement standards that were less rigorous compared to today's standards; and Defining lead-based paint as paint containing more than 1 percent lead by weight.
1973	**Amendment to the LBPPPA**	Mandated that HUD eliminate, to the extent practicable, the hazards of lead-based paint in pre-1950 housing covered by housing subsidies and applications for mortgage insurance, and in all pre-1950 Federally-owned housing prior to sale. These amendments lowered the allowable lead content in paint to 0.5 percent until December 31, 1974 and to 0.06 percent after.
1978	**Consumer Product Safety Commission**	Banned the residential use of lead-based paint that contained greater than or equal to .06 percent or 600 ppm of lead.
1987-1988	**Significant Amendments to LBPPPA**	Section 566 of the Housing and Community Development Act of 1987 amendments required: Inclusion of intact paint in the definition of an immediate hazard; Targeted lead-based paint requirements to pre-1978 housing; Changes to lead-based paint requirements in public housing; Extensive research and demonstration programs; and HUD to "prepare a comprehensive plan for the prompt and cost-effective inspection and abatement of privately-owned single family and multifamily housing, including housing assisted with Section 8." This report became the Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing, 1990.
1992	**Title X (Title Ten) of the Housing and Community Development Act**	Amends the LBPPPA as described in Attachment 3-F. It enacts a number of important changes that shift the focus of Federal requirements from responding to lead-poisoned children to actions that address lead-based paint hazards and reduce the risk that children will be poisoned.

ATTACHMENT 3-F

RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT OF 1992 (TITLE X): SUMMARY OF REQUIREMENTS, RESPONSIBLE AGENCIES, AND STATUS OF REQUIREMENTS

Public Law 102-550
102nd Congress -- 2nd Session [H.R. 5334]
102 P.L. 550; 106 Stat. 3672
1992 Enacted H.R. 5334; 102 Enacted H.R. 5334
DATE: OCT. 28, 1992 -- PUBLIC LAW 102-550

Section	Section Title	"Deliverable"
1001	Short Title	Residential Lead-Based Paint Hazard Reduction Act of 1992
1002	Findings	n/a
1003	Purposes	n/a
1004	Definitions	n/a
SUBTITLE A -- LEAD-BASED PAINT HAZARD REDUCTION		
1011	Grants for Lead-Based Paint Hazard Reduction in Target Housing	On going. Eighth "round" of grants in FY2000. Total grant funding is over $551M since 1993.
1012	Evaluation And Reduction Of Lead-Based Paint Hazards In Federally Assisted Housing	Final regulation published September 15, 1999
1013	Disposition of Federally Owned Housing.	Final regulation published in September 15, 1999
1014	Comprehensive Housing Affordability Strategy	Completed
1015	Task Force on Lead-Based Paint Hazard Reduction and Financing	Published *Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing* on July 11, 1995.
1016	National Consultation on Lead-Based Paint Hazard Reduction.	Federal Interagency Task force meets quarterly.
1017	Guidelines for Lead-Based Paint Hazard Evaluation and Reduction Activities	Published the *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* in June 1995.
1018	Disclosure of Information Concerning Lead Upon Transfer of Residential Property	Final regulation published on March 6, 1996 (61 FR 9064). Regulations have been in effect for all target housing since December 6, 1996. Regulations published in two locations (24 CFR 35.80-35.98 and 40 CFR 745.100-745.119) (40 CFR is EPA)
SUBTITLE B – LEAD EXPOSURE REDUCTION		
1021	Section 1021 of Title X amended the Toxic Substances Control Act by adding Title IV (Sec 401-412)	
TITLE IV of TSCA -- LEAD EXPOSURE REDUCTION		
401	Definitions	n/a
402	Lead-Based Paint Activities Training and Certification	Final regulation published on August 29, 1996 (61 FR 45778). Regulations published at 40 CFR 745 Subpart L (40 CFR 745.220-745.239).
403	Identification of Dangerous Levels of Lead	Final regulation published January 5, 2001. (40 CFR 745 Subpart D)
404	Authorized State Programs	Final regulation published on August 29, 1996 (61 FR 45778). Regulations took effect in March 2000. Regulations published at 40 CFR 745 Subpart Q (40 CFR 745.320-745.339).
405	Lead Abatement and Measurement	

406	Lead Hazard Information Pamphlet 406(a) - Lead Hazard Information Pamphlet 406(b) - Renovation of Target Housing	406(a) pamphlet completed and announced on August 1, 1995 (60 FR 39167). 406(b) final regulation published on June 1, 1998 (63 FR 29908). Regulations took effect on June 1, 1999. Regulations published at 40 CFR 745 Subpart E (40 CFR 745.80-745.88).
407	Regulations	n/a
408	Control of Lead-Based Paint Hazards at Federal Facilities.	n/a
409	Prohibited Acts	n/a
410	Relationship to Other Federal Law	n/a
411	General Provisions Relating to Administrative Proceedings	n/a
412	Authorization of Appropriations	n/a
SUBTITLE C – WORKER PROTECTION		
1031	Worker Protection	Published at 29 CFR 1926.62 (29 CFR is Department of Labor/OSHA)
1032	Coordination Between Environmental Protection Agency and Department of Labor	On going
1033	NIOSH Responsibilities.	Amends the Occupational Safety and Health Act of 1970
SUBTITLE D – RESEARCH AND DEVELOPMENT		
1051	Research on Lead Exposure From Other Sources.	Research grants and contracts awarded and work is underway
1052	Testing Technologies	
1053	Authorization.	n/a
1056	Federal Implementation and Insurance Study	n/a
SUBTITLE E – REPORTS		
1061	Reports of the Secretary of Housing and Urban Development	On going

ATTACHMENT 3-G

ADDRESSING LEAD-BASED PAINT IN LOCAL HOUSING PROGRAMS — KEY LESSONS

Why is Action Needed?

- ❑ Lead-based paint in older housing is the primary cause of lead poisoning.
  - ➢ 64 million homes have lead-based paint.
  - ➢ 20 million homes have conditions that expose families to unsafe levels of lead.
- ❑ Lead-based paint threatens the health and future of families and our children. Without action, it also poses a threat to housing providers.
- ❑ Tremendous progress has been made in reducing lead poisoning. Lead-based paint in housing is the final remaining widespread source of lead that directly threatens families.
- ❑ States and communities are meeting the challenge.
  - ➢ The new regulation presents challenges -- it will impact housing program production and operations.
  - ➢ Programs in many communities are already successfully addressing lead.
  - ➢ Practical actions are available that protect families

Understanding Lead and Lead-Based Paint Hazards

- ❑ Lead poisoning usually does not have obvious symptoms, but it has long-term effects.
  - ➢ Some potential effects include damage to brain and nervous system, loss of intelligence, and learning difficulties.
  - ➢ The only way to know for sure if someone has been poisoned is to perform a blood test.
- ❑ Not all lead-based paint is a hazard.
  - ➢ Intact lead-based paint does not cause lead exposure.
  - ➢ Lead hazards include deteriorated paint, lead-contaminated dust and lead-contaminated soil.

Meeting the New Lead-Based Paint Regulation

- ❑ The new lead-based paint regulation emphasizes practical solutions.
  - ➢ Required actions depend upon the nature of its Federal assistance, as well as the amount and duration.
  - ➢ Lead hazard reduction, rather than abatement.
- ❑ The regulation gives States and communities flexibility.

TAKING ACTION TO ADDRESS LEAD-BASED PAINT

To successfully implement the new regulation, State and local housing programs receiving Federal funds should:

- ❑ Revise their program procedures and documents to implement the additional steps required for:
  - ➢ Providing notification
  - ➢ Identifying lead hazards
  - ➢ Performing lead hazard reduction, using safe work practices and achieving "clearance"
  - ➢ Implementing ongoing maintenance where required
  - ➢ Responding to lead-poisoned children
- ❑ Obtain training for contractors and program staff on lead hazard evaluation and reduction.
- ❑ Develop methods and assembled materials to educate rental property owners, homeowners, and occupants of rental housing about the new requirements.
- ❑ Establish working relationships with lead professionals and key partners, such as risk assessors and lead sampling technicians, public health departments and HUD lead grantees.
- ❑ Create procedures for determining when is it more cost-effective to presume that lead hazards are present, and when it makes sense to evaluate a property.

ATTACHMENT 3-H
RESEARCHING STATE REQUIREMENTS

INTRODUCTION

State and local agencies are responsible for meeting state requirements, if any, for lead-based paint and its hazards, in addition to the Federal requirements. Currently, approximately 35 states have their own EPA-authorized lead-based paint requirements. When researching the rule or code for a state, program administrators may find that the state adopted some or all of the Federal requirements. In these situations, meeting both the Federal and state requirements is fairly straight-forward. Program administrators are also likely to find that some (or many) of the state's requirements vary from the Federal requirements, in which case the more stringent requirements must be met.

Attachment 3-H provides guidance for researching the requirements in the state. It provides program administrators with a series of questions that will help collect the important information to ensure that the requisite Federal and state requirements are met. It is organized into three parts:

- ❑ **Getting Information.** This section provides guidance on where to look for information. It suggests possible contacts and information to request.
- ❑ **Common Questions and Answers About State Lead-Based Paint Requirements.** This section lists the "Top Ten Questions" to ask about a state's requirements and discusses what the answers might be.
- ❑ **Worksheet: Top Ten Questions to Ask About Lead-Based Paint Requirements.** The last section is a worksheet that lists the Top Ten Questions and provides space for the answers.

GETTING INFORMATION

To research the state's requirements, start with good sources of information. Here are three helpful steps to get started on state rules research:

- Find people who can answer questions.
- Find the applicable state regulations and laws.
- Look for other sources of information.

- ❑ **Find people who can answer questions.**
  - ➢ One of the best sources of information about state and local lead-based paint requirements are the people who work with these regulations every day. These people are usually found at your state department of health or environment. The **National Council of State Legislatures (NCSL)** keeps a helpful list of contacts on its website. To access this list, use the following contact information.
    - ◆ http://www.ncsl.org/programs/esnr/pbdir/htm
      This web page has a searchable database that lists contact people by state and by subject area related to lead-based paint (e.g., it lists a contact person for training accreditation, abatement standards,, waste disposal, etc. by state). It also provides summaries of lead regulations and lead training requirements by state. [The home page is http://www.ncsl.org/]
    - ◆ NCSL can also be reached directly by phone at 303-830-2200 (Denver) or 202-624-5400 (Washington, DC).

- Also look for resources on HUD's Office of Healthy Homes and Lead Hazard Control website at www.hud.gov/offices/lead. Under "Resources," there is a page for "Lead Information Resources" which includes multiple lists of resources, including a pdf version of the 1998 NCSL guide (at www.hud.gov/offices/lead/outreach/ncsl.pdf).

- **Find applicable state regulations and statutes.** Regulations implement the requirements outlined in statutes. Therefore, the regulation is likely to be of more use than the statute, but sometimes the statute is a useful reference tool. Look for regulations related to lead-based paint in residential properties. To find information about regulations and statutes, use the following resources.

  - **Contact person.** Call the state regulations contact person (identified as described above). Ask about lead-based paint regulations for residential properties. Ask where to find the regulations as well as any interpretive guidance, summaries, etc.

  - **State website.** Copies of regulations and statutes may be available on the state website, most likely on the site for the department of health or environment.

    - **State's department of health.** This department may have other names, such as the Department of Public Health or the Department of Health and Environment. In many states, the health department administers a program for addressing lead poisoning in children. Health department staff are likely to be knowledgeable on the state laws. For example, the Kansas Department of Health and Environment (KDHE) established and implements the Kansas Childhood Lead Poisoning Prevention Program.
    - **State's environmental agency.** A state environmental agency may also have information related to lead. For example, on the Utah Department of Environmental Quality, Division of Air Quality website, you can find a link to Utah's lead-based paint rules. http://www.eq.state.ut.us/equair/HAPS/lead/

  - **Megalaw.com.** Another source for statutes is Megalaw.com.
    Go to http://www.megalaw.com/
    Choose State law / Pick your state / Search state statutes
    Use a key word such as "Lead" ("Lead-based paint" may not lead to the name of the name of the statute because it might be something like Illinois' state law "Lead Poisoning Prevention Act.")

- **Find other good general sources of information**. You will find a range of web sites related to lead, including HUD, EPA, state government agencies, universities, law firms, lead professional contracting agencies, etc. For example:

COMMON QUESTIONS AND ANSWERS ABOUT STATE LEAD-BASED PAINT REQUIREMENTS

This section provides information on ten of the most important questions that program administrators should ask while doing their research of state requirements. [The Top Ten Questions are provided in worksheet format following this section.] The following discussion gives program administrators a better understanding of why these are the most important questions to ask, and explains the answers that they are likely to find. Use this section to assess whether or not the answers to the Top Ten questions are complete enough to compare and reconcile the Federal and state requirements.

1. How does the state define lead-based paint and lead-based paint hazards?

Federal and state requirements might differ in how they define lead-based paint and lead-based paint hazards. If the state defines lead using a lower threshold, state requirements may be triggered at times when the Federal

requirements are not. If the state uses a higher threshold, Federal regulations will be triggered at times when state regulations are not.

2. How does the state define abatement?

The Federal definition of abatement applies only to work designed to permanently eliminate lead-based paint or a lead-based paint hazard . Some states define abatement as any lead-based paint hazard reduction activity, including interim measures. In such cases, state rules may trigger worker certification and licensing requirements, even if they are not required by HUD or EPA.

3. What triggers state lead-based paint requirements?

HUD requirements for lead-based paint hazard control apply to housing that is assisted with Federal funds or is being sold by the Federal government. State requirements may be triggered by circumstances such as the presence of a poisoned child, the disturbance of paint, the presence of lead-based paint, or the provision of funding. State regulations may cover only certain kinds of property, such as rental property, multifamily housing, or housing only of a certain age (pre-1950). As a result, state requirements may be triggered in cases where the Federal rules do not apply and vice versa.

4. What does the state require in this event?

The HUD rules require specific actions to evaluate and address lead-based paint and/or hazards. State rules may differ. For example, in a case where the Federal rules require risk assessment and interim controls, the state requirements may require paint inspection and abatement. In such a case, the more stringent or protective requirements apply.

5. What actions does the state or local government require when a lead-poisoned child is identified?

Because of the complexity of this topic, this question has been divided into a short series of questions to determine the state's requirements and the extent to which they differ from HUD's. Consult your state or local health department if they have a childhood lead poisoning prevention program.

- ❑ What is the definition of a lead-poisoned child that triggers an environmental intervention?
  - ➢ This question should be one of the first questions asked when inquiring about the requirements for responding to poisoned children. Do not assume that HUD and the state or local government define them the same.
  - ➢ HUD requirements are triggered when a child under 6 years of age has a confirmed concentration of lead in whole blood equal to or greater than 1) 20 µg/dL[1] for a single test, or 2) 15 µg/dL for two tests taken at least three months apart. State regulations may specify different ages and blood lead levels.
- ❑ For which properties are the requirements applicable?
  - ➢ HUD's requirements for responding to poisoned children apply only for some program activities. For -funding programs administered by HUD's Office of Community Planning and Development, they apply only to units where the residents receive tenant-based rental assistance. State or local requirements are likely to be triggered by a poisoned child in any property, regardless of assistance.

[1] µg/dL = micrograms per deciliter

- ❑ What actions are required?
  - ➢ The type of activities that are required can vary considerably. HUD requires a risk assessment and interim controls. The state or local government may require additional evaluation and abatement and may also have additional requirements pertaining to doctors and health providers and to reporting responsibilities.

6. What are the state's training, certification, and licensing requirements for lead professionals?
(Risk assessors, Paint inspectors, Abatement supervisors, Abatement workers, Lead Sampling (or Clearance) Technicians)

Most states establish training, certification, and licensing requirements, through their own EPA-authorized program. For the rest, EPA operates a training, certification, and licensing program.

Here are a few places you can go on the HUD and EPA websites that will help you find information on trainings for lead professionals.

- ❑ The Office of Healthy Homes and Lead Hazard Control website provides a range of training resources at: http://www.hud.gov/offices/lead/lbptraining.cfm
- ❑ An Office of Pollution Prevention and Toxic website contains links to relevant EPA regulations and contacts for lead information and training for lead professionals: http://www.epa.gov/opptintr/lead/index.html
- ❑ Another Office of Pollution Prevention and Toxic website contains information on its training and certification program for lead-based paint activities in target housing and child occupied facilities at: http://www.epa.gov/lead/leadcert.htm
- ❑ Assistance locating qualified lead service providers can be found at: http://www.leadlisting.org/

7. In what situations does the state require trained workers or certified/licensed workers?

The HUD rule provides for trained (not certified) workers to perform interim controls. A state may require certified workers for all projects involving lead-based paint. In this case, state law applies.

Further, the HUD rule allows for clearance technicians (also called Lead Sampling Technicians) to perform non-abatement clearance. If states have not authorized this discipline, they may permit a trained sampling technician to perform non-abatement clearance if his/her work is approved by a certified lead-based paint inspector or risk assessor, or they may permit only certified risk assessors and lead-based paint inspectors to conduct clearance.

8. Does the state have requirements for the notification of residents by program administrators?

HUD and EPA require communication with residents about lead hazards and ways to avoid exposure to these hazards. Residents are required to receive information prior to leasing a unit and after lead hazard evaluation and reduction activities have occurred to inform them about lead hazards and lead hazard reduction activity so that they can take appropriate action in response to potential lead hazards in their homes. Some states may have identified additional times when residents must be informed. For example, some states require a notice to residents prior to beginning work on an abatement project.

9. What are the state or local residential lead waste disposal requirements?

Waste disposal requirements are administered by state governments under EPA regulations implementing RCRA. Contact the state and local environmental departments to determine when, where, and how the lead waste must be handled and disposed of. In many (but not all) cases, EPA's household waste exemption will apply.

10. What are the state's record-keeping requirements?

HUD requires that records related to lead hazard evaluation and reduction (including maintenance and reevaluation records) be kept 3 years, but some states require records to be kept for a longer period of time. Find out which records the state requires be kept for a longer period of time.

WORKSHEET: TOP TEN QUESTIONS TO ASK ABOUT A STATE'S REQUIREMENTS

After locating the information needed on the state's rules, program administrators need to answer some basic questions. The worksheet below lists the ten most important questions to answer. The questions pinpoint the most common differences that arise between the state and Federal requirements. There is space left to answer the questions. The next section on Implications of State Requirements for My Program provides more explanation about possible answers and what they mean.

1. How does the state define lead-based paint and lead-based paint hazards?
   Use the following box to compare the Federal and state thresholds.

Federal Definition	State Definition
Lead-Based Paint (applied, not in the can)	
Equal to or greater than 1 milligrams per square centimeter (mg/cm^2) of lead, or Equal to or greater than 0.5 percent lead by dry weight, or Equal to or greater than 5,000 parts per million (ppm) lead by dry weight	

2. How does the state define abatement?

3. What triggers state lead-based paint requirements?

4. What does the state require in this event?

5. What actions does the state or local government require when a lead-poisoned child is identified? (These actions may overlap with the answers you find to questions 3 and 4.)

6. What are the state's training, certification, and licensing requirements for lead professionals?

Lead Professional	Training	Certification	Licensing
Risk assessors			
Paint inspectors			
Abatement supervisors			
Abatement workers			
Lead Sampling (or Clearance) Technicians			
Other Discipline			

7. In what situations does the state require trained workers or certified/licensed workers?

8. Does the state have requirements for the notification of residents by program administrators?

9. What are the state or local residential lead waste disposal requirements?

10. What are the state's record-keeping requirements?

ATTACHMENT 3-I

HUD-EPA LETTER ABOUT ABATEMENT

APRIL 19, 2001

U.S. ENVIRONMENTAL
PROTECTION AGENCY
WASHINGTON, D.C. 20640

U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-3000

APR 19 2001

Dear Colleague:

This letter clarifies the Title X requirements for rehabilitation and lead hazard reduction in property receiving up to $25,000 per unit in Federal rehabilitation assistance under regulations issued by the Department of Housing and Urban Development (HUD). This letter also clarifies the definition of "abatement" under regulations issued by the Environmental Protection Agency (EPA) and HUD. Both agencies issued their regulations under the authority of Title X of the 1992 Housing and Community Development Act, which among other things amended the Toxic Substances Control Act. EPA and HUD are working together to ensure that these two regulations complement each other to ensure that children are protected from lead-based paint hazards.

EPA is authorized to set minimal standards for all lead-based paint abatements, inspections, and risk assessments. This includes establishing training and certification requirements and work practice standards for individuals and firms engaged in those activities, and developing hazard standards. While EPA regulations do not mandate abatement, they require that whenever abatement activities occur by design, they be performed by certified personnel. EPA also authorizes states and tribes to operate their own training and certification programs to address inspections, risk assessments, and abatement if they demonstrate that they are at least as protective as the EPA program and provide for adequate enforcement. Because authorized state and tribal programs may differ from the EPA training and certification program, individuals and firms working in these areas must check with the authorized state or tribe to ensure compliance with those requirements. Local jurisdictions may also have requirements for lead hazard control.

HUD is authorized to require lead-based paint hazard control measures in federally-assisted housing, community development, and loan guarantee programs, and to provide grants to address lead-based paint hazards in low-income, privately-owned dwelling units. HUD's Lead Safe Housing Rule, also issued under the authority of Title X, requires that each recipient of Federal rehabilitation assistance less than $25,000 per unit must reduce lead-based paint hazards, through either interim controls or, if desired, abatement (this does not include public housing authorities conducting modernization). With limited exception, recipients conducting Federally assisted rehabilitation of more than $25,000 per unit must abate lead-based paint hazards.

Pursuant to Title X, both EPA's and HUD's regulations define abatement generally as any measure or set of measures *designed* to permanently eliminate lead-based paint hazards, including occupant protection and safe work practices. Whenever activities intended to permanently eliminate lead hazards are being conducted, EPA and HUD consider such activities

to be abatement. Under HUD's Lead Safe Housing Rule, intention to conduct abatement would, in virtually all circumstances, be established when HUD regulations require abatement, when abatement is specified in work 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 regulations require abatement during modernization of conventional pre-1978 family public housing developments (regardless of funding level), conversions, and for housing rehabilitation programs funded through the HUD Office of Community Planning and Development when Federal rehabilitation assistance exceeds $25,000 per unit.

EPA's regulations at 40 CFR Part 745.223 exclude from abatement "renovation, remodeling, landscaping or other activities, when such activities are not *designed* to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards" (emphasis added). When the primary purpose of work is rehabilitation or weatherization, EPA and HUD do not consider such activities to be abatement. The presence of a lead inspection or risk assessment report or the presumption of the presence of lead-based paint does not trigger federal abatement requirements or automatically change a housing rehabilitation project into an abatement project. Similarly, the use of specific work practices, such as window replacement, does not by itself change a rehabilitation project into an abatement project. On the other hand, even if a housing unit's Federal rehabilitation assistance is less than $25,000, activities expressly intended to permanently eliminate lead hazards are considered abatement. For example, if a cost allocation document subtracts the cost of window replacement from the hard cost of rehabilitation as a lead-based paint hazard reduction measure, the window removal is considered to be abatement. Any other building component replacement, enclosure, or encapsulation measure intended to permanently eliminate a lead-based paint hazard, particularly as documented in regulation, project specifications, cost allocation document, or court or agency order is abatement.

For paint repair and rehabilitation activities in properties receiving less than $25,000 in federal rehabilitation assistance, HUD regulations require occupant protection, the use of workers trained in lead-safe work practices and clearance testing whenever more than de minimis amounts of paint are disturbed. Occupant protection is a required element of all federally-assisted rehabilitation projects covered under Subpart J of the HUD regulation, regardless of funding level, because occupant protection is a requirement under lead-safe work practices (see 24 CFR 35.1350(b) and 24 CFR 35.1345). While EPA does not currently regulate remodeling or renovation activities, both EPA and HUD support the use of lead-safe work practices for all rehabilitation and paint repair activities involving surfaces that may contain lead-based paint. HUD has adapted EPA's one-day training courses to address the requirements of HUD's Lead Safe Housing Rule and HUD is working to make its courses widely available for those subject to HUD's rule (see www.hud.gov/offices/lead for a schedule of course offerings).

HUD will enforce its requirements. Those who believe HUD's lead-based paint

regulations are being violated should send a written complaint and supporting documentation to:

John P. Kennedy
Associate General Counsel for Finance and Regulatory Enforcement
U. S. Department of Housing and Urban Development
451 Seventh St., SW
Washington, DC 20410

When fully implemented, these requirements will help to ensure that every child living in federally-assisted housing will have a lead-safe home.

William H. Sanders, III, Director
Office of Pollution Prevention and Toxics
U.S. Environmental Protection Agency

David E. Jacobs, Director
Office of Healthy Homes and Lead Hazard Control
U.S. Department of Housing and Urban Development

CHAPTER 4

ADDRESSING LEAD-BASED PAINT IN REHABILITATION PROGRAMS

4.1 INTRODUCTION

- This chapter explains how to integrate new Federal lead-based paint requirements into local rehabilitation programs funded through HUD's Office of Community Planning and Development (CPD). It explains:
  - The lead-based paint requirements that apply to grantee rehabilitation activities such as owner-occupied, homebuyer, and rental property rehabilitation programs;
  - The stages where lead-based paint issues arise in the rehabilitation process; and
  - How to integrate required procedures into rehabilitation program procedures.

Rehabilitation Programs That Must Meet New Lead-Based Paint Requirements

HUD Office of Community Planning and Development (CPD) programs that provide funds for local rehabilitation:*

- HOME Investment Partnership Program (HOME)
- Community Development Block Grant (CDBG)
- Housing Opportunities for Persons With AIDS (HOPWA)
- Emergency Shelter Grants (ESG)
- Supportive Housing Program (SHP)

*Note: The rehabilitation activities required for insular areas are significantly different. See Attachment 3-D for a description.

- Grantees and subrecipients operating local rehabilitation programs will be referred to as **administering agencies** throughout this chapter.
- This chapter covers the following:
  - Overview of Requirements (Section 4.2);
  - Calculating Level of Rehabilitation Assistance (Section 4.3);
  - Assessing Your Program Design (Section 4.4);
  - Overview of the Rehabilitation Process (Section 4.5); and

- Detailed Review of How the New Lead Regulation Affects Rehabilitation Procedures:
  - Putting Lead-Based Paint in the Program Application (Section 4.6);
  - Lead-Based Paint Activities During Property Inspection (Section 4.7);
  - Planning The Work (Section 4.8);
  - Selecting Contractors For Your Lead Hazard Reduction Activities (Section 4.9);
  - Addressing Lead-Based Paint at the Pre-Construction Conference (Section 4.10);
  - Supervising Lead Hazard Reduction Activities During Construction (Section 4.11);
  - Final Inspection and Clearance (Section 4.12); and
  - Post-Rehabilitation Lead-Based Paint Activities (Section 4.13).

4.2 OVERVIEW OF REQUIREMENTS

- The new regulations described in 24 CFR Part 35, Subpart J — Rehabilitation require that lead hazard evaluation and reduction activities be carried out for all projects constructed before 1978 that are receiving rehabilitation assistance. Exhibit 4-1 summarizes the requirements of the new regulation and they are described below. For more information, see Chapter 3 (Requirements).

Definitions

- **Lead Hazard Evaluation.** A risk assessment, paint testing or a combination of these to determine the presence of lead-based paint hazards or lead-based paint.
- **Lead Hazard Reduction**. Activities designed to reduce or eliminate exposure to lead-based paint hazards through methods including interim controls, standard treatments, or abatement.
- **Clearance.** An activity conducted following lead-based paint hazard reduction activities to determine that the hazard reduction activities are complete. It involves a visual assessment and dust testing by a qualified individual.

- The requirements for rehabilitation correspond to three of the approaches to lead hazard evaluation and reduction described in Chapter 3. Larger rehabilitation jobs must meet more protective requirements than smaller ones. The three approaches are:
  - **Approach 1: Do No Harm**. Perform the rehabilitation in a way that does not create lead hazards.
  - **Approach 3: Identify and Control Lead Hazards.** Identify lead-based paint and hazards and use a range of methods to address the hazards.

- **Approach 4: Identify and Abate Lead Hazards**. Identify lead-based paint and hazards and remove, enclose or encapsulate them permanently.

EXHIBIT 4-1

REHABILITATION: REQUIRED ACTIVITIES TO ADDRESS LEAD-BASED PAINT (Subpart J)

	≤$5,000	$5,000 - $25,000	>$25,000
Approach to Lead Hazard Evaluation and Reduction	1. Do no harm	3. Identify and control lead hazards	4. Identify and abate lead hazards
Notification	Yes	Yes	Yes
Lead Hazard Evaluation	• Paint Testing of surfaces to be disturbed by rehabilitation	• Paint Testing of surfaces to be disturbed by rehabilitation • Risk assessment	• Paint Testing of surfaces to be disturbed by rehabilitation • Risk assessment
Lead Hazard Reduction	• Repair surfaces disturbed during rehabilitation • Safe work practices • Clearance	• Interim Controls • Safe work practices • Clearance	• Abatement • Safe work practices • Clearance
Ongoing Maintenance	For HOME rental properties only	For HOME rental properties only	For HOME rental properties only
EIBLL	No	No	No
Options	• Presume lead-based paint • Use safe work practices on all surfaces	• Presume lead-based paint and/or hazards • Use standard treatments	• Presume lead-based paint and/or hazards • Abate all applicable surfaces

- **Notification**. The following notification requirements apply to all units receiving Federal assistance for rehabilitation. See Section 3.6 of this manual for details.

> - **EPA Lead-Based Paint Pre-Renovation Education.** Contractors and property owners must provide the lead information pamphlet, "Protect Your Family from Lead in Your Home" before starting any work that disturbs paint in pre-1978 housing (40 CFR 745.80).

  - **Disclosure.** [*24 CFR 35 Subpart A*]. The requirements of the HUD-EPA disclosure rule must be complied with if the property is being sold or leased. See Section 3.6 for a full description of the disclosure rule.

  - **Lead Hazard Information Pamphlet**. [*24 CFR 35.910, 24 CFR 35.130*]. Unit occupants must receive the HUD/EPA/CPSC pamphlet "Protect Your Family from Lead in Your Home" or an EPA-approved alternative. The grantee is not required to provide this pamphlet if it has already been provided under the Disclosure Rule (described above) or under the Pre-Renovation Education Rule (described in the text box above).

  - **Notices of Hazard Evaluation and Reduction**. [*24 CFR 35.910, 24 CFR 35.125*]. Unit occupants must be notified of any lead hazard evaluation results (or the presumption of lead-based paint/hazards) and of the hazard reduction activities and clearance, as described in 3.6.

- **Lead Hazard Evaluation**. [*24 CFR 35.930*]. Each unit must be evaluated to identify lead hazards. The required method of evaluation depends on the level of rehabilitation assistance (as described below). Methods include paint testing of surfaces to be disturbed by rehabilitation and conducting a risk assessment. See Exhibit 4-1 for a summary of when each method is required. See Section 3.7 for details on these methods.

- **Lead Hazard Reduction.** [*24 CFR 35.930*]. The level of hazard reduction required depends on the level of assistance. (See Exhibit 4-1. Details on reduction are provided in Sections 3.8, 3.9, and 3.10) Specific actions required include:

  - **Repair of Paint Disturbed During Rehabilitation**. Includes surface preparation and applying a new coat of paint.

  - **Interim Controls and Standard Treatments**. Includes addressing friction and impact surfaces, creating smooth and cleanable surfaces, encapsulation or enclosure, removing or covering lead-based paint components, paint stabilization, and interim controls of bare soil.

  - **Abatement**. Abatement involves permanently (i.e. more than 20 years) eliminating lead-based paint hazards, through paint removal, component replacement, encapsulation, and enclosure.

  - **Safe Work Practices**. Safe work practices must be used for all work on all lead-based paint surfaces. Safe work practices are required on interior surfaces larger than 2 ft^2 per room and on exterior surfaces larger than 20 ft^2.

  - **Clearance**. [*24 CFR 35.1340*]. A person certified to perform clearance in the applicable State must conduct a clearance examination after the rehabilitation work is completed.

- **Ongoing Maintenance**. Ongoing maintenance, monitoring, and cleaning are required for some properties that have an ongoing relationship with the funding program (e.g. HOME rental property). For all other properties, they are recommended.

- **Environmental Intervention Blood Lead Level (EIBLL) Child**. No requirements apply for rehabilitation projects.

- **Comparison to Former Regulations**. In contrast to the former regulations, which had different requirements for each CPD funding source, the new regulation standardizes the requirements so that they apply to *all* CPD-funded rehabilitation. (See Attachment 3-C, Table 1, for a comparison.)

4.3 CALCULATING THE LEVEL OF REHABILITATION ASSISTANCE

- The lead hazard evaluation and reduction activities required for rehabilitation projects depend on the level of rehabilitation assistance received by the project. This level of assistance is determined by taking the lower of:

  - Per unit rehabilitation hard costs (regardless of source of funds), or

- Per unit Federal assistance, (regardless of the use of the funds).

- **Some definitions**. To make this determination, it helps to understand several terms:

  - **Rehabilitation Hard Costs**. The rehabilitation costs are calculated using only hard costs. They do not include soft costs or other such costs as listed in Exhibit 4-2, nor do they include the costs of lead hazard evaluation and reduction, as described below.

  - **Lead Hazard Evaluation and Reduction Costs**. 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. See exhibit 4-3 for a discussion of the implications of subtracting these costs.

  - **Federal Assistance**. The Federal assistance includes all Federal funds provided to the rehabilitation project, regardless of whether the funds are used for acquisition, construction, soft costs or other purposes. This also includes funds from program income, but excludes low-income housing tax credit funds (LIHTC), Department of Energy Weatherization Program funds, or non-Federal HOME Program match funds.

EXHIBIT 4-2

COSTS NOT COUNTED WHEN CALCULATING REHABILITATION HARD COSTS

Soft Costs:

- Financing fees
- Credit reports
- Title binders and insurance
- Recordation fees, transaction taxes
- Legal and accounting fees
- Appraisals
- Architectural and engineering fees, including specifications and job progress inspections
- Staff and overhead costs incurred by the PJ that are directly related to a specific project

Administrative Costs

Relocation Costs

Environmental Reviews

Acquisition of the Property

Lead Hazard Evaluation and Reduction Costs (see definition above)

EXHIBIT 4-3

IMPLICATIONS OF SUBTRACTING LEAD HAZARD REDUCTION COSTS FROM THE HARD COSTS OF REHABILITATION

Costs attributable to lead-based paint hazard reduction can be excluded from the calculation of the hard costs of rehabilitation. In general, costs of rehabilitation that would have been performed in the absence of the lead-based paint regulation should not be excluded. HUD recognizes, however, that grantees, participating jurisdictions, and subrecipients have some discretion in determining which costs are considered lead hazard reduction and which are considered hard costs of rehabilitation for the purposes of calculating the regulatory level of Federal rehabilitation assistance.

For example, a decision to replace windows or doors may be influenced by the existence of lead-based paint hazards in those components. This decision could be made in one of two ways.

- A decision to attribute component replacement to lead-based paint hazard reduction carries with it the requirement to use personnel certified to perform lead-based paint abatement for such work, even if the calculated level of Federal rehabilitation assistance is less than $25,000. (This is because component replacement is an abatement method. If an activity is expressly intended to permanently eliminate lead-based paint hazards, the activity falls under the jurisdiction of EPA and/or State or tribal regulations pertaining to abatement.)
- If, however, the cost is attributed to rehabilitation, and the calculated level of Federal rehabilitation assistance is no more than $25,000, Federal regulations do not require the use of certified abatement personnel. State, tribal or local regulations may differ.

- **Some examples**. Note that when making this calculation, the use of Federal funds is not relevant. Simply compare rehabilitation hard costs with the Federal assistance. The following examples illustrate this concept:
  - A single family home is being rehabilitated for a total of $6,000 (hard costs). The owner is receiving a $2,000 low-interest loan from the city's HOME program. The level of assistance is $2,000.
  - A family is purchasing a home. They are receiving $10,000 in assistance for downpayment, closing costs, and rehabilitation costs. The hard costs of rehabilitation are $6,000. The level of assistance is $6,000.
- **Calculating the Level of Assistance in Multifamily Properties**. In multifamily properties, average per unit costs must be determined.
  - **In projects where all units are federally-assisted**, simply divide the total costs by the number of units. For example:
    - A 10-unit property is being rehabilitated for hard costs of $200,000. The property receives $150,000 in HOME and CDBG funds. Additional funding comes from private sources. All units are federally-assisted.
    - The average per unit Federal assistance for this project is $150,000/10 units = $15,000.
    - The per unit rehabilitation hard costs are $200,000/10 units = $20,000.

- Therefore, the level of assistance is $15,000 (the lesser of $15,000 and $20,000)

➢ **In projects that include both federally-assisted and non-assisted units**, the calculation is more complex because the cost of rehabilitating common areas and exterior surfaces must be allocated appropriately. To calculate the correct level of assistance, take the following steps:

- The average per unit Federal assistance is the total Federal assistance divided by the total number of federally assisted units. For example, a 20 unit project has 10 HOME-assisted units and 10 unassisted units. It receives $300,000 in Federal funds. The per unit Federal assistance is $300,000/10 units = $30,000.
- The per unit rehabilitation hard costs are calculated using the following formula provided in the box below.
- Compare the per unit Federal assistance to the per unit rehabilitation hard costs.

Formula For Calculating Per Unit Rehabilitation Costs In Mixed Projects

A/AU + B/TU

Where:

A	=	Rehabilitation hard costs for all assisted dwelling units (not including common/exterior areas)
B	=	Rehabilitation hard costs for common areas and exterior surfaces
AU	=	Number of federally-assisted units in the project
TU	=	Total number of units in the project

For example: A 20-unit property is doing rehabilitation for $160,000. The rehabilitation will include:

- $40,000 for repairs to the exterior and common areas of the building,
- $60,000 to rehabilitate 10 HOME-assisted units, and
- $60,000 for the unassisted units.

The per unit rehabilitation costs are 60,000/10 units + 40,000/20 units = 6,000 + 2,000 = $8,000 per unit.

❑ **Exercise**. Attachment 4-1 is an exercise on calculating per unit assistance.

4.4 ASSESSING YOUR PROGRAM DESIGN

❑ Grantee rehabilitation programs meet community needs and use local resources. The new lead requirements may necessitate important changes to a grantee's program design and procedures or only some minor adjustments.

❑ While the requirements of the new lead regulation apply uniformly to all rehabilitation activities, how they apply to a grantee's program *in practice* depends upon the type of program (owner-occupied, rental, homebuyer); staff capacity; and program goals. Other specific factors to keep in mind include the following.

➢ **Players.** Some owner-occupied projects involve only the homeowner and a rehabilitation specialist. For large rental housing projects, a

developer, nonprofit, municipal agency, owner, and bank may be involved.

- **Complexity of the Construction Activity.** Some rehabilitation jobs are more complex than others. The staged rehabilitation of multifamily apartment buildings may require different construction management skills than those required to oversee single-family unit rehabilitation. This may affect choices about who undertakes particular construction management activities.

- **Grantee's Development Expertise and Process**. In cases where an owner, developer or subrecipient is new or inexperienced with rehabilitation management, the grantee may want to play a substantive role in overseeing initial rehabilitation projects that incorporate the new requirements. It may be especially important to provide oversight up front to ensure that the new lead requirements are followed.

- The rest of this chapter addresses specific stages in the rehabilitation process. The remaining sections suggest ways to incorporate the new requirements into each stage of the rehabilitation process.

4.5 OVERVIEW OF THE REHABILITATION PROCESS

- While rehabilitation procedures will remain essentially the same, the new lead regulation will require some adjustments to a grantee's procedures. Exhibit 4-4 lists the key steps in the conventional rehabilitation process and describes where the new requirements may be integrated.

4.6 PUTTING LEAD-BASED PAINT IN THE PROGRAM APPLICATION

- In the application stage, the applicant provides property and income information so that program staff can begin to determine whether the applicant and the property are eligible for rehabilitation funds according to program criteria.

Regulation Change Highlights

- The application process should not have to change as a result of the new regulation.
- However, this is a good point in the process to meet one requirement and distribute the lead hazard information pamphlet. It is also an opportunity to begin discussing the lead hazard reduction issues that occupants and owners may have to face as the rehabilitation work moves forward.

- **Collecting Information.** The application is also a good place to collect information about the project to determine which lead requirements are applicable and about lead-based paint at the property. Program staff can collect information about lead-based paint hazards by:

  - Asking direct questions that can be used to assess lead hazards at the property in the application; and

  - Requiring applicants to provide readily available information about potential lead hazards at the property.

EXHIBIT 4-4

SUMMARY OF REHABILITATION ACTIVITIES AND LEAD-BASED PAINT REQUIREMENTS

Key Rental Rehabilitation Activities	Key Owner-Occupied and Homebuyer Rehabilitation Activities	Applicable Lead-Based Paint Requirements
1. Program Application (4.6)		
Application. A nonprofit, private or public owner applies for funding by either completing an application or submitting a proposal for funding.	**Application**. A current or prospective homeowner submits an application, typically using a standardized application form.	**Application**. Begin to find out property and occupant information that will help to identify and assess lead hazards. Notify applicants and occupants of the dangers of lead-based paint.
2. Property Inspection (4.7)		
Evaluate Property. A program rehabilitation specialist inspects the property and determines eligibility, feasibility, and produces a scope of work and cost estimate. The evaluation may take place during a single visit or during a series of visits.	**Evaluate Property**. A program rehabilitation specialist inspects the property and determines eligibility, feasibility, and produces a scope of work and cost estimate. The evaluation may take place during a single visit or during a series of visits.	**Evaluate Property**. Have a qualified professional identify and evaluate lead hazards in units where rehabilitation will take place.
3. Rehabilitation Planning (4.8)		
Determine Approach. Program staff determine whether lead hazard control work can be efficiently and safely carried out before or during the rehabilitation and the steps to protect residents. If a developer is involved, planning may be carried out in consultation with the developer.	**Determine Approach**. Program staff determine whether lead hazard control work can be efficiently and safely carried out before or during the rehabilitation and the steps to protect residents.	**Plan Work.** This step involves working with contractors to coordinate work and may involve sequencing of rehabilitation and lead hazard control work items.
4. Contractor Selection (4.9)		
Choose Contractors. One or more contractors are selected to carry out the rehabilitation work.	**Choose Contractors**. One or more contractors are selected to carry out the rehabilitation work.	**Choose Contractors**. Select contractor who is experienced and properly qualified to reduce lead hazards.
5. Pre-Construction Conference (4.10)		
Meet Players. The owner, contractor(s), program specialist, developer, and other players discuss how the rehabilitation work will be carried out.	**Meet Players**. The owner, homebuyer, contractor(s) and program specialist discuss how the rehabilitation work will be carried out.	**Meet Players**. Review lead hazard reduction strategy, confirm roles and responsibilities for reducing hazards and discuss outstanding issues such as worksite restrictions.
6. Supervising Construction (4.11)		
Monitor Work. The rehabilitation specialist monitors the rehabilitation. Oversight may be in conjunction with a developer.	**Monitor Work**. The rehabilitation specialist monitors the rehabilitation.	**Monitor Work**. Administering agency staff oversees construction work to ensure that the lead hazard reduction is being carried out and that workers use safe practices where appropriate.
7. Final Inspection and Clearance (4.12)		
Perform Final Check and Clearance. The rehabilitation specialist conducts a final inspection to check that all work has been completed and has clearance testing performed. If clearance is successful the project can be closed-out and units leased-up.	**Perform Final Check and Clearance**. The rehabilitation specialist conducts a final inspection to check that all lead hazard reduction work has been completed and is ready for the clearance inspection. If clearance is successful, the project is closed out.	**Perform Final Check and Clearance**. The rehabilitation specialist conducts a final inspection to check that all lead hazard reduction work has been completed and is ready for the clearance inspection. If clearance is successful, the project is closed out.
8. Post Rehabilitation (4.13)		
Monitor, Maintain, and Notify. Owners monitor painted surfaces regularly and perform maintenance to prevent lead hazards. These activities are required for HOME rental properties and recommended for other types of rental properties. Program staff must ensure compliance. Provide lead pamphlet to new tenants.	**Monitor and Maintain Surfaces.** Program staff should educate homeowners on how to monitor potential hazards, perform proper cleaning, and perform maintenance to prevent hazards. Property owners must disclose the presence of lead-based paint when selling or leasing the property.	**Monitor, Maintain, and Notify.** Property owners should monitor potential hazards, repair damaged surfaces, and maintain the property to prevent hazards. These activities are required for HOME rental properties. Property sellers must disclose the presence of lead-based paint. Landlords must provide the lead information pamphlet to new tenants.

- **Types of Information**. Useful information to collect during the application stage includes the following.
  - **Age of Property**. The age of the property can give some indication about how lead-based paint was used in the building.
  - **Age of Children Living at the Property**. Young children are more at risk when there are lead hazards than adults, especially those under 6 years of age.
  - **Existing Information on Children's Blood Lead Levels**. Have any children been tested for lead in blood? What were the results? In order to protect the contractor and grantee from a liability, it is a good practice to find out if children have blood lead levels that exceed the environmental intervention blood lead level before work starts. However, blood lead tests cannot be required if a parent or guardian refuses.
  - **Existing Information on Lead-Based Paint**. If any lead hazard evaluations or paint testing has been carried out at the property, request copies of the reports, if available, to find out when tests were performed, their results, and where lead-based paint is known to exist.
- **Notifications to Residents and Purchasers**. The application stage is a good opportunity to fulfill the notification requirements by informing applicants about the dangers of lead poisoning.
  - **Pamphlet**. Whenever a unit is sold, leased, or renovated, occupants must receive the HUD/EPA/CPSC pamphlet, "Protect Your Family from Lead in Your Home." The pamphlet provides educational information describing lead-based paint hazards.
  - **Disclosure**. Remind owners of the HUD-EPA disclosure rule. If lead-based paint or lead hazards have been identified in a unit, occupants must be informed at time of lease approval (24 CFR Part 35 Subpart A, or 40 CFR Part 745 Subpart F).

4.7 LEAD-BASED PAINT ACTIVITIES DURING PROPERTY INSPECTION

- This section covers lead-related activities for the property inspection, lead-based paint hazard evaluation, and post-evaluation activities.
- In the property inspection stage, program staff typically perform a room-by-room walk-through at the property to identify deficiencies and determine the scope of the rehabilitation work. Based on this walk-through, program staff prepare a work write-up and a cost estimate.

Regulation Change Highlights

- Evaluation for lead-based paint and/or hazards must take place before work starts.
- The costs of rehabilitation determined during inspection are used to determine the applicable lead hazard evaluation and reduction requirements.

- The new lead requirements add an activity to this process because they require some type of lead hazard evaluation activity. The evaluation may be

carried out as part of an initial inspection or performed separately after the level of assistance has been determined.

- The new regulation allows grantees the option of simply presuming that lead-based paint and/or hazards are present as an alternative to conducting an evaluation. Deciding whether to evaluate or presume the presence of lead-based paint and/or hazards is discussed in Chapter 8, Module C (Strategies).

PROPERTY INSPECTION

- The walk-through inspection is a good opportunity for program staff to begin to identify potential lead hazards. While a more comprehensive evaluation will be carried out later, rehabilitation specialists can become familiar with the location and nature of lead hazards so that they are better able to ensure that contractors address them properly during the rehabilitation work. Examples of items to look for include:
  - Interior and exterior surfaces with deteriorating paint;
  - All chewable surfaces within reach of small children such as window sills, banisters, and chair railings;
  - Friction and impact surfaces such as doors, windows, and floors;
  - Areas of bare soil at the exterior of the building, especially those under deteriorated paint surfaces; and
  - Causes of lead hazards, such as water damage due to leaking pipes or a leaking roof.
- Based upon the walk-through inspection, program staff can prepare a cost estimate for the rehabilitation work. The amount of this cost estimate is used with the amount of Federal funding to determine the type of lead hazard evaluation and reduction required.

LEAD HAZARD EVALUATION ACTIVITIES

- Lead hazard evaluation is a new step that must be added to regular rehabilitation procedures. During evaluation, determine whether lead-based paint or hazards exist in the unit and where.
  - Rehabilitation program managers have the option to forego evaluation and presume the presence of lead-based paint and/or lead–based paint hazards.
- Work up to and including $5,000 requires paint testing of surfaces that will be disturbed during rehabilitation.
- Work over $5,000 requires a risk assessment of the entire unit and paint testing of surfaces to be disturbed during rehabilitation.
- Evaluation must be conducted by certified professionals described in Exhibit 4-5.
  - Paint testing must be conducted by a certified lead-based paint inspector or risk assessor.

- Risk assessments must be conducted by a certified risk assessor.

Paint inspectors and risk assessors must be certified to conduct evaluations. Rehabilitation specialists and other program staff may have the experience and educational qualifications needed to pursue lead-based paint inspector or risk assessor training and certification. The following specific certification requirements apply to these evaluators (from *40 CFR 745.226*):

- Certified paint inspectors must:
  - Successfully complete an EPA or state-accredited training program.
  - Pass the exam required by the certifying authority.
  - Apply for and be certified by the state or EPA.
- Risk assessors must:
  - Successfully complete an EPA or state-accredited training program.
  - Pass the exam required by the certifying authority.
  - Apply for and be certified by the state or EPA.

    AND
  - Have a bachelor's degree and at least one year of experience in lead, asbestos, environmental remediation or construction or an associate's degree with two years experience in one of these areas.

    OR
  - Be certified as an industrial hygienist, engineer, architect, or related field.

    OR
  - Have a high school diploma and at least three years experience with lead, asbestos, environmental remediation work, or construction.

- Rehabilitation program staff have some strategic choices to make about how to conduct lead-based paint evaluations. Exhibit 4-6 highlights these choices.

EXHIBIT 4-6

STRATEGIC CHOICES: CONDUCTING LEAD HAZARD EVALUATIONS

1. **Certifying Staff**. Rehabilitation program managers may want to consider having program staff certified to carry out evaluations and clearance testing. It may be more cost effective to train in-house staff, such as rehabilitation specialists, to carry out evaluations than to contract for evaluating. Staff rehabilitation specialists who can monitor construction projects *and* lead hazard reduction have the valuable skill combination to oversee repairs, improvements, and lead hazard reduction. Certification of in-house staff can also become part of staff professional development.

2. **Combining Property and Lead Hazard Evaluations**. Rehabilitation programs may end up conducting several inspections and evaluations to determine eligibility, feasibility, and the scope of work. Grantees may want to consider the possibility of combining the lead hazard evaluation with the inspection to determine the scope of work. To do this, it may be necessary to have the rehabilitation specialist and a certified evaluator conduct the inspection together or have a rehabilitation specialist certified to conduct lead hazard evaluations.

3. **Using XRF Machines**. Your program may want to consider purchasing an XRF machine to test for lead-based paint. While this machine is expensive ($12,000 to $20,000 plus $1,000 to $3,000 per year for maintenance), it can prove cost-effective for high-volume programs. Keep in mind that, in order to operate an XRF machine, staff will have to be certified to conduct paint testing, receive manufacturer training, and obtain a license to handle the radioactive material used by the machine.

POST-EVALUATION ACTIVITIES

- **Notice of Evaluation.** The administering agency must notify occupants about the results of the lead hazard evaluation within 15 days after the results have been determined. The notification must provide the following information.
  - The presence and location of lead-based paint.
  - A description of how occupants can get further information including the full report of the testing methods and results.
  - An explanation of the decision to forego evaluation and presume that lead-based paint and/or hazards exist. You must notify occupants of the reasons for making this presumption.
- In single-family buildings, grantees can provide this information to the homeowner directly.
- In multifamily buildings, grantees can either distribute this information to each household or post it in a central location where all residents can access it.
- **Documenting the Results.** In addition to the notice, reports of all evaluations prepared by lead-based paint inspectors or risk assessors must be made available to residents if requested.

4.8 PLANNING THE WORK

- Once the location and nature of lead hazards has been determined, the rehabilitation specialist can begin to determine how these hazards can be best addressed in conjunction with the regular rehabilitation work.
- The rehabilitation specialist can supervise this planning but may need to include other players in planning such as the contractor(s), the owner, or the risk assessor.

Regulation Change Highlights

- This is a new requirement in the rehabilitation process.
- Grantees must determine what kind of lead hazard evaluation and lead hazard control will have to be performed.
- At this point, grantee staff can also determine whether or not relocation will be necessary.
- Occupants must be informed of the results of lead hazard evaluations.

KEY PLANNING ISSUES

- Key questions to consider when planning rehabilitation that involves lead-based paint include the following:
  - What is the required level of lead hazard reduction (i.e. interim controls, abatement)? See Exhibit 4-7.
  - What methods will be used to reduce lead-based paint hazards (i.e. paint stabilization, component removal)?

- What qualifications must contractors possess (i.e. certifications, training)?
- How will lead hazard reduction work be coordinated with the rehabilitation work?
- Do occupants need to be temporarily relocated to protect them or speed the rehabilitation work?

- Programs have the option to forego evaluation and presume the presence of lead-based paint and/or hazards. If the presumption option is taken, certain hazard reduction requirements must be carried out. This option is discussed in Chapter 8, Module C (Strategies).

EXHIBIT 4-7

REQUIRED LEVEL OF LEAD HAZARD REDUCTION

If Federal rehabilitation assistance is up to and including $5,000*

- Safe work practices must be used for all rehabilitation activities, and paint disturbed during the work must be repaired.

If Federal rehabilitation assistance is over $5,000 up to and including $25,000*

- Interim controls must be performed on the hazards identified by the risk assessment and paint disturbed during the rehabilitation must be stabilized. Interim controls include paint stabilization, dust removal, preventive maintenance that keeps lead hazards from developing, treating some or all friction and impact surfaces, and covering contaminated bare soil. Unless bare soil has been tested and is found not to be a lead hazard, soil treatments are required. (*24 CFR 35.1330*). Bare soil can be covered with appropriate covering such as gravel, wood chips, sod, or permanent covering.

OR

- Standard treatments must be carried out for the entire unit. Standard treatments include:
  - Paint stabilization.
  - Smooth and cleanable horizontal surfaces.
  - Correction of dust-generating conditions.
  - Treatment of bare soil.
  - Safe work practices must be used while the work is being performed and the unit must pass clearance.
- Workers performing interim controls and standard treatments must meet the training requirements described in Attachment 4-D.
- Note: If you explicitly choose to abate a hazard instead of using interim controls, you must use an abatement contractor with the qualifications listed in Attachment 4-D. For example, component replacement is an abatement method and therefore requires a certified abatement contractor. However, if that component replacement is conducted as a part of the rehabilitation, not for the purpose of lead-based paint hazard reduction, it is not considered "abatement" under EPA regulations; so an abatement contractor is not required under such circumstances. (Remember: this applies only if the calculated level of Federal rehabilitation assistance is no more than $25,000. Over $25,000, all lead-based paint hazards must be abated by certified personnel.) See Attachment 3-I for a letter that clarifies HUD and EPA's definition of abatement.

EXHIBIT 4-7

REQUIRED LEVEL OF LEAD HAZARD REDUCTION (cont.)

If Federal rehabilitation assistance is over $25,000*

- ❑ Surfaces painted with lead-based paint that are disturbed during rehabilitation and hazards identified by the risk assessment all must be abated. Abatement includes removing lead-based paint from surfaces, enclosure or encapsulation methods, removing and replacing components painted with lead-based paint, and removing and replacing contaminated soil. Of all the lead hazard reduction methods discussed, only abatement methods are considered permanent (i.e. having at least a 20-year expected life).
- ❑ Interim controls may be performed on exterior surfaces if those surfaces are not undergoing rehabilitation.

OR

- ❑ If presuming the presence of lead-based paint and hazards, the surfaces being disturbed during rehabilitation and all applicable surfaces—deteriorated, friction, impact, and chewable surfaces and bare soil surfaces must be abated.
- ❑ Workers performing abatement must meet the training and certification requirements described in Attachment 4-D.

When is Abatement Required?

Abatement must be performed using certified personnel in the following three circumstances:

1. Abatement is required by the HUD regulations (e.g., rehabilitation jobs receiving over $25,000 in Federal rehabilitation assistance);
2. Abatement is specified in work specifications, job write-ups, cost allocation, or similar documents; or
3. Abatement is explicitly ordered by a responsible state or local agency or court order.

WRITING WORK SPECIFICATIONS

- ❑ **Work Write-Up**. Based on the property inspection and hazard evaluation, program staff prepare a work write-up for the rehabilitation and hazard reduction work.
- ❑ Depending on staff skills and timing of the inspection for property deficiencies and hazard evaluation, they may prepare one or two sets of specifications, one for rehabilitation items and one for hazard reduction items.
- ❑ **Preparing Specifications.** There are several approaches to writing these specifications:
  - ➢ Write two work write-ups, one for rehabilitation after the property inspection and another for lead hazard reduction items after evaluation.
  - ➢ If the property inspection and evaluation are combined, program staff may consider preparing one work write-up that contains both types of specifications.
  - ➢ Depending on the level of hazard reduction, staff may need help in writing specifications. A risk assessor's recommendations can serve as

a starting point. The program can also hire a risk assessor to prepare specifications if he/she has a background in construction.

COORDINATING REHABILITATION AND LEAD HAZARD REDUCTION

- If a lead hazard reduction contractor and a rehabilitation contractor are both involved in the job, the rehabilitation specialist should think through how the contractors will approach the job. Without good planning and coordinating, problems could arise. For example, if an abatement contractor performs lead hazard reduction before a regular contractor is to begin work, will the work activities of the regular contractor create new hazards?
- If a rehabilitation contractor and a lead hazard reduction contractor are involved in a job, there are a number of possible approaches to assigning the work. Some possible scenarios include:
  - Using a lead hazard reduction contractor to perform all rehabilitation and lead hazard reduction work;
  - Using a lead hazard reduction contractor to abate all lead-based paint before a rehabilitation contractor does the rehabilitation; and
  - Performing lead hazard reduction and rehabilitation in stages.
- Some project factors to consider when determining how to coordinate the work include the following:
  - **Personnel identified to perform work**. Which type of contractors will you need to work on the project? Do they have the proper qualifications for the work? If an abatement contractor is not required, does the contractor have staff who are trained in safe work practices?
  - **Size of the Project.** During larger projects, lead-based paint hazards are more likely to be created. Regardless of the level of rehabilitation, if large amounts of lead dust and debris will be generated, it may be best to hire an abatement contractor who has the equipment and skills to perform the lead hazard reduction work safely. For larger projects, the amount of debris can trigger disposal issues—large amounts of lead debris can be considered hazardous waste.
  - **Extent of the Presence of Lead-Based Paint and Lead Hazards.** If lead-based paint is present on a majority of the surfaces that will be disturbed during rehabilitation, it is likely that the work will generate large amounts of dust and debris.
  - **Number of Units to be Rehabilitated.** The number of units to be rehabilitated will affect the clearance procedures. In multifamily properties, it is not necessary to perform clearance testing in all units. In buildings with more than 10 similarly constructed units, units can be sampled at random.
  - **Limits of Funding.** Funding limits will affect how much can be spent on the regular rehabilitation work and how much can be spent on lead

hazard reduction. Program staff will have to strike a balance so that the essential rehabilitation work, such as corrections of code violations, and lead-hazard reduction can be carried out.

- **Staging the Contractors.** Integrating lead hazard control work with the other rehabilitation work may be a concern if separate contractors are used. Lead clearance must be achieved after the lead hazard reduction work is being performed. Keep in mind that if the lead hazard reduction is performed first, followed by the rest of the rehabilitation, then, clearance must be performed twice – after the lead hazard reduction work and at the conclusion of all work.

- **Timing of Rehabilitation Work with Future Renovations.** If future renovations are planned for a property, it may be more cost-effective to either delay the rehabilitation work to take place along with the renovations or move up the scheduled renovations.

OCCUPANT RELOCATION

- **Relocation.** It may be necessary to relocate occupants while the work is being performed. Relocation may be costly, but may be a necessary step to protect the health of the occupants. In large part, the decision to relocate is determined by the extent of the rehabilitation and lead hazard reduction work.

  - Relocation may be necessary when rehabilitation requires more than one day, if it affects major portions of the unit or will take place in bathrooms and kitchens. Exhibit 4-8 lists situations when relocation may be necessary. See Exhibit 3-9 for circumstances in which HUD does not require relocation for occupants.

  - Federal relocation requirements may apply when occupants are temporarily relocated. Temporary relocation requirements are spelled out in HUD Handbook 1378 and may be covered as part of specific program regulations (depending on the Federal program). In general, temporarily relocated residents must receive reimbursement for reasonable out-of-pocket expenses, advisory services, and the offer of a decent, safe and sanitary temporary unit. See HUD Handbook 1378 for more information.

  - Relocation options may include having occupants stay with relatives, providing a hotel room, or temporary rental housing.

  - 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 (See "Interpretive Guidance", dated September 21, 2000, Question J24. The interpretive guidance is posted on HUD's website at www.hud.gov/offices/lead).

EXHIBIT 4-8

WHEN TO TEMPORARILY RELOCATE OCCUPANTS

Rehabilitation situations when relocation may be required:

- Utilities such as water, electricity, and gas are turned off for periods exceeding eight hours.
- Rehabilitation takes place in the kitchen or available bathroom(s)
- Extensive rehabilitation in several rooms requiring work over several days
- A child under the age of six occupies the home
- Occupants cannot be prevented from entering the work site after hours
- Debris and dust cannot be contained in the worksite and may spread to occupied areas.

4.9 SELECTING CONTRACTORS FOR YOUR LEAD HAZARD REDUCTION ACTIVITIES

Regulation Change Highlights

- ❑ Your program must choose trained workers for interim control and certified contractors for abatement work. Training requirements are listed in Attachment 4-D.
- ❑ Only trained contractors can perform standard treatments.

- ❑ The steps for selecting lead hazard reduction contractors are similar to those for selecting regular contractors. It is important to assess the qualifications of contractors as thoroughly as your program checks the backgrounds of the contractors who perform regular rehabilitation.

- ❑ Depending on the nature and extent of lead hazard reduction, a regular contractor who is experienced with safe work practices, a contractor who is qualified to perform interim controls, or an abatement contractor will perform the work. Attachment 4-D lists the types of contractors a grantee may need.

- ❑ In all cases, contractors should be qualified, willing, and able to perform the lead hazard reduction work properly from worksite set-up through successful clearance. A list of questions to assess contractor experience is provided in Attachment 4-E.

- ❑ Program staff should obtain routine information about contractors' qualifications, experience, and skills in addition to information on the contractor's experience with lead hazard reduction. This information can be obtained by requiring documentation from the contractor, asking questions directly of the contractor, and requesting references. Attachment 4-E provides questions that can be used to evaluate contractors.

- ❑ Attachment 4-D summarizes the qualifications that lead hazard reduction contractors must have to meet the requirements of the new regulation.

Building Contractor Capacity

In some areas of the country, there are few contractors who are trained or certified to perform interim controls and abatement. In some areas, there may be no certified contractors. Grantees can take some steps to help build contractor capacity.

Contractors may know little about lead-based paint and how they can become qualified to work with lead-based paint. For contractors, lead-based paint work can be a new business opportunity.

Your program can help build local capacity through outreach to contractors that educates contractors about lead issues and provides the information they need to become certified lead professionals.

- Discuss your program's goals and its need to perform lead hazard reduction as part of rehabilitation. Work provided by a rehabilitation program is business for contractors. If they are convinced of the availability of lead work, they may be more willing to become certified.
- Recommend that contractors receive general lead-based paint training. See Attachment 4-D for general lead-based paint courses. (An updated list is at www.hud.gov/offices/lead.)
- Obtain contact information for state- or EPA-certified lead training in your state and provide it to contractors.
- If your program works with a number of dependable contractors, your program may consider paying for some or all of a contractor's training. Paying for contractor training is an eligible administrative cost for CPD programs.

4.10 ADDRESSING LEAD-BASED PAINT AT THE PRE-CONSTRUCTION CONFERENCE

- The pre-construction conference is an opportunity for the contractor(s), program staff, and the homeowner or property owner to meet in person and review key aspects of the work. It is an opportunity to establish open lines of communication, make expectations and roles clear, and bring up concerns. The conference should be attended by:

  - The regular contractor and subcontractors;
  - The lead hazard reduction or abatement contractor (if applicable);
  - Program staff; and
  - Homeowner if single-family, or the owner or owner's representative if multifamily property.

Regulation Change Highlights

- The pre-construction conference is a good time to discuss lead in construction issues, clarify roles, and expectations.

EXHIBIT 4-9

ITEMS TO DISCUSS DURING THE PRE-CONSTRUCTION CONFERENCE

Special items to emphasize during the pre-construction conference include:

- ❑ Lead hazard reduction items and locations;
- ❑ The project schedule;
- ❑ How lead hazard reduction will coordinate with the rehabilitation work;
- ❑ Timing of the clearance inspection(s);
- ❑ Progress inspections;
- ❑ Handling of lead waste;
- ❑ Occupant protection measures, such as worksite restrictions and protecting the occupants' belongings, worksite set-up;
- ❑ Cleanup procedures;
- ❑ Clearance procedures;
- ❑ Grievance procedures;
- ❑ Temporary relocation; and
- ❑ Change order procedures.

4.11 SUPERVISING LEAD HAZARD REDUCTION ACTIVITIES DURING CONSTRUCTION

Regulation Change Highlights

This section includes new steps in the rehabilitation process.

Contractors must:

- ❑ Set up the worksite properly
- ❑ Use safe work practices
- ❑ Use occupant protection measures
- ❑ Clean up daily

- ❑ Program staff should be at least as vigilant in overseeing lead hazard reduction work as they are in overseeing rehabilitation. Just as there are visible signs of good and bad rehabilitation work, there are good and bad signs of lead hazard reduction work. The safe work practices discussed in this section are required (if applicable) as part of all lead hazard reduction (interim controls and abatement). Safe work includes:
  - ➢ Occupant Protection
  - ➢ Worksite Preparation
  - ➢ Daily Cleanup
  - ➢ Safe Work Practices
  - ➢ Worker Protection
- ❑ In addition to being required, the most important benefit of following safe practices is the avoidance of serious problems.

- Proper worksite set-up helps contain lead dust and debris during work. Containment makes daily and final cleanup easier and quicker to perform.
- Daily cleanup keeps dust and debris from piling up and from becoming a very large and difficult-to-control lead hazard. It helps contractors meet safety requirements for their workers and reduces the spread of lead to other parts of the unit.
- Correct practices help to reduce the chances of poisoning, and help protect the contractor and the program from liability claims.
- Improper work and cleanup will not pass clearance testing. Work and cleanup must be redone until clearance is successful.
- If work items that were planned to remove the causes of lead hazards are missed, the lead hazard will return.

- **Occupant Protection.** The purpose of occupant protection is to take steps to eliminate the risk to occupants by restricting access to the worksite, containing debris and dust during work, using safe work practices, and cleaning the worksite frequently. Occupant protection may mean temporarily relocating occupants.

- **Worksite Preparation.** The following measures may be appropriate to reduce the spread of debris and dust to other parts of the dwelling:
  - Sealing doorways with two flaps of poly sheeting;
  - Sealing off vents (if possible);
  - Covering floors and ground with poly sheeting;
  - Covering furniture and shrubs with poly sheeting;
  - Wrapping debris in poly sheeting before disposal;
  - Removing lead-contaminated protective clothing before exiting the worksite; and
  - Posting a warning sign at the entry of each room being treated for lead-based paint hazards when occupants are present. Warning signs on exterior surfaces should be visible 20 feet from the worksite.

- **Worker Protection**. The Occupational Safety and Health Administration (OSHA) has regulations that cover workers who come into contact with lead (29 CFR 1926.62). Workers should take proper precautions to protect themselves from lead-based paint hazards, including inhaling dust and avoid taking it home with them on their clothes where it can poison children. Protective measures for workers include:
  - Using safe work practices;
  - Wearing NIOSH-approved respirators; and
  - Wearing disposal gloves, work suits, booties, and head coverings.

- **Daily Cleanup.** Daily cleanup is crucial to containing debris to the worksite and for reducing occupant and worker exposure to lead hazards. Debris should be disposed of properly each day and excessive amounts of paint chips and dust should be removed. If dust and chips are not removed daily, there is greater chance that they will be tracked to other parts of the dwelling.
- **Safe Work Practices.** Safe work methods, such as wet work methods, minimize dust and control the spread of paint chips. Exhibit 4-10 summarizes the safe and prohibited methods for treating lead-based paint.
  - Safe work practices ultimately keep the added costs of meeting safety requirements to a minimum.
  - Above all, safe work practices make the unit safe for its occupants and clearance easier to achieve.
- **Safe Work Practices Exemption.** Safe work practices are not required when the rehabilitation, maintenance or hazard reduction activities do not disturb painted surfaces that total more than:
  - 20 square feet (2 square meters) on exterior surfaces;
  - 2 square feet (0.2 square meters) in any one interior room or space; or
  - 10 percent of the total surface area on an interior or exterior type of component with a small surface area (such as windowsills, baseboards, and trim).

EXHIBIT 4-10

SAFE AND PROHIBITED METHODS FOR TREATING LEAD-BASED PAINT

Examples of Safe Treatment Methods

Removal of deteriorated paint by:

- Wet scraping;
- Wet sanding;
- Chemical stripping off site;
- Replacing painted components;
- Scraping with an infrared or coil-type heat gun with temperatures below 1,100°F;
- HEPA vacuum sanding;
- HEPA vacuum needle gun;
- Abrasive sanding with HEPA vacuum; and
- Specialized cleaning to remove lead dust.

Covering of deteriorated paint surface with:

- Durable materials (such as wallboard or vinyl siding) with joints sealed and caulked.

Prohibited Methods of Paint Removal *(24 CFR 35.140)*

- Open flame burning or torching;
- Machine sanding or grinding without a HEPA local exhaust;
- Abrasive blasting or sandblasting without a HEPA local exhaust;
- Heat guns operating above 1,100°F or charring paint;
- Dry scraping or dry sanding except in conjunction with heat guns or within one foot of electrical outlets; and
- Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance.

- **Abatement**. For an abatement job, the rehabilitation specialist will have to perform inspections before all of the work is completed in addition to a final inspection. The specialist should be sure that:
  - All old paint has been removed prior to repainting.
  - All surfaces with lead-based paint have been marked as lead-based paint prior to enclosure.

4.12 FINAL INSPECTION AND CLEARANCE

- When the work is done, program staff perform a final check of the rehabilitation and the lead hazard reduction work to make sure that all the work is complete. Then a certified professional conducts a clearance examination. If the unit(s) pass clearance testing, the unit(s) will be safe for their occupants.

Regulation Change Highlights

- This section includes new steps in the rehabilitation process. Occupants must be notified of the lead-hazard reduction measures that were taken.
- Clearance, a new step, is required after all lead hazard reduction.
- In some cases, owners are responsible for ongoing monitoring of lead hazard reduction.

FINAL INSPECTION

- As part of the final inspection, it is a good practice for the rehabilitation specialist to inspect all of the planned lead hazard reduction items along with the rehabilitation work. This may be done by the rehabilitation specialist alone, or in conjunction with the risk assessor if appropriate.
- The rehabilitation specialist should make sure that:
  - All lead hazard reduction work covered in the work specifications has been completed.
  - All areas where paint has been stabilized have been repainted with primer and finish coats of paint. Prior to applying a primer coat, deteriorated paint surfaces should be inspected to be sure that all loose paint, dust or grease have been removed and that the surface is smooth and solid.
  - All causes of deteriorated paint have been repaired.
  - Encapsulants have been applied according to their manufacturer's directions.
  - Friction and impact surfaces have been treated.
  - Surfaces that collect lead dust have been cleaned.
- **Revised Inspection Procedures.** Program staff may need to modify normal inspection procedures to include lead-related work.

- To inspect for these additional items, program staff may need training in what to look for and how specialized work, such as encapsulants, are applied.
- Program staff may also need to create additional inspection tools such as checklists for lead-related work items.

CLEARANCE

- See Section 3.10 for further details on clearance.
- **Performance of Clearance**. The purpose of clearance is to make sure that the unit is safe for occupants to return. Occupants are not permitted in the work area until it has passed clearance. Clearance must be performed at least one hour after work has been completed. During clearance, a certified professional will take dust samples and have them tested for lead.
- **Clearance Examiner**. Clearance inspections must be conducted by a qualified professional.
  - Qualified professionals include certified risk assessors, certified paint inspectors, or lead sampling technicians (called a clearance technician in the HUD regulation) who are certified or who work under the supervision of a certified paint inspector or risk assessor;
  - The person conducting clearance must be independent of the contractor who performed the lead hazard reduction work.
- **Clearance Exemptions**. Clearance is not required if the rehabilitation, maintenance or hazard reduction activities did not disturb painted surfaces that totaled more than:
  - 20 square feet (2 square meters) on exterior surfaces;
  - 2 square feet (0.2 square meters) in any one interior room or space; or
  - 10 percent of the total surface area on an interior or exterior type of component with a small surfac e area (such as windowsills, baseboards, and trim).
- **Before Clearance**. Prior to the clearance inspection, the contractor and program staff should ensure that the worksite is ready for inspection.
  - Be sure that all the required work has been completed.
  - Be sure that all the lead hazard reduction measures have been completed.
  - Remove debris, paint chips, and dust from all surfaces, especially horizontal surfaces.
  - Remove debris and chips from the ground surrounding the building.
  - Perform specialized cleaning to eliminate any dust lead hazards (see Section 3.9).

- No less than one hour after work has been completed, perform a final check of all surfaces for dust and chips. Check where dust tends to settle such as window troughs and sills, the tops of door frames, and baseboards.

- **Clearance Tasks**. During clearance, the clearance professional will complete the following tasks.
  - Conduct a visual assessment of the unit and worksite to identify dust, debris, and deteriorated paint.
  - Take dust samples from floors, interior window sills, and window troughs.
  - If work was done to the exterior, visually assess the soil near the worksite.
  - Submit the samples to an NLLAP-recognized laboratory for analysis.
  - Write a report presenting the results of the clearance examination.

- **Cleaning Before Clearance**. It is crucial that the contractor and program staff make sure that the worksite is thoroughly cleaned before the clearance examiner arrives. If the unit(s) did not pass clearance, the inspector will require an additional cleaning and clearance inspection until the unit passes clearance.

Strategic Choice

- Your program may want to make contractors responsible for performing a thorough cleanup and ensuring that the unit passes the clearance inspection.
- Add a clause to the construction contract specifying that the contractor is responsible for cleanup. If the worksite does not pass clearance, the contractor is responsible for additional cleaning.
- Have contractors pay for additional clearance testing if they fail the first time.

Note: It is preferable that contractors perform cleanup after any job. However, a cleanup in preparation for clearance is more thorough, and programs need to make clear to contractors their responsibilities. A contractor will then include the costs of doing this cleanup in the bid.

- **Clearance Report**. See Section 3.10 for guidance on content of clearance report.

OCCUPANT NOTICE

- Occupants must receive a Notice of Lead Hazard Reduction within 15 days of completion.
- The Notice of Lead Hazard Reduction includes:
  - A summary of the hazard reduction activities and clearance results.
  - A contact name, address, and telephone number for further information.
  - The locations of remaining lead-based paint surfaces and lead hazards.

- **Revised Notice Procedures.** Program may need to develop procedures for how it will inform occupants of the results of the clearance test results and hazard reduction.
  - Program can provide an easy to read summary of the most important information and instructions for obtaining complete information.
- See Section 3.6 for further guidance on notices.

DOCUMENTATION

- Rehabilitation programs generally keep documentation of their regular rehabilitation activities. With lead hazard reduction activities, it is even more crucial to document key activities during the rehabilitation process, and keep these records on file. The regulation requires that records be kept for at least three years. Having documentation of proper procedures and test results can help protect a program from liability claims. Documentation that should be collected includes:
  - Risk assessor's report;
  - Work write-up;
  - Warrantees and guarantees;
  - Results of all lab tests for samples taken before and after work;
  - Any photographs, videos, or written records about the condition of the worksite before work started;
  - Clearance report; and
  - Notices to occupants.

4.13 POST-REHABILITATION LEAD-BASED PAINT ACTIVITIES

REQUIREMENTS FOR HOME RENTAL PROPERTIES

- **New Regulations for HOME Rental Properties**. The new regulation requires post-rehabilitation and ongoing lead-based paint maintenance activities for rental properties rehabilitated using HOME funds. The purpose of these requirements is to inform current and new occupants of the dangers of lead-based paint and to prevent surfaces from becoming lead hazards again.

Rule Change Highlights

Ongoing requirements for HOME rental properties.

No post-rehabilitation requirements for other types of properties. While a program's involvement may end at the close of the project, this is a good opportunity to educate owners about what they can do to maintain a lead-safe home.

- **Purpose of Maintenance**. Ongoing maintenance is an important post-rehabilitation activity because many treatments of lead are not permanent. Only in cases where lead-based paint was abated is maintenance not required.

- **Grantee and Owner Responsibilities**. For a multifamily property funded wholly or in part by HOME funding, the administering agency will have to ensure that the owner is conducting the required monitoring, evaluations, and notifications as part of their regular compliance monitoring.

- **Maintenance Activities**. The following are specific maintenance activities required for HOME rental properties.

  - Regular maintenance and evaluation of the lead hazard reduction work must be performed. The owner is responsible for:

    - A visual inspection of lead-based paint annually and at unit turn-over;

    - Repair of all deteriorated paint; and

    - Repair of encapsulated or enclosed areas <u>that are damaged</u>.

  - Owners should request, in writing, that the occupants of rental units monitor lead-based paint surfaces and inform the owner of potential lead hazards.

- **Disclosure**. Owners must disclose to prospective tenants any known lead-based paint or lead-based pa9int hazards. The lead information pamphlet "Protect Your Family from Lead in Your Home," must be provided to new occupants before they move in.

  - Owners must continue to comply with the notification requirements when additional lead hazard evaluation and hazard reduction activities are performed.

PRUDENT PRACTICES FOR ALL RENTAL PROPERTIES

- **Follow HOME Procedures.** While ongoing maintenance is only required for HOME rental properties, it is prudent practice for owners of all rental properties to follow the procedures described above.

- **Disclosure**. All owners of rental property must disclose to prospective tenants any known lead-based paint and lead-based paint hazards. The lead information pamphlet "Protect Your Family from Lead in Your Home," must be provided to new occupants before they move in.

POST-REHABILITATION LEAD-BASED PAINT ACTIVITIES IN OWNER-OCCUPIED PROPERTIES

- For single-family properties, the administering agency should make sure that the owner is aware of the dangers of lead-based paint and the need to monitor lead hazard reduction work regardless of the CPD program through which the property was assisted. In this case, however, the administering agency does <u>not</u> have to conduct monitoring or evaluations directly.

- Project close-out is a good opportunity for rehabilitation program staff to inform homeowners of maintenance needs in their home so that they can prevent lead-based paint from becoming a lead hazard in the future. Activities that homeowners should perform include:
  - An annual visual check for deteriorated paint and a look at repairs and interim controls to make sure that they are in place (e.g. is a repaired door jamb in place?); and
  - Monthly wet cleaning of surfaces that tend to accumulate dust.

ATTACHMENT 4-A

EXERCISE — DETERMINING THE LEVEL OF REHABILITATION ASSISTANCE

Three Levels of Rehabilitation Assistance		
A	≤$5,000	Safe work practices and work site clearance
B	$5,000-$25,000	Risk assessment and interim controls
C	>$25,000	Risk assessment and abatement

1. In the examples below, families receive Federal funds to help purchase and rehabilitate a home. The table summarizes the amount of Federal assistance received and the hard costs of the planned rehabilitation. Indicate an A, B, or C for which category of assistance the family may be placed into.

Federal Assistance	Rehabilitation Costs (Hard Costs Only)	Level of Rehabilitation Assistance (A, B, or C)
$2,000	$10,000	
$10,000	$20,000	
$5,000	$50,000	
$26,000	$10,000	

2. The Newtown Community Development Corporation (NCDC) is acquiring and rehabilitating a property to develop 20 rental units. NCDC has applied for and received a low interest loan through the HOME program as well as some foundation funding. Of the 20 units, 10 will be HOME-assisted. The rest will be market rate units. The projects sources and uses are listed below.

Sources		Uses	
HOME	300,000	Acquisition	200,000
Foundation	60,000	Hard Costs	170,000
NCDC Equity	20,000	➢ HOME-assisted units	75,000
	$380,000	➢ Market-rate units	75,000
		➢ Common areas	20,000
		Soft Costs	10,000
			380,000

Per Unit Rehabilitation Hard Costs $ = A/NU + B/TU

Where:

A = Rehabilitation Hard Costs for all assisted dwelling units (excluding common/exterior areas)
B = Rehabilitation Hard Costs for common areas and exterior painted surfaces
NU = Number of Federally assisted units in the project
TU = Total number of units in the project

(a) Calculate the per unit hard costs for rehabilitation per unit using the information provided above.

(b) Calculate the per unit Federal Assistance.

(c) What is the level of assistance?

ATTACHMENT 4-B

INTRODUCTION TO THE POST-IT EXERCISE

HOMEVILLE BACKGROUND

Homeville is a mid-size metropolitan city (population 140,000) that has had a redevelopment program for over 30 years. Most of the housing stock that is rehabilitated by the city was built before 1950. The City of Homeville has a rental program that normally has a production rate of 120 rental units per year. Homeville also has a Home Improvement Program (HIP) that is run by a citywide CDC, the Action Housing Corporation (AHC).

HOMEVILLE'S RENTAL PROGRAM

Homeville's rental program is funded by the HOME program and operated by the city's Community Development Division. They match up to $8,000 in rehabilitation funds per unit. The funds are forgiven over a five-year period after the date of completion. The owner must keep the property up to code and rent the apartments at affordable rents as defined by HUD during the five-year period.

HOMEVILLE'S HOME IMPROVEMENT PROGRAM

The Home Improvement Program provides multiple levels of renovation improvement running from emergency repairs to $45,000 substantial renovations. AHC has successfully operated this program for 26 years and offers a range of financial loan products with are due upon sale or conveyance of the property. Over 26 years, their portfolio has grown to 6.8 million dollars with an annual turnover rate of $400,000.

THE NEW LEAD REQUIREMENTS

Each of these organizations, the Homeville's Community Development Division and the Action Housing Corporation, have analyzed the new lead requirements for rehabilitation in eight key areas, Each of these areas is represented by a chart on the wall. Let' see how the new lead hazard evaluation and reduction requirements effect this process by building a model ourselves.

ATTACHMENT 4-C

SELF TEST EXERCISES

Exercise # 1: Rehabilitation Of A Rental Property

The Scenario:

A three-unit property, built in 1954 in a mostly residential neighborhood is occupied by three families. Two of the units have families with children under age six and the third is occupied by and elderly woman who lives alone.

The kitchen and the bathroom in each unit are long overdue for improvements and there is peeling paint on various components throughout the units. All of the units have the original casement windows. The unit on the first floor has water stains on the ceiling.

The owner estimates that it will cost $45,000 to repair the building and has applied to the city's CDBG program for a $40,000 loan to cover the majority of the costs. The owner will contribute the remaining $5,000.

Questions:

1. What is the level of rehabilitation assistance to these units?

2. What are the lead hazard evaluation and reduction requirements for these units? Are there any alternatives?

3. If a lead hazard evaluation is performed and lead hazards are found, what are the activities required to meet the new requirements?

4. Without considering lead hazard reduction, what items is the owner likely to have identified for repair?

5. What other repairs are likely to be needed due to the lead requirements?

6. What extra steps to ensure occupant safety must the property owner take when performing this work?

Exercise # 2: The Yorktown Rental Rehabilitation Program

The Scenario:

The City of Yorktown offers a Rental Rehabilitation Program that uses HOME funds to make low interest loans to owners of rental properties of less than 12 units.

The Rental Rehabilitation Program typically makes 25 loans each year. The average size of the loan is $22,000. The average per unit rehabilitation costs for the program is $6,000.

The Rental Rehabilitation Program has a staff of four including two rehabilitation specialists, an HQS inspector, two compliance staff. Yorktown has many contractors who perform rehabilitation work. Three contractors, in particular, have worked extensively on Rental Rehabilitation Program projects. Yorktown has one risk assessor and two abatement contractors.

Lead-based paint is known to be common in both the single-family and multifamily housing stock in Yorktown. Just over a one-third of the multifamily buildings were built before 1940. The City's health department offers a blood lead screening program and has a team that goes out to evaluate homes for lead when a child is found to have unsafe levels of lead in his or her blood.

Questions:

The staff at Yorktown's Rental Rehabilitation Program must prepare to implement the new lead-based paint requirements. They have called you to ask for advice on the following:

1. In planning to meet the new lead-based paint requirements, what additional information should they gather? Indicate some possible sources.
2. Are there aspects of their program design that they should reexamine? If so, indicate which aspects and the types of changes that they should examine.
3. Should they continue to target the same type of property? Make the same size loans?
4. Do any of the program staff need training? If so, make specific recommendations about courses.

ATTACHMENT 4-D

WHO IS QUALIFIED TO PERFORM LEAD HAZARD REDUCTION WORK?

❑ Qualifications for Abatement Contractors

- Abatement contractors consist of:
  - Trained and state-certified abatement supervisor(s); and
  - Workers who have successfully completed accredited lead abatement worker training.

❑ Qualification to Perform Interim Controls or Standard Treatments

- To perform interim controls or standard treatments, a worker must be supervised by a certified abatement supervisor or have successfully completed one of the following courses:
  - An accredited lead-based paint abatement supervisor course;
  - An accredited lead-based paint worker course;
  - The lead-based paint course: "Work Smart, Work Wet, and Work Clean," prepared by the National Environmental Training Association for the EPA and HUD;
  - The Remodeler's and Renovator's Lead-Based Paint Training Program prepared by HUD and the National Association of the Remodeling Industry (NARI); or
  - A similar course recognized by HUD and EPA. (See HUD website, www.hud.gov/offices/lead, for list of approved courses.)

❑ Qualifications for Safe Work Practices

- There are no specific qualifications for safe work practices, however, the following courses are useful general courses for all workers who want to work safely with lead.
  - Remodeler's and Renovator's Lead-Based Paint Training Program developed by HUD and the National Association for the Remodeling Industry (NARI)
  - Lead-Based Paint Maintenance Training Program developed by HUD/EPA and the National Educational Training Association (NETA)
- The booklet, "Lead Paint Safety: A Field Guide for Painting, Home Maintenance, and Renovation Work," is an excellent illustrated guide. Available on www.hud.gov/offices/lead or from the National Lead Information Center at 1-800-424-LEAD.

❑ Locating Professionals

- Certified lead professionals can be located using The Lead Listing. Call The Lead Listing at 888-Leadlist (888-532-3547) or on the Internet at http://www.leadlisting.org.
- National Lead Information Center (NLIC) can refer you to your state's agency responsible for lead. The NLIC is located at: 8601 Georgia Avenue, Suite 503
  Silver Spring, MD 20910
  1-800-424-Lead (1-800-424-5323)
  http://www.epa.gov/lead/nlic.htm

ATTACHMENT 4-E

QUESTIONS FOR LEAD PROFESSIONALS

Use these questions when evaluating the experience and qualifications of lead professionals.

- Questions for Lead Contractors:
  - Do they have a certified abatement supervisor who will be on-site or available at all times?
  - Are all workers certified as abatement workers?
  - Is the contractor familiar with safe setup, work practices, and disposal practices?
  - How will the contractor conduct cleanup? How will the contractor handle cleanup if the unit fails the clearance test?
  - Will the contractor provide a written proposal, schedule, and budget?
  - Does the contractor have required bonding or letters of credit?
  - Will the contractor provide details about lead hazard reduction methods and discuss them with occupants?
  - Does the contractor carry the proper types of insurance, such as general liability that covers lead work and errors and omissions (E&O) insurance? Does this insurance meet state requirements?
  - If required for the work, does the contractor have the required certifications for your state? Have the contractor's workers received training?
  - If required for the work, are the contractor's workers certified or have they received training?
  - How long has the contractor been in business? How many lead hazard reduction jobs has the contractor completed?
- Questions to ask contractor references:
  - Was all of the work completed?
  - Was the work completed on time and within budget?
  - Did the contractor do satisfactory cleanup before clearance?
- Questions for paint inspectors and risk assessors:
  - Does the paint inspector or risk assessor have the required certifications for your state?
  - How long has the paint inspector or risk assessor been in business? How many evaluations have they completed?
  - Ask for references from recent, similar jobs.

ATTACHMENT 4-F

LEAD-BASED PAINT SKILLS FOR REHABILITATION SPECIALISTS

To implement the requirements of the new regulation, program staff, especially rehabilitation specialists, may have to gain new skills and knowledge. Below is a partial list of skills and knowledge areas for program rehabilitation specialists.

Knowledge of safe work practices

- Wet work methods
- Prohibited work practices
- Other work methods that reduce the creation of dust

Proper set-up and clean-up procedures

- Interior and exterior dust and debris containment methods
- Washing and HEPA vacuuming
- Waste disposal methods and requirements

Interim control and standard treatment techniques

- Paint stabilization
- Encapsulation and enclosure
- Component removal and replacement
- Treatments for friction and impact surfaces

Basic knowledge of OSHA requirements for work safety

Familiarity with lead-based paint inspection and risk assessment techniques

- XRF testing
- Paint sampling
- Visual assessments

Clearance testing

- Dust wipe sampling

Ability to read and interpret the results of lead-based paint inspections and risk assessments

- How results are reported
- Lead hazard control plan

CHAPTER 5

ADDRESSING LEAD-BASED PAINT IN TENANT-BASED RENTAL ASSISTANCE (TBRA) PROGRAMS

5.1 INTRODUCTION

- This chapter outlines how to incorporate new Federal lead-based paint requirements into local tenant-based rental assistance (TBRA) programs funded by the HUD Office of Community Planning and Development (CPD). The chapter:
  - Provides an overview of lead-based paint requirements for TBRA programs;
  - Outlines steps in a typical TBRA program; and
  - Describes when and how the new requirements fit into program procedures.

TBRA Programs That Must Meet New Lead-Based Paint Requirements

HUD Office of Community Planning and Development (CPD) programs that provide funds for local tenant-based rental assistance:

- HOME Investment Partnership Program (HOME)
- Housing Opportunities for People with AIDS (HOPWA)
- Shelter Plus Care (S+C)

Other HUD programs that provide funds for local tenant-based rental assistance:

- Section 8 of the US Housing Act of 1937
- Indian Housing Block Grant Program

- Grantees and organizations administering TBRA programs will be referred to as **administering agencies** throughout this chapter.
- This chapter covers the following:
  - Overview of Requirements (Section 5.2);
  - Key Activities in a TBRA Program and Lead-Based Paint Requirements (Section 5.3); and
  - Detailed Review of TBRA Activities Affected by Lead-Based Paint Requirements:
    - Application Process (Section 5.4);

- Coupon Issuance (Section 5.5);
- Unit Approval (Section 5.6);
- Signing of Rental Documents (Section 5.7);
- Ongoing Lead-Based Paint Requirements (Section 5.8); and
- Steps to Take If a Child is Identified With an Environmental Intervention Blood Lead Level Children (Section 5.9).

5.2 OVERVIEW OF REQUIREMENTS

- ❑ The new lead-based paint requirements for TBRA programs are found at 24 CFR Part 35, Subpart M—Tenant-Based Rental Assistance.
- ❑ The requirements for TBRA programs are consistent with Approach #2: Identify and Stabilize Deteriorated paint, as defined in Chapter 3 (Requirements). This approach provides assurance that the deteriorated paint has been stabilized. Because this approach does not prevent the occurrence of lead hazards in the future, ongoing maintenance is required. Exhibit 5-1 highlights required activities.

EXHIBIT 5-1

TBRA: REQUIRED ACTIVITIES TO ADDRESS LEAD-BASED PAINT (Subpart M)

Approach to Lead Hazard Evaluation and Reduction **2. Identify and Stabilize** Deteriorated paint	
Notification (35.1210)	• Pamphlet and Disclosure • Notice of Lead Hazard Evaluation or Presumption, if applicable • Notice of Lead Hazard Reduction Activity
Lead Hazard Evaluation (35.1215)	• Visual Assessment
Lead Hazard Reduction (35.1215)	• Paint Stabilization • Safe Work Practices • Clearance
Ongoing Maintenance (35.1220)	• Ongoing Maintenance
Environmental Intervention Blood Lead Level (35.1225)	• Sharing and Comparing Data • Risk Assessment • Interim Controls or Abatement • Notices and Disclosure
Options	• Perform paint testing on deteriorated paint. Safe work practice requirements only apply to lead-based paint.

- ❑ The following is a summary of the lead-based paint requirements for residential properties receiving Federal assistance under TBRA. These requirements are discussed in detail in Chapter 3.

- **Notification.** Administrators of TBRA programs must ensure that the following take place to comply with the lead regulation's notification requirements:

  - **Disclosure** [24 CFR 35 Subpart A]. Owners must comply with the HUD-EPA disclosure rule prior to lease approval. See Section 3.6 for a description of disclosure requirements.

  - **Lead Hazard Information Pamphlet** [*24 CFR 35.1210(b)*; *24 CFR 35.130*]. Occupants must receive the HUD/EPA/CPSC pamphlet "Protect Your Family from Lead in Your Home" or an EPA-approved alternative. The pamphlet describes lead-based paint hazards. It is not necessary to provide the pamphlet again if it has already been provided in compliance with the lead disclosure rule or EPA's Pre-Renovation Education Rule.

  Definitions

  - **Visual Assessment.** A visual examination of painted surfaces to identify: (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.
  - **Paint Stabilization.** Repairing any physical defect in the foundation 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.
  - **Clearance.** An activity conducted following lead hazard reduction activities to determine that the paint is intact and that dust-lead levels are acceptable. It involves visual assessment and dust sampling by a qualified individual.

  - **Notices of Lead Hazard Evaluation and Reduction** [*24 CFR 35.1210(a)*; *24 CFR 35.125*]. Property owners must notify occupants about any lead hazard evaluation and reduction activities that have occurred or are occurring on the rental property within 15 calendar days of completion of lead hazard evaluation or lead hazard reduction. (Note: A Notice of Lead Hazard Evaluation is only required if paint testing or a risk assessment is conducted. A visual assessment is not a lead hazard evaluation activity.)

- **Lead Hazard Evaluation.** The following is required to identify deteriorated paint in TBRA units.

  - **Visual Assessment** [*24 CFR 35.1215(a)*]. Agencies administering TBRA programs must visually assess the interior and exterior surfaces and common areas of the rental property to identify deteriorated paint.

  - **Note:** A visual assessment is not considered an evaluation that requires a notification of lead hazard evaluation, since the assessment does not determine the presence or absence of lead-based paint and/or lead hazards. Also, the person performing the visual assessment must be trained in accordance with HUD procedures. (See the self-administered course at www.hud.gov/offices/lead.)

- **Lead Hazard Reduction**. The following activities are required to address deteriorated paint in TBRA units.

- **Paint Stabilization** [*24 CFR 35.1215(b); 24 CFR 35.1330(a)(b)]*. Property owners must stabilize deteriorated paint surfaces before an occupant moves into a unit.
- **Safe Work Practices** [*24 CFR 35.1345*]. The owner must use safe work practices when conducting paint stabilization. Safe work practices include safe work methods, occupant protection, worksite preparation, and cleanup.
- **Clearance** [*24 CFR 35.1215(b)(c); 24 CFR 35.1340*]. A person certified to perform clearances in the applicable State must conduct a clearance examination in the unit and common areas after paint stabilization has occurred and prepare a report indicating whether the unit is free of lead-based paint hazards.

❑ **Ongoing Maintenance**. Because TBRA programs involve an ongoing relationship with the administering agency, the following ongoing requirements apply:

- **Periodic Inspections** [*24 CFR 35.1215*]. Administering agencies must ensure that TBRA units are inspected periodically by an inspector trained in visual assessment for deteriorated paint surfaces to determine whether units meet Housing Quality Standards (HQS) or equivalent standards.

  Note: HQS inspections include a visual assessment for deteriorated paint. HOME program rules require annual unit inspections.

- **Ongoing Maintenance** [*24 CFR 35.1220; 24 CFR 35.1355(a)*]. Owners must conduct ongoing maintenance of rental units participating in the TBRA programs, including maintenance of painted surfaces.

❑ **Environmental Intervention Blood Lead Level** [*24 CFR 35.1225*]. TBRA requirements are subject to requirements for children with environmental intervention blood lead levels. The following requirements apply.

- **Comparing data with local health agencies**. Agencies must crosscheck identified environmental intervention blood lead level cases with families participating in the TBRA program.
- **Risk Assessment and Interim Controls**. When a child with an environmental intervention blood lead level is identified, the administering agency must conduct a risk assessment and the owner must conduct interim controls to eliminate identified lead-based paint hazards.

❑ **Applicability of Requirements**. Lead-based paint requirements for TBRA listed in the new regulation **APPLY ONLY TO PRE-1978 HOUSING OCCUPIED BY ONE OR MORE CHILDREN UNDER AGE SIX**. The lead based paint disclosure rule, however, continues to apply to all pre-1978 units. Compliance with the disclosure rule is the responsibility of the owner.

- **Designated Parties** [*24 CFR 35.1200*]. Designated parties are responsible for ensuring the requirements are implemented. These entities can delegate responsibilities to others. Designated parties for TBRA programs include:
  - **HOME**: Participating jurisdictions
  - **HOPWA and S+C**: Grantees
- **Applicable Surfaces** [*24 CFR 35.1200(b)*]. These requirements apply to surfaces in the dwelling unit, exterior painted surfaces, common areas servicing the unit, and other common areas used by occupants and frequented by one or more children under age six, including on-site play areas and child care facilities.
- **Comparison to Former Requirements.** The new lead-based paint regulation for TBRA programs includes important changes from previous requirements. Attachment 3-C summarizes changes between former requirements and the new lead-based paint regulation.

5.3 KEY ACTIVITIES IN A TBRA PROGRAM AND LEAD-BASED PAINT REQUIREMENTS

- Tenant-based rental assistance (TBRA) programs include activities that range from marketing to unit approval and periodic inspections. Exhibit 5-2 outlines typical TBRA program activities and highlights areas affected by the new lead-based paint requirements. **Note**: All TBRA programs may not include all of these activities or may include different activities. Activities outlined in Exhibit 5-2 are common among TBRA programs, but not exclusive to all TBRA programs.
- The remaining sections of this chapter address in detail how new lead-based paint requirements affect TBRA activities outlined in Exhibit 5-2.

5.4 LEAD-BASED PAINT AND THE APPLICATION PROCESS

- After informing the public about the rental assistance program through marketing and outreach, TBRA staff provide program applications to interested individuals. Candidates complete the application and TBRA program staff review all applications to evaluate household income and eligibility. The application process offers an opportunity to collect preliminary information about the applicant.

Regulation Change Highlights

- No change to current TBRA program application procedures as long as current application includes information on families with children under age six.

- **Identify Families with Children under Age Six.** To identify households affected by the lead-based paint regulation, administering agencies should ensure the program application asks about any children under six years old in the household. This information must be provided to inspectors when they go out to inspect the unit for program suitability.

- ❑ **Note**: Only the pamphlet and disclosure requirements apply when an applicant has no children under age six.

EXHIBIT 5-2

SUMMARY OF TBRA ACTIVITIES AND LEAD-BASED PAINT REQUIREMENTS

KEY TBRA PROGRAM ACTIVITIES	APPLICABLE LEAD-BASED PAINT REQUIREMENTS
THE APPLICATION PROCESS	
Marketing and Outreach. The administering agency begins by publicly announcing the availability of TBRA. The agency also conducts outreach to occupants, owners and, where appropriate to organizations providing supportive services to program participants.	**Marketing and Outreach**. No change in TBRA procedures.
Application. Potential occupants complete a program application.	**Application**. Administering agency intake staff can use information collected in the application to identify households with children under age six.
Eligibility Determination. TBRA agency intake staff evaluates the application to determine if potential occupants meet program guidelines. Eligible occupants are selected to participate in the program.	**Eligibility Determination**. The existence of children under age six does not affect the applicant's eligibility for TBRA.
Coupon Issuance. Eligible occupants participate in a program briefing session where they receive coupons to use when signing the lease. They now can begin to search for housing.	**Coupon Issuance**. While not required by the new regulation, TBRA agency staff are encouraged to educate eligible occupants about lead hazards during the occupant briefing, when coupons are issued.
UNIT SELECTION/INSPECTION	
Request for Unit Approval. Once the occupant has located a unit and the owner has agreed to participate, the occupant and the household submit a request for unit approval to the administering agency. The agency then inspects the unit, determines rent, reviews the lease and calculates subsidy.	**Request for Unit Approval**. This request triggers a visual assessment in units constructed before 1978 if the household includes a child under age six. If a visual assessment reveals deteriorated paint, paint stabilization, cleanup and clearance occur at this time.
RENTAL DOCUMENTS/PAYMENTS	
Rental Documents Signed. After unit approval, the agency intake staff, owner and occupant sign documents outlining the responsibilities of each in the TBRA program. These documents can include a lease addendum and a rental assistance contract.	**Rental Documents Signed**. When rental documents are signed, occupants are provided a lead hazard information pamphlet and a disclosure form providing information on any lead hazard reduction activities in the unit.
Payments Begin. Administering agency financial staff begins making monthly payments. Payments are made to the owner or to the occupant, according to program structure.	**Payments Begin**. No change in TBRA procedures.
ONGOING RESPONSIBILITIES	
Recertification. At least annually, assisted households must complete recertification to document their family composition and income.	**Recertification**. If a child under age six is newly documented in the household, the relevant lead-based paint requirements take effect.
Periodic Inspections. At least annually, administering agencies will send an inspector to the TBRA unit to ensure unit compliance with Housing Quality Standards (HQS).	**Periodic Inspections**. When conducting periodic unit inspections, inspectors look for deteriorated paint in pre-1978 units with children under age six.
Ongoing Maintenance. Owners maintain rental units to comply with HQS standards or equivalent standards and lead-based paint requirements.	**Ongoing Maintenance**. Owners are required to perform paint stabilization when a visual assessment reveals deteriorated paint in pre-1978 units with children under age six.

5.5 LEAD-BASED PAINT AND COUPON ISSUANCE

- **TBRA Program Briefing.** Administering agencies often conduct a TBRA program briefing when issuing rental assistance coupons to eligible occupants. This briefing:
  - Outlines responsibilities of the occupant, the TBRA program, and the owner; and
  - Helps the occupant make an informed decision about choosing appropriate housing.

Regulation Change Highlights

- No change to coupon issuance procedures.
- However, TBRA program administrators should note families with children under age six at this time.

- **Applicant Briefing.** The briefing provides an opportunity to educate the applicants about lead-based paint hazards. At this time, administering agency intake staff can distribute the brochure "Protect Your Family from Lead in Your Home" issued by EPA, HUD, and the Consumer Product Safety Commission. This brochure uses pictures and simple language to describe the dangers of lead and outlines how to prevent lead hazards. After distributing this brochure, agencies are encouraged to brief applicants as follows:
  - Explain the physical effects of lead-based paint and describe the hazards for children under age six;
  - Explain how the unit occupants choose will be inspected to protect them from lead-based paint hazards; and
  - Let applicants know how they can protect themselves by reporting any deteriorated paint or other lead-based paint hazards in the unit to the administering agency.

5.6 LEAD-BASED PAINT ACTIVITIES DURING UNIT APPROVAL

- Once an applicant has located a unit and the owner has agreed to participate, the household and the owner jointly submit a request for unit approval to the TBRA program administrator. This request triggers the TBRA staff inspection of the unit.
- **Unit Inspection**. For households with a child under age six, the

Lead-Based Paint Requirements for TBRA Units – Steps to Take During Unit Approval*

- Conduct visual assessment for deteriorated paint
- Stabilize deteriorated paint using safe work practices:
  - Occupant protection
  - Worksite preparation
  - Cleanup
  - Safe work methods
- Clearance
- Keep records

*For households including a child under age six.

inspection is the appropriate time to assess and ensure reduction of any identified lead-based paint hazards. Lead-based paint hazard reduction requirements apply to housing units built before 1978. By first identifying the housing age, the inspector determines whether the unit is exempt from lead-based paint requirements.

- If the household includes a child under age six, the unit approval process includes a visual assessment for deteriorated paint, stabilization of any identified deteriorated paint, and clearance.

VISUAL ASSESSMENT FOR DETERIORATED PAINT

- **Unit Inspection**. Each unit must be visually inspected to ensure that the unit meets Housing Quality Standards (HQS) or equivalent standards before the unit can be approved for occupancy. As part of the HQS inspection, the inspector will conduct a visual assessment of all painted surfaces to identify deteriorated paint.

Regulation Change Highlights

- No change in inspection procedures except that the person performing the visual assessment for deteriorated paint must now be trained.
- TBRA agency staff should ensure that inspection reports instruct owners to use safe work practices for lead when stabilizing paint.

- **Note**: If the program requirements do not mandate HQS, alternatives to HQS may be used, but these must include standards that are at least equivalent to HQS.

- **Record Results on HQS Inspection Form or Equivalent Form**. HUD has provided two forms for use when inspecting units: HUD-52580-A (9/95), with detailed instructions, and HUD-52580 (9/95), a shorter version.

  - If the inspector finds deteriorated paint during the visual assessment, he or she must record these findings on the inspection form.

  - Each section, except "Section 5. Secondary Rooms," includes a question about lead-based paint. For secondary rooms, which include laundry rooms and storage rooms, deteriorated paint can be noted under "Section 5.4. Other Potentially Hazardous Features."

  - The HQS forms allow inspectors to record whether an area is free of deteriorated paint by checking Yes/Pass or No/Fail. The forms also allow inspectors to record if the area is above or below the threshold that requires safe work practices and clearance. Each section includes a comment area where inspectors can record the repairs necessary.

The HQS form includes space to record:

- The year the house was constructed.
- The number of children in the family under age six.
- The number of children in the family with environmental intervention blood lead level.
- Identified deteriorated paint.

- If a unit fails the visual inspection for deteriorated paint, inspectors should record what repairs are necessary next to the area on the form marked "No/Fail."
- Repair instructions should be specific and include Federal requirements. For example, "fix paint surface" is inadequate. Appropriate instruction would be "Correct deteriorated paint surfaces on the living room door in accordance with the requirements for paint stabilization of 24 CFR Part 35."

- **Notify Owner of Deteriorated Paint.** If the visual assessment reveals deteriorated paint, the administering agency should follow its usual procedure to notify the owner of unit inspection results. For example, an agency can provide the owner a copy of the inspection summary that identifies inspection failures and required responses.
- **Ensure Owner Stabilizes Deteriorated Paint Before Unit Occupancy**. Administering agency staff should instruct the owner to conduct paint stabilization before the unit is occupied to control possible lead-based paint hazards.
- **Owner Failure to Respond.** If an owner does not correct deteriorated paint, children under six cannot occupy this unit under a TBRA program.

PAINT STABILIZATION

- Deteriorated paint identified during a visual assessment must be stabilized. Paint stabilization is the treatment of paint surfaces that are cracking, scaling, chipping, peeling or loose. Paint stabilization must include the following activities:

  - **Repair Deteriorated Material**. Any physical defect in the substrate of a painted surface that is causing the paint deterioration must be repaired before treating the surface.

  - **Remove Loose Paint**. All loose paint or other loose material should be removed from the surface to be treated.

  - **Apply New Paint**. Paint stabilization includes the application of a new protective coating of paint. The surface must be dry and protected from future moisture damage before applying new protective coating or paint.

- **Training and Supervision.** The individual performing the paint stabilization must be trained in accordance with OSHA's Hazard Communication regulations (*29 CFR 1926.59*). In addition, they must meet one of the following:

Rule Change Highlights

- No change in TBRA administering agency procedures.
- The new regulation instructs the owner to stabilize the surface and perform work using safe work practices.
- The TBRA agency should instruct the owner to use safe work practices when stabilizing paint.

- Be supervised by an abatement supervisor certified in accordance with *40 CFR 745.225*; (in this case the supervisor is responsible for assuring that safe work practices are followed);
- Successful completion of an accredited abatement supervisor course in accordance with *40 CFR 745.225*;
- Successful completion of an accredited lead-based paint abatement worker course in accordance with *40 CFR 745.225*;
- Successful completion of the Lead-Based Paint Maintenance Training Program developed by the National Environmental Training Association for EPA and HUD;
- Successful completion of the Remodeler's and Renovator's Lead-Based Paint Training Program developed by HUD and the National Association of the Remodeling Industry; or
- Successful completion of an equivalent course approved by HUD. Visit the HUD web site at www.hud.gov/offices/lead for a list of additional approved courses.

- The agency may decide to create a form for the worker to sign certifying that they have successfully completed one of the approved training courses.
- **Safe Work Practices.** The administering agency should instruct the owner to use safe work practices when stabilizing paint. Safe work practices help minimize and control the spread of lead-contaminated dust and debris while protecting workers and residents from exposure to lead. Safe practices include:
  - Occupant Protection
  - Worksite Preparation
  - Cleanup
  - Safe Treatment Methods
- **Exemptions to Safe Work Practices**. Safe work practices are not required when treating areas tested to be free of lead-based paint or small surface areas. Areas not requiring safe work methods are those smaller than 20 square feet on exterior surfaces, two square feet in any one interior room or 10 percent of the total surface area of small interior or exterior components, such as window sills.
- **Occupant Protection.** Property owners should protect residents and their personal belongings from exposure to lead-contaminated dust and debris during paint stabilization.
  - Personal belongings should be relocated to an area outside the treatment area or covered with an impermeable covering with all seams and edges taped shut.
  - Residents may need to be temporarily relocated during treatment if they are exposed to lead-based paint hazards. See Chapter 3, Section 3-9, for specific relocation requirements.

- **Worksite Preparation**. The administering agency should instruct the owner to control the spread of dust and debris at the worksite. This preparation should ensure that leaded dust, lead-based paint chips and other debris are contained within the worksite until they can be safely removed. Protective measures include sealing off vents and doorways with poly sheeting; covering floors and furniture with poly sheeting and wrapping debris in poly before disposal.

  - Remind owners to post a warning sign at the entry of each room being treated for lead-based paint hazards when occupants are present. Warning signs on exterior surfaces should be visible 20 feet from the worksite.

- **Cleanup**. After paint stabilization is complete, the worksite should be cleaned to remove lead-based paint dust. Cleanup must be accomplished by wet washing surfaces with a lead-specific detergent or its equivalent. Vacuum cleaners with HEPA filters should be used during cleanup. Waste and debris must be disposed in sealed containers in accordance with Federal and state waste disposal requirements.

- **Safe Treatment Methods**. Exhibit 5-3 lists examples of safe and prohibited treatment methods. This exhibit also lists prohibited methods of paint removal.

EXHIBIT 5-3

SAFE AND PROHIBITED METHODS FOR TREATING LEAD-BASED PAINT

Examples of Safe Treatment Methods

Removal of deteriorated paint by:

- Wet scraping;
- Wet sanding;
- Chemical stripping on or off site;
- Replacing painted components;
- Scraping with an infrared or coil-type heat gun with temperatures below 1,100°F;
- HEPA vacuum sanding;
- HEPA vacuum needle gun;
- Abrasive sanding with HEPA vacuum; and
- Specialized cleaning to remove lead dust.

Covering of deteriorated paint surface with:

- Durable materials (such as wallboard or vinyl siding) with joint sealed and caulked.

Prohibited Methods of Paint Removal

- Open flame burning or torching;
- Machine sanding or grinding without a HEPA local exhaust;
- Abrasive blasting or sandblasting without a HEPA exhaust;
- Heat guns operating above 1,100°F or charring paint;
- Dry scraping or dry sanding except in conjunction with heat guns or within 1 foot of electrical outlets; and
- Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance.

- Administering agencies should educate program staff on the fundamentals of safe work practices. This training will help program staff accomplish the following:
  - Determine whether the worker or supervisor has completed one of the approved training course programs;
  - Direct workers or supervisors to the appropriate resources if it is determined that they do not have adequate training to work with lead-based paint;
  - Supervise the work; and
  - Provide guidance to property owners and answer questions regarding safe work practices.
- **Notify Occupants**. Within 15 days after completing paint stabilization, the property owner must provide occupants with a Notice of Lead Hazard Reduction to notify them that paint stabilization has occurred and provide the clearance results. (If clearance is not required, a notice is not required.) The notice should include a summary of activities, contact name, address and telephone for more information and available information about any remaining lead-based paint in the unit. The TBRA administering agency should instruct the owner to notify occupants of clearance results.

CLEARANCE

- Clearance is a new mandatory activity that follows paint stabilization. Clearance helps ensure that the worksite is clean after work is done and that dust-lead levels are at acceptable levels.
- **Clearance.** Paint stabilization and other lead hazard reduction efforts are considered complete when clearance is conducted. Clearance must be performed to ensure reduction of lead-based paint hazards. Lease agreements should be made only after this work is complete.
  - Clearance consists of a visual examination, dust sampling and laboratory analysis of dust samples.
  - Clearance is performed after paint stabilization and cleanup are complete.
  - Units must meet clearance standards as described in Chapter 3, Section 3.10.

Regulation Change Highlights

- Clearance is a new requirement.
- This mandatory activity helps ensure tenants are safe from lead-based paint dust hazards.
- The TBRA administering agency must change procedures to ensure they receive a clearance report prior to unit approval.
- The TBRA administering agency also should instruct the owner to provide clearance results to the tenant in the Notice of Lead Hazard Reduction.

- **Clearance Exemption.** Clearance is not required if the work in the unit involved surfaces less than 20 square feet on exterior surfaces, 2 square feet in any interior room or less than 10% of the surface area of a small interior or exterior component, such as a window sill.

- **Clearance Examiner**. The clearance examiner must be a certified risk assessor, lead-based paint inspector, or *lead sampling technician*. The clearance examiner must be independent from the individual or entity who conducted the paint stabilization or other lead hazard reduction, unless the owner or agency uses in-house employees to conduct clearance who are certified lead-based paint inspectors or risk assessors. An in-house employee cannot conduct both paint stabilization and its clearance examination.

  Either the owner or the agency can pay for the clearance inspection. Under HOME, this can be counted as an administrative cost, since there are no project-related soft costs for TBRA.

- **Clearance Report.** The TBRA administering agency should ensure that a clearance report is prepared within 15 calendar days of completion of lead hazard reduction activities. This report should include:

  - Beginning and ending dates of the paint stabilization;
  - Name and address of the firm conducting paint stabilization and the name of the supervisor assigned to the paint stabilization;
  - The name, address and signature of each person conducting clearance sampling, the date of clearance testing, and the certification number for each certified risk assessor or inspector who conducted sampling;
  - The results of clearance testing and the name of each laboratory that conducted the analyses and the identification number of the laboratory. **Note:** The laboratory must be accredited under the National Lead Laboratory Accreditation Program; and
  - A detailed written description of the paint stabilization including methods used, location of rooms where activity occurred, and any suggested monitoring.

- **Results of Clearance Examination.** All surfaces that fail the clearance examination must be re-cleaned and retested until the area passes clearance. Results of the clearance examination must be included in the Notice of Lead Hazard Reduction.

- **Staff Training**. As a result of the new cleanup and clearance requirements, the administering agency will need to evaluate their program design and incorporate these new requirements.

  - All program staff should have a basic understanding of the proper clearance procedures;
  - Staff conducting the clearance examination must complete one of the acceptable training courses for risk assessors, lead-based paint

inspectors, or lead sampling technician and become certified in the state; and

- Program staff should understand the components of the clearance report and be able to prepare a report.

RECORDKEEPING

- **Recordkeeping.** The TBRA administering agency must keep records related to lead-based paint hazard activities at least three years as described in Chapter 3, Section 3.17. If specific programs, such as HOME, require longer periods, agencies must comply with the longer time requirements.

> **Regulation Change Highlights**
>
> - No change in record keeping procedures.
> - Records related to lead-based paint should be kept at least three years, and maintained indefinitely as documentation in case of future actions.

  - **HOME**. For tenant-based rental assistance projects, records must be retained for five years after the period of rental assistance terminates. [*24 CDR Part 92, Section 508(c)(3)*]
  - **HOPWA**. Each administering agency must ensure that records are maintained for a four-year period. [*24 CFR Part 35, Section 574.530*]

- **Recommendation:** Records on lead-based paint should be kept indefinitely, in the event of a complaint or lawsuit.

5.7 STEPS TO TAKE DURING SIGNING OF RENTAL DOCUMENTS

- After unit approval, the owner, occupant, and a representative from the TBRA program sign rental documents outlining the responsibilities of each. These documents can include a lease addendum and a rental assistance contract.

> **Regulation Change Highlights**
>
> - No change in procedures during signing of rental documents.
> - Tenants must continue to receive a lead-based paint hazard pamphlet and be notified about the existence of lead-based paint hazards and any hazard reduction activities.

- **Step 1: Disclosure.** The TBRA administrative staff should ensure the owner has notified occupants about lead-based paint hazards. Before the lease is signed, the owner must provide the pamphlet information to the occupant and the disclosure statement. Required information includes:

  - **Lead Hazard Information Pamphlet**. All occupants must receive the brochure "Protect Your Family from Lead in Your Home" issued by EPA, HUD, and the Consumer Product Safety Commission.
  - **Disclosure**. Occupants in units built before 1978 must receive and acknowledge receipt of a disclosure statement. This statement discloses any known lead-based paint hazards in the unit.

- **Step 2: Document Disclosure.** Owners and TBRA administering agencies can document occupant notification by completing the following activities:
  - Have residents sign the disclosure form and check the box indicating that they received the pamphlet.
  - The disclosure of information form must be attached to the lease. Administering agencies must not approve any lease that does not contain this form or an equivalent.
  - Owners and TBRA intake staff should keep these documents in their occupant files.
- **Step 3: Owner Agreement.** The rental assistance agreement between the administering agency and owners of rental housing receiving rental assistance funds should require the owner to maintain the housing to meet HQS or equivalent standards.

5.8 ONGOING LEAD-BASED PAINT REQUIREMENTS

- To reduce the risk that lead-based paint hazards will develop after the occupant moves in, both TBRA program staff and the property owner must conduct certain activities. These include identification of children under age six at recertification, periodic visual assessments, ongoing maintenance and occupant notification.

Regulation Change Highlights

- No change in inspection procedures.
- The Agency must have procedures to identify new children under age six, at recertification, and take appropriate action.
- TBRA agency staff should instruct the owner to use safe work methods during ongoing routine maintenance.
- Ongoing maintenance of painted surfaces is required for property owners for the duration of TBRA funding at the property.

- **Recertification**. If at recertification, the agency learns that a household has a child under age six, the agency must take appropriate action. (For example, a family moved in with a ten-year old child. At recertification, they state that they have a newborn. Since lead-based paint was not previously addressed in the unit, the agency must now ensure that a visual evaluation, paint stabilization, and clearance occur.)
- **Visual Assessment**. TBRA program staff are responsible for periodic inspections of the unit at least annually to determine if the unit meets HQS or equivalent standards. As part of this inspection, inspectors must conduct a visual assessment to identify deteriorated paint.
  - Periodic inspections are similar to the initial inspection required at unit approval that involved a visual assessment, as described in Section 5.6.
  - The administering agency must notify the owner of defects revealed during the inspection.

- If the visual assessment reveals deteriorated paint, the owner must conduct paint stabilization. Paint stabilization must be completed within 30 days of notification of visual assessment results.
- If paint stabilization is required, clearance must be conducted as described in Section 5.6.
- The administering agency may not charge the occupant or owner a fee for initial inspection or periodic inspections of the unit.

❑ **Ongoing Maintenance**. TBRA program staff must instruct the owner that ongoing maintenance of painted surfaces must be incorporated into regular building operations. The owner's ongoing maintenance responsibilities include the following activities.

- A check for deteriorated paint every twelve months and at unit turnover.
- Stabilization of any deteriorated paint on interior and exterior surfaces revealed during periodic inspections. Paint stabilization must be completed within 30 days of notification of the inspection results.
- Use of safe work practices when performing routine maintenance or renovation that disturbs paint that may be lead-based paint.
- Repair lead-based paint hazard reduction activities that are no longer effective.
- Distribution of written notice to all occupants requesting notification of deteriorated paint. This notice should include a contact name, address and telephone number of the person residents should notify to report any deteriorated paint.
- The owner or designated party must respond to resident notification of deteriorated paint and perform paint stabilization within 30 days of receiving notification.

❑ **Exemptions to Ongoing Maintenance**. Ongoing maintenance is not required if both of the following conditions are met:

- A paint inspection reveals no lead-based paint is present in the apartment or a clearance report indicates all lead-based paint has been removed; and
- A risk assessment indicates that no lead-contaminated soil and no lead-contaminated dust is present.

❑ **Ongoing Occupant Notification**. Occupants must be informed of lead-based paint hazard reduction activities following periodic inspections or treated during ongoing maintenance.

- The owner must notify the occupant no more than 15 calendar days after lead hazard reduction activity is completed. This notice is not required if clearance is not required. The notice must include:

- Summary of the nature and scope of paint stabilization and the results of clearance;
- Contact name, address and telephone number for more information; and
- Available information on the location of any remaining lead-based paint.

➢ The notice must be provided to occupants at their apartments or in a centrally located common area.

➢ Any required paint stabilization is considered complete when clearance is conducted as described in Section 5.6.

5.9 STEPS TO TAKE IF A CHILD IS IDENTIFIED WITH AN ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL

❑ Both administering agencies and owners must take specific steps after receiving notice that a child with environmental intervention blood lead level is living in a dwelling unit receiving TBRA. These steps help assess risk, eliminate identified lead hazards, and ensure the appropriate health agency has updated information about environmental intervention blood lead level cases.

Environmental Intervention Blood Lead Level

Environmental intervention blood lead level is a confirmed concentration of lead in the blood of 20 µg/dL (micrograms of lead per deciliter) for a single test or 15-19 µg/dL in two tests taken at least three months apart.

Note: Under the current regulations, this is referred to as EBL.

STEP 1: SHARE AND COMPARE DATA

❑ **Request Data from Health Department**. The administering agency must request the addresses of families with environmental intervention blood lead level children at least quarterly from state or local public health departments.

❑ **Share TBRA Data**. The administering agency must provide an updated list of addresses of families receiving tenant-based rental assistance with children under age six to the state or local public health department at least quarterly. This list is not required if the public health department states that it does not wish to receive the data.

❑ **Compare TBRA Data with Health Department Data**. If names and/or addresses are provided, TBRA administering agencies must then compare the names of environmental intervention blood lead level children to families receiving rental assistance to check for a match. This comparison is not required if the public health department performs the matching procedure.

❑ **If a Match is Identified, Conduct Risk Assessment**. If a match is found and verified, the administering agency must conduct a risk assessment of the unit occupied by the environmental intervention blood lead level child

and require the owner to use interim controls or abatement to treat identified lead hazards.

EXHIBIT 5-4

TIMELINE OF ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL ACTIVITIES

Immediately: Notice of an environmental intervention blood lead level child must be verified with the health department or other medical health care provider, unless these sources made the notification.

Within 5 days of notification: Administering agency must report to the public health department after being notified of child with an environmental intervention blood lead level from any source other than the health department.

Within 15 days of notification: Risk assessment must be complete after being notified of child with an environmental intervention blood lead level.

Within 30 days of receiving risk assessment results: Property owner must complete reduction of identified lead-based paint hazards through interim controls or abatement after receiving risk assessment report. Hazard reduction is complete when clearance is achieved.

STEP 2: VERIFY AND REPORT INFORMATION

- **Verify Information.** When informed about an environmental intervention blood lead level child by a source other than a public health department or a medical health care provider, the TBRA administrative staff should verify this information with the public health department or other medical health care provider. If the department or provider verifies this information, the verification serves as notification and a risk assessment and lead hazard reduction must be conducted.

- **Report to Public Health Department**. The administering agency must report the presence of a child with an identified environmental intervention blood lead level to the state or local public health department within 5 days of being notified by any other medical health care professional.

Regulation Change Highlights

- Identification and response to children with an environmental intervention blood lead level have changed.
- The new requirements seek to protect children who are exposed to lead-based paint hazards.
- Information about a child with an environmental intervention blood lead level must be verified.
- A risk assessment must be performed in the unit where the child lived when the environmental intervention blood lead level was identified.
- The TBRA agency has ongoing responsibilities to work with a public health department to match TBRA data of families with children under six with reported environmental intervention blood lead levels.

STEP 3: COMPLETE RISK ASSESSMENT

Costs of Evaluation

Either the owner or the agency can pay for the risk assessor or clearance inspector. If the child is eligible for Medicaid, the state Medicaid program may pay for some risk assessment costs.

- **Evaluate Unit**. When notified by a public health department or other medical health care provider that a child under age six living in a unit receiving TBRA has an environmental intervention blood lead level, the TBRA administering agency must complete a risk assessment of the unit where the child lived at the time the blood was last sampled and of common areas servicing the unit. If the child has moved when the administering agency receives notification, but another family receiving Federal assistance lives in the unit or plans to live in the unit, the unit must be evaluated.

- **Exemptions to Unit Evaluation.** A risk assessment is not required if a public health department or the administering agency already has conducted a risk assessment of the unit and common areas between the date the child's blood was last sampled and the date when the administering agency received notification.

- **Timeframe to Complete Risk Assessment.** This assessment must take place within 15 days of the date notice of the environmental intervention blood lead level was provided. The assessment is considered complete when the administering agency receives the risk assessment report.

- **Use a Certified Risk Assessor**. A certified risk assessor must perform the risk assessment. In most cases, risk assessors are certified by the state. Local health departments can help identify certified risk assessors. On the Internet, The Lead Listing website at *www.leadlisting.org* provides lists of local organizations across the country that employ certified risk assessors.

- **Ensure Risk Assessment Follows Standards**. The risk assessment must be conducted to comply with a state program authorized by the U.S. Environmental Protection Agency (EPA). The inspector should conduct an on-site investigation to identify lead-based paint hazards and prepare a report indicating results and options.

- **Provide Risk Assessment Report to the Owner**. After receiving the risk assessment report, TBRA staff must immediately provide this report to the owner.

- **Notify Occupants of Results**. To meet occupant notification requirements, the TBRA administering agency must ensure that the owner notifies occupants of the risk assessment results.

STEP 4: ENSURE REDUCTION OF LEAD-BASED PAINT HAZARDS

- **Ensure Owner Completes Lead Hazard Reduction.** The administering agency must ensure the owner completes lead hazard reduction activities (either abatement or interim controls) within 30 days of receiving a risk

assessment report or evaluation from the public health department indicating the presence of lead-based paint hazards. The owner pays for lead hazard reduction activities.

- ❑ **Instruct Owner on Required Treatment**. TBRA administrative staff must inform owners that hazards must be treated through appropriate interim controls or abatement methods as identified in the risk assessment report. Interim control activities include paint stabilization, treatment for friction and impact surfaces where levels of lead dust are above acceptable levels, dust reduction and lead-contaminated soil reduction.
- ❑ **Ensure Lead Hazard Reduction Activities are Complete**. Lead hazard reduction activities are complete after clearance is achieved. Clearance includes a visual assessment, and collection and analysis of dust and soil samples, as described in Section 5.6.
- ❑ **Notify Occupants**. TBRA administrative staff should ensure that owners notify occupants of lead hazard reduction activities and the clearance results.

STEP 5: RESPOND TO OWNERS WHO FAIL TO REDUCE LEAD HAZARDS

- ❑ **Modify Assistance Agreement.** Include appropriate language in the TBRA assistance agreement clearly establishing the consequences for owners who fail to comply.
- ❑ **Explain Consequences to Owners.** TBRA administrative staff should inform owners that they cannot receive (or continue to receive) Federal assistance until a risk assessment and lead hazard reduction activities are complete in a unit occupied by a family with an environmental intervention blood lead level child.
- ❑ **Termination of Rental Assistance**. TBRA administering agencies must terminate rental assistance for owners who fail to reduce identified hazards and keep a file of properties that are not in compliance with lead-based paint requirements. Agencies should help relocate residents that were living in these units. Local ordinances also typically require owners to correct lead-based paint hazards in units when they are rented.

ATTACHMENT 5-A

TENANT-BASED RENTAL ASSISTANCE - EXERCISES

Scenario One:

Four families are moving into a two-story apartment building constructed in 1958 and owned by Interstate Housing. The kitchens in units 1 and 2 have peeling paint. The Cross Village Housing Corporation administers a tenant-based rental assistance (TBRA) program supported with HOME funds. The agency has agreed to provide TBRA to all four families.

Unit 1	A couple with one 5-year-old and one 7-year-old.
Unit 2	A single woman, age 30.
Unit 3	An elderly couple.
Unit 4	A single woman with one 11-year-old.

Please answer the following questions:

1. Which unit/s must be notified about lead-based paint hazards?

2. Which unit/s must be assessed for deteriorated paint?

3. In which unit/s must clearance be performed?

4. When, from whom, and in what form (written, oral, etc.) do occupants first receive information about lead-based paint hazards?

5. During unit approval, what activities must the Cross Village Housing Corporation ensure happen in the appropriate unit to identify and correct potential lead-based paint hazards?

6. What instructions should the Cross Village Housing Corporation provide to the property owner about these lead-based paint hazard activities during unit approval?

7. What recourse does the Cross Village Housing Corporation have if the owner refuses to comply with instructions regarding lead-based paint hazards?

8. How do occupants learn about lead-based paint activities that occur during unit approval?

9. What activity signifies that lead-based paint hazard reduction is complete?

10. What three activities relating to lead-based paint hazards should occur on an ongoing basis after move-in? (Hint: One activity is the property owner's responsibility and two are the TBRA agency's responsibility.)

Scenario Two:

Nicole and her 5-year-old daughter Sally use Shelter Plus Care TBRA funds at Bedrock Garden apartments. The City of Paint Branch administers the TBRA program.

Nicole just received a call from the secretary at Sally's school explaining that a recent blood test shows Sally has lead in her blood that exceeds the environmental intervention blood lead level. Nicole reports this information to staff at Paint Branch.

Paint Branch staff recently learned about changes required when identifying and responding to children with an environmental intervention blood lead level. The new requirements seek to protect children who are exposed to lead-based paint hazards.

Please answer the following questions:

1. Since neither Sally nor the school secretary is a medical health care provider, what should Paint Branch staff do to verify the information about the blood sample?

2. To whom and when must Paint Branch report the name and address of the child with the environmental intervention blood lead level?

3. What activity should Paint Branch staff begin in the unit in response to the environmental intervention blood lead level and within what timeframe?

4. What happens in the unit if Nicole and her daughter move out of Bedrock Gardens after the blood samples were taken?

5. Once Paint Branch receives a risk assessment report in a unit occupied by a child with an environmental intervention blood lead level, what are the city's obligations to the owner and the occupants?

6. Who should perform lead hazard reduction activities if the risk assessment report identifies lead-based paint hazards in the apartment and within what timeframe?

7. What activity signifies that lead-based paint hazard reduction activities are complete?

8. What three activities are required of Paint Branch regarding matching TBRA program data with environmental intervention blood lead level children?

Scenario 3: Sharing and Comparing Data

As part of the quarterly sharing and comparing requirement to identify poisoned children, the AnyState Department of Health (a TBRA administering agency) has received List A from the Public Health Department and has prepared List B from its TBRA files. The lists include:

- Addresses from the public health department of children less than six years old with an identified environmental intervention blood lead level
- Addresses of households with children under age six receiving TBRA assistance from AnyState Department of Health

Please complete the following:

- Compare the lists.
- Identify any matches.
- Describe next steps required.

A. Public Health Department data	B. Units receiving TBRA with children under age six
1700 K Street, SW, Apt. 25 Hometown, AS 33333	Marigold family 333 Porter Street, Apt. 36 Silver City, AS 33215
333 University Place., Apt. 210 Hometown, AS 33347	Holden family 1700 K Street, SW, Apt. 30 Hometown, AS 33333
4200 Main Street, Apt. 7 Silver City, AS 33201	Natcher family 4200 Main Street, Apt. 10 Silver City, AS 33201
12 Jessup Lane, Apt. 17 Silver City, AS 33556	Smith family 12 Jessup Lane, Apt. 17 Silver City, AS 33556
1901 West Street, Apt. 3 Hometown, AS 33306	Tenley family 222 Foster Lane, Apt. 12 Hometown, AS 33310
222 Fort Rigg Drive, Apt. 377 Silver City, AS 33215	

CHAPTER 6

ADDRESSING LEAD-BASED PAINT IN HOMEBUYER PROGRAMS

6.1 INTRODUCTION

- This chapter discusses how to incorporate the new Federal lead-based paint requirements into State and local homebuyer programs receiving funding from HUD's Office of Community Planning and Development (CPD). The chapter:
  - Provides an overview of the lead-based paint requirements for homebuyer programs;
  - Outlines steps in a typical home purchase program; and
  - Describes when and how the new requirements fit into program procedures.

Homebuyer Programs That Must Meet New Lead-Based Paint Requirements

HUD Office of Community Planning and Development (CPD) programs that provide funds for local homebuyer assistance:

- HOME Investment Partnership Program (HOME)
- Community Development Block Grant (CDBG)

- Grantees and participating jurisdictions (PJs), and their subrecipients, administering homebuyer assistance programs that use CPD funds must follow these requirements.
- If the program provides the potential homeowner with funds for rehabilitation activities, the requirements of Subpart J Rehabilitation in the new regulation are triggered. See Chapter 4 for a detailed discussion of the lead-based paint requirements when conducting rehabilitation. **Note:** If the level of rehabilitation assistance is less than or equal to $5,000[1], the requirements of Subpart K (discussed in this chapter) will apply because they are more stringent.
- Grantees, PJs and their subrecipients will be referred to as **administering agencies** throughout this chapter.

[1] When determining the level of rehabilitation assistance, compare the level of Federal funds to the funds used cover the "hard costs" of rehabilitation. See Section 4.3 of this manual for a full description of the method for calculating the level of assistance for rehabilitation.

- This chapter covers the following:
  - Overview of Requirements (Section 6.2);
  - Costs (Section 6.3); and
  - Key Activities in a Homebuyer Program and Lead-Based Paint Requirements (Section 6.4):
    - Application Process (Section 6.5);
    - Home Selection (Section 6.6);
    - Purchase Contract (Section 6.7);
    - Home Inspection (Section 6.8);
    - Purchase Negotiation (Section 6.9);
    - Closing (Section 6.10); and
    - Post-Purchase Counseling (Section 6.11).

6.2 OVERVIEW OF REQUIREMENTS

- The lead-based paint requirements for programs administered for homebuyer assistance are found at 24 CFR Part 35 Subpart K—Acquisition, Leasing, Support Services, and Operations (because homebuyer activities qualify as acquisition).

Emergency Assistance Exemption

Providing emergency foreclosure assistance does not trigger these requirements if the assistance does not continue for more than 100 days.

- The requirements for homebuyer programs apply to all pre-1978 units, not just to those occupied by children under 6.
- The requirements for homebuyer programs are consistent with Approach #2: Identify and Stabilize Deteriorated Paint, as defined in Chapter 3. This approach provides reasonable assurance that any lead-based paint is intact and that the unit is "lead safe" when it is occupied by the assisted household. Because homebuyer programs do not involve an ongoing relationship with the project, there are no ongoing maintenance requirements. Exhibit 6-1 highlights the required activities.

EXHIBIT 6-1

HOMEBUYER: REQUIRED ACTIVITIES TO ADDRESS LEAD-BASED PAINT
(Subpart K- Acquisition, Leasing, Support Services, and Operations)

Approach to Lead Hazard Evaluation and Reduction 2. Identify and Stabilize Deteriorated Paint	
Notification (35.1010)	• Pamphlet and Disclosure • Notice of Lead Hazard Evaluation or Presumption, if applicable • Notice of Lead Hazard Reduction Activity
Lead Hazard Evaluation (35.1015)	• Visual Assessment
Lead Hazard Reduction (35.1015)	• Paint Stabilization • Safe Work Practices • Clearance
Ongoing Maintenance	• No requirements
EIBLL Requirements	• No requirements
Options	• Perform paint testing on deteriorated paint. If the paint is not lead-based paint, paint stabilization and clearance are not required.

- Following is a summary of the requirements designed to reduce lead-based paint hazards in residential properties receiving Federal assistance under programs administered for acquisition. These requirements are discussed in detail in Chapter 3.

- **Notification.** Administrators of homebuyer programs must ensure that the following take place to comply with the lead regulation's notification requirements:

  - **Disclosure** [24 CFR 35 Subpart A]. Homeowners must also receive a disclosure form noting any known presence of lead-based paint. See Section 3.6 for a full description.

  - **Lead Hazard Information Pamphlet** [*24 CFR 35.1010(b); 24 CFR 35.130*]. Prospective homeowners must receive the HUD/EPA/CPSC pamphlet "Protect Your Family from Lead in Your Home" or an EPA-approved alternative. The pamphlet provides educational information describing lead-based paint hazards. It is not necessary to provide the pamphlet again if it has already been provided in compliance with the lead disclosure rule or

Definitions

- **Visual Assessment.** A visual examination of painted surfaces to identify: (1) deteriorated paint; or (2) visible surface dust, debris, and residue as part of a risk assessment or clearance examination; or (3) the completion or failure of a lead hazard reduction measure.
- **Paint Stabilization.** Repairing any physical defect in the painted component 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.
- **Clearance.** An activity conducted following lead hazard reduction activities to determine that the paint is intact and dust-lead levels are acceptable. It involves a visual assessment and dust sampling by a qualified individual.

EPA's Pre-Renovation Rule.

- **Notices of Lead Hazard Evaluation and Reduction** *24 CFR 35.1010(a); 24 CFR 35.125)*]. The administering agency is responsible for providing notification of lead hazard evaluation or reduction activity to the potential owner within 15 calendar days of the completion of lead hazard evaluation or reduction activities. (**Note:** A Notice of Lead Hazard Evaluation is required only if paint testing or a risk assessment is conducted.)

- **Lead Hazard Evaluation.** The following is required to identify deteriorated paint in homes.
  - **Visual Assessment** [*24 CFR 35.1015(a)*]. A visual assessment of all interior painted surfaces, including common areas such as hallways, laundry rooms or garages, and exterior surfaces of the building in which the dwelling unit is located must be conducted to identify deteriorated paint.
  - **Note:** A visual assessment is not considered an evaluation that requires a notification of lead hazard evaluation, since the assessment does not determine the presence or absence of lead-based paint and/or lead hazards.

- **Lead Hazard Reduction.** The following activities are required to address deteriorated paint in homes.
  - **Paint Stabilization** [*24 CFR 35.1015(b); 24 CFR 35.1330(a)(b)*]. All deteriorated paint surfaces must be stabilized before the homebuyer moves into the home.
  - **Safe Work Practices.** [*24 CFR 35.1345*] The owner must use safe work practices when conducting paint stabilization. Safe work practices include safe work methods, occupant protection, worksite preparation, and cleanup.
  - **Clearance** [*24 CFR 35.1015(b)(d)*]. After the completion of work, the home must pass clearance. Clearance must happen before occupancy if the home is vacant or immediately after receipt of Federal assistance for a home currently occupied.

- **Comparison to Former Requirements**. Attachment 3-C outlines differences between former requirements and the new regulation.

6.3 COSTS

- In order to provide maximum flexibility, the party responsible for paying for lead hazard evaluation and reduction in homebuyer programs depends upon program design and local requirements. Costs may be borne by:
  - The administering agency;
  - The seller;
  - The homebuyer; or

- A combination of the above.

- For example, some homebuyer programs will pay for all or a portion of the cost of the home inspection or provide their own staff inspector. Other programs provide monetary assistance for the lead hazard reduction.

6.4 KEY ACTIVITIES IN A HOMEBUYER PROGRAM AND LEAD-BASED PAINT REQUIREMENTS

- Fostering homeownership is an increasingly popular way in which states and local jurisdictions are using their funds. This type of assistance can be provided using a variety of methods including downpayment assistance, closing cost assistance, secondary financing, and assisting with private mortgage insurance, among others. Regardless of the method of assistance, there are various points in the process of purchasing a home that trigger lead-based paint requirements and require the administering agency to take some type of action. Exhibit 6-2 summarizes the steps that are common to many homeownership programs and the corresponding lead-based paint requirements.

- **Note:** Not all homeownership programs look alike. Some of the following steps may or may not be a part of your program, and you may have additional steps or procedures that are required. View these steps and the corresponding guidance on meeting lead-based paint requirements as a guide or best practice. Although you must incorporate the lead-based paint requirements into your homebuyer program, there is flexibility in choosing the procedures to implement the requirements.

EXHIBIT 6-2

SUMMARY OF HOMEBUYER PROGRAM ACTIVITIES AND LEAD-BASED PAINT REQUIREMENTS

KEY HOMEBUYER PROGRAM ACTIVITIES	APPLICABLE LEAD-BASED PAINT REQUIREMENTS
THE APPLICATION PROCESS	
Intake and Screening. This step is designed to determine basic eligibility. It may be a telephone interview or an in-person session with a program staff person to discuss issues such as income and credit.	**Intake or Counseling.** The application time, whether during intake and screening or as part of a counseling program, is a good time to provide lead-based paint education and distribute the pamphlet. Even if the homebuyer is deemed unqualified or their loan application is rejected, they have received valuable information on lead hazards and homeownership that they can use if they pursue other programs or financing assistance.
Pre-Purchase Education and Counseling. If the intake and screening indicate that the potential buyer appears qualified for a home purchase, they are typically referred to a counseling or education program. These programs provide prospective buyers an overview of the home purchase process and focus on issues such as budgeting and home maintenance.	
Application. After counseling and education, the potential borrower must complete a loan application and may be required to complete a program application. Depending on program design, these applications may be combined.	**Application**. No change in application requirements.
HOME SELECTION	
Select Home. This step may take place before loan processing. The advantage of processing the loan first is that it enables the borrower to know the amount of loan for which they qualify. Depending on program design, the borrower may undertake this activity with a real-estate agent or they may be required to choose a home from an approved list. Either way, there are typically some program guidelines to follow, which will trigger a grantee review of the home selection or possibly an appraisal.	**Select Home.** By this time, the borrower should have a basic understanding of lead hazards. This understanding makes them better equipped to evaluate potential homes.
PURCHASE CONTRACT	
Sign Purchase Contract. During this stage the buyer and seller negotiate the terms of the sale. The involvement of the administering agency in this stage depends on program design.	**Sign Purchase Contract**. Before signing the contract, the seller should give the homebuyer the disclosure statement. In addition, the homebuyer can exercise their option to test the home for lead-based paint and lead-based paint hazards.
INSPECTION	
Home Inspection. A standard home inspection is a critical requirement for any program. Depending on program design, certain types of inspections may be required in addition to the standard inspection. Some programs have inspectors on staff and other programs help homebuyers select qualified inspectors. In addition, some programs will pay all or a portion of the cost of the inspection.	**Home Inspection**. At this point, the visual assessment for deteriorated paint should be performed.

EXHIBIT 6-2

SUMMARY OF HOMEBUYER PROGRAM ACTIVITIES AND LEAD-BASED PAINT REQUIREMENTS

KEY HOMEBUYER PROGRAM ACTIVITIES	APPLICABLE LEAD-BASED PAINT REQUIREMENTS
PURCHASE NEGOTIATION	
Purchase Negotiation. During this process, the buyer and seller negotiate who will be responsible for correcting the deficiencies identified in the inspection report.	**Purchase Negotiation**. If the visual assessment shows deteriorated paint, this is the time to stabilize the paint and conduct clearance. The administering agency is responsible for ensuring that the work is performed using safe work practices and that the dwelling passes clearance before occupancy.
PRE-CLOSING	
Pre-Closing Activities. This step includes obtaining title and homeowner's insurance and drawing up the necessary legal documents for closing.	**Pre-Closing Activities.** Prior to occupancy, and within 15 calendar days of the completion of lead hazard reduction activities, the administering agency must ensure that the borrower is notified of the results of the clearance examination.
LOAN CLOSING	
Sign Closing Documents. After all the necessary papers are prepared and a title search has been conducted, the borrower, seller, realtor, agency staff, title company representative and lender come together to sign the loan documents and transfer payment.	**Sign Closing Documents.** The closing documents should include documents indicating that the borrower received the lead pamphlet, the disclosure statement, and clearance results.
POST-PURCHASE COUNSELING	
Post-Purchase Counseling. Post-purchase counseling provides the homeowner with ongoing support on practical issues such as finding a contractor for after-purchase repairs or helping the homeowner to re-work budgets due to unforeseen circumstances such as illness or loss of income.	**Post-Purchase Counseling**. If your program design includes post-purchase counseling, you can use this time to provide additional education on general home maintenance and ongoing maintenance of painted surfaces.

6.5 LEAD-BASED PAINT AND THE HOMEBUYER APPLICATION PROCESS

- **Intake and Screening**. Most low-income homeownership programs have some form of intake or screening program designed to determine whether the potential homebuyer meets certain basic eligibility requirements. This may be conducted through an initial telephone screening and then followed-up with an in-person interview.

  - The in-person meeting provides a good opportunity to educate the potential homebuyer on lead-based paint hazards and distribute the pamphlet "Protect Your Family from Lead in Your Home" issued by EPA, HUD, and the Consumer Product Safety Commission. This brochure uses pictures and simple language to describe the dangers of lead and suggest steps to prevent lead hazards. However, the new regulation does not require administering agencies to provide the pamphlet to the buyer if it is provided by the seller in compliance with the lead-based paint

Regulation Change Highlights

- Changes to the application process are not needed. This may be a good time to distribute the pamphlet.
- The rule stresses the importance of ongoing education regarding lead-based paint and this step in the process provides a good opportunity to provide that education. For example, the counseling program may be adjusted to include a module on lead-based paint.

disclosure rule. Provision of the pamphlet is a requirement of the disclosure rule.

- When homebuyers do not qualify for the program, it is common practice to provide advice or help them develop a plan for getting ready for homeownership. By providing lead-based paint information, they receive valuable information on lead-based paint hazards and homeownership, which even homebuyers that have been turned down can use if they pursue other programs or financing assistance.

- **Pre-Purchase Education and Counseling**. Many first-time homebuyer programs have a pre-purchase education and counseling requirement. As an alternative to offering lead-based paint information during intake, program administrators may want to consider adding a module on lead-based paint to their standard pre-purchase counseling program. This would accomplish the following:

  - Provide lead hazard identification information which will help the buyer make an informed decision about choosing a property;
  - Help the buyer understand lead hazard reduction including safe practices for work preparation and cleanup; and
  - Outline program requirements and responsibilities regarding notification and lead hazard reduction activity.
  - **Note:** This step offers an alternative opportunity to distribute the pamphlet. If your initial intake or screening is by telephone, you may choose to distribute the pamphlet at this time since it is the first in-person contact with the homebuyer. Providing the pamphlet in person offers the opportunity to discuss the information and answer any questions the homebuyer may have regarding lead-based paint hazards and reduction. Program intake and screening procedures do not have to change as a result of the new regulation.

- **Completing the Application**. Homebuyer programs typically require that the homebuyer complete a program application in addition to a loan application, depending on program design, before they begin the home selection and purchase process. The application process for many programs can seem lengthy to the homebuyer as well as the administering staff. However, filling out a program and loan application typically elicits many questions from the homebuyer. This time of question and answer provides an opportunity for program staff to remind homebuyers of the importance of lead issues and answer their questions in preparation for home selection and inspection. This is especially important for households with children under age six.

6.6 LEAD-BASED PAINT AND HOME SELECTION

- After completing the homebuyer program application and receiving approval to participate in the program, the homebuyer can select a home. Some homebuyers already may have identified a home prior to applying for homebuyer program assistance.

- **Note:** Final approval of the home selection depends on a physical inspection. If the dwelling was built prior to 1978, this must include a visual assessment for deteriorated paint, stabilization of any identified deteriorated paint, cleanup, and clearance. If the unit is in a multi-family building, such as a condominium, these requirements also apply to common areas surrounding the dwelling unit. These activities typically occur during home inspection and purchase negotiation.

6.7 LEAD-BASED PAINT AND THE PURCHASE CONTRACT

- After homebuyers have been approved and have selected a home, they move to contract negotiations. In this step the owner, homebuyer, and, in some cases, a representative from the program, negotiate the terms of the sale and outline the responsibilities of each party.

- **Note:** Three requirements described in this section — provision of the lead information pamphlet, lead-based paint disclosure and the option to test — are requirements in all pre-1978 home sales, not just in those in which Federal funding is provided. Therefore, these requirements will not affect your program design or require any additional staff or resources.

- **Disclosure.** The administering agency should make sure that homebuyers receive the pamphlet and a disclosure statement from the seller including:

  - All known information about the presence of lead-based paint or lead-based paint hazards; and
  - Records or reports pertaining to the presence of lead-based paint or lead-based paint hazards.

Regulation Change Highlights

- Providing the lead-based paint pamphlet and disclosure statement and allowing the homebuyer to obtain a lead-based paint evaluation are standard in all home sales.
- There is no new requirement in this stage as a result of the lead-based paint regulation changes.

- **Option to Obtain an Evaluation**. At this time homebuyers have the option to evaluate the home for lead-based paint. If requested, sellers must allow homebuyers a ten-day opportunity to inspect the dwelling for lead-based paint or lead-based paint hazards. **Note:** If the seller and homebuyer agree, this time frame may be negotiated.

  - If the homebuyer elects to evaluate the home for lead-based paint, he or she must hire a certified paint inspector or risk assessor or negotiate with the seller to hire one.
  - Administering agencies should educate program staff on lead-based paint evaluations so that they can assist homebuyers in identifying a certified inspector or risk assessor, if they choose to obtain a lead-based paint evaluation. This will also enable staff to assist the homebuyer, after results are known, to understand options and help make difficult choices.

- If lead-based paint hazards are found they are treated like any other defect found during an inspection. These options are constrained by the lead-based paint contingency in the contract.
  - The homebuyer may elect to withdraw from the contract and select another home. **Note**: Unless the contract includes contingencies for lead hazards, sellers' are not required by law to allow homebuyers to void their contract based on the results of the lead-based paint evaluation.
  - The homebuyer may re-negotiate the contract requiring the seller to conduct the necessary repairs.
  - The homebuyer may request to re-negotiate the contract requiring a lower purchase price in exchange for conducting the repairs themselves.
- In cases where the buyer elects to have the home evaluated and lead-based paint or lead-based paint hazards are found, the administering agency, depending on program design, also has several options. These options include:
  - Provide a rehabilitation loan to the homebuyer in order to address the lead hazards. (**Note:** Refer to the rehabilitation requirements discussed in Chapter 4); or
  - Assist the homebuyer in selecting another home.

6.8 LEAD-BASED PAINT ACTIVITIES DURING THE HOME INSPECTION

- The homebuyer is responsible for having the home inspected. Some administering agencies have inspectors on staff and other programs help homebuyers select qualified inspectors. In addition, some programs will pay all or a portion of the cost of the inspection.

Regulation Change Highlights

- Conducting the home inspection and visual assessment for deteriorated paint is similar to previous requirements.
- Repair instructions must instruct the seller to use safe work practices.

- **Visual Assessment and the Home Inspection**. The home inspection is a good time to perform the required visual assessment for deteriorated paint. The assessment can be incorporated into the inspector's work to check for conditions that do not meet housing quality standards (HQS) or local codes.
  - The CDBG and the HOME Program provide the flexibility of using local standards that meet or exceed HQS requirements. However, many administering agencies use HQS, or standards based on HQS, and many cities have adopted codes that resemble HQS.
  - Inspectors typically record information on a checklist or form. This checklist or form will likely have a section for each area of the home

(living room, kitchen, etc. as well as common areas if the unit is located in a multifamily building, such as a condo building).

- Within each section there should be a sub-section on lead-based paint for pre-1978 units which asks if the painted surfaces are either free of cracking, scaling, peeling, chipping, and loose paint or adequately treated and covered to prevent exposure of the occupants to lead-based paint hazards.
- If program standards do not include a check for deteriorated paint, the administering agency must add it to the inspection items.

❑ **Review/Revise Inspection Procedures.** Administering agencies using in-house inspectors may need to review and revise their inspection procedures and forms to include specific lead-based paint information and instructions.

- Procedures should be revised, if necessary, to include training for in-house inspectors on conducting a proper visual assessment, including what to look for and how to record the repair instructions. A short, self-administered interactive training module on visual assessment is available on the web site of the HUD Office of Healthy Homes and Lead Hazard Control, www.hud.gov/offices/lead.
- Inspection forms should be evaluated to ensure that they have specific instructions for the evaluation and a place to record the results and recommended repairs.

❑ **Record Inspection Results.** If the inspector finds deteriorated paint during the inspection, he or she must record these findings on the inspection form along with a description of the repairs required to correct the problem.

- Repair instructions should be specific and specify the use of safe work practices. For example, "fix paint surface" is inadequate. A more appropriate instruction would be: "Correct deteriorated paint surfaces on the living room door in accordance with Federal lead-based paint requirements for safe treatment."
- A copy of the complete inspection report and the detailed repair instructions should be provided to the homebuyer and the administering agency.

6.9 LEAD-BASED PAINT AND PURCHASE NEGOTIATION

❑ **Purchase Negotiation.** Once the home has been inspected and, if opted for, the lead-based paint inspection or risk assessment, the parties move to the purchase negotiation stage. During a purchase negotiation, the homebuyer and the seller negotiate who will be responsible for the necessary repairs, and how, if at all, the purchase price will be affected.

Regulation Change Highlights

❑ Deteriorated paint must be corrected using paint stabilization methods.

❑ Th new regulation requires that this work be conducted using safe work practices.

- **Make Repairs.** Any repairs or improvements are made during this stage. **Note:** If the program is providing additional assistance to the homebuyer to make property improvements, the lead-based paint requirements for rehabilitation are triggered. See Chapter 4 for the specific rehabilitation requirements.

PAINT STABILIZATION

- Deteriorated or deteriorating paint identified during a visual assessment must be stabilized. Paint stabilization is the treatment of paint surfaces that are cracking, scaling, chipping, peeling or loose. Paint stabilization must include the following activities:
  - **Repair Deteriorated Surface**. Any physical defect on a painted surface must be repaired before treating the surface.
  - **Remove Loose Paint**. All loose paint or other loose material should be removed from the surface to be treated.
  - **Apply New Paint.** Paint stabilization includes the application of a new protective coating or paint. The surface must be dry and protected from future moisture damage before applying a new protective coating or paint.
- **Training/Supervision**. Workers performing paint stabilization must be trained in accordance with OSHA regulations at *29 CFR 1926.59*. In addition, they must meet one of the following:
  - Supervision by a certified abatement supervisor;
  - Successful completion of an accredited abatement supervisor course in accordance with *40 CFR 745.225*;
  - Successful completion of an accredited lead-based paint abatement worker course in accordance with *40 CFR 745.225*;
  - Successful completion of the Lead-Based Paint Maintenance Training Program developed by the National Environmental Training Association for EPA and HUD;
  - Successful completion of The Remodeler's and Renovator's Lead-Based Paint Training Program developed by HUD and the National Association of the Remodeling Industry available on the HUD web site, www.hud.gov/offices/lead; or
  - Successful completion of an equivalent course approved by HUD..
- The agency may decide to create a form for the worker to sign certifying that they have successfully completed one of the approved training courses.
- **Safe Work Practices.** Safe work practices must be used during paint stabilization and cleanup. Safe work practices help minimize the production and spread lead-contaminated dust and protect workers and residents from exposure to lead. There are four elements to safe work practice requirements that must be met:

- **Occupant Protection**. Work should be performed in a vacant unit if possible. If residents must remain inside the dwelling during work, a barrier to the room where stabilization is taking place should be erected and residents should not be allowed to enter the work area until clearance has been completed.

- **Worksite Preparation**. The worksite should be contained using plastic sheeting extending five feet beyond the perimeter of the treated area in all directions on the floor. Ventilation systems should be turned off until work is completed.

- **Cleanup.** After paint stabilization is complete, the worksite should be cleaned to remove all lead-based paint dust. Cleanup must be accomplished by wet washing surfaces with a lead-specific detergent or its equivalent. Other cleaning devices, such as vacuum cleaners with HEPA filters, can be used during cleanup. Waste and debris must be disposed of in sealed containers in accordance with Federal and state waste disposal requirements.

- **Use of Safe Treatment Methods.** Exhibit 6-3 lists examples of safe and prohibited treatment methods.

EXHIBIT 6-3

SAFE AND PROHIBITED METHODS FOR TREATING LEAD-BASED PAINT

Examples of Safe Treatment Methods

Removal of deteriorated paint by:

- ❑ Wet scraping;
- ❑ Wet sanding;
- ❑ Chemical stripping on or off site;
- ❑ Replacing painted components;
- ❑ Scraping with an infrared or coil-type heat gun with temperatures below 1,100°F;
- ❑ HEPA vacuum sanding;
- ❑ HEPA vacuum needle gun;
- ❑ Abrasive sanding with HEPA vacuum; and
- ❑ Specialized cleaning to remove lead dust.

Covering of deteriorated paint surface with:

- ❑ Durable materials (such as wallboard or vinyl siding) with joint sealed and caulked.

Prohibited Treatment Methods

- ❑ Open flame burning or torching;
- ❑ Machine sanding or grinding without a HEPA local exhaust;
- ❑ Abrasive blasting or sandblasting without a HEPA exhaust;
- ❑ Heat guns operating above 1,100°F or charring paint;
- ❑ Dry scraping or dry sanding except in conjunction with heat guns or within one foot of electrical outlets; and
- ❑ Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance.

- ❑ Administering agencies should educate program staff on the fundamentals of safe work practices. They may want to send staff to a training course. As a result, program staff will be able to accomplish the following:

- Determine whether the worker or supervisor has completed one of the approved training courses programs;
- Direct workers or supervisors to the appropriate resources if it is determined that they do not have adequate training to work with lead-based paint;
- Supervise the work; and
- Provide guidance and answer the homebuyers' questions regarding safe work practices.

- **Exemptions to Safe Work Practices**. Safe work practices are not required when treated areas are tested and found to be free of lead-based paint, or if the surface area being treated is smaller than a total of 20 square feet on exterior surfaces, 2 square feet per interior room, or 10 percent of the total surface area of small interior components, such as window sills.

CLEARANCE

- Clearance must take place following paint stabilization. Clearance helps ensure that lead-based paint hazards are controlled and the unit is safe for habitation.

- **Clearance**. Paint stabilization and other lead hazard reduction efforts are considered complete when clearance is conducted. Clearance must be performed to ensure that lead-based paint hazards have been controlled and dust-lead standards have been met.

Regulation Change Highlights

- Clearance is a new requirement.
- Incorporating clearance into program procedures will require educating and training staff on the procedures for obtaining a clearance inspection and reviewing the results.

  - Clearance consists of a visual examination, collection of dust samples, and laboratory analysis of the samples for lead.
  - Clearance is performed after lead hazard reduction and clean-up are complete.
  - Dwellings must meet clearance standards as described in Chapter 3, Section 3.10 prior to occupancy.

- **Clearance Exemption.** Clearance is not required if the work in the unit involved surfaces less than 20 square feet on exterior surfaces, 2 square feet in any interior room or less than 10% of the surface area of a small interior or exterior component, such as a window sill.

- **Clearance Examiner**. The administering agency is responsible for hiring a certified professional to conduct clearance. This professional may be a certified risk assessor, lead-based paint inspector, or lead sampling technician. The clearance examiner must be independent from the individual or entity who conducted the paint stabilization or other lead hazard reduction, unless they are employees of the administering agency.

Note: If agency employees are used, the same individual who conducted paint stabilization is not permitted to conduct clearance.

- **Clearance Report**. Prior to closing, and within 15 calendar days of the completion of lead hazard reduction activities, the homebuyer must be notified of the results of the clearance examination. This notice is part of the required notice of head hazard reduction activity. The administering agency should ensure that the report is prepared and sent to the homebuyer. This report should include:
  - Beginning and ending dates of the lead hazard reduction activities.
  - Name and address of the firm conducting lead hazard reduction activities and the name of the supervisor assigned to the lead hazard reduction activities.
  - The name, address and signature of each person conducting clearance sampling, the date of clearance testing, and the certification number for each certified risk assessor or inspector who conducted sampling.
  - The results of clearance testing and the name of each laboratory that conducted the analyses and the identification number of the laboratory.
  - A detailed written description of the lead hazard reduction activities including methods used (usually paint stabilization), location of rooms where activity occurred, and any suggested monitoring.
- All surfaces that fail the clearance examination must be re-cleaned and retested until the area passes clearance.
- **Staff Training**. As a result of the new cleanup and clearance requirements, the administering agency will need to evaluate their program design and incorporate these new requirements.
  - All program staff should have a basic understanding of the proper clearance procedures;
  - Staff conducting the clearance examination must complete the requirements for certification in your State; and
  - Program staff should understand the components of the clearance report and understand the procedures for notifying the buyer of the results.

6.10 LEAD-BASED PAINT AND CLOSING

Regulation Change Highlights

- There is no new requirement at loan closing as a result of the new lead-based paint regulation.
- It is good practice for owners and administering agencies to document notification by using the disclosure form.

- **Loan Closing.** Closing is the final step in the home purchase process. At closing, the homebuyer obtains loan proceeds and presents a certified check to cover the balance of the down payment and the closing costs. The loan closes, and the homebuyer assumes ownership and can move into the new home.

- **Document Notification.** The new lead-based paint requirements do not trigger any changes in the closing process. However, owners and administering agencies should document that residents have received the brochure "Protect Your Family from Lead in Your Home" and the disclosure form from the seller. The disclosure form provides this documentation.

- **Recordkeeping.** HUD Field Offices are responsible for monitoring administering agencies and their subrecipients to make sure that they are in compliance with applicable regulations. It is good practice to incorporate lead-based paint documents into existing record keeping policies. If program staff use a checklist for ensuring that necessary home purchase records are kept, consider adding the lead-based paint documents listed below to the list. Records must be kept for at least three years as described in Chapter 3, Section 3.17, but it is recommended that lead-based paint records be kept indefinitely. If specific programs, such as HOME, require longer periods, agencies must comply with the longer time requirements.

- Important lead-based paint records to keep include the:

  - Inspection report;
  - Disclosure statement, including acknowledgement of receipt of the pamphlet; and
  - Clearance report

6.11 LEAD-BASED PAINT AND POST-PURCHASE COUNSELING

- **Post-Purchase Counseling.** Many program designs target first-time homebuyers. To keep delinquency and default rates to a minimum, programs often include post-purchase counseling. Post-purchase counseling can assist new homeowners with maintenance issues or dealing with financial crises after the move-in.

Regulation Change Highlights

- There is no new requirement during the post-purchase counseling process as a result of the new lead-based paint regulation.
- However, post-purchase counseling provides an opportunity to educate the homeowner on safe work practices during repair or renovation.

- **Explain Safe Work Practices.** The new lead-based paint requirements do not require changes or additions to the post-purchase activities in a homebuyer program. However, if a new homeowner has a maintenance issue after move-in, and post-purchase counseling is offered, it is good practice to educate the homeowner on the importance of safe work practices during repair or renovation.

ATTACHMENT 6-A

HOMEOWNERSHIP PROGRAM – EXERCISES

Lead-Based Paint Requirements for Homeownership Programs

Answer the following questions.

1. Mary and Matt have been trying to buy a home for several years. They are referred to your downpayment assistance program by a local lender. They are qualified for your program and soon after select a home. Mary and Matt have read the information pamphlet provided by your program staff. Since they hope to start a family soon, they have decided to conduct a risk assessment. During the risk assessment lead-based paint hazards are identified. What are their options as the potential homeowners? What are your options as the administering agency? What guidance can you give them?

2. Sam and Sally are participating in a HOME-funded homebuyer program. They have identified a home and it has just gone through inspection. During the inspection the inspector found deteriorated paint in the kitchen. The homebuyer hires Paint Plus Contractors to conduct the paint stabilization.

   - Does the individual doing the paint stabilization need any special training?

   - Can this same individual conduct clearance?

   - Can another individual from Paint Plus conduct clearance?

   - Suppose you have an agency employee conduct the paint stabilization for Sam and Sally. Can this agency employee also conduct clearance?

   - Can another individual from the administering agency conduct clearance?

3. Tasha and Tom are participating in your downpayment assistance program. They have identified a home and it has just gone through inspection. During the inspection, the inspector found deteriorated paint in the bathroom, some leaky pipes, and some damage to the staircase.

   - Since the home is suitable otherwise, your agency has decided to provide the applicant with a low interest loan of $4,000 to make the repairs. Does the provision of this rehabilitation loan affect the lead-based paint requirements? If so, how?

- Suppose the damage was more extensive and rehabilitation loan was for $6,000. Would this affect the lead-based paint requirements? How?

4. Indicate whether the following are true or false.

   Using a water mister when sanding is a prohibited method of paint removal _____

   Paint that is loose but not chipped or cracked does not need to be stabilized _____

   Safe work practices are not required when treating areas smaller than a total of two square feet per room. _____

   The administering agency has 30 calendar days in which to notify the homebuyer of the results of the clearance examination. _____

5. The city of Dodge provides HOME funds to ABC Housing Opportunities Inc., a nonprofit, to run a homebuyer program that provides downpayment and closing cost assistance to low income borrowers. Dodge has a reasonable supply of affordable homes but many need small repairs to meet HOME Program property standards. Accordingly, ABC also makes rehabilitation loans, up to $10,000 to qualifying homebuyers.

   ABC contracts with a home inspector to perform home inspections for all program participants. In cases where repairs are needed, ABC encourages the homebuyers to hire their own contractors for the work, however, ABC does maintain a list of contrac tors and will assist the homebuyers in finding contractors.

   As the City of Dodge prepares to implement the new lead-based paint requirements, what do they need to tell ABC about the changes and what recommendations should they make to ABC about the design of their program?

   Some items to think about:

   - What do ABC staff need to know about the lead requirements?

   - Will ABC need additional capacity to address the lead-based paint requirements? Should they hire new staff or use new contractors?

   - What does the home inspector need to know about lead requirements?

   - Can ABC continue to use the same list of contractors?

   - Should ABC continue to make housing rehabilitation loans?

CHAPTER 7

ADDRESSING LEAD-BASED PAINT IN SPECIAL NEEDS HOUSING PROGRAMS

7.1 INTRODUCTION

- This chapter discusses how to incorporate the new Federal requirements regarding lead-based paint into local programs that provide housing for special needs populations and are funded by HUD's Office of Community Planning and Development (CPD).

Special Needs Housing Programs That Must Meet New Lead-Based Paint Requirements

HUD Office of Community Planning and Development (CPD) programs that provide funds for supportive housing:

- Housing Opportunities for Persons with AIDS (HOPWA);
- Supportive Housing Program (SHP);
- Shelter Plus Care (S+C);
- HOME Investment Partnership Program (HOME);
- Community Development Block Grant (CDBG); and
- Emergency Shelter Grants (ESG).

- Grantees, participating jurisdictions (PJs), and their subrecipients or sponsoring organizations will be referred to as **housing providers** throughout this chapter.
- The chapter is divided into two parts:
  - Part 1: Types of Special Needs Housing Projects; and
  - Part 2: Projects Involving Acquisition, Leasing, Support Services and Operations Assistance.
- Part 1 contains three sections:
  - Types of Assistance to Special Needs Housing Projects (Section 7.2);
  - Projects Receiving Rehabilitation Assistance (Section 7.3); and
  - Projects Receiving Tenant-Based Rental Assistance (Section 7.4).
- Part 2 contains five sections:
  - Overview of Requirements (Section 7.5);
  - Costs (Section 7.6);
  - When to Take Action (Section 7.7);
  - Initial Actions Addressing Lead-Based Paint (Section 7.8); and

- Ongoing Actions to Address Lead-Based Paint (Section 7.9).

PART 1: TYPES OF SPECIAL NEEDS HOUSING PROJECTS

7.2 TYPES OF ASSISTANCE TO SPECIAL NEEDS HOUSING PROJECTS

- **Acquisition or Leasing of Residential Property**. Acquisition or leasing of residential property is often done for the purpose of providing affordable housing for people with special needs. For example, a housing provider may purchase a 12-unit building to provide transitional housing for the homeless or special needs housing for the disabled. A housing provider may also choose to lease a single family home for use as a homeless shelter.

- **Rehabilitation.** Buildings or homes often need to be rehabilitated so that they are suitable to provide supportive housing or supportive housing services. Rehabilitation assistance also may be necessary to bring a building or home up to code so that it may then be used for housing assistance.

- **Support Services and Operations**. Support services are often provided in connection with housing assistance in order to help individuals and families to become self-sufficient. Such services may include child care, employment training, or case management. Funds also may be used to assist transitional housing participants move to permanent housing by paying for the first month's rent or a security deposit. Operations refers to the day-to-day operating expenses a housing provider incurs in connection with providing special needs housing.

- **Tenant-Based Rental Assistance (TBRA)**. In TBRA programs, funds are provided on behalf of program participants who choose their own housing units. When TBRA is used for special needs populations, it is not uncommon to impose some restrictions on where participants may live. This restriction is sometimes necessary to facilitate the provision of supportive services.

- Attachment 7-A lists activities for Special Needs Housing Programs.

7.3 PROJECTS RECEIVING REHABILITATION ASSISTANCE

- Under certain special needs housing programs, rehabilitation is an eligible activity. For example, the SHP program allows grant funds to be used to pay part of the cost of rehabilitating a building so that it may be used as supportive housing or to provide supportive services. In addition, grant funds can be used to cover the cost of necessary repairs to bring an existing structure up to housing code.

- The lead-based paint requirements for rehabilitation are found at 24 CFR 35 Subpart J—Rehabilitation.

- The following paragraphs briefly review the lead-based paint requirements when conducting rehabilitation. See Chapter 4 for a more complete discussion of the requirements.
- The lead-based paint requirements when conducting rehabilitation include steps in common with homeownership and TBRA discussed in earlier chapters, and also steps that are more stringent. Conducting these more stringent steps, such as encapsulation or abatement, depends on the amount of Federal money involved in performing the rehabilitation work in the project. The requirements for rehabilitation are:
  - Notification (Distribution of the lead hazard information pamphlet; disclosure and notices of hazard evaluation and reduction);
  - Lead hazard evaluation (paint testing and risk assessment);
  - Lead hazard reduction (including safe work practices and clearance); and
  - Ongoing maintenance (for HOME multifamily properties).
- Since rehabilitation typically involves disturbing painted surfaces and creating dust, the requirements are designed to ensure that residents are protected from potential lead-based paint hazards.
- In addition, since rehabilitation and lead hazard reduction work have similar components, rehabilitation provides a good opportunity to conduct necessary lead hazard reduction work.

7.4 PROJECTS RECEIVING TENANT-BASED RENTAL ASSISTANCE

- Some of the programs listed above allow TBRA as an eligible activity. The Shelter Plus Care Program, for example, provides grants to acquire rental units that will enable homeless people to live as independently as possible. A program requirement is that participants must live in a particular structure for the first year of assistance and in a particular area for the entire rental assistance period. This restriction is sometimes necessary to facilitate the provision of supportive services.
- The lead-based paint requirements for TBRA are found at 35.1200-35.1225 Subpart M—Tenant-Based Rental Assistance. These TBRA requirements apply only to households with children under age six.
- The following paragraphs briefly describe the lead-based paint requirements that apply to TBRA programs. See Chapter 5 for a more complete discussion of these requirements.
- The lead-based paint requirements for TBRA include:
  - Notification (Distribution of the lead hazard information pamphlet; disclosure and notices of hazard evaluation and reduction);
  - Visual assessment for deteriorated paint;

- Stabilization of deteriorated paint (including safe work practices and clearance);
- Ongoing maintenance; and
- Environmental intervention blood lead level requirements.

- There are additional requirements if a child under age six is identified with an environmental intervention blood lead level. These requirements are:
  - Risk assessment;
  - Reduction of lead hazards (interim controls or abatement); and
  - Data collection, reporting and matching.

PART 2: PROJECTS INVOLVING ACQUISITION, LEASING, SUPPORT SERVICES, AND OPERATIONS ASSISTANCE

7.5 OVERVIEW OF REQUIREMENTS

- The lead-based paint requirements for acquisition, leasing, support services, and operations are found at 24 CFR 35 Subpart K—Acquisition, Leasing, Support Services, and Operation.
- Housing providers may choose to acquire or lease a building to provide temporary housing for special needs populations or permanent housing for the disabled homeless. Sometimes they acquire a single family home for this purpose. **Note:** If the home or building requires rehabilitation, the lead-based paint requirements for rehabilitation are triggered. See Chapter 4 for a discussion of these requirements.
- The requirements for special needs housing programs are consistent with Approach #2: Identify and Stabilize Deteriorated Paint, as defined in Chapter 3. This approach provides assurance that deteriorated paint has been. Because this approach does not prevent the reappearance of lead hazards, ongoing maintenance is required when there is an ongoing relationship with the project. Exhibit 7-1 highlights required activities.

EXHIBIT 7-1

SPECIAL NEEDS: REQUIRED ACTIVITIES TO ADDRESS LEAD-BASED PAINT (Subpart K – Acquisition, Leasing, Support Services, and Operations)

Approach to Lead Hazard Evaluation and Reduction 2. Identify and Stabilize Deteriorated Paint	
Notification (35.1010)	• Pamphlet and Disclosure • Notice of Lead Hazard Evaluation or Presumption, if applicable • Notice of Lead Hazard Reduction Activity
Lead Hazard Evaluation (35.1015)	• Visual Assessment
Lead Hazard Reduction (35.1015)	• Paint Stabilization • Safe Work Practices • Clearance
Ongoing Maintenance (35.1220)	• Ongoing Maintenance required in instances where there is an ongoing relationship with the funder.
EIBLL Requirements	• There is no requirement.
Options	• Perform paint testing on deteriorated paint. Safe work practice requirements only apply to lead-based paint.

- The following is a summary of the lead-based paint requirements for residential properties receiving Federal assistance under programs administered for acquisition and leasing or support services and operations. These requirements are discussed in detail in Chapter 3.

- **Notification.** Administrators of special needs programs must ensure that the following take place to comply with the lead regulation's notification requirements:

  - **Disclosure** [24 CFR Subpart A]. Owners must comply with the HUD-EPA disclosure rule prior to lease approval. See Section 3.6 for a description of disclosure requirements.

  - **Lead Hazard Information Pamphlet** [*24 CFR 35.1010(b); 24 CFR 35.130*]. Occupants must receive the HUD/EPA/CPSC pamphlet "Protect Your Family from Lead in Your Home" or an EPA-approved alternative. The pamphlet provides educational information describing lead-based paint hazards. Occupants also must receive a disclosure form noting the presence of lead-based paint.

Definitions

- **Visual Assessment.** A visual examination of painted surfaces to identify: (1) deteriorated paint; or (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.
- **Paint Stabilization.** Repairing any physical defect in the painted component 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.
- **Clearance.** An activity conducted following lead-based paint hazard reduction activities to determine that paint is intact and dust-lead levels meet standards. It involves a visual assessment and dust sampling by a qualified individual.

- **Notices of Lead Hazard Evaluation and Reduction** [*24 CFR 35.1010(a); 24 CFR 35.125)*]. The administering agency is responsible for providing notification of lead hazard evaluation or reduction activity to the occupant within 15 calendar days of the completion of lead hazard reduction activities. (**Note:** A Notice of Lead Hazard Evaluation is required only if paint testing or a risk assessment is conducted.)

- **Lead Hazard Evaluation.** The following is required to identify deteriorated paint in units.
  - **Visual Assessment** [*24 CFR 35.1015(a)*]. A visual assessment of all interior painted surfaces and common areas such as hallways, laundry rooms, or garages must be conducted to identify deteriorated paint.
  - **Note:** A visual assessment is not considered an evaluation that requires a notification of lead hazard evaluation, since the assessment does not determine the presence or absence of lead-based paint and/or lead hazards. Also, the person performing the visual assessment must be trained in accordance with HUD procedures. (See the 40-minute self-administered course at *www.hud.gov/offices/lead*.)

- **Lead Hazard Reduction.** The following is required to address deteriorated paint in units.
  - **Paint Stabilization** [*24 CFR 35.1015(b); 24 CFR 35.1330(a)(b)*]. All deteriorated or deteriorating surfaces must be stabilized using safe work practices.
  - **Clearance** [*24 CFR 35.1015(b)(d)*]. After the completion of work, the unit or dwelling must pass clearance. Clearance must happen before occupancy if the unit is vacant or immediately after receipt of Federal assistance if currently occupied.

- **Ongoing Maintenance.** For special needs programs that involve an ongoing relationship with the administrating agency, the following ongoing requirements apply:
  - **Maintenance.** The housing provider and administering agency must incorporate ongoing maintenance activities into regular building operations unless a lead-based paint inspection indicates that no lead-based paint is present or an abatement report indicates that all lead-based paint has been removed. Ongoing maintenance includes a visual assessment for deteriorated paint, paint stabilization, and clearance if necessary.

- **Comparison to Former Requirements.** Attachment 3-C summarizes changes between former requirements and the new lead-based paint regulation.

7.6 COSTS

- In order to provide maximum flexibility, the allocation of lead hazard evaluation and reduction costs in special needs housing programs is left to

the discretion of the grantee and is based on program design and local requirements. Costs may be borne by:

- The housing provider;
- The property owner; or
- A combination of the above.

7.7 WHEN TO TAKE ACTION

- There are two times to take action to address lead-based paint:
  - **Initial Actions**. Some actions must be taken immediately upon receipt of funds. These actions include a visual assessment and paint stabilization.
    - If the unit is vacant, these initial actions must be completed before occupancy.
    - If the unit is occupied, these initial actions must be taken immediately after the receipt of Federal funds.
  - **Ongoing Actions**. Some actions continue to be taken on an ongoing basis. These include occupant notification, disclosure, ongoing maintenance, and recordkeeping.
- If funding is going to a dwelling or common area of a building already receiving Federal assistance that has been visually evaluated and passed clearance, the housing or service provider does not have to conduct this work again.

7.8 INITIAL ACTIONS FOR ADDRESSING LEAD-BASED PAINT

- Initial actions include a visual assessment, owner notification, paint stabilization and clearance.

VISUAL ASSESSMENT FOR DETERIORATED PAINT

- CPD programs such as Shelter Plus Care require adherence to Housing Quality Standards (HQS). Others, such as HOME and CDBG, provide the flexibility of using local standards that meet or exceed HQS requirements. However, many agencies administering these program funds use HQS, or standards based on HQS, and many cities have adopted codes that resemble HQS.
- **Guidance for Non-HQS Inspection**. Inspectors typically record information on a checklist or form. This checklist or form will likely have a section for each area of the home, unit, or building. Within each section there should be a sub-section on deteriorated paint that asks if the interior surfaces are either free of cracking, scaling, peeling, chipping, and loose paint or adequately treated and covered to prevent exposure of the occupants to lead-based paint hazards.

- Housing providers using in-house inspectors may need to review and revise their inspection procedures and forms to include specific lead-based paint information and instructions.
  - Procedures should be revised, if necessary, to include training for in-house inspectors on conducting a proper visual assessment, including what to look for and how to record the repair instructions. One such training can be found on the HUD web site at www.hud.gov/offices/lead.
  - Inspection forms should be evaluated to ensure that they have specific instructions for the lead hazard evaluation and a place to record the results and recommended repairs.
- If the inspector finds deteriorated paint during the inspection, he or she must record these findings on the inspection form along with a description of the repairs required to correct the problem.
  - Repair instructions should be specific and address applicable Federal requirements. For example, "fix paint surface" is inadequate. Appropriate instruction would be: "Correct deteriorated paint surfaces on the living room door in accordance with Federal requirements for safe treatment. Found at 24 CFR 35."
  - A copy of the complete inspection report and the detailed repair instructions should be provided to the homebuyer and the administering agency.

❑ **Guidance for HQS Inspection.** Each building or home must be visually inspected to ensure that it meets HQS. As part of the HQS inspection, the inspector must visually evaluate all painted surfaces to identify deteriorated paint.

- **Record Results on HQS Inspection Form.** HUD has provided two forms for use when inspecting units: HUD-52580-A (9/95), with detailed instructions; and HUD-52580 (9/95), a shorter version.
  - If the inspector finds deteriorated paint during the inspection, he or she must record these findings on the inspection form.
  - Each section, except "Section 5. Secondary Rooms," includes a question about lead-based paint. For secondary rooms, which include laundry rooms and storage rooms, deteriorated paint hazards can be noted under "Section 5.4. Other Potentially Hazardous Features."
  - Note that the HQS form requires information on deteriorated paint only in units with children under age six. For the purposes of the lead regulation, all units must be checked for deteriorated paint.
  - The HQS forms allow inspectors to record whether an area is free of deteriorated paint hazards by checking Yes/Pass or No/Fail. The forms also allow the inspector to indicate if the deteriorated paint exceeds the thresholds for requiring safe work practices and

clearance. Each section includes a comment area where inspectors can record the appropriate responses to identified deficiencies.

- If a unit or dwelling fails the visual inspection for deteriorated paint, inspectors should record what repairs are necessary next to the area on the form marked "No/Fail."
- Repair instructions should be specific and include Federal requirements. For example, "fix paint surface" is inadequate. Appropriate instruction would be: "Correct deteriorated paint surfaces on the living room door in accordance with Federal requirements for paint stabilization found at 24 CFR 35."

OWNER NOTIFICATION

- ❑ When housing providers are **leasing** a building or home, they should notify the property owner of the results of the visual assessment. At this point, the housing provider and the property owner can negotiate the responsibility for the cost and time frame for paint stabilization and clearance.
  - ➢ If the visual assessment reveals deteriorated paint, the housing provider should follow its usual procedure to notify the owner of unit inspection results.
  - ➢ For example, the housing provider can provide the owner a carbon copy of the unit inspection report that identifies inspection failures and required responses.
- ❑ If the housing provider is **purchasing** the building or home, it should notify the owner of the results of the visual assessment. At this point, the housing provider and the property owner can negotiate the responsibility for the cost and time frame for paint stabilization and clearance.

PAINT STABILIZATION

- ❑ Deteriorated or deteriorating paint identified during a visual assessment must be stabilized. Paint stabilization is the treatment of paint surfaces that are cracking, scaling, chipping, peeling, or loose. It must include the following activities:
  - ➢ **Repair Deteriorated Surface**. Any physical defect on a painted surface must be repaired before treating the surface.
  - ➢ **Remove Loose Paint**. All loose paint or other loose material should be removed from the surface to be treated.
  - ➢ **Apply New Paint**. Paint stabilization includes the application of a new protective coating or paint. The surface must be dry and protected from future moisture damage before applying new protective coating or paint.
- ❑ **Training/Supervision.** The individual performing the paint stabilization must be trained in accordance with OSHA regulations at *29 CFR 1926.62*. In addition, they must meet one of the following conditions:

- Supervision by a certified abatement supervisor;
- Successful completion of an accredited abatement supervisor course in accordance with *40 CFR 745.225*;
- Successful completion of an accredited lead-based paint worker course in accordance with *40 CFR 745.225*;
- Successful completion of the Lead-Based Paint Maintenance Training Program developed by the National Environmental Training Association for EPA and HUD;
- Successful completion of The Remodeler's and Renovator's Lead-Based Paint Training Program developed by HUD and the National Association of the Remodeling Industry; or
- Successful completion of an equivalent course approved by HUD.

- The housing provider may decide to create a form for the worker to sign certifying successful completion of one of the approved training courses.
- **Safe Work Practices.** Safe work practices must be used during paint stabilization and cleanup. Safe work practices help minimize the production and dispersal of lead-contaminated dust and protect workers and residents from exposure to lead. There are four elements to safe work requirements that must be met:
  - **Occupant Protection**. Work should be performed in a vacant unit if possible. If residents must remain inside the dwelling during work, a barrier to the room where stabilization is taking place should be erected, and residents should not be allowed to re-enter the work area until clearance has been completed.
  - **Worksite Preparation**. The worksite should be contained using plastic sheeting extending at least five feet beyond the perimeter of the treated area in all directions on the floor. Ventilation systems should be turned off until work is completed.
  - **Cleanup.** After paint stabilization is complete, the worksite must be cleaned to remove all lead-based paint dust. Cleanup must be accomplished by wet washing surfaces with a lead-specific detergent or its equivalent. Vacuum cleaners with HEPA filters must be used during cleanup. Waste and debris must be disposed in sealed containers in accordance with Federal and state waste disposal requirements.
  - **Use of Safe Treatment Methods**. Exhibit 7-2 lists examples of safe and prohibited treatment methods.

EXHIBIT 7-2

HUD STANDARDS FOR SAFE AND PROHIBITED METHODS FOR TREATING LEAD-BASED PAINT

Examples of Safe Treatment Methods

Removal of deteriorated paint by:

- ❑ Wet scraping;
- ❑ Wet sanding;
- ❑ Chemical stripping off site;
- ❑ Replacing painted components;
- ❑ Scraping with an infrared or coil-type heat gun with temperatures below 1,100˚F;
- ❑ HEPA vacuum sanding;
- ❑ HEPA vacuum needle gun; and
- ❑ Abrasive sanding with HEPA vacuum.

- ❑ Specialized cleaning to remove lead dust.

Covering of deteriorated paint surface with:

- ❑ Durable materials (such as wallboard or vinyl siding) with joint sealed and caulked.

Prohibited Methods of Paint Removal *(24 CFR 35.140)*

- ❑ Open flame burning or torching;
- ❑ Machine sanding or grinding without a HEPA local exhaust;
- ❑ Abrasive blasting or sandblasting without a HEPA exhaust;
- ❑ Heat guns operating above 1,100˚F or charring paint;
- ❑ Dry scraping or dry sanding except in conjunction with heat guns or within one foot of electrical outlets; and
- ❑ Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance.

➢ Housing providers should educate program staff on the fundamentals of safe work practices. They may want to send staff to a training course. As a result, program staff will be able to accomplish the following:

- Determine whether the worker or supervisor has completed one of the approved training course programs;
- Direct workers or supervisors to the appropriate resources if it is determined that they do not have adequate training to work with lead-based paint;
- Supervise the work; and
- Provide guidance and answer questions regarding safe work practices.

❑ **Exemptions to Safe Work Practices**. Safe work methods are not required when treated areas are tested and found to be free of lead-based paint, or if the surface area being treated is smaller than a total of 20 square feet on an exterior surface, 2 square feet per interior room or 10 percent of the total surface area of small components, such as window sills.

CLEARANCE

- Clearance must take place following paint stabilization and prior to occupancy. Clearance helps ensure that lead-based paint hazards are controlled and the unit is safe for habitation.

- **Clearance.** Paint stabilization and other lead hazard reduction efforts are considered complete when clearance is conducted.

  - Clearance consists of a visual examination and laboratory analyses of dust samples.

  - Clearance is performed after lead hazard reduction and cleanup is complete.

  - Units or dwellings must meet clearance standards as described in Chapter 3, Section 3.10, before occupancy.

- **Clearance Exemption.** Clearance is not required if the work in the unit involved surfaces less than 20 square feet on exterior surfaces, 2 square feet in any interior room or less than 10% of the surface area of a small interior or exterior component, such as a window sill. Exemptions for clearance are the same as those for safe work practices.

- **Clearance Examiner**. The housing provider is responsible for hiring a certified professional to conduct clearance. This professional may be a certified risk assessor, lead-based paint inspector, or lead sampling technician. The clearance examiner must be independent from the individual or entity who conducted the paint stabilization or other lead hazard reduction, unless they are employees of the housing provider. **Note:** If in-house employees are used, the same individual who conducted paint stabilization is not permitted to conduct clearance.

- **Clearance Report**. Prior to closing or occupancy, and within 15 calendar days of the completion of lead hazard reduction activities, a clearance report indicating the results of the clearance inspection must be completed and a summary provided to the occupant. This report should include:

  - Beginning and ending dates of the lead hazard reduction activities.

  - Name and address of the firm conducting lead hazard reduction activities and the name of the supervisor assigned to the lead hazard reduction activities.

  - Name and address of person conducting clearance examination.

  - The results of clearance testing and the name of each laboratory that conducted the analyses and the identification number of the laboratory. **Note:** The laboratory must be accredited under the National Lead Laboratory Accreditation Program.

  - A detailed written description of the lead hazard reduction activities including methods used, location of rooms where activity occurred and any suggested monitoring.

- All surfaces that fail the clearance examination must be recleaned and retested until the area passes clearance.
- **Staff Training**. As a result of the new cleanup and clearance requirements, the housing provider will need to evaluate their operations and incorporate these new requirements.
  - All staff should have a basic understanding of the proper clearance procedures.
  - Staff conducting the clearance examination must complete the requirements for clearance examination in your State.
  - Staff should understand the components of the clearance report and be able to prepare a report.

7.9 ONGOING ACTIONS TO ADDRESS LEAD-BASED PAINT

- Providers must comply with resident notification and disclosure requirements and perform maintenance on an ongoing basis.

DISTRIBUTING THE PAMPHLET AND DISCLOSURE

- The pamphlet and disclosure requirements apply to all housing that is rented or purchased (not only HUD-assisted housing).
- **Lead Hazard Information Pamphlet**. Housing providers must distribute the pamphlet "Protect Your Family from Lead in Your Home" issued by EPA, HUD, and the Consumer Product Safety Commission to any new occupants who move in after the assistance was provided.
- **Disclosure**. All new occupants must receive a disclosure statement. This statement discloses any known lead-based paint hazards in the unit and provides signed acknowledgement of receipt of pamphlet. See Appendix D for a sample disclosure form.

ONGOING MAINTENANCE

- If the dwelling unit has a continuing programmatic relationship, then ongoing maintenance is required.
- The housing provider must incorporate ongoing maintenance of painted surfaces into regular building operations. Ongoing maintenance includes the following activities:
  - Conducting a visual assessment to identify deteriorated paint every 12 months and at unit turnover;
  - Stabilizing any deteriorated paint identified during ongoing monitoring. Paint stabilization must be completed within 30 days of notification of the inspection results; and
  - Performing a clearance examination. Repairs are considered complete after the work site passes clearance.

- **Exemptions to Ongoing Maintenance**. Ongoing maintenance is not required if both of the following conditions are met:
  - A lead-based paint inspection reveals no lead-based paint is present in the apartment or a clearance report indicates all lead-based paint has been removed; and
  - A risk assessment indicates that no lead-contaminated soil and no lead-contaminated dust is present.

NOTICES OF LEAD HAZARD REDUCTION

- When deteriorated paint is identified during ongoing maintenance and paint stabilization occurs, the housing provider must notify the occupant within 15 days of stabilization completion. This notice must include:
  - Summary of the nature, scope, and results of paint stabilization;
  - Contact name, address, and telephone number for more information;
  - Results of the clearance examination; and
  - Available information on the location of any remaining lead-based paint.
- The notice must be provided to occupants at their apartments or in a centrally located common area.
- The housing provider must respond to resident notification of deteriorated paint and perform paint stabilization within 30 days of receiving notification.

RECORDKEEPING

- Shelter Plus Care, SHP, HOME, and CDBG require that records be kept for a minimum of three years. The HOPWA program requires that records be kept for a four-year period. However, it is recommended that lead-based paint records be kept indefinitely.
- Important lead-based paint records to keep include:
  - Inspection report;
  - Disclosure statement; and
  - Clearance report.

ATTACHMENT 7-A

SPECIAL NEEDS HOUSING PROGRAMS AND THE LEAD SAFE HOUSING REGULATION

BASIC EXEMPTIONS AND CLARIFICATIONS

HUD has published interpretive guidance which is available at http://www.hud.gov/offices/lead. This guidance outlines the following exemptions to the Lead-Based Paint Regulation:

Exemptions:

- **Zero-bedroom units, including single-room occupancy units (SROs)** are exempt from the regulation. This exemption may apply to a shelter if it consists of one large room. (See Interpretive Guidance, Question K1 for more information.)
- **Housing designated exclusively for the elderly of persons with disabilities (including persons with AIDS),** provided that a child less than six years of age does not reside or is not expected to reside in the same household. Housing for the elderly is defined 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.
- **Units that receive emergency rental assistance or foreclosure prevention assistance for less than 100 days** are exempt from the regulation, including properties that serve as a shelter only temporarily. (Interpretive Guidance, Question K1)
- **Group homes** are exempt from the regulation if they involve the rental of individual rooms in residential dwellings. (Interpretive Guidance, Question K1)
- **Support services that are not tied to housing assistance** are exempt from the regulation (the regulation only applies to support services provided as part of a housing program). Therefore, if a resident receives housing support services provided through HOPWA, SHP, or ESG, the unit **IS** covered by the regulation. However, if the resident receives services not tied to housing assistance (including medical, educational, or food services --e.g., Meals on Wheels), these services **do not** trigger the regulation. (Interpretive Guidance, Question K2)
- **Housing counseling** does not trigger the regulation. (Interpretive Guidance, Question K3)
- **Default and delinquency assistance** is unlikely to trigger the regulation because it lasts less than 100 days. (Interpretive Guidance, Question K3)

Clarifications:

- **Security deposit assistance** triggers the requirements of Subpart K if it helps to put someone in a unit where they will live more than 100 days. Note – Security deposit assistance provided under the HOME Program counts as Tenant-Based Rental Assistance and therefore triggers Subpart M. (Interpretive Guidance, Question K4)
- **Leasing activities** could include helping a family rent a pad for a mobile home. (Interpretive Guidance, Question K8)
- **If a property receives more than one form of housing assistance,** and two sets of lead paint requirements apply, observe the most protective requirements. For example, a project that involves acquisition and substantial rehabilitation would be subject to Subpart J, not K. (Interpretive Guidance, Question A11).

Special Needs Housing Programs That Must Meet Lead-Based Paint Requirements

Housing Opportunities for Persons with AIDS (HOPWA)

HOPWA provides housing assistance and supportive services for low-income people with HIV/AIDS and their families. *Housing designated for persons with AIDS is exempt unless a child under the age of six also resides there.*

Eligible Activities under Program	Applicable LBP Subparts
➢ Purchase/Acquisition ➢ Leasing	24 CFR 35 Subpart K—Acquisition, Leasing, Supportive Services, and Operations
➢ Rehabilitation ➢ Conversion ➢ Repair of Housing	24 CFR 35 Subpart J—Rehabilitation
➢ Supportive Services tied to housing assistance (including health care, mental health services, chemical dependency treatment, nutritional services, case management, and help with daily living)	24 CFR 35 Subpart K—Acquisition, Leasing, Supportive Services, and Operations
➢ Operating Costs of Housing	24 CFR 35 Subpart K—Acquisition, Leasing, Supportive Services, and Operations
➢ Tenant-Based Rental Assistance (TBRA)	24 CFR 35 Subpart M—Tenant-Based Rental Assistance

LBP requirements do not apply to the following activities:

- Housing Information and Resource Identification
- New Construction for SROs and Community Residences
- Technical Assistance
- Administrative Expenses
- Emergency mortgage, rental, or utility payments provided for less than 100 days
- Assistance provided to SROs/zero-bedroom units
- Group homes that consist of rental of individual rooms in residential dwellings
- Units receiving assistance for less than 100 days

Notes:

Special Needs Housing Programs That Must Meet Lead-Based Paint Requirements

Supportive Housing Program (SHP)

SHP is designed to promote, as part of a local Continuum of Care strategy, the development of supportive housing and supportive services to assist homeless persons in the transition from homelessness and to enable them to live as independently as possible. SHP supports five kinds of programs: transitional housing; permanent housing; safe havens; innovative housing; and supportive services only (SSO) projects. As outlined below, a variety of activities may be performed under these programs.

Eligible Activities under Program	Applicable LBP Subparts
➢ Acquisition ➢ Leasing	24 CFR 35 Subpart K—Acquisition, Leasing, Supportive Services, and Operations
➢ Rehabilitation	24 CFR 35 Subpart J—Rehabilitation
➢ Supportive Services tied to housing assistance (including child care, employment assistance, health care, and case management)	24 CFR 35 Subpart K—Acquisition, Leasing, Supportive Services, and Operations
➢ Operating Costs of Housing	24 CFR 35 Subpart K—Acquisition, Leasing, Supportive Services, and Operations

LBP requirements do not apply to the following activities:

- New Construction
- Administrative Costs
- Assistance provided to SROs/zero-bedroom units
- Group homes that consist of rental of individual room in residential dwellings
- Units receiving assistance for less than 100 days
- Supportive services only projects (SSO)

Notes:

Special Needs Housing Programs That Must Meet Lead-Based Paint Requirements

Shelter Plus Care (S+C)

S+C is a rental assistance program designed to provide housing and supportive services on a long-term basis for homeless persons with disabilities and their families who are living in places not intended for human habitation or in emergency shelters. The program allows for a variety of housing choices, and a range of supportive services funded by other sources, in response to the needs of the hard-to-reach homeless population with disabilities.

Eligible Activities under Program	Applicable LBP Subparts
➢ Project-based Rental Assistance with rehabilitation	The more restrictive of: 24 CFR 35 Subpart J—Rehabilitation 24 CFR 35 Subpart H—Project-Based Assistance
➢ Sponsor-based Rental Assistance ➢ Project-based Rental Assistance without rehabilitation	24 CFR 35 Subpart H—Project-Based Assistance
➢ Tenant-Based Rental Assistance (TBRA)	24 CFR 35 Subpart M—Tenant-Based Rental Assistance

LBP requirements do not apply to the following activities:

- Households receiving TBRA where there are no children under the age of 6
- Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings (SRO)

Notes:

Emergency Shelter Grants (ESG)

The Emergency Shelter Grants program provides homeless persons with basic shelter and essential supportive services. It can assist with the operational costs of the shelter facility and for the administration of the grant. ESG also provides short-term homeless prevention assistance to persons at imminent risk of losing their own housing due to eviction, foreclosure, or utility shutoffs.

Eligible Activities under Program	Applicable LBP Subparts
➢ Renovation ➢ Rehabilitation, Remodeling ➢ Conversion	24 CFR 35 Subpart J—Rehabilitation
Supportive Services tied to housing assistance, including: ➢ Essential Services (e.g., services concerned with employment, health, drug abuse, and education) ➢ Homeless Prevention Activities	24 CFR 35 Subpart K—Acquisition, Leasing, Supportive Services, and Operations
➢ Operational Costs of Housing	24 CFR 35 Subpart K—Acquisition, Leasing, Supportive Services, and Operations

LBP requirements do not apply to the following activities:

- Administrative Costs
- Emergency housing payment assistance less than 100 days
- Assistance provided to SROs/zero-bedroom units
- Group homes that consist of rental of individual room in residential dwellings
- Units receiving assistance for less than 100 days

Notes:

CHAPTER 8

IMPLEMENTING LEAD HAZARD EVALUATION AND REDUCTION

This chapter consists of four modules that will explore some of the issues involved in implementing the lead-based paint requirements. The modules include many useful resources, job aides, and exercises. The chapter is divided into four parts:

MODULE A: ASSESSING LOCAL CAPACITY

This module will discuss strategies for assessing local capacity, increasing the number of qualified contractors and the costs and considerations involved in training in-house staff to perform lead related tasks.

MODULE B: LEAD HAZARD EVALUATION METHODS

This module teaches participants to be informed consumers of lead hazard evaluation services. The first part of the module reviews the different methods of hazard evaluation, what they tell you, and how to interpret the results. The second part of the module concentrates on how to read evaluation reports.

MODULE C: STRATEGIES FOR ADDRESSING LEAD-BASED PAINT HAZARDS

This module will discuss strategies for addressing lead-based paint. It highlights some of the common choices that will have to be made, both at a project and program level, regarding evaluation and reduction.

MODULE D: PROGRAM ADMINISTRATION AND OPERATIONAL ISSUES

This module helps program managers prepare for planning and managing projects that involve lead-based paint requirements. The module is intended to help administrators identify the types of changes in procedures needed to comply with the new lead-based paint regulation.

MODULE A: ASSESSING LOCAL CAPACITY

This module will discuss strategies for assessing local capacity, increasing the number of qualified contractors and the costs and considerations involved in training in-house staff to perform lead-related tasks.

Objectives:

- By the end of this module, participants will be able to:
  - Understand the skills, qualifications, and services needed to address lead-based paint in their programs.
  - Understand the key considerations in deciding whether to train in-house staff or use contractors to perform lead-related work.
  - Identify different ways to build capacity within their community for certified lead-based paint personnel.

Materials include:

- Handout #A1: Summary of Qualifications for Certified Lead Personnel
- Handout #A2: Case Study – Assessing Capacity in Homeville
- Handout #A3: Assessing Local Capacity: A Worksheet
- Handout #A4: Sample Classes for Lead-Based Paint Certification
- Handout #A5: Resources for Finding Qualified Contractors
- Handout #A6: Examples of Resources
- Handout #A7: Summary of Module – Lessons Learned

NOTES

HANDOUT #A1

SUMMARY OF QUALIFICATIONS FOR LEAD-CERTIFIED PERSONNEL

Certification	Qualifications	Tasks Able To Perform
Lead Hazard Evaluation		
Risk Assessor	Must be certified* (and State-licensed** if required)	• Risk Assessment • Lead Paint Inspection • Clearance
Paint Inspector	Must be certified (and State-licensed if required)	• Lead Paint Inspection • Clearance
Lead Sampling Technician (called a clearance technician in the HUD regulation)	Must be certified (and State-licensed if required)	• Clearance
Lead Hazard Reduction		
Qualified Workers for Interim Controls	Must be either: • Supervised by a certified Abatement Supervisor; OR • Trained in a HUD accepted course (see Chapter 3, p. 3-16, for listing)	• Interim Controls • Standard Treatments
Abatement Supervisor	Must be certified (and State-licensed if required)	• Abatement • Interim Controls • Standard Treatments
Abatement Workers	Must be certified (and State-licensed if required)	• Abatement *(but must be supervised by an abatement supervisor who is on site or accessible at all times)* • Interim controls *(can be unsupervised)*
Project Designer	Must be certified (and State-licensed if required)	• Abatement Planning

* Certification requires taking the appropriate EPA-recognized course and passing an examination.

** The licensing requirement varies by State.

NOTES

HANDOUT #A2: CASE STUDY – ASSESSING CAPACITY IN HOMEVILLE

Homeville Background

Homeville is a mid-size metropolitan city (population 140,000) that has had a redevelopment program for over 30 years. Most of the housing stock that is rehabilitated by the city was built before 1950. The City of Homeville has a rental program that normally has a production rate of 120 rental units per year.

Staffing

Homeville's Neighborhood Development Division has a staff of ten individuals, four of whom are construction rehabilitation specialists. The construction staff is responsible for initial walkthroughs, developing and creating work item lists and monitoring the work during construction. The construction specialists also perform all necessary HQS and Minimum Property Standards inspections. They are well versed in the BOCA standards and the city's codes. Most projects are completed by local contractors who understand the complexities of working with federal funds and are sensitive to low-income clients' needs.

Homeville's Rental Program

Homeville's rental program is funded by the CDBG program and operated by the city. The program provides up to $8,000 in rehabilitation funds per unit to supplement the owner's contribution. The funds are forgiven over a five-year period after the date of completion. The owner must keep the property up to code and rent the apartments at affordable rents as defined by HUD during the five-year period.

Planning for Next Year

Homeville is putting together the budget for next year and expects to maintain the same budget amounts and match caps per unit.

Discuss the following:

1. What additional personnel and contractors does Homeville need? Check all that apply:

- ❑ Inspectors trained in visual assessment
- ❑ Lead-based paint inspectors
- ❑ Risk assessors
- ❑ Trained workers
- ❑ Relocation specialist
- ❑ _____
- ❑ _____
- ❑ _____
- ❑ Abatement workers
- ❑ Abatement supervisors
- ❑ Clearance examiners
- ❑ Project designers
- ❑ _____
- ❑ _____
- ❑ _____
- ❑ _____

2. Think about the different certified personnel needed for various lead jobs.

   a. Do you think the city should train in-house staff, contract for these services, or both? Why?

   b. What activities would you decide to use in-house staff for and why? Which in-house staff?

   c. Why is it important for Homeville to determine their process and staff roles now?

3. What should Homeville do to make sure they have enough qualified contractors and workers to handle their production? What can they do to build capacity?

HANDOUT #A3: ASSESSING LOCAL CAPACITY – A WORKSHEET

To assess the local capacity for lead-related work, take the following steps for each relevant service.

	Give answers in shaded boxes
1. Identify all certified contractors in your area (see Handouts #4 and #5) – Check lead listing – Check phonebook – Check states and local sources for any lists they might have	
2. How many contractors are located in your area?	
3. Contact firms to confirm that they provide the services in your community. – Are they currently certified? – Do they have the appropriate state licensing? – What is the price for their services? – Will they provide references? – How many certified staff of each type do they have? – How many jobs a week do they perform?	
4. How many are qualified?	
5. How many jobs can they do a week total?	
6. Review your current program activity and estimate your demand (per month) for this type of service	
7. How many jobs a week do you have?	
8. Compare demand to supply of qualified contractors with good track record.	
9. Do you have an adequate supply of contractors?	

NOTES

HANDOUT #A4: SAMPLE CLASSES FOR LEAD-BASED PAINT

These classes may vary by title, cost and number of days for the training. It is important to know the topics that will be covered, the certifications that may be earned and the prerequisites (if any) that exist to enroll for the course.

Inspecting for Lead-Based Paint

Sample cost: $595 No. of days: 3

This course presents the EPA model lead inspection curriculum and supplements it with current findings from lead investigators and practical advice from experienced inspectors. Course topics will include: the importance of various lead sources in the environment, an update on toxicology of lead, theory and use of X-ray fluorescence (XRF Analyzers); paint chip sampling and laboratory analytical methods; legal and insurance issues; abatement project clearance procedures; legislative developments; and HUD, EPA, and OSHA regulations and guidance.

Lead-Based Paint Risk Assessment

Sample cost: $920 ($325 + $595) No. of days: 5

Risk Assessors must attend a 5-day course that consists of the Inspection course (3 days) and two extra days for risk assessment. This two-day course will train individuals who will be conducting risk assessments in private and public housing and large apartment complexes using the new EPA model risk assessment curriculum developed for the EPA jointly by Georgia Tech and the National Center for Lead-Safe Housing. This risk assessment course will focus on issues related to detecting lead hazards in paint, dust and soil and integrating interim controls of lead hazards into the owner's or landlord's ongoing management and maintenance operations. **Note:** Students must take the inspection course before taking this course.

Lead Abatement for Supervisors and Contractors

Sample cost: $600 No. of days: 5

This course presents the Environmental Protection Agency (EPA) model abatement project supervisor curriculum and supplements it with a number of case studies of lead-based paint abatement projects in public and private housing. Course topics include: legal liabilities, current Federal regulations, effective employment training, estimating costs of abatement jobs, managing medical surveillance, and dust and air sampling.

Lead-Based Paint Abatement Design Strategies

Sample cost: $300 No. of days: 1

This one-day course will follow the Lead Abatement for Supervisors and Contractors course for those wishing to design safe and cost-effective lead-based paint abatement projects. Students will participate in a design laboratory that will be hosted by architects and engineers.

Supervision of Lead-Based Paint Abatement Projects: An Update

Sample cost: $250 No. of days: 1

This one-day course is intended for persons who have previously taken the Lead Abatement for Contractors and Supervisors course or equivalent. This course will present recent developments in regulations, technology, and research in lead abatement. Course topics will include: EPA regulatory update; HUD update; OSHA update; new developments in abatement strategies and effectiveness; safety and health issues update; legal and insurance update and lead abatement project case study.

HANDOUT #A5: RESOURCES FOR FINDING LEAD PROFESSIONALS

The following are sources of information on lead professionals.

Lead-Based Paint Contractors

- ❑ Lead list website (http://www.leadlisting.org)
- ❑ State and Local Agencies (Health department, environmental agencies)
- ❑ HUD Lead Hazard Control Grantees. See Appendix G of the Student Manual for a listing, or see the Office of Healthy Homes and Lead Hazard Control's website, listed below.

Answers to Technical Questions About Lead-Based Paint

- ❑ Office of Healthy Homes and Lead Hazard Control (OHHLHC) (http://www.hud.gov/lea/leahome.html). Sets standards for evaluation and management of lead in federally-assisted housing, and promotes efforts to reduce lead hazards in privately owned housing. In addition, provides grants to communities to reduce lead hazards in housing.
- ❑ Environmental Protection Agency (http://www.epa.gov/opptintr/lead/index.html)
- ❑ National Lead Information Center (http//www.epa.gov/lead/nlic.htm). A Federally funded hotline and clearinghouse that provides information on lead hazard reduction and exposure prevention.
- ❑ The Centers for Disease Control and Prevention (CDC) (http://www.cdc.gov/nceh/programs/lead/lead.htm). Promotes state and local screening efforts and develops improved treatments for lead exposure.
- ❑ *The Occupational Safety and Health Administration (OSHA)* (http://www.osha-slc.gov/SLTC/lead/index.html). *Develops work practice standards and worker exposure limits to protect workers from occupational lead exposure.*
- ❑ The Consumer Product Safety Commission (CPSC) (http://www.cpsc.gov/). Identifies and regulates sources of lead exposure in consumer products.

Lead-Based Paint Requirements

- ❑ 24 CFR Part 35: Requirements for Notification, Evaluation, and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Final Regulation (September 15, 1999). (See Appendix A)
- ❑ National Conference of State Legislatures (NCSL) (http://www.ncsl.org or 303-830-2200) provides publications such as a directory of contacts for State programs to reduce lead hazards.

HANDOUT #A6: EXAMPLES OF RESOURCES

1. Phone Book
2. Lead Listing

Phone Book

Lead Listing

Leading Listing

HANDOUT #A7: SUMMARY OF MODULE – LESSONS LEARNED

ASSESSING LOCAL CAPACITY

The list below summarizes some of the lessons learned in this module. Add additional lessons that you learned through the class discussion and exercises.

1. Lead hazard evaluation and reduction will require the services of a number of qualified staff and contractors including:

   - Lead Hazard Evaluation Professionals
     - Inspectors trained in visual assessment
     - Risk Assessors
     - Paint Inspectors
     - Clearance Examiners (Risk assessors, paint inspectors, or lead sampling technicians)
   - Lead Hazard Control Professionals
     - Workers trained to do paint stabilization and other interim controls
     - Abatement Workers
     - Abatement Supervisors
     - Project Designers
   - Other Services
     - Relocation Specialists
     - Moving Companies
     - Lead-accredited laboratories

2. Key considerations for deciding whether to train in-house staff or hire contractors include:

   - Availability and cost of contractors
   - Costs of training staff – in time and dollars
   - Current staff capacity and roles
   - The need to monitor contractors performance

3. Some ideas for increasing staff skills include:

   - Send at least one staff member to a risk assessor course
   - Send rehabilitation specialists to a risk assessor course and/or the Abatement Supervisor course
   - Give all relevant staff copies of this course manual

4. Ideas for increasing the number of qualified contractors include:

   - Sponsor a course for your local contractors
   - Provide incentives for contractors to take courses
   - Advertise your need for qualified contractors and the expected volume of lead related work

MODULE B: LEAD HAZARD EVALUATION METHODS

This module teaches participants to be informed consumers of lead hazard evaluation services. The first part of the module reviews the different methods of hazard evaluation, what they tell you, and how to interpret the results. The second part of the module concentrates on how to read evaluation reports.

Objectives:

- By the end of this module, participants will be able to:
  - List methods used to evaluate lead hazards.
  - Interpret sample results from evaluation activities.
  - Read and interpret an evaluation report.

Materials include:

- Handout #B1: Lead Hazard Evaluation Methods
- Handout #B2: Summary of Lead Hazard Evaluation Results
- Handout #B3: Exercise – Interpreting Lead Hazard Evaluation Results
- Handout #B4: Checklist – Items on a Good Risk Assessment Report
- Handout #B5: Checklist – Items on a Good Paint Testing Report
- Handout #B6: Checklist – Items on a Clearance Report
- Handout #B7: Fact sheet – Interpreting Clearance Results
- Handout #B8: List of Common Problems with Lead Hazard Evaluation Reports
- Handout #B9: Sample Evaluation Reports – Risk Assessment, Paint Testing, Clearance
- Handout #B10: Summary of Module – Lessons Learned

NOTES

HANDOUT #B1: HAZARD EVALUATION TOOLS AND METHODS

Tools	Description	Method Used In	Results
XRF Analyzer	A special tool used to measure the lead in a painted surface.	Lead-Based Paint Inspection Risk Assessment (sometimes)	Identifies presence of lead and lead concentration.
Dust Testing	Sampling and laboratory testing of dust to determine its lead content	Risk Assessment Lead Hazard Screen Clearance	Identifies lead dust hazards.
Soil Testing	Sampling and laboratory testing of soil to determine its lead content	Risk Assessment Lead Hazard Screen	Identifies lead soil hazards.
Paint Chip Testing	Sampling and laboratory testing of paint chips to determine its lead content	Risk Assessment Lead Hazard Screen	Identifies lead content of paint.

HANDOUT #B1: HAZARD EVALUATION TOOLS AND METHODS(Continued)

Evaluation	Description	Performed by	Results
Visual Assessment	A visual evaluation of interior and exterior painted surfaces to identify specific conditions that contribute to lead-based paint hazards	A Certified Risk Assessor or Housing Quality Standards (HQS) inspector trained in visual assessment	Identifies deteriorated paint; surface dust, debris and residue; or completion/failure of hazard reduction activities. (Does not say anything about presence of lead.)
Paint Testing	Testing of specific surfaces, by XRF or lab analysis, to determine the lead content of these surfaces.	Certified Lead-Based Paint Inspector or Certified Risk Assessor	Identifies lead-based paint on specific surfaces. (**Note:** Paint testing should not be confused with a lead paint inspection. A lead paint inspection is a more comprehensive survey that provides a complete list of lead-based paint surfaces in a unit.)
Risk Assessment	A comprehensive evaluation for lead-based paint hazards that includes paint testing, dust and soil sampling and a visual evaluation	Certified Risk Assessor	Identifies lead-based paint hazards. Report provides information on the presence, nature, severity and location of hazards, and recommends hazard control measures. (Does not identify lead content of painted surfaces.)
Lead Hazard Screen	A limited risk assessment activity that can be performed in units that meet certain criteria (e.g. good condition).	Certified Risk Assessor	Identifies hazards. If hazards are found, must do full Risk Assessment.
Evaluation AFTER Hazard Reduction	**Description**	**Performed by**	**Results**
Clearance Examination	A visual assessment, analysis of dust samples and preparation of report. It is performed after hazard reduction, rehabilitation or maintenance activities to determine if a unit is safe for occupancy.	A certified risk assessor, paint inspector or lead sampling technician (independent from entity/individual conducting paint stabilization or hazard reduction).	Identifies dust hazards and deteriorated paint. Indicates if unit is safe for occupancy. A unit that fails clearance must be re-cleaned.

HANDOUT #B2: HAZARD EVALUATION RESULTS

Paint Sample Standards

Surface	Threshold
Lead-based paint	• 5,000 µg/gram or • 1 mg/cm^2 or • 5,000 ppm or • 0.5%

Dust Sample Standards

Surface	Thresholds		
	Risk Assessment	Lead Hazard Screen	Clearance
Floors	40 µg/ft^2	25 µg/ft^2	40 µg/ft^2
Interior Window Sills	250 µg/ft^2	125 µg/ft^2	250 µg/ft^2
Window Troughs	Not Applicable	Not Applicable	400 µg/ft^2

Soil Sample Standards

Surface	Threshold
Play areas used by children under age 6	400 µg/gram
Other areas >9 ft^2 per dwelling	1,200 µg/gram
Abatement required by HUD	5,000 µg/gram

NOTES

HANDOUT #B3: EXERCISE – INTERPRETING EVALUATION RESULTS

Review the evaluation results outline below and answer the questions that follow each evaluation.

A. Paint Testing. A paint test found the following lead levels in paint.

Surface	Level
Floor – Stairs	0.7 mg/cm^2
Front Door	0.8 mg/cm^2
Baseboards — Living Room	1.5 mg/cm^2
Window Sill	2.5 mg/cm^2

1. Which of these surfaces has lead-based paint?

2. You plan to sand the living room floor and the front door. Where do you need to be careful? Why?

B. Visual Assessment. A visual assessment identified the following conditions.

Visual Assessment Results:

- ❑ Deteriorated paint on exterior doors
- ❑ Visible bite marks on interior stairway railing
- ❑ Hanging paint from water stain on kitchen ceiling

1. Why are these items potential lead-based paint hazards?

2. Which have lead-based paint?

3. If the unit is going to receive TBRA, what actions do you recommend in this unit to address these conditions?

C. Lead Hazard Screen. A home in relatively good condition has to meet the requirements for a risk assessment. The owner has opted to conduct a lead hazard screen instead and has found the following lead levels in dust.

Surface	Level*
Floors	38 µg/ft^2
Window Sill	300 µg/ft^2

* Levels based on composite samples.

1. Based on these results, which surface has a lead-based paint hazard?

2. What do you have to do next?

D. Risk Assessment. The risk assessment in this unit included the following test results:

Dust sampling results:	
Floor – bedroom	38 µg/ft^2
Windowsill	300 µg/ft^2
Soil sampling results:	
Dripline	1,000 µg/g
Under swing set	1,500 µg/g
Paint sampling results:	
Door – bedroom	0.7 mg/cm^2
Door – Exterior	0.1 mg/cm^2
Window – bedroom	2.0 mg/cm^2

Which of these results indicate hazards?

HANDOUT #B4: RISK ASSESSMENT REPORT CHECKLIST

1. Summary

✓ Identification Information

- ❑ Full address of property and unit (if applicable)
- ❑ Property owner's address and telephone number
- ❑ Name, address, and telephone number of risk assessor and firm
- ❑ Certification/license number of risk assessor and firm

✓ Basic Inspection Information

- ❑ Date of risk assessment and start and stop time
- ❑ Brief description of procedures used or reference to documented methods
- ❑ Brief description of the type of risk assessment conducted
- ❑ Make, model, serial number, and source date (if applicable) for XRF machine

✓ Summary of Results

- ❑ Brief history of renovation, repairs, and painting at property and discussion of building condition
- ❑ List of lead hazards identified including location and in rank order
- ❑ Summary of optional sampling results such as water tests (if applicable)
- ❑ Brief summary analysis of previous XRF testing reports (if applicable)

✓ Other Information

- ❑ Statement on property owner's responsibility to disclose lead-based paint information
- ❑ Notice that deteriorated or disturbed painted surfaces may still contain lead-based paint and may pose a hazard, especially during renovation.

2. Full Explanation of Methodology and Results

✓ Results

- ❑ History of renovation, repairs, and painting at property
- ❑ Discussion of building condition
- ❑ List of lead hazards: location, type, priority hazards indicated
- ❑ Complete paint sample results
- ❑ Complete dust testing results
- ❑ Complete soil sampling results
- ❑ Optional sampling results such as water tests (if applicable)

✓ Test Methods

- ❑ Full description of procedures used or reference to documented methods
- ❑ Full description of the type of risk assessment conducted
- ❑ Full description of quality control procedures for XRF machine
- ❑ Analysis of previous XRF testing reports (if applicable)

3. Lead Hazard Control Plan

- ❑ Recommended interim control and/or abatement options
- ❑ Reevaluation schedule
- ❑ Risk assessor's signature and date

4. Appendix

- ❑ Laboratory analysis result forms
- ❑ All laboratory and XRF raw data

HANDOUT #B5: LEAD-BASED PAINT TESTING REPORT CHECKLIST

1. SUMMARY

✓ Identification Information

- ❑ Full address of property and unit (if applicable)
- ❑ Client's address and telephone number
- ❑ Name, address, and telephone number of both lead-based paint inspector and firm
- ❑ Certification/license number of both lead-based paint inspector and firm

✓ Basic Inspection Information

- ❑ Date(s) of lead-based paint testing
- ❑ Brief description of procedures used or reference to documented methods
- ❑ Make, model, serial number, and source date (if applicable) for XRF machine
- ❑ Brief description of quality control procedures for XRF machine and calibration data
- ❑ Verification that the XRF machine was used in accordance with its performance characteristics sheet (PCS) and the manufacturer's directions

✓ Other Information

- ❑ Brief summary analysis of previous XRF testing reports (if applicable)
- ❑ Statement on property owner's responsibility to disclose lead-based paint information

2. RESULTS AND TEST METHODS

✓ Results

- ❑ List of positive component types for surfaces to be disturbed rehab by room equivalent
- ❑ List of components assumed to have lead-based paint
- ❑ Explanation of special terms

✓ Test Methods

- ❑ Full description of procedures used (or reference to established methods)
- ❑ Full description of quality control procedures for XRF machine
- ❑ Statement on accuracy of inspection and report contents with the paint inspector's signature
- ❑ Description of abbreviated testing (if applicable)

3. APPENDIX ITEMS

- ❑ Laboratory analysis result forms
- ❑ All laboratory and XRF raw data
- ❑ Scope of Service

NOTES

HANDOUT #B6: CLEARANCE REPORT CHECKLIST

The following information should be included in a clearance report.

Item	Yes	No
General		
1. Property Address and specific unit or common areas identified.		
Hazard Reduction Related Activities		
2. Name and address of each firm and supervisor involved in the lead-hazard reduction activity.		
3. Start and completion date of hazard reduction or completion activity.		
4. Detailed written description of the lead hazard reduction activity including the methods used.		
5. Locations of exterior surfaces, interior rooms, common areas and /or components where the hazard reduction activity occurred.		
6. Any suggested monitoring requirements.		
Clearance Related Activities		
7. Name, address, signature and certification number of each person involved in the clearance examinations.		
8. Name and identification number of each laboratory conducting an analysis.		
9. Dates of clearance examination.		
10. Results of visual assessment for the presence of deteriorated paint and visible dust, debris, residue or paint chips.		
11. Results of the analysis of dust samples in micrograms square feet ($\mu g\ ft^2$) by location of sample.		

HANDOUT #B7: GUIDANCE ON HOW TO INTERPRET CLEARANCE REPORTS

µg/ft²

Micrograms per square feet is the measurement used to measure levels of lead in dust samples. The clearance report should have the results listed in **µg/ft²** (micrograms per square foot). In order to understand the results of a clearance report, it is helpful to be familiar with the levels of measurements that are being used.

1. **µg (Microgram)**: A microgram is 1/1000th of a milligram, or one thousand micrograms are needed to equal a milligram. To put into perspective, a penny weighs 2 grams. To get a microgram, you would need to divide the penny into 2 million pieces.
2. **ft² (Square foot)**: One square foot is equal to an area that has a length of one foot (12 inches) and a width of one foot (12 inches).

Thresholds

A paint inspector or lead sampling technician should be performing dust sampling in window troughs, window sills, and floors. The HUD thresholds for dust clearance can be found in the chart below. Any report that shows lead levels in a particular area that exceed the thresholds has failed.

Floors	40 µg/ft²
Window Sills	250 µg/ft²
Window Troughs	800 µg/ft²

How to Read a Report

When you receive a clearance report, take these steps:

1. Confirm that the results are provided in µg/ft²
2. Compare the results to the thresholds provided above. If the lead levels are above these levels, this indicates a failure.

Pass or Fail — What's Next?

- **Pass:** If a clearance report shows that the lead levels found in the tested areas of the unit are ***lower*** than the HUD thresholds, then the unit passes. The unit is now safe from lead and maintenance and monitoring recommendations should be followed.
- **Fail:** If a clearance report shows that the lead levels found in any of the tested areas of the unit are ***higher*** than the HUD thresholds, then the unit must be recleaned.
  - Recleaning: Only similar surfaces need to be recleaned and tested, not the entire dwelling. For example if the floors and window sills pass, but the window troughs fail, only the window troughs need to be recleaned and retested. Note, it is good practice to clean everything again.
  - Retesting: The exact same surface area should not be retested since by wiping the area, the lead has already been removed by the previous wipe sample. A similar surface should be retested and sent to the lab.
  - Results: If a sample fails ***twice***, the property owner should consider additional hazard control measures and or further sealing of the surface.

HANDOUT #B8: LIST OF COMMON PROBLEMS WITH LEAD HAZARD EVALUATION REPORTS

The following are common problems with lead hazard evaluation reports:

1. Report fails to provide inform ation in a clear manner that is easy to read
2. Report fails to make the most important information prominent – i.e. location of identified lead-based paint and/or hazards
3. Report is missing key identifying information about the person, firm, or equipment performing the evaluation (e.g. certification #s, XRF serial numbers)
4. Report gives no explanations of technical terms
5. Report does not include a statement of the standards/thresholds used to evaluate hazards
6. Report is missing data – for example, only the results of some of the readings or sampling is provided
7. Report has no reference to the procedures that were followed
8. Risk assessment report does not provide recommendations for ways to address the hazards, or provides a list but it is not prioritized
9. Report is not signed by the examiner
10. Report does not provide information on dates of testing
11. Risk assessment hazard reduction recommendations are not clear or do not provide sufficient details to take action

NOTES

HANDOUT #B9: SAMPLE EVALUATION REPORTS

The pages at the end of this chapter include samples reports from the following:

- Risk Assessment
- Paint Testing
- Clearance

As you read them, see if you can answer the following questions.

For all:

1. Based on your reading of this report, what types of hazards are in this unit and where are they located?

2. Where did you find this information?

3. Does the report clearly summarize the results?

4. Who signed the report?

For the risk assessment only:

1. Does the assessment ask questions about current maintenance painting protocols?

2. Does the risk assessment include soil, dust, and paint chip sampling?

3. How many dust wipe samples were taken?

4. Where are the results listed for these types of sampling?

5. Can you tell by looking at the results which samples represent hazards?

6. What method of paint sampling was used?

7. Where are the paint test results?

8. What were the results of the soil sampling?

9. How does the risk assessment tell you to address those hazards?

10. Does the plan include both interim controls and abatement options for the same property?

11. Where do you find information on costs for interim control and abatement options for this one property?

NOTES

HANDOUT #B10: SUMMARY OF MODULE – LESSONS LEARNED

LEAD HAZARD EVALUATION METHODS

1. Different lead hazard evaluation methods tell us different things about the paint or hazards in the unit. (See Handout #B1)

   - Visual assessment identifies deteriorated paint only.
   - Paint testing identifies lead based paint.
   - Risk assessment identifies lead-based paint hazards.
   - Clearance determines if a unit is safe for occupancy.
   - Lead hazard screen is a limited risk assessment.

2. The measurements for lead-based paint and lead-based paint hazards are very small. (See Handout #B2)

3. Even lead levels below the standard can create hazards and lead to poisoning. (e.g. paint with a lead content of .8 mg/cm^2 is not considered lead based paint but if this paint is not intact, it could still result in lead exposure.) (See Handout #B2)

4. Lead hazard evaluation reports are meant to be informative to the layperson. Therefore, when a professional is hired to do one, the scope of work should be specific and require a readable, understandable report. A good report will include at least the following. See the checklists provided as Handouts #B4 – B6 for a full list)

   - A summary which clearly describes the lead-based paint and/or hazards that are in the unit
   - Copies of all the results of testing
   - Copies of any other information used in the evaluation

NOTES

MODULE C: STRATEGIES FOR ADDRESSING LEAD-BASED PAINT HAZARDS

This module will discuss strategies for addressing lead-based paint. It highlights some of the common choices that will have to be made, both at a project and program level, regarding lead hazard evaluation and reduction.

Objectives:

- By the end of this module, participants will be able to:
  - Understand the implications of performing a lead hazard evaluation or presuming the presence of lead-based paint and/or hazards.
  - List situations in which they might choose to presume the presence of lead-based paint and/or hazards.
  - Outline a strategy, including evaluation and reduction, for a sample rehabilitation program.

Materials include:

- Handout #C1: Summary – Deciding Whether to Evaluate or Presume Lead-Based Paint Hazards
- Handout #C2: Exercise – Presume or Evaluate?
- Handout #C3: Summary of Lead Hazard Control Methods
- Handout #C4: Exercise – Case Study of Homeville's Strategy for Lead Hazard Reduction
- Handout #C5: Summary of Module – Lessons Learned

NOTES

HANDOUT #C1: DECIDING TO EVALUATE OR PRESUME LEAD-BASED PAINT AND/OR HAZARDS

The following table summarizes the requirements associated with an evaluation or a presumption of lead-based paint and/or hazards.

Evaluation	**No Evaluation** **(Presume Lead Based Paint and/or Hazards)**
Rehabilitation up to $5,000	
Paint Testing Use safe work practices and repair paint **only** on surfaces where lead-based paint is identified.	**No Paint Testing** **(Presume Lead-Based Paint)** Use safe work practices and repair paint on **all** surfaces disturbed by the rehabilitation work.
Rehabilitation between $5,000 and $25,000	
Risk Assessment (and Paint Testing) Perform interim controls **only** on identified hazards.	**No Risk Assessment (or Paint Testing)** **(Presume Lead-Based Paint and Hazards)** Perform standard treatments throughout the unit.
Rehabilitation over $25,000	
Risk Assessment (and Paint Testing) Perform abatement **only** on identified lead-based paint hazards.	**No Risk Assessment (or Paint Testing)** **(Presume Lead-Based Paint and Hazards)** Perform abatement on **all** applicable surfaces – surfaces to be disturbed, deteriorated paint, impact, friction, and chewable surfaces.

Factors to consider when deciding whether to presume the presence of lead-based paint and/or hazards include:

- The age and physical condition of the property.
  - Older buildings, especially those built before 1950 are more likely to have lead-based paint.
  - Properties in poor condition are likely to have conditions that may be hazards if lead-based paint is present.
- The likelihood of the presence of lead-based paint can be based upon knowledge of the use of lead-based paint in housing in the community.
  - When first implementing the new regulations, programs may not have much information about the historical use and presence of lead-based paint in the community. However, as properties are tested, program staff will have better knowledge about the presence of lead-based paint.
- What is the cost of not knowing if there is lead-based paint or lead-based paint hazards?
  - For a small job, such as repainting one room or rehanging a door, it may cost little to do the job safely.
  - For a large job, there could be significant costs to performing interim controls or abatement on a surface that did not have lead-based paint.

HANDOUT #C2: EXERCISE – PRESUME LEAD-BASED PAINT OR EVALUATE?

Scenario 1. You are doing a small exterior repainting job (<$5,000) where neighborhood volunteers, supervised by a certified abatement supervisor, will be scraping and repainting the exterior trim, soffits, and porches. You have worked in this neighborhood a lot and you know that past evaluations have shown lead-based paint on the exterior and interior of most homes.

1. Should you conduct paint testing or simply assume lead-based paint?

2. How does your previous answer affect your work practices?

3. Would you consider doing additional evaluation? If so, what and why?

Scenario 2. You are doing a small plumbing job (<$5,000) in a house in the same neighborhood. You know from past evaluations that many of these homes have lead-based paint, mostly in the kitchens and on the exterior. Your plumbing job will involve going behind a wall, fixing the pipes, and then repairing the wall.

1. Should you conduct paint testing or assume lead-based paint?

2. How does your previous answer affect your work practices?

3. Would you consider doing additional evaluation? If so, what and why?

Scenario 3. You are doing a medium sized job ($15,000) that involves laying vinyl floor covering in the kitchen and bathroom, stripping wallpaper, repainting walls and rehanging doors.

1. Should you perform a risk assessment or should you simply presume lead-based paint hazards?

2. Should you perform paint testing on the surfaces you are working on or simply presume lead-based paint?

3. How do your previous answers affect the scope of you work in the unit?

4. How do your previous answers affect your work practices?

Scenario 4. You are doing another medium sized job ($10,000) that includes repairing stair railings, adding storm windows, some repainting of walls and removing carpeting from the living room floor. You did a small job one year ago and clearance revealed lead-contaminated dust on the window sills.

1. Should you perform a risk assessment or should you simply presume lead-based paint hazards?

2. Should you perform paint testing on the surfaces you are working on or simply presume lead-based paint?

3. How do your previous answers affect the scope of you work in the unit?

4. How do your previous answers affect your work practices?

Scenario 5. You are doing a job that involves extensive plumbing and electrical work as well as structural work on the roof and stairs. Because the level of assistance will be $30,000, abatement is required.

1. Should you perform a risk assessment or should you simply presume lead-based paint hazards?

2. Should you perform paint testing on the surfaces you are working on or simply presume lead-based paint?

3. How do your previous answers affect the scope of you work in the unit?

4. How do your previous answers affect your work practices?

HANDOUT #C3: LEAD HAZARD REDUCTION METHODS

The three basic types of lead hazard reduction methods are:

Interim Controls: Set of measures to temporarily control lead-based paint hazards. Interim control methods must be identified by a certified risk assessor and completed by qualified workers using safe work practices. Follow-up monitoring is needed.

Standard Treatments: Series of interim control methods that when used together temporarily control all potential lead hazards in a unit. Because they address all conditions, a risk assessment or other evaluation is not needed. Standard treatments may be specified by a rehabilitation specialist and completed by qualified workers using safe work practices. As with interim controls, follow-up monitoring is needed.

Abatement: Measures to permanently (20 years) control lead-based paint or lead-based paint hazards must be identified by a risk assessor and completed by abatement workers under an abatement supervisor.

INTERIM CONTROLS	
Meethod	**Description**
Paint Stabilization	Wet scraping and repainting painted surfaces and addressing the underlying cause of deterioration. Steps include: • Repairing defective surfaces • Removing loose paint • Applying new paint
Friction and Impact Surface Treatment	Treating areas subject to abrasion that may generate leaded dust or dislodge paint chips, such as windows, doors, stair treads and floors. Methods include: • Rehanging doors • Installing window channel guides • Covering stairs with tread guards
Chewable Surface Treatment	Treating areas with evidence that a child has chewed. Methods include: Covering area with enclosure or coating that cannot be penetrated by teeth
Dust Removal and Control	Cleaning and removing dust from all surfaces, such as floors, stairs, window sills and window troughs. Methods include: • Thorough cleaning of horizontal surfaces • Covering of pitted or porous horizontal surfaces with a smooth, cleanable covering, such as linoleum • Removing carpets/rugs using a mister or cleaning carpets/rugs using HEPA vacuums
Soil Control	Treating bare soil containing excessive levels of lead. Methods include: • Covering with temporary cover such as gravel, bark or sod • Land use controls (fencing, landscaping, warning signs)

STANDARD TREATMENTS	
Method	**Description**
Paint Stabilization	Wet scraping and repainting all interior and exterior painted surfaces and addressing the underlying cause of deterioration. Steps include: • Repairing defective surfaces • Removing loose paint • Applying new paint
Horizontal Surfaces Treatment	Covering all horizontal surfaces such as bare floors, stairs and window sills that are rough, pitted or porous with a smooth, cleanable covering or coating, such as vinyl or polyurethane or carpet.
Correction of Dust-Generating Conditions	Correcting all conditions that generate lead-contaminated dust, including friction and impact surfaces on windows, doors and stairs. Methods include: • Rehanging doors • Installing door stops • Installing window jamb liners • Replacing components (for impact surfaces, specific components only)
Bare Residential Soil Control	Treating all bare residential soil over 9 ft^2. Methods include: • Covering with temporary cover such as gravel, bark or sod • Land use controls (fencing, landscaping, warning signs)
ABATEMENT	
Method	**Description**
Building Component Replacement	Removing doors, window, trim and other building items that contain lead-based paint and replacing with lead-free components.
Enclosure	Installing a rigid, durable barrier that is mechanically attached to building components with all edges and seams sealed with caulk or other sealant. Appropriate barriers include wood paneling and drywall.
Paint Removal	Removal of paint using heat guns, chemicals or contained abrasive measures either onsite or offsite.
Encapsulation	Involves a liquid or adhesive material that covers the component and forms a barrier that makes the lead-based paint surface inaccessible by relying upon adhesion. It is most appropriate for most kinds of smooth surfaces, but it cannot be used effectively on friction surfaces, surfaces in poor condition, or surfaces that may become wet. It also must be compatible with existing paint. *Federal standards have not yet been developed for encapsulants. However, HUD recognizes encapsulation as an approved abatement method if the following criteria are met: the manufacturer of the encapsulation system provides a twenty-year warranty on its durability; use of encapsulation products is consistent with procedures outlined in the HUD Guidelines; patch-testing is successfully completed; monitoring is conducted regularly; and any failures are repaired as soon as possible.*
Soil Abatement	Methods include: • Soil removal and replacement followed by offsite disposal • Soil cultivation (rototiling) • Soil cleaning and replacement • Paving with concrete or asphalt

HANDOUT #C4: EXERCISE: CASE STUDY-HOMEVILLE'S STRATEGY FOR LEAD HAZARD REDUCTION

The following scenarios highlight programs in the City of Homeville that require strategies to address lead hazards. Read the background and scenarios below. Take one scenario and answer the questions that follow the scenarios.

Background

After interviewing the health department and a local risk assessor, the City learns that in many of the community's older homes, the probability of the exterior paint containing lead is over 90%. Half of the kitchens and baths tested had lead on the walls and trim. In general, the walls and floors do not contain lead and most of the units will pass a dust test on the floors. Almost all soil readings exceed 4000 µg/gram.

Scenario 1 – The Emergency Repair Program

This deferred payment loan program will provide up to $8,000 to address health and safety code violations only. In the past, the program has not been involved in any site work other than occasionally demolishing a deteriorated, highly dangerous garage. Exterior work is usually limited to repairing legal means of egress, steps, stairs, windows and railing. Typical code repairs involve roof replacement, water heater replacement, furnace upgrades or replacement, electrical repairs, plumbing repairs and miscellaneous structural items. The 28 x 32 foot, two-story frame structures could all use three times as much money. The budget is fully expended, barely meeting the housing quality standards minimum with the $8,000 budget. Many of the occupants are elderly who house their single daughters and grandchildren at various times. Last year the program was allocated $240,000 and they completed 30 to-code renovations.

Scenario 2—Acquisition and Rehab for Homeownership

The Action Housing Corporation (AHC) also operates a small program where they acquire D-rated properties, renovate them and resell them to first time homebuyers. The typical units are scattered across the city in two-story brick buildings that have been vacant from three days to 12 years. The acquisition costs range from a few thousand dollars to $45,000 for property that is in fairly good shape. In the typical $37,000 renovation, the baths and kitchens are gutted, the plumbing, electrical and heating systems are replaced, new cabinets are installed, the floors are sanded and storm windows are installed on the wood, double-hung openings. The exterior trim is painted to conform to historical colors and the renovations are usually performed in conformance with the Secretary of Interior's historic guidelines because of their historic environments. When the structures are completed, they are normally sold with a principal reduction writedown of approximately $20,000.

Scenario 3—Rental Rehabilitation

Homeville's Rental Rehabilitation program usually aids small multifamily properties that are scattered throughout the distressed neighborhoods. The program provides up to $8,000 per unit to supplement the owner's contribution. Projects almost never have a construction budget in excess of $16,000 per unit. Typically these jobs involve window replacement, heating system repairs and improvements, the installation of new fire doors in the common space, emergency lighting, smoke detector systems, and repainting of common areas. The remaining funds are used inside the units to replace all of the appliances, replace faucets, wire for cable and address any outstanding housing code violations, which mostly involve deferred maintenance.

HANDOUT #C4: EXERCISE: CASE STUDY-HOMEVILLE'S STRATEGY FOR LEAD HAZARD REDUCTION (Continued)

Question: What strategy would you recommend to Homeville?

Consider the following:

- What should be their approach to lead hazard evaluation -- testing, risk assessment, or presumption?
- What should be their approach to lead hazard reduction -- interim controls, abatement or standard treatments?

1. Provide the City with a recommendation for addressing interior, exterior, and site lead hazards.

2. Give three reasons why you chose this strategy.

HANDOUT #C5: SUMMARY OF MODULE – LESSONS LEARNED

STRATEGIES FOR ADDRESSING LEAD-BASED PAINT HAZARDS

1. Deciding whether to presume or evaluation depends on a number of factors. Some are listed below. See Handout #C1 for a summary of the implications and considerations of presuming or evaluating.

   - Your level of information about your property
   - The costs of performing the lead hazard evaluation
   - The costs of performing lead hazard reduction when lead-based paint is not present (if you presume)
   - Your tolerance for risk
   - Others?
   -
   -
   -

2. Developing a lead hazard evaluation and reduction strategy for your program depends on a number of factors

   - The condition of housing stock
   - Knowledge of lead hazards in the stock
   - The nature of the work being done
   - Program resources
   - Staff capacity
   - Availability of contractors
   - Preferences of program participants
   - HUD requirements
   - Others?
   -

MODULE D: PROGRAM ADMINISTRATION AND OPERATIONAL ISSUES

This module helps program managers prepare for planning and managing projects that involve lead-based paint requirements. The module is intended to help administrators identify the types of changes in procedures needed to comply with the new lead-based paint regulation.

Objectives:

- ❑ At the end of this module, participants will be able to describe key changes in program operations and procedures that need to be made to address the new lead-based paint requirements.

Materials include:

- ❑ Handout #D1: Exercise – Administering Homeville's Programs
- ❑ Handout #D2: Red Flags
- ❑ Handout #D3: Summary of Module – Lessons Learned

NOTES

HANDOUT #D1: EXERCISE: CASE STUDY — ADMINISTERING HOMEVILLE'S PROGRAMS

The City of Homeville has three programs:

The Emergency Repair Program

This program is run by AHC (the CDC). It provides up to $8,000 to address life and safety code violations only. In the past, the program has not been involved in any site work other than occasionally demolishing a deteriorated, highly dangerous garage. Exterior work is usually limited to repairing legal means of egress, steps, stairs, windows and railing. Typical code repairs involve roof replacement, water heater replacement, furnace upgrades or replacement, electrical repairs, plumbing repairs and miscellaneous structural items. The budget is fully expended, barely meeting the housing quality standards minimum with the $8,000 budget. Many of the occupants are elderly who house their single daughters and grandchildren at various times.

Acquisition and Rehab for Homeownership

AHC also operates a small program where they acquire D-rated properties, renovate them and resell them to first time homebuyers. The typical units are scattered across the city in two-story brick buildings that have been vacant from three days to 12 years. The acquisition costs range from a few thousand dollars to $45,000 for property that is in fairly good shape. In the typical $37,000 renovation, the baths and kitchens are gutted, the plumbing, electrical and heating systems are replaced, new cabinets are installed, the floors are sanded and storm windows are installed on the wood, double-hung openings. The exterior trim is painted to conform to historical colors and the renovations are usually performed in conformance with the Secretary of Interior's historic guidelines because of their historic environments. When the structures are completed, they are normally sold with a principle reduction write down of approximately $20,000.

Rental Rehabilitation

Homeville's Rental Rehabilitation program, run by the city, usually aids small multifamily properties that are scattered throughout the distressed neighborhoods. The program provides up to $8,000 per unit to supplement the owner's contribution. Projects almost never have a construction budget in excess of $16,000 per unit. Typically these jobs involve window replacement, heating system repairs and improvements, the installation of new fire doors in the common space, emergency lighting, smoke detector systems, and repainting of common areas. The remaining funds are used inside the units to replace all of the appliances, replace faucets, wire for cable and address any outstanding housing code violations, which mostly involve deferred maintenance.

Your Task. Homeville is looking at each of its three programs to consider the program administration and operational issues that they are going to face as they implement the lead-based paint requirements. Your task is to advise the administrator of one of these programs.

NOTES

HANDOUT #D1 : WORKSHEET 1

Program issues addressed for :_____

Area	Potential Issue
Budgeting	
Contractor Issues	
Scheduling and Coordinating Work	
Relocation	
Oversight/Monitoring	
Closing out a project	
Recordkeeping	
Other Administrative and Operational Issues	

HANDOUT #D1: WORKSHEET 2

Program issues addressed for :_____

Issue	Possible Solutions
Budgeting	
Contractor Issues	
Scheduling and Coordinating Work	
Relocation	
Oversight/Monitoring	
Closing out a project	
Recordkeeping	
Other Administrative and Operational Issues	

HANDOUT #D2: RED FLAGS

Below are a number of "Red Flag" scenarios. Determine why it is a red flag and what should be done to address the situation. Assume that all of the scenarios below involve a rehabilitation job for reducing lead hazards.

1. On one of your monitoring visits, you see a contractor using a torch to remove paint.

2. You notice that some of the workers are removing paint by dry sanding and scraping all four walls of the living room.

3. You see workers cleaning up the site by pushing all of the paint debris with a dry broom and sweeping it out the door.

4. Workers are eating in the contained work area.

5. Debris from the job is in the occupant's trash cans.

6. The occupant's children just came home from school and are watching TV in the room where the painters are still cleaning up.

7. Workers have left for the day and there is dust and debris in the worksite.

8. A wall is being taken out. To get rid of the dust in the room, the contractor has placed a large exhaust fan in the window to blow all the dust outside.

NOTES

HANDOUT #D3: SUMMARY OF MODULE – LESSONS LEARNED

PROGRAM ADMINISTRATION AND OPERATIONAL ISSUES

The following is the beginning of a list of the administrative and operational issues that may arise when addressing lead-based paint:

Budgeting

Need to research:

- What are the additional costs?
- Where can we find additional resources?
- How will this affect production?

Contractor Issues

- Bidding the work – Need a good RFP that specifies lead-related qualifications.
- Contractor selection -- Contractors must possess the required certifications to perform the work that will be done.
- Contracts -- Language should be added to the contract that is specific that the work is not complete until clearance has been successfully completed and that contractors are responsible for cleaning.

Scheduling and Coordinating Work

Need to consider:

- If several contractors/subcontractors are involved, how is their work sequenced and coordinated?
- How do you make sure that they all have the information they need about where lead based paint and lead hazards are?
- For example, how will the electrician know which walls have lead and should not be disturbed without safe work practices.

Relocation

Need to consider:

- Are there ways to minimize relocation?
- Do we need to hire a relocation specialist?
- How will costs of relocation affect budget?

Oversight/Monitoring

- Daily Monitoring – Rehab specialists or project inspectors should be familiar with safe work practices and be able to identify when rehabilitation projects should be stopped. (See Handout #D2 for red flags.)
- Change Orders – Consider the implications of change orders that "bump up" the rehabilitation cost for a job to a higher level of lead-hazard reduction requirements. For example your job had been costed to include federal funds at $24,000 allowing for interim controls. A discovery has been made ½ way through the job that has created a $1,500 change order. The federal funds committed now require abatement. What do you do?

Closing Out A Project

- Project completion – Job is not complete until unit passes clearance
- Scheduling clearance – Need capacity and procedures to make clearance occur as quickly as possible

Recordkeeping

- Need to identify new documents that are required and procedures for collecting them
- Consider keeping lead related documents indefinitely

Other Administrative and Operational Issues

-
-
-
-

SAMPLE REPORTS

The following pages include:

- A Paint Testing Report
- A Clearance Report
- A Risk Assessment Report

Sample Paint Testing Report

The following is a sample paint testing report for a unit where limited renovation is being performed in the bathroom and kitchen. Consequently, testing was performed only of those two rooms on surfaces to be disturbed during the rehabilitation.

Home Environmental Inspection Services, Inc.
345 Hammond Road
East Chicago, IN 12345
123-123-1235
345-789-5678 (fax)

Firm certification number: IN 78787

PAINT TESTING REPORT

Inspection Information

Date of inspection:	8/5/99
Paint Inspector:	Joe Smith
Certification number:	IN 77777
Property address:	125 South Street East Chicago, IN 44556
Client name:	Jane Summer
Client address:	Same as above
Laboratory:	NA
Address:	NA
Telephone number:	NA
NLLAP number:	NA

Summary Results

Lead-based paint above Federal standards was found in the following areas:

Location	Surface	mg lead/cm^2
Bathroom	Window	1.5
Bathroom	Walls	2.0
Kitchen	Window	1.7

Signature: *Joe Smith*
Date: ***8/12/99***

PAINT TESTING RESULTS

Date of clearance:	8/5/99
Clearance Technician:	Joe Smith
Client:	Jane Summer
Property address:	125 South Street East Chicago, IN 44556

01 Room: Bath #1

Reading #	Elevation A/B/C/D	Component	Surface	Paint Condition	Lead (mg/cm^2)
00	Calibration	Calibration	Calibration	Calibration	.99
01	A	Window	Sash	Good	1.5
02			Windowsill	Poor	6.0
03			Jamb	Good	.8
04	B	Wall		Good	2.0

02 Room: Kitchen

Reading #	Elevation A/B/C/D	Component	Surface	Paint Condition	Lead (mg/cm^2)
05	A	Window	Sash	Poor	1.7
06			Windowsill	Poor	.6
07			Jamb	Good	1.7
08	B	Wall		Good	.7

Sample Clearance Report

The following report is a sample clearance report from a small rehabilitation job (less than $5,000) that involved window replacements in the small bedroom and kitchen of a single-family home that is available for rent. The clearance report covers clearance of the worksite.

Home Environmental Inspection Services, Inc.
345 Hammond Road
East Chicago, IN 12345
123-123-1235
345-789-5678 (fax)

Firm certification number: IN 78787

CLEARANCE REPORT

General Information

Date of inspection:	8/5/99
Clearance Inspector:	Joe Smith
Certification number:	IN 77777
Property address:	78 East Main St., Apt. A Hammond, IN 89898
Client name:	Sally Jones
Client address:	80 East Main St. Hammond, IN 89898
Laboratory:	Analysis Services, Inc.
Address:	990 45th St., Suite 500 Gary, IN 44444
Telephone number:	222-222-2222
NLLAP number:	IN 999999

Summary Clearance Results

Dust above Federal standards was found in the following areas:

Location	Surface	F g lead/ft^2
Small bedroom	Side facing window (C-1)—windowsill	600
Small bedroom	Floor	200
Kitchen	Window above sink (A-1)--windowsill	525

Signature: *Joe Smith*
Date: *8/12/99*

Summary of Hazard Reduction Activities

Name of firm	ABC Renovations
Address of Firm	123 Main Street East Chicago, IN 12345
Supervisor	John Brown #1634
Supervisor certification number	1634
Start and completion date of hazard reduction or completion activity.	8/1/99 to 8/6/99

Description of Hazard Reduction Activities and Areas Addressed:

Location	Activity
Kitchen	*Replaced A-1 widow*
2nd Floor Small Bedroom	*Replaced C-1 and C-2 windows*

Monitoring Requirements:

None.

VISUAL EVALUATION RESULTS FORM

Date of clearance:	*8/5/99*
Clearance Technician:	*Joe Smith*
Client:	*Sally Jones*
Property address:	*78 East Main St., Apt. A* *Hammond, IN 89898*

Location of Defects in the Work Area

Work Area	Deteriorated Paint	Debris	Visible Dust	Notes	Pass/ Fail
Small bedroom					*Pass*
Kitchen					*Pass*
First floor hallway					*Pass*
Staircase					*Pass*
Second floor hallway					*Pass*

DUST SAMPLING RESULTS FORM

Date of clearance:	*8/5/99*
Clearance Technician:	*Joe Smith*
Client:	*Sally Jones*
Property address:	*78 East Main St., Apt. A* *Hammond, IN 89898*

Sample #	Location	Surface	Dimensions of sample area	F g Lead/ft^2	Above/ Below Standard
1-2	*Upstairs small bedroom*	*Front facing window (C-2)-windowsill*	*4" x 18"*	*17*	*Below*
1-3	*Upstairs small bedroom*	*Floor under C-1 window*	*12" x 12"*	*200*	*Above*
1-4	*Upstairs small bedroom*	*Side facing window (C-1)-windowsill*	*4" x 18"*	*600*	*Above*
2-1	*Second floor*	*Floor*	*12" x 12"*	*35*	*Below*
3-1	*Staircase*	*Floor*	*12" x 12"*	*30*	*Below*
4-1	*Kitchen*	*Floor under A-1 window*	*12" x 12"*	*12*	*Below*
4-2	*Kitchen*	*Window above sink (A-1)-windowsill*	*4" x 18"*	*525*	*Above*
5-1	*First floor*	*Floor*	*12" x 12"*	*30*	*Below*

Understanding Your Report

1. The Summary Results section lists all of the areas that failed the clearance examination. The entire area represented by the sample needs to be re-cleaned and then re-tested to see if the cleaning removed the contaminated dust. Deteriorated painted surfaces should be repaired using interim controls or abatement techniques.

   For written information on how to address lead hazards, call the National Lead Information Center Clearinghouse at 1-800-424-Lead (1-800-424-5323). You may consider hiring a risk assessor to evaluate lead hazards in your home and recommend a lead hazard control plan. Risk assessors can be located through the Leadlisting at 1-888-Leadlist (1-888-532-3547).

2. The laboratory result forms attached to the report list all of the areas sampled inside and outside the dwelling and the laboratory analysis results for each sample.

3. The results dust wipe samples will be presented in micrograms per square foot ($\Phi g/ft^2$); soil samples will be presented in micrograms per gram ($\Phi g/g$).

4. Areas that failed the clearance examination showed lead levels in dust at or above Federal or state standards. The standards that were used for during this clearance examination are:

HUD Standards for Lead in Dust

Floors: 40 $\Phi g/ft^2$
Interior window sill (stool): 250 $\Phi g/ft^2$
Window trough: 800 $\Phi g/ft^2$

CHAPTER 9

PUTTING IT ALL TOGETHER: AN ACTION PLAN

REVIEW WORKSHEET 1 — SUMMARY OF CHANGES: REHABILITATION

Key Design Decisions
Changes to Program Procedures/Documents
Building Program Capacity
Educating Recipients

REVIEW WORKSHEET 2 — SUMMARY OF CHANGES: TBRA

Key Design Decisions
Changes to Program Procedures/Documents
Building Program Capacity
Educating Recipients

REVIEW WORKSHEET 3 — SUMMARY OF CHANGES: HOMEBUYER PROGRAMS

Key Design Decisions
Changes to Program Procedures/Documents
Building Program Capacity
Educating Recipients

REVIEW WORKSHEET 4 — SUMMARY OF CHANGES: SPECIAL NEEDS HOUSING

Key Design Decisions
Changes to Program Procedures/Documents
Building Program Capacity
Educating Recipients

CHAPTER 9

PUTTING IT ALL TOGETHER: AN ACTION PLAN

9.1 INTRODUCTION

- The previous four chapters focused on the major types of programmatic activities that are affected by the new lead-based paint regulation:
  - Rehabilitation
  - Tenant-based rental assistance
  - Homeownership
  - Special needs housing
- This chapter focuses on helping grantees identify the steps that they will need to take to develop a lead-based paint strategy for their agency. This strategy will effectively combine each of these major activities in a way that:
  - Meets HUD's lead-based paint requirements;
  - Reduces the risk that residents will be exposed to lead-based paint hazards;
  - Makes the most efficient use of the grantee's program resources; and
  - Is feasible for agency staff to implement.
- This chapter incorporates a planning exercise that will help participants develop an action plan for the programs that their agency offers. For grantees that offer multiple programs, this process can help staff identify opportunities to coordinate resources across programs.
- By the end of this chapter, participants will be able to:
  - Identify key programmatic considerations that grantees and their partners will need to address in developing a lead-based paint strategy; and
  - Develop an action plan for designing and implementing a lead-based paint strategy.

9.2 DEVELOPING AN ACTION PLAN FOR STATE AND LOCAL HOUSING PROGRAMS

- To develop an effective lead-based paint strategy for their programs, grantees will need an action plan. In this module, participants will conduct a review of their programs in light of the forthcoming lead-based paint requirements and prepare an action plan for meeting these new requirements by the time that they take effect.

- ❑ Exhibit 9-1 presents a checklist of the key actions and decisions that grantees need to address in preparing to meet the requirements of the new lead-based paint regulation when it takes effect.
- ❑ Exercise 9-1 will assist course participants in developing an action plan for their programs. This action plan can be used to guide and coordinate the efforts on key grantee staff, as well as a grantees partners.

EXHIBIT 9-1

REVIEW OF NEW LEAD-BASED PAINT REQUIREMENTS FOR KEY PROGRAMS

Rehabilitation Programs

Grantees will need to adopt additional (or revise existing) program procedures to ensure that:

- ❑ Applicants for rehabilitation funding receive the required lead-based paint information and understand their responsibilities.
- ❑ Staff properly determine whether proposed projects are exempt from some or all lead-based paint requirements.
- ❑ The level of Federal rehabilitation assistance is properly calculated and the applicable lead-based paint requirements determined.
- ❑ Properly qualified personnel perform risk assessment, paint testing, lead hazard reduction, and clearance services when required.
- ❑ Required lead hazard reduction work and protective measures are incorporated into project rehabilitation specifications.
- ❑ Risk assessment, paint testing, lead hazard reduction, and clearance work are performed in accordance with the applicable standards established in 24 CFR part 35, subpart R.
- ❑ Required notices regarding lead-based paint evaluation, presumption, and hazard reduction are provided to occupants and documented.
- ❑ Program documents establish the rental property owner's responsibility to perform and document ongoing lead-based paint maintenance activities, when applicable.
- ❑ Program staff monitor owner compliance with ongoing lead-based paint maintenance activities.

Tenant-Based Rental Assistance (TBRA) Programs

Grantees will need to adopt additional (or revise existing) program procedures to ensure that:

- ❑ Families or households that include one or more children under age six are identified at the time of application and receive information about the lead-based paint requirements that apply to TBRA.
- ❑ Staff properly determine whether the dwelling unit selected by the applicant is exempt from some or all lead-based paint requirements.
- ❑ A proper visual assessment to identify deteriorated paint in the selected dwelling unit, any common areas servicing the unit, and exterior surfaces associated with the unit or these common areas is performed prior to occupancy and during subsequent unit inspections.
- ❑ Prior to occupancy, properly qualified personnel perform paint stabilization and the dwelling unit passes a clearance exam in accordance with the standards established in 24 CFR part 35, subpart R.
- ❑ Tenants receive the required lead-based paint pamphlet and notices from the property owner.
- ❑ The property owner incorporates ongoing lead-based paint maintenance activities into project operations.
- ❑ Adequate efforts are made each quarter to match the public health department records of EIBLL children to program participants.

Exhibit 9-1

REVIEW OF NEW LEAD-BASED PAINT REQUIREMENTS FOR KEY PROGRAMS

(continued)

Homeownership Programs [a]

Grantees will need to adopt additional (or revise existing) program procedures to ensure that:

- ❑ Applicants for homeownership assistance receive adequate information about lead-based paint requirements.
- ❑ Staff properly determine whether proposed projects are exempt from some or all lead-based paint requirements.
- ❑ A proper visual assessment is performed to identify deteriorated paint in the dwelling unit, any common areas servicing the unit, and exterior surfaces of the building.
- ❑ Prior to occupancy, properly qualified personnel perform paint stabilization and the dwelling passes a clearance exam in accordance with the standards established in 24 CFR part 35, subpart R.
- ❑ The home purchaser receives the required lead-based paint pamphlet and notices.

Special Needs Housing Programs [a]

Grantees will need to adopt additional (or revise existing) program procedures to ensure that:

- ❑ Applicants for special needs housing assistance receive adequate information about lead-based paint requirements.
- ❑ Staff properly determine whether proposed projects, or units within a project, [b] are exempt from some or all lead-based paint requirements.
- ❑ A proper visual assessment is performed to identify deteriorated paint in assisted dwelling units, any common areas servicing these units, and exterior surfaces of the building.
- ❑ Prior to occupancy,[c] properly qualified personnel perform paint stabilization and a clearance exam in accordance with the standards established in 24 CFR part 35, subpart R.
- ❑ Occupants receive the required lead-based paint pamphlet and notices.
- ❑ Required ongoing lead-based paint maintenance activities are incorporated into project operations if the assistance involves a continuing relationship with HUD.

[a] *If these programs also involve rehabilitation, program staff will also need to ensure that the applicable rehabilitation requirements are addressed.*

[b] *Reminder - Units that will serve occupants who qualify as a person with a disability (e.g., a person with AIDS) are exempt from lead-based paint requirements if it can be reasonably expected that the unit will <u>not</u> be occupied by a household that includes a child under age six.*

[c] *If the dwelling units are already occupied, the work must be performed immediately upon receipt of Federal assistance.*

EXERCISE 9-1

DEVELOPING A LEAD-BASED PAINT ACTION PLAN FOR STATE & LOCAL HOUSING PROGRAMS RECEIVING FEDERAL FUNDS

The following questions identify key actions and decisions facing grantees in preparing to meet the requirements of the new Federal lead-based paint regulation. Please answer the questions in the chart below. For every question with a "NO" answer, indicate the actions that need to be performed to "make this decision" or "implement this step" in the third column. After completing the chart, use your responses to develop an action plan by answering the questions on the last page.

QUESTION	ANSWER			IF NO, WHAT ACTIONS ARE NEEDED (Note who is responsible and projected completion date)
	Y	N	NA	
INITIAL PLANNING				
1. Have all key staff for each of the Agency's affected programs been briefed on the new lead-based paint requirements?				
2. Has your Agency identified a point of contact on lead-based paint matters at each partner organization?				
A. REHABILITATION PROGRAMS				
A-1. Has the program application form and procedures been revised to gather the necessary lead-based paint information about potential projects?				
A-2. Do program application materials provide prospective applicants with adequate information about their responsibilities under the new lead-based paint requirements?				
A-3. Have program procedures been established to identify projects that are exempt under the new lead-based paint requirements?				
A-4. Has the program established procedures for determining the level of Federal rehabilitation assistance?				

QUESTION	ANSWER			IF NO, WHAT ACTIONS ARE NEEDED (Note who is responsible and projected completion date)
	Y	N	NA	
A-5. Have program documents been revised to establish the recipient's responsibilities regarding: ➢ Notices to occupants ➢ Lead-based paint evaluation ➢ Lead hazard reduction ➢ Safe work practices ➢ Clearance ➢ Ongoing maintenance?				
A-6. Have program staff assessed the local supply of contractors qualified to perform lead-based paint evaluation, lead hazard reduction, and clearance testing services?				
A-7. If the assessment reveals an inadequate supply of contractors, does the program have a plan and procedures for ensuring that an adequate supply will be available when the requirements take effect?				
A-8. Have the program's contractor selection procedures been revised to ensure that risk assessments and paint testing are performed when required and in accordance with the standards in the new regulation?				
A-9. Does the program have procedures to ensure that required lead hazard reduction work and protections are incorporated into rehabilitation specifications?				

QUESTION	ANSWER			IF NO, WHAT ACTIONS ARE NEEDED (Note who is responsible and projected completion date)
	Y	N	NA	
A-10. Does the program have adequate procedures to ensure that lead hazard reduction work is effectively coordinated with other rehabilitation work?				
A-11. Does the program have adequate procedures for monitoring construction to ensure that lead hazard reduction work and clearance is performed in accordance with the specifications and requirements?				
A-12. Do existing program procedures ensure that the rental property owners distribute the lead hazard information pamphlet, disclosure form, and required notices to occupants in the property?				
A-13. Has a plan been developed to assess and address staff training needs regarding lead-based paint?				
A-14. Have program recordkeeping procedures been revised to ensure that required lead-based paint documentation is maintained as required?				
B. TENANT-BASED RENTAL ASSISTANCE				
B-1. Do program application materials enable staff to identify applicants with one or more children under age six?				
B-2. Have the program's inspectors received proper training on how to perform a visual assessment?				

QUESTION	ANSWER			IF NO, WHAT ACTIONS ARE NEEDED (Note who is responsible and projected completion date)
	Y	N	NA	
B-3. Are the program's existing procedures and inspection reports sufficient to document visual assessment results and promptly convey them to the owner?				
B-4. Will the program's existing procedures for confirming that owners correct identified deficiencies be sufficient to ensure that they stabilize deteriorated paint surfaces using qualified work crews and the unit passes a proper clearance exam?				
B-5. Have the program procedures been revised to ensure that owners perform and document required ongoing maintenance work?				
B-6. Do the program's current procedures include monitoring to ensure that owners provide occupants with the required lead-based notices?				
B-7. Has the program established procedures to implement the EIBLL match requirements?				
B-8. Has the program established adequate procedures to respond promptly and effectively to notification of an EIBLL child?				
C. HOMEOWNERSHIP PROGRAMS				
C-1. Have the program application procedures been revised to ensure that occupants receive the required information about lead-based paint?				

QUESTION	ANSWER			IF NO, WHAT ACTIONS ARE NEEDED (Note who is responsible and projected completion date)
	Y	N	NA	
C-2. Has the program established procedures for properly determining what units are exempt?				
C-3. Do the program's procedures enable staff to obtain a proper visual assessment?				
C-4. Has the program established adequate procedures to ensure that paint stabilization is properly performed and implemented by trained workers?				
C-5. Do existing procedures document that homebuyers received the required lead-based paint information materials?				
SPECIAL NEEDS HOUSING PROGRAMS				
D-1. Have special needs housing staff identified the full range of activities performed with special needs housing funds?				
D-2. For program activities other than rehabilitation and TBRA, have program procedures been established to ensure that activities required prior to assistance have been properly performed?				
D-3. For these same activities, have procedures been put into place to ensure that post-assistance activities have been properly performed?				
D-4. Has a plan been developed to assess and address staff training needs regarding lead-based paint?				

QUESTION	ANSWER			IF NO, WHAT ACTIONS ARE NEEDED (Note who is responsible and projected completion date)
	Y	N	NA	
D-5. Have program recordkeeping procedures been revised to ensure that required lead-based paint documentation is maintained as required?				
D-6. Have program documents been revised to establish the recipient's responsibilities under the new regulation?				

EXHIBIT 9-2

CREATING THE ACTION PLAN

Based on your responses to the questions in the chart above, please fill out the action plan below. Indicate the actions that need to be taken within the specified timeframes, as well as the people involved and the projected completion date for the action.

Lead-Based Paint Action Plan for _____

1. What actions need to be taken in the next 30 days?

Action	Staff and Others Involved	Completion Date

2. What actions need to be taken in the next 90 days?

Action	Staff and Others Involved	Completion Date

3. What actions need to be taken in the next six months?

Action	Staff and Others Involved	Completion Date

Page 2

1. What actions need to be taken in the next 30 days?

Action	Staff and Others Involved	Completion Date

2. What actions need to be taken in the next 90 days?

Action	Staff and Others Involved	Completion Date

3. What actions need to be taken in the next six months?

Action	Staff and Others Involved	Completion Date

APPENDIX A

LEAD-BASED PAINT REGULATION
[24 CFR Part 35]

INTERPRETIVE GUIDANCE

TECHNICAL AMMENDMENTS

federal register

Wednesday
September 15, 1999

Part II

Department of Housing and Urban Development

24 CFR Part 35, et al.

Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 35, 91, 92, 200, 203, 206, 280, 291, 511, 570, 572, 573, 574, 576, 582, 583, 585, 761, 881, 882, 883, 886, 891, 901, 906, 941, 965, 968, 970, 982, 983, 1000, 1003, and 1005

[Docket No. FR–3482–F–06]

RIN 2501–AB57

Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance

AGENCY: Office of the Secretary-Office of Lead Hazard Control, HUD.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to ensure that housing receiving Federal assistance and federally owned housing that is to be sold does not pose lead-based paint hazards to young children. 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. The requirements of this rule are based on the practical experience of cities, states and others who have been controlling lead-based paint hazards in low-income privately-owned housing and public housing through HUD assistance. It also reflects the results of new scientific and technological research and innovation on the sources, effects, costs, and methods of evaluating and controlling lead hazards. With today's action, HUD's lead-based paint requirements for all Federal programs are now consolidated in one part of title 24 of the Code of Federal Regulations.

DATES: *Effective Dates:* Section 35.140 is effective on November 15, 1999. All other provisions of the rule are effective on September 15, 2000.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, call (202) 755–1785, ext. 104 (this is not a toll-free number) or e-mail your inquiry to lead__regulations@hud.gov. For lead-based paint program information, contact Steve Weitz, Office of Lead Hazard Control, Department of Housing and Urban Development, 451 7th Street, SW, Room B–133, Washington, DC 20410–0500. For legal questions, contact John B. Shumway, Office of General Counsel, Room 9262, Department of Housing and Urban Development. Hearing and speech-impaired persons may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

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I. Background

A. Lead Poisoning

Childhood lead poisoning causes reduced intelligence, low attention span, reading and learning disabilities, and has been linked to juvenile delinquency, behavioral problems, and many other adverse health effects. Over the past 20 years, the removal of lead from gasoline, food canning and other sources has been successful in reducing population blood lead levels by over 80 percent. Nearly 1 million children, however, still have excessive levels of lead in their blood, making lead poisoning a major childhood environmental disease (See CDC 1997a). Lead-based paint in housing is the major remaining source of exposure and is responsible for most cases of childhood lead poisoning today.

HUD estimates that over 60 million occupied homes, or approximately 80 percent of all homes built before 1980, have some lead-based paint. Many of those 60 million homes have only small amounts of such paint, however; generally, the older the home, the greater the amount of lead-based paint. The use of lead in paint was highest in housing built before 1960. It was completely banned for residential use in 1978 by the Consumer Product Safety Commission.

Higher childhood blood lead levels are associated with lower household income, residence in large urban areas, non-Hispanic African American race, and living in older homes. Recent data from the period 1991–1994 indicate that over 16 percent of young children of less than 6 years of age from low income families had blood levels above the level of concern set by the Centers for Disease Control and Prevention (CDC), compared with only one percent for young children from high income families. Over 8 percent of all young children living in housing built before 1946 had blood lead levels over the CDC level of concern compared to only 1.6 percent for those living in housing built after 1973. Over 11 percent of non-Hispanic African American children were above the CDC level of concern compared to 2.3 percent for non-Hispanic white children. Twenty-two percent of non-Hispanic African American children living in pre-1946 housing were over the CDC level of concern.

Childhood lead poisoning is ''the most common environmental disease of young children,'' (CDC 1990) eclipsing all other environmental health hazards found in the residential environment (ATSDR 1988). Lead is highly toxic and affects virtually every system of the body. At high exposure levels, lead poisoning can cause coma, convulsions, and death. While adults can suffer from excessive lead exposures, the groups most at risk are fetuses, infants, and children under age 6. At low levels, the neurotoxic effects of lead have the greatest impact on children's developing brains and nervous systems, causing reductions in IQ and attention span, reading and learning disabilities, hyperactivity, and behavioral problems. These effects have been identified in many carefully controlled research studies (National Academy of Sciences 1993; HUD 1997). The vast majority of childhood lead-poisoning cases, however, go undiagnosed and untreated, since most poisoned children have no obvious symptoms.

The Residential Lead-Based Paint Hazard Reduction Act of 1992 (Pub. L. 101–550; 42 U.S.C. 4851 *et seq.*), which hereafter is referred to as ''Title X'' because it is Title X of the Housing and Community Development Act of 1992, redefines the concept of ''lead-based paint hazards.'' Under prior Federal legislation, a lead-based paint hazard was defined as any paint greater than or equal to one milligram of lead per square centimeter (mg/cm^2), regardless of its condition or location. Title X states that a lead-based paint hazard is ''any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil or lead-contaminated paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.'' Thus, under this definition, intact lead-based paint on most surfaces is not considered a ''hazard,'' although the condition of the paint should be monitored and maintained to ensure that it does not become deteriorated.

Title X defines two methods of ''evaluating'' lead-based paint hazards or lead-based paint. One method, ''risk assessment,'' includes dust wipe sampling and other environmental sampling to identify lead-based paint hazards. The other, ''inspection'' (or ''lead-based paint inspection''), determines the presence only of lead-based paint. Evaluation may also be accomplished by a combination of the two methods. The combination approach results in an identification of all lead-based paint and lead-based paint hazards. Title X provides for three types of lead-based paint ''hazard reduction'': Interim controls, abatement of lead-based paint hazards, and complete abatement of all lead-based paint. Interim controls are ''measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards.'' Abatement means ''a set of measures designed to permanently eliminate lead-based paint hazards'' or lead-based paint. To ensure that evaluation and hazard reduction are carried out safely and effectively, Title X authorizes new requirements for consistency and quality control.

B. Legislative and Regulatory History

The existing lead-based paint regulations pertaining to the Department's programs, as well as to all federally owned residential property at the time of sale, were written pursuant to the passage of the Lead-Based Paint Poisoning Prevention Act of 1971, as amended prior to 1992 (42 U.S.C. 4821 *et seq.*). This legislation required the Secretary to ''establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning

with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary.'' HUD interpreted the phrase ''housing assistance payments'' broadly and therefore in 1976 drafted regulations to eliminate the hazards of lead-based paint for virtually all of its programs. Part 35 of the Department's regulations in title 24 of the Code of Federal Regulations was promulgated setting forth general procedures for the inspection and treatment of defective paint surfaces in HUD-associated housing. The regulation at 24 CFR 35.5(c), however, gave each Assistant Secretary the authority to develop regulations pertaining to their specific areas of responsibility, and varying program regulations concerning lead-based paint now exist throughout title 24.

The Department's lead-based paint regulations have been amended from time to time in response to changes in the law, court orders and increased knowledge about the hazards and treatment of lead-based paint. The most recent Department-wide regulatory revisions pertaining to lead-based paint were made in 1986, 1987 and 1988. Some additional revisions specific to the public and Indian housing programs were issued in 1991, and important changes were made in 1995 to the Housing Quality Standards (HQS) that apply to Section 8 tenant-based rental assistance and certain other HUD programs.

Title X represents a new and sweeping approach to the problem of lead-based paint poisoning of children, necessitating a comprehensive revision of HUD's lead-based paint regulations. Title X amends what had previously been general language contained in the Lead-Based Paint Poisoning Prevention Act and sets out specific requirements for federally owned residential property and housing receiving Federal assistance. Title X stresses identification of hazards, notification to occupants of the existence of these hazards, and control of those hazards. This final rule also reflects current knowledge of the causes of lead poisoning and current lead-based paint hazard evaluation and reduction technologies and practices. The presence of lead-based paint will be more accurately identified, with fewer false negatives or false positives. Likewise, the existence, nature, severity and location of lead-based paint hazards (in dust, soil and deteriorated paint) will be more accurately identified and reported. By improving lead-based paint hazard evaluation, decisions about hazard reduction activities will be more fully informed, and available resources will be better targeted to reduce exposure to occupants and to the environment.

C. HUD Reinvention

The Department has launched a major restructuring to meet the changing housing and development needs of communities across the country. The restructuring includes program consolidation, organizational changes within the Department, and relocation of some cross-cutting functions outside of Washington, D.C. HUD's reinvention efforts are taking place in the context of a broader, government-wide reinvention process, the National Performance Review, initiated by President Clinton and Vice-President Gore. The goal of the reinvention is to give State, tribal and local decisionmakers maximum flexibility to tailor Federal resources in response to local circumstances, needs and priorities.

In order to keep pace with the changes HUD is undertaking, the Department's program regulations must also change. Although this lead-based paint rule was developed to implement the statutory requirements of Title X for federally owned residential property and housing receiving Federal assistance, the Department saw this as an opportunity to revise all of its lead-based paint regulations to keep pace with changes in the scientific understanding of how childhood lead poisoning occurs, lead-based paint technology and in HUD service delivery.

The rule consolidates numerous lead-based paint regulations found throughout HUD's program regulations into part 35 of title 24 of the Code of Federal Regulations. This eliminates redundant lead-based paint regulations and achieves consistency among the lead-based paint requirements for different HUD programs. Before this rule, many HUD clients received funding from several HUD programs with separate and sometimes inconsistent sets of program regulations.

This rule groups HUD programs by the type of assistance provided to make it easier to understand and implement. For instance, a client receiving HUD funds for rehabilitation will find only one rehabilitation subpart. In addition, grouping HUD programs by type of assistance allows greater flexibility for local governments and recipients of HUD funds.

Finally, the rule reflects HUD's efforts to balance the practical need for cost-effective, affordable lead-based paint hazard notification, evaluation and reduction measures with the statutory requirements of Title X as well as with HUD's duty to protect children living in a residential property that is owned or assisted by the Federal government.

D. Public Input on Rulemaking

Consistent with Executive Order 12866, Regulatory Planning and Review, and with Executive Order 13045 on Protection of Children From Environmental Health Risks and Safety Risks, HUD has increased public participation in the regulatory development process, with attention to the special needs of children. Because of the magnitude of the changes required in HUD's lead-based paint regulations and the potential impact of these changes, public involvement was crucial to the rulemaking process. The three main avenues for public involvement in the development of the proposed rule were the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995) (HUD Guidelines), the recommendations from the Task Force on Lead-Based Paint Hazard Reduction and Financing (Task Force), and three major meetings of HUD clients to seek input on the implementation of Title X. In addition to these three methods of public involvement, there was, of course, the opportunity for public comment on the proposed rule.

1. *HUD Guidelines.* The HUD Guidelines were mandated by section 1017 of Title X. They were developed by housing, public health and environmental professionals with broad experience in lead-based paint hazard identification and control. The HUD Guidelines form the basis for many of the lead-based paint evaluation and reduction methods described in subpart R, and are intended to help property owners, government agencies and private contractors sharply reduce children's exposure to lead-based paint hazards, without adding unnecessarily to the cost of housing.

2. *Title X Task Force.* The Task Force on Lead-Based Paint Hazard Reduction and Financing (Task Force) was mandated by section 1015 of Title X. The Task Force submitted its report with recommendations, Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing, to then-HUD Secretary Henry Cisneros and EPA Administrator Carol Browner in July 1995. Members of the Task Force included representatives from Federal agencies, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the building and construction industry, landlords, tenants, primary lending

institutions, private mortgage insurers, single family and multifamily real estate interests, nonprofit housing developers, property liability insurers, public housing agencies, low-income housing advocacy organizations, lead-poisoning prevention advocates and community-based organizations serving communities at high-risk for childhood lead poisoning. The mandate of the Task Force was to address sensitive issues related to lead-based paint hazards in private housing, including standards of evaluation and control, financing, and liability and insurance for rental property owners and hazard control contractors. Methods found in this rule for ongoing lead-based paint maintenance and the option for standard treatments are drawn from the Task Force recommendations. Further discussion of ways the Department used the Task Force recommendations in developing this rule is provided below under ''Other General Issues.''

3. *Meetings with HUD Clients.* Prior to the development of the proposed rule, the Department held three meetings with HUD clients on the potential implications of Title X on HUD programs. The meetings involved HUD constituents, grantees, and field staff of the Offices of Public and Indian Housing (PIH), Community Planning and Development (CPD), and Housing, as well as advocacy and tenant representatives. Participants shared their thoughts on several Title X issues including: Risk assessment and interim controls, hazard reduction activities during the course of rehabilitation, occupant notice of evaluation and hazard reduction activities, and responding to children with elevated blood-lead levels. Additional written comments were accepted from participants after the meetings.

4. *Comments on Proposed Rule.* Under the authority of Title X, HUD published a proposed rule in the **Federal Register** of June 7, 1996 (61 FR 29170). The proposed rule set forth new requirements for lead-based paint hazard notification, evaluation, and reduction for federally owned residential property and housing receiving Federal assistance. Comments on the proposed rule were requested on or before September 5, 1996.

Most of the 93 comments were from persons representing organizations that would be directly affected by the rule. More than a third of the comments (34) came from agencies of State or local government: Community development agencies, public housing authorities, planners, mayors, health departments and other organizations directly or indirectly involved with federally assisted programs involving housing. Groups representing the housing and community development industry, or segments of it, accounted for an additional nine comments.

Fourteen Federal agencies submitted comments on the rule, including 11 agencies affected by it as potential regulated entities, and three others with their own regulatory role in some aspect of health and safety regulations associated with lead poisoning. Four comments were received from hospitals, physicians or health agencies other than those included in the count of State or local agencies, above. Four lead poisoning prevention advocacy groups submitted comments, along with three more broadly based environmental groups and five law firms or legal aid organizations.

Housing developers, or representatives of developers, accounted for five comments. Eight others were received from persons identifying themselves as consultants or experts on some aspect of the rule, or individuals who did not explain the basis of their interest in the rule. In addition, two comments were received from standards-setting entities, and one each from a bank, a secondary mortgage market organization, a coalition of tenant action groups, a child welfare group, and an advocacy group representing industries that manufacture or use lead.

Comments are summarized below in Section II of this preamble and described in more detail in Section III of this preamble.

E. Related Actions by EPA and HUD

Title X requires EPA and HUD to take other very important actions that are complementary to and in some cases binding on this final rule. Five such actions are: (1) The HUD–EPA regulation on notification and disclosure during real estate transactions; (2) the EPA standards for certification of firms and individuals performing lead-based paint activities, and associated work practices standards; (3) EPA standards for determining hazardous levels of lead in paint, dust and soil; (4) the EPA program for the accreditation of laboratories for analysis of lead in paint, dust and soil; and (5) EPA requirements applying to renovation and remodeling activities.

1. *Disclosure Rule.* Section 1018 of Title X (42 U.S.C. 4852d) directs EPA and HUD to issue joint regulations requiring disclosure of known lead-based paint or lead-based paint hazards by persons selling or leasing most housing built before 1978. Under that authority, the two agencies published a final rule on March 6, 1996, which became effective on September 6, 1996 for owners of more than four dwelling units and on December 6, 1996 for owners of four or fewer dwelling units. The rule requires that, before completing the transaction, sellers and lessors of applicable housing must: (1) Provide purchasers and lessees (tenants) with the lead hazard information pamphlet approved by EPA; (2) disclose all known information about the presence of lead-based paint or lead-based paint hazards; (3) provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint or lead-based paint hazards; (4) include, as an attachment to the contract or lease, certain disclosure and acknowledgement language and a warning statement about the dangers of lead-based paint; and (5) include certain disclosure and acknowledgment language in the contract or lease. In addition, sellers must allow purchasers a ten-day opportunity to inspect the dwelling for lead-based paint or lead-based paint hazards. Purchasers and sellers are free to negotiate another mutually-agreeable time period and all other aspects of the inspection or risk assessment. Agents must ensure compliance with these requirements. Section 1018 does not require either the buyer or the seller to conduct an inspection, nor does it require either the buyer or the seller to take action to reduce any lead-based paint or lead-based paint hazards. Also, with lease agreements, neither the landlord nor the tenant is required by section 1018 to conduct any type of inspection or hazard reduction.

Section 1012 of Title X (42 U.S.C. 4822) directs HUD to require that tenants and purchasers of ''target housing'' receiving Federal assistance be provided the same EPA-approved pamphlet that must be used in compliance with the section 1018 notification and disclosure regulation. (''Target housing'' is a statutorily defined term in Title X that means housing constructed before 1978, except housing for the elderly and persons with disabilities unless a child of less than 6 years of age resides or is expected to reside in the housing, and except any zero-bedroom dwelling.) As described below, HUD has avoided duplication of pamphlet dissemination requirements if the pamphlet has already been provided in compliance with the disclosure rule.

2. *EPA Certification Requirements and Work Practices Standards.* Title IV of the Toxic Substances Control Act (TSCA, 15 U.S.C. 2681–2692), as

amended by Title X, section 402(a) (15 U.S.C. 2682(a)) requires EPA to establish a regulatory framework governing lead-based paint activities that will ensure that individuals engaged in risk assessments, inspections and abatement are properly trained, that contractors are certified (licensed), and that training programs are accredited. TSCA section 404 (15 U.S.C. 2684) mandates a process under which EPA will approve State programs for training and certification of individuals and firms under section 402. In States lacking their own programs, EPA must establish, administer and enforce Federal programs. EPA published a final rule on August 29, 1996 (40 CFR part 745, subparts L and Q, 61 FR 45777–45830) implementing sections 402 and 404 as they pertain to target housing and ''child-occupied facilities'' (generally, certain facilities regularly visited by children under 6 years). The regulations contain the following requirements: Training and certification to ensure the proficiency of individuals who offer to conduct lead-based paint inspections, risk assessments or abatement services; accreditation requirements to ensure that training programs provide quality instruction; work practice standards to ensure that lead-based paint activities are conducted safely, reliably and effectively; and procedures for States and Tribes to apply to EPA for authorization to administer these elements. It is expected that many States and Tribes will have EPA-authorized certification programs in place prior to the effective date for the 402/404 rule, which is August 29, 1999. Regardless of the status of EPA authorizations, however, after that time, all lead-based paint inspections, risk assessments and abatements must be conducted by individuals and contractors certified in accordance with the EPA rule and the work must be in accordance with the work practice standards contained in that rule.

HUD requires that lead-based paint inspections, risk assessments and abatements done in compliance with its final rule on lead-based paint activities in federally owned and assisted housing be conducted in accordance with the EPA rule implementing TSCA sections 402 and 404, i.e., that individuals and firms be certified and the work be done in accordance with the work practices standards. It should be noted that the EPA regulation is not applicable to interim controls. It has been necessary, therefore, for HUD to include basic standards for such procedures in this rule.

3. *EPA Standards for Hazardous Levels of Lead in Paint, Dust and Soil.* TSCA section 403 (15 U.S.C. 2683) requires EPA to issue regulations identifying, for the purposes of Title X, levels of lead in paint, dust and soil that are considered hazardous. EPA published a proposed rule on June 3, 1998. When promulgated and effective, the final rule implementing section 403 will contain standards that affect the risk assessments required in this rule. In the meantime, the interim levels of lead in paint, dust and soil set forth in this rule issued by HUD shall be followed in housing covered by the rule. When the TSCA 403 rule is effective, HUD will issue any technical amendments that are needed to make clear what standards are applicable to this rule at that time.

4. *EPA Laboratory Accreditation Program.* Under TSCA section 405(b) (15 U.S.C. 2685(b)), EPA has established the National Lead Laboratory Accreditation Program (NLLAP). NLLAP recognizes laboratories which have demonstrated the ability to accurately analyze lead in paint, dust, and soil samples. To be NLLAP recognized, laboratories must successfully participate in the Environmental Lead Proficiency Analytical Testing (ELPAT) program and undergo a systems audit. EPA has recognized the American Association for Laboratory Accreditation (A2LA) and the American Industrial Hygiene Association (AIHA) as NLLAP accrediting organizations. The National Lead Information Center Clearinghouse (1–800–424-LEAD) provides the public with a continually updated list of NLLAP recognized laboratories. In this rule on lead-based paint requirements in housing receiving Federal assistance and federally owned housing, HUD is requiring the use of NLLAP recognized laboratories for laboratory-based analysis of lead in paint, dust and soil samples.

5. *Possible EPA Regulations Pertaining to Renovation and Remodeling.* TSCA section 402(c) (15 U.S.C. 2682(c)) requires EPA to study the extent to which various types of renovation activities create a lead-based paint exposure hazard for workers or occupants where the work is being conducted. The same section directs EPA to revise the regulations implementing section 402(a) to apply to renovation and remodeling activities or to determine that such regulations are not required. EPA has not yet made the determination as to whether regulatory revision is necessary. If EPA does decide to issue such regulations, it is possible that they would apply to interim controls, which are a type of hazard reduction activity commonly required in this HUD rule but not currently regulated by EPA. Other types of work may also be affected. Until EPA promulgates and makes effective a new regulation under TSCA section 402(c), the requirements in this rule issued by HUD shall be followed in housing covered by the rule.

II. Summary of Public Comments on Proposed Rule

A. Diversity of Comments

With only a few exceptions, commenters on the proposed rule agreed that lead-based paint hazards are a serious health problem deserving to be addressed. There was, however, an extraordinary diversity of views regarding how best to control lead-based paint and its associated risks. Additionally, commenters varied widely on the question of what relative priority lead-based paint control efforts should enjoy, given the shortage of resources for the provision of housing services generally, and the costs associated with lead hazard control measures.

Commenters also perceived the proposed rule in different ways. Some considered it biased in favor of lead-based paint abatement as opposed to less expensive interim control procedures. Several argued that in recent years interim controls have become accepted as a wiser response to lead hazards than more elaborate abatement processes. Other commenters, however, warned against what they saw as undue readiness in the proposed rule to undertake limited measures to control hazards in circumstances where, *these* commenters believed, such measures would be inadequate and would afford only temporary solutions of unknown duration.

Spokespersons for State and local funded agencies, despite providing many comments on ways to make the rule more effective, were concerned that the cost of compliance with the rule would severely affect their housing programs.

Most, although not all, of the commenters representing the health industry or environmental concerns pleaded for a stronger rule, for more rapid effectiveness, and for a more strenuous program of hazard control than the proposed rule required.

Regulated Federal agencies, like their State and local counterparts, worried about costs and often advocated wider discretion. Many State and Federal commenters advocated more deference on HUD's part to hazard control programs, present or future, that have been or will be developed elsewhere.

Commenters from varying backgrounds suggested that HUD's rule

was likely to become the nationwide ''standard'' for compliance, i.e., that courts (through tort litigation) and lending institutions (through underwriting standards) eventually would establish a standard of care applicable to *private* housing suppliers that was closely patterned after the standards set out in this rule. Most often, this observation was accompanied by expressions of concern that the proposed rule was not adequate to provide the appropriate standard of care for the nation's housing stock.

B. Commenters' Broad Concerns

Following is a brief description of the most common concerns expressed by the commenters. The Department's response to these concerns is described and explained in Section IV of this preamble below.

1. *''Missed Opportunities''*. Some argued that the proposed rule was misdirected, set the wrong priorities, spent limited resources less wisely than they could be spent, or failed to take important additional considerations into account. Most typical are comments suggesting that the rule:

(1) Should stress abatement more (or less);

(2) Is inadequately focused on controlling lead in units currently occupied by small children;

(3) Pays insufficient attention to soil-related hazards;

(4) Pays too little deference to EPA and/or private-sector standards-setters;

(5) Stresses liability risk-management over health-based hazard control measures; or

(6) Otherwise misses an opportunity to apply the most effective possible rule to an acknowledged problem.

2. *Cost of Compliance*. A very large number of commenters expressed concerns about costs. Cost-related comments took many forms, but the most frequently raised assertions were variations on the following:

(1) The cost-benefit analysis in the Economic Analysis is inaccurate and grossly underestimates the impact the rule will have on the ability of federally funded entities to carry out their programs.

(2) Because of high costs, the regulation will divert resources that could be better used to meet other critical housing needs.

(3) Costs will be so extreme that many housing programs currently in existence will be forced to close down or drastically curtail their productivity.

(4) The rule will cause existing housing to deteriorate as it becomes too expensive to rehabilitate, or will distort local selection processes by steering them away from older dwellings most in need of rehabilitation.

(5) Landlords in HUD's tenant-based rental assistance program will not accept the additional financial burden of participating in the program.

3. *Legality of Portions of the Rule*. Two of the issues presented raised challenges to the legitimacy of portions of the rule, asserting that:

(1) Lead hazard controls in the tenant-based subsidy programs and controls on properties receiving less than $5,000 in project-based assistance are beyond the scope of the statute.

(2) The rule's soil-testing and soil-abatement/control provisions are outside the scope of HUD's authority, to the extent they fail to differentiate the *sources* of lead in dust.

4. *Perceived HUD Overreaching*. Beyond the aforementioned legal challenges, some commenters thought that the rule exceeded proper bounds. They asserted that:

(1) The rule is an ''unfunded mandate,'' in that it would require expensive undertakings by those regulated, without the offer of a new source of financial assistance.

(2) The rule, by imposing new risk assessment requirements and/or new obligations to control hazards, would endanger existing contracts.

(3) The underlying statute makes no distinction between HUD-assisted and other housing receiving Federal assistance, while the rule provides for this dichotomy without providing any justification.

(4) The rule fails to provide real support to local hazard control efforts, instead imposing requirements that fail to recognize important community concerns.

III. Response to Public Comments and Final Rule Provisions

A. Scope and Applicability

This rule implements the requirements of the Lead-Based Paint Poisoning Prevention Act (LPPPA), as amended by section 1012 and section 1013 of Title X.

Throughout this rule, lead-based paint hazard notification, evaluation, and reduction requirements represent the minimum activities required. Parties may voluntarily undertake more extensive lead-based paint activities if appropriate or permitted under the specific housing program with which the dwelling unit or residential property is associated.

If the requirements of this rule for a dwelling unit or residential property differ from those of the State, tribal or local government, the more protective requirement applies.

Section 302 of the LPPPA requires HUD ''to establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary or otherwise receives more than $5,000 in project-based assistance under a Federal housing program.'' In addition, the LPPPA requires HUD to establish procedures for the inspection and reduction of lead-based paint hazards in Federally owned housing at disposition. Accordingly, this final rule covers all target housing that: (1) HUD is associated with; (2) receives more than $5,000 in project-based assistance under a program of an agency other than HUD; and (3) is being disposed of by the Federal government.

Since 1975, when it first proposed regulations implementing section 302, HUD has taken a broad interpretation of the phrase ''covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary.'' The scope of HUD's lead-based paint regulations has always included all HUD-associated housing, and this final rule continues that policy. The phrase, ''or otherwise receives more than $5,000 in project-based assistance under a Federal housing program,'' was added to section 302 by Title X in 1992. HUD's interpretation of that phrase is explained below.

1. *Housing Receiving Less Than $5,000 in Project-Based Rental Assistance*. Section 1012(a) amends the first sentence of the Lead-Based Paint Poisoning Prevention Act to add the phrase ''or otherwise receives more than $5,000 in project-based assistance under a Federal housing program'' so that 42 U.S.C. 4822(a) now reads as follows: ''The Secretary of Housing and Urban Development * * * shall establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary or otherwise receives more than $5,000 in project-based assistance under a Federal housing program.''

One commenter asserted that HUD is ''clearly outside of its statutory authority'' in imposing requirements on multifamily properties receiving less than $5,000 in project-based assistance. Quoting the 1992 amendments, the

commenter declared that despite HUD's imposing only minimal procedures on these under-$5,000 properties, the rule would result in additional costs and regulatory burdens on property owners that the Congress ''never intended to regulate.''

HUD disagrees. The statute does not prohibit the Department from establishing lead-based paint hazard reduction requirements for housing receiving less than $5,000 in project-based assistance under a program administered by the Secretary of HUD. The legislative history makes this clear. The Senate committee report accompanying the bill states, ''Title X would expand the coverage of the LPPPA to include pre-1978 housing suitable for occupancy by families * * * which is covered by an application for mortgage insurance or housing assistance payments *under a HUD program* or receives more than $5,000 in housing assistance *through another federal program*'' (emphasis added, Senate Report 102–332, page 117).

Although the statute gives HUD authority to impose the same requirements on HUD assisted housing receiving less than $5,000 as on that receiving more than $5,000, the Department recognizes that the Congress intended that the stringency of the requirements would be related generally to the amount of financial assistance from the Government. HUD is not requiring, therefore, housing receiving multifamily project-based rental assistance of $5,000 or less per unit per year to comply with the statutorily specified requirements for multifamily housing receiving project-based rental assistance of more than $5,000 per unit per year. Instead, the rule requires such housing to comply with the less stringent procedures established for tenant-based rental assistance.

2. *Tenant-Based Rental Assistance*. Some commenters thought that the Congress never intended for the rule to impose duties on landlords in the tenant-based rental assistance programs. This group argued that there exists a ''statutory, program-wide exemption for housing receiving tenant-based Section 8 assistance.''

The statute is silent on whether the new minimum procedures for lead-based paint hazard notification, evaluation and reduction apply to tenant-based rental assistance. Congress did not amend the first sentence of the Lead-Based Paint Poisoning Prevention Act, set out above, to delete or amend the phrase ''housing assistance payments.'' HUD has historically interpreted this general phrase to cover virtually all types of housing assistance, including tenant-based rental assistance—the type of assistance that it seems to cover most obviously. The legislative history for Title X states, however, that housing receiving tenant-based rental assistance would be exempt from the Lead-Based Paint Poisoning Prevention Act, as amended by Title X. Congress was concerned that, due to the tendency of residential properties to pass in and out of tenant-based Federal assistance programs, it would be unworkable and inequitable to impose greater burdens on owners of such properties than on other private landlords (Senate Report 102–332, page 117).

Clearly, Congress did not intend for HUD to apply the new minimum procedures set out in section 1012(a) of Title X to tenant-based rental assistance. HUD does not believe, however, that Congress intended to abolish HUD's current procedures, which serve to protect, in a minimal way, the children in families receiving this type of housing assistance. Rather, HUD infers that Congress intended for the Department to effectively retain its present lead-based paint requirements for tenant-based rental assistance. In its current regulations, HUD requires units with tenant-based rental assistance occupied by families with children under 6 to meet the minimal standard for lead-based paint found in its Housing Quality Standards (HQS) (see 24 CFR 982.401). In this rule, then, HUD continues to require tenant-based rental property to meet HQS. To streamline requirements, HUD has modified the lead-based paint requirements in the current HQS slightly, in order to be consistent with recent scientific information on how to protect children who are exposed to lead-based paint hazards. The requirements in this rule for tenant-based rental assistance continue to apply only to units in which children of less than 6 years of age reside. HUD does not believe Congress intended that Federal funds be used to subsidize housing that can poison children.

3. *Federally Owned Housing and the Availability of Appropriations*. Section 1013 of Title X amends the Lead-Based Paint Poisoning Prevention Act at section 302 to modify existing requirements for the sale (disposition) of all residential property constructed before 1978 and owned by a Federal agency. Section 302(a)(3)(C) (42 U.S.C. 4822(a)(3)(C)) states that:

''To the extent that subparagraphs (A) and (B) (which contain evaluation and abatement requirements for pre-1960 housing, and evaluation and notification requirements for housing constructed between 1960 and 1978) increase the cost to the Government of outstanding direct loan obligations or loan guarantee commitments, such activities shall be treated as modifications under section 504(e) of the Federal Credit Reform Act of 1990 and shall be subject to the availability of appropriations. To the extent that paragraphs (A) and (B) impose additional costs to the Resolution Trust Corporation and the Federal Deposit Insurance Corporation, its requirements shall be carried out only if appropriations are provided in advance in an appropriations Act. In the absence of appropriations sufficient to cover the costs of subparagraphs (A) and (B), these requirements shall not apply to the affected agency or agencies.''

In the proposed rule, the Department interpreted this language to mean that HUD (and other Federal agencies that own residential property) need not comply with the requirements set out in section 302(a)(3) if sufficient funds are not appropriated to the agency for this purpose. The Department then proposed in the absence of sufficient appropriations to include requirements to identify and treat deteriorated paint in HUD-owned properties (similar to current procedures), even if funding is not made available to the Department to carry out more extensive lead-based paint evaluation and reduction.

Commenters expressed strong objections to basing the rule's requirements on the adequacy of appropriations. Several commenters questioned whether a determination that appropriations were ''inadequate'' would or could ever be made. There was also sentiment against using such a two-pronged system for determining regulatory responsibility at all: ''Letting our standards be set by appropriation levels is dreadful public policy when the health of children [is] at stake.''

A commenter urged HUD to retain high standards in the regulations and ''let the legislative process deal with the fiscal responsibility [for] this community health issue.'' If more costly requirements are optional, money will not be appropriated, predicted another commenter. Others agreed, saying that since adequate (separate) appropriations are not at all likely to be forthcoming for each program, contemplating them confuses ''an already complex regulation.''

State and local funded agencies and others expressed their resentment concerning the ''adequate appropriations'' approach taken in the subparts affecting HUD and other Federal agency responsibilities in the proposed rule: ''HUD has two standards, depending on whether there is a Federal appropriation. We find this interesting as HUD has *refused* to seek an

appropriation since the legislation was passed in 1992. Instead, subpart G (HUD without appropriations) will be used.''

Two commenters posed the question, ''may CDBG and HOME recipients ignore *their* regulations if there is not additional or sufficient funding to properly do the work?''

Another commenter roundly condemned the appropriations-based dichotomy as ''seriously misguided'':

> '' * * * There will never be explicit 'sufficient' appropriations, and the Secretary is unlikely ever to make an explicit pronouncement that appropriations are 'insufficient.' HUD should be adopting a single set of requirements that stipulate minimum levels of hazard controls as part of the price of doing business, not as a matter of fiscal convenience.''

An environmental health advocacy group discussed the statutory exception that is provided for the disposition of certain federally owned housing—where inspection and risk assessment is called for (under section 302(a)(3)) *except* when compliance would increase the cost to the Government of outstanding direct loan obligations or loan guarantee commitments (or would impose additional costs on RTC or FDIC)—*and* there are no appropriations to fund those increased costs.

The described exception, the commenter maintained, was the *only* such exception/exemption in the statute:

> '' * * * Absolutely no evidence exists to support the contention that Congress implied or otherwise intended that HUD should be able to grant federal agencies broad discretion to opt out of lead hazard evaluation and control requirements. Such an interpretation would allow federal agencies such as the General Services Administration and the Department of Defense to simply dispose of their properties without paying heed to their condition or habitability * * *.''

The group urged that, in its final property disposition regulations, HUD clearly limit waiver availability only to those agencies that qualify, based on the cited statutory exemptions. The commenter also urged that HUD revise the regulation to describe ''minimum steps'' that even agencies entitled to the waiver must undertake. A ''sweeping exemption'' is clearly unacceptable, the group declared, and HUD ''must not condone such an irresponsible policy and must instead set some floor of minimum requirements with which all federal agencies must comply, regardless of appropriations.''

HUD acknowledges the validity of many of these comments. In the final rule, the Department includes single subparts for HUD-owned single family property and HUD-owned multifamily property, rather than providing separate subparts for when HUD has sufficient appropriations and when HUD does not have sufficient appropriations. An additional subpart is included for residential property owned by Federal agencies other than HUD; the requirements in this subpart are identical to those in Title X. Each affected agency must decide whether the requirements of Title X apply to it; HUD feels that it is inappropriate for the Department to decide this issue for other agencies.

HUD maintains, however, that the language of section 302(a)(3)(C) makes the lead-based paint requirements for HUD-owned residential property conditional on the sufficiency of appropriated funds to be used to conduct inspections and abate lead-based paint hazards in HUD-owned residential property. HUD has never received such an appropriation for these purposes and it did not receive such a line item in the most recent appropriations act. Therefore, in the Department's view, ''appropriations'' are not presently sufficient to conduct the lead-based paint activities required under section 302(a)(3)(A) and (B) and HUD is not required to implement these procedures. If sufficient appropriations become available at a later time, this final rule may have to be amended.

It should be noted that HUD interprets the first sentence of section 302(a)(3)(C) to apply only to HUD programs where the cost of conducting lead-based paint evaluation or abatement activities under section 302(a)(3)(A) and (B) increase HUD's outstanding direct loan obligations or loan guarantee commitments. Since appropriations are not sufficient for the Department to conduct inspections and abatement of lead-based paint hazards in accordance with section 302(a)(3)(A) and (B), a determination of the effect of such activities on HUD's direct loan obligations or loan guarantee commitments is unnecessary.

Although HUD has made the determination for purposes of section 302(a)(3) that it does not have ''sufficient appropriations'' and therefore, the Department is not required to implement the procedures set out in section 302(a)(3) for its HUD-owned properties, the Department nevertheless has included lead-based paint procedures in this final rule which the Department can afford to implement and which, in HUD's view, are fully protective. While Congress under Title X did not require the Department to carry out the requirements in section 302(a)(3)(A) and (B) in the absence of sufficient appropriations, Congress was silent concerning what activities the Department should carry out to reduce lead-based paint hazards in HUD-held properties in the absence of appropriations. This created a ''gap'' for HUD's interpretation. Under *Chevron U.S.A., Inc.* v. *National Resources Defense Council*, 467 U.S. 837 (1984), where a statute is silent or ambiguous on a specific issue, the Department's interpretation of the statute will be upheld if it is based on a permissible or reasonable construction of the statute. The Department believes that Congress did not intend for HUD to ignore lead-based paint in its properties, even in the absence of sufficient appropriations. As a consequence, HUD has developed procedures for HUD-owned properties, as set forth in subparts F and I, which it believes are reasonable.

4. *Soil and Dust Standards.* a. *Legal Issues.* A legal question raised by commenters had to do with the Department's authority to regulate in the area of dust and soil. Two basic questions were raised: authority to regulate in the asserted absence of a nexus with lead-based paint, and authority to regulate in the absence of EPA regulations defining hazardous levels of lead in dust and soil under section 403 of the Toxic Substances Control Act.

One commenter claimed that HUD is exceeding its authority and has moved ''arbitrarily and capriciously'' by setting interim controls and abatement levels for lead in soil and dust without reference to the risk posed by the *type* of lead contained in soil or dust, or to the bioavailability of the lead. Because HUD's action is in advance of EPA's statutorily mandated determinations of soil cleanup levels, HUD is overreaching, in the commenter's opinion, because the Congress intended that EPA's regulatory action—identifying what are hazardous levels of lead in dust and soil—was to be the ''first step'' in rulemaking on that subject matter. According to the commenter, the Congress gave HUD and EPA authority to implement interim controls and abatement with respect to hazards from lead-based *paint*, including the dust *from lead-based paint and soil contaminated by lead-based paint*. Thus, HUD set *ad hoc* standards for lead dust and soil in the absence of any EPA study results *and* without any nexus to lead-based paint.

Further, the commenter stated that HUD was attempting to ''decouple'' dust and soil testing and abatement from any necessary relation to lead-based paint itself. The ''unstated premise'' of HUD's rule would be that all lead in dust is

assumed to come from paint, although this is not the case. HUD's approach would unfairly burden property owners with the costs of cleaning up soil and dust which may have become contaminated from ''sources not under the property owner's control.'' This regulatory requirement, the commenter asserted, would raise the constitutional questions of a ''taking without just compensation and deprivation of property without due process of law under the Fifth Amendment * * *''

The commenter concluded that HUD should not ''decouple'' lead found in dust and soil from the *source* of that lead, and should reconsider its imposition of a single dust-lead standard unrelated to the source of the lead or its bioavailability. Where there is a source of dust related to lead paint, HUD's standards may be workable, the commenter acknowledged, although waiting for EPA's upcoming standards under section 403 of the 1992 Act ''would have been more consistent with Congress' intent.'' HUD's proposed standards, however, would be ''unfair'' to the extent there are other sources of lead involved, because the Department assertedly lacks authority to regulate lead that is from non-paint sources, and because the regulations would bear ''no relationship to cause or risk.''

HUD and EPA, after careful consideration, do not agree with the commenter's argument. EPA, which has the relevant regulatory authority under TSCA section 403, has concluded that the language of Title X supports an interpretation that dust and soil lead are covered regardless of the source of the lead. Definitions in Title X do not limit the source of lead in soil or dust to lead from lead-based paint. The definitions of ''lead-contaminated dust'' and ''lead-contaminated soil'' do not specify that the source of lead in the dust or soil must be lead-based paint. In fact, the definition of ''lead-based paint hazard'' specifies lead-contaminated dust and soil as sources of lead contamination separate from and not explicitly linked to lead-contaminated paint.

Furthermore, as a practical matter, it is not possible to determine through routine chemical analysis the source of the lead in the dust and soil at any given site, not to mention every site of pre-1978 housing in the nation. Also, it is well known that the scientific literature has determined that lead in dust is an important source of childhood lead exposure and that dust lead is well correlated with paint lead (Lanphear, 1996). It is unlikely, therefore, that the Congress meant to curtail the reduction of lead in dust at each individual property covered by this regulation until it is established that paint is the source of the lead in dust at the site.

HUD acknowledges, however, that owners cannot be expected to have protected their properties from dust-lead deriving from such sources as gasoline combustion, nearby bridge repainting, or nearby industrial activity. It is reasonable that this final rule should give the highest priority to the reduction of lead in old residential paint that may cause lead exposure in children. As explained below in Section III.A.5.b of this preamble, HUD has exempted from the requirements of this final rule residential properties that are found not to contain lead-based paint or that have had all lead-based paint removed. (This exemption is consistent with a similar exemption in the real estate notification and disclosure rule that was issued jointly by HUD and EPA on March 6, 1996.) Thus, in this final rule, dust-lead hazards and soil-lead hazards are regulated only in properties in which lead-based paint is known or presumed to be present.

b. *Coordination With EPA Rulemaking.* With regard to coordination with EPA rulemaking on hazardous levels of lead in dust and soil, HUD agrees that the standards set forth in final regulations promulgated and made effective by EPA pursuant to TSCA section 403 will be relevant to this rule. The final rule states that the section 403 standards shall be referenced when such standards are promulgated and effective. There may be a period of time, however, between the effective date of this final rule and the 403 regulations. Therefore, the Department is including in this final rule interim standards for levels of lead in dust and soil that are based on a recently-completed, peer-reviewed, pooled analysis of virtually all available epidemiological studies that directly measure the relationship between lead in children's blood and lead in dust and soil (Lanphear et al. 1998). This ensures that HUD's interim standards are scientifically valid. The interim standards promulgated in this rule are reasonably consistent with the standards recently proposed by EPA. For further discussion of the interim standards, see Sections III.E.15.a and b of this preamble, below.

The Department does not agree with the comment (cited above in Section III.A.4.a of this preamble) that it should delay all regulatory action pertaining to lead in dust and soil until final 403 regulations are promulgated. HUD has previously established standards for dust lead and soil lead to ensure that hazard controls are properly targeted and are effective in the housing it assists or owns. Such standards were published in Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing, September 1990 (Interim Guidelines); and again in Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, June 1995 (HUD Guidelines). These standards have already been widely used in HUD programs. The scientific literature has confirmed that lead in dust and soil are important pathways to childhood lead exposure, as discussed below in Section III.E.15.b of this preamble.

When EPA regulations implementing TSCA section 403 are final and effective, they will apply to this HUD rule and will supersede most of the HUD interim standards for dust and soil. If the final section 403 rule does not establish a standard for an activity or situation that is covered by the HUD interim standards, there may be a question as to whether that aspect of the interim standards is retained. HUD expects that, after the section 403 rule is published, the Department will publish a technical amendment to this rule or engage in additional rulemaking to make clear what the applicable standards are.

5. *Exemptions.* a. *Housing for the Elderly.* This rule applies most broadly to ''target housing,'' which is defined in Title X as 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 the unit) or any 0-bedroom dwelling unit. As in the proposed rule, HUD interprets the exemptions for elderly and disabled housing to apply only to residential property which is designated exclusively for elderly or disabled use.

Some commenters complained about this restrictive interpretation and urged that it should be enough that elderly or disabled persons reside in a dwelling unit and that no young children are expected to reside there. After careful consideration, HUD has decided to retain the interpretation of the exemption that was adopted in the proposed rule. This is consistent with the definition of target housing used in all regulations issued pursuant to Title X. The statute has never been interpreted as providing an exemption for each dwelling that happens to be occupied by elderly or disabled persons. Such a policy, in the judgment of the Department, would be contrary to the intent of the statute, which is to eliminate as far as practicable lead-based paint hazards in all housing receiving Federal assistance and in federally owned housing at disposition.

Most dwellings currently occupied by elderly persons or persons with disabilities will probably be occupied by a child in the future.

The Department defines the phrase ''expected to reside'' in the statutory definition of target housing as meaning that there is actual knowledge that a child is expected to reside, rather than a general presumption that a child will probably reside in the dwelling unit sometime in the future. If a woman residing in the dwelling unit is known to be pregnant, there is actual knowledge that a child is expected to reside in that unit. However, in the context of most residential real estate transactions it is not advisable to inquire as to whether a woman is pregnant. The term ''expected to reside'' is used in the statutory definition of ''target housing'' in Title X, but it is not defined there. It would not be unreasonable for people seeking to comply with the law to think that the term might refer to the distant future, that is ''expected to reside at some time, however far in the future.'' That uncertain potentiality is not part of HUD's interpretation of statutory intent. Therefore HUD is providing this tightened definition to minimize confusion.

b. *Absence of Lead-Based Paint, or Prior Hazard Reduction.* The proposed rule provided exemptions from certain requirements if a residential property was found to contain no lead-based paint, but such exemptions did not apply to all programs. To streamline the final rule, exemptions are provided for properties found not to have lead-based paint by a certified lead-based paint inspector and for properties in which all lead-based paint has been identified and removed in accordance with procedures established by an EPA-authorized State or tribal program or by EPA in accordance with 40 CFR part 745, subparts L and Q. If the method of abatement is enclosure or encapsulation, this exemption does not apply because lead-based paint is still present.

An owner or recipient of Federal assistance hoping to qualify for this exemption may question whether correcting for possibly incorrect (or outdated) positive findings during lead-based paint inspections is permissible. In the rule, the owner or recipient always retains the option of having additional tests performed by a certified lead-based paint inspector. Nothing in the regulation is intended to revoke or restrict that option. An additional test can sometimes clarify whether lead-based paint is or is not present. Actions may be taken based on the results of the most recent inspection by a certified lead-based paint inspector, provided appropriate technology is used. Laboratory analysis of a properly taken paint sample is a more reliable method of measurement than the use of a portable X-ray fluorescence (XRF) analyzer on site. Therefore a new laboratory analysis of a paint sample can overturn either an old portable XRF reading or an old laboratory test, but a new portable XRF reading can overturn only an old portable XRF reading.

These general exemptions are intended to apply only if the entire residential property is free of lead-based paint or has had all lead-based paint removed. The term ''residential property'' is defined in the rule as including such things as outbuildings, fences, and play equipment affixed to the property as well as dwelling units and common areas.

HUD is providing this exemption to assure that the highest priority in the use of scarce lead-based paint hazard control resources is given to residential properties with lead-based paint. The Department recognizes that some properties have dust-lead hazards and/or soil-lead hazards but do not have any lead-based paint. These properties are expected to be a small proportion of the total affected stock, however.

c. *Housing To Be Demolished.* In response to questions from various sources, the rule provides that housing to be demolished is exempt, provided the housing remains unoccupied until demolition. Owners should be aware, of course, that other local, State and Federal regulations pertaining to environmental protection and occupational safety and health may apply to demolitions.

d. *Nonresidential Property.* The final rule also states explicitly that property that is not and will not be used for human habitation is exempt. In the case of a mixed use property, HUD intends that only those parts of the property normally associated with residential use shall be covered by this rule. For example, retail and office establishments in an apartment building would not be covered, but hallways leading to such uses would be covered if the hallways also service dwelling units that are covered by the rule.

e. *Rehabilitation Disturbing Little or No Painted Surface.* Commenters also complained that existing exemptions in HUD rules for weatherization, emergency repairs, water/sewer hookups, installation of security devices, and other special work were no longer included in the rule, even though, the commenters said, these were ''realistic and necessary'' exemptions. The commenters were concerned primarily with rehabilitation activities funded under the Community Development Block Grant or HOME programs.

With regard to weatherization, the Department believes this is too broad a category on which to base an exemption from this rule. Weatherization often includes window replacement, which can generate lead dust and therefore should be performed with safe work practices. With regard to such activities as water and sewer hookups and installation of security devices, HUD has provided in subpart B of the final rule an exemption for rehabilitation that does not disturb a painted surface. Also, activities that disturb painted surfaces of no more than a ''de minimis'' amount of 2 square feet in any one interior room, 20 square feet on exterior surfaces, or 10 percent of the total surface area on an interior or exterior component with a small surface area are not required to use ''safe work practices,'' and worksite clearances are not required for such work. (This de minimis is stated in the section on safe work practices in subpart R of the rule.) Therefore, installation of security devices under rehabilitation assistance will generally not require special precautions usually associated with lead-based paint hazard reduction. Furthermore, in situations in which security devices are being installed as a part of the operation and maintenance of a residential property that is required under this rule to incorporate ongoing lead-based paint maintenance as a part of the everyday maintenance of the property, the same ''de minimis'' exemption applies.

f. *Emergency Actions and Natural Disasters.* The proposed rule provided a general exemption for properties undergoing emergency repairs in response to natural disaster. The Department believes that there are circumstances in which the time required for compliance could adversely affect life or property and, consequently, an appropriately tailored exemption is needed.

Two commenters requested additional exemptions beyond the ''natural disaster'' exemption set out in the proposed rule. They believed it was too narrow in scope, arguing that *any* form of disaster should be the basis for an exemption from the rule's requirements. On the other hand, others claimed that no justification existed for exempting damaged properties. At a minimum, these properties need risk assessment and full disclosure before any sale, one commenter said.

In the final rule, HUD has provided in subpart B a more carefully worded provision that provides an exception for ''emergency actions immediately necessary to safeguard against an imminent danger to human life, health or safety, or protect property from further structural damage (such as when a property has been damaged by a natural disaster, fire, or structural collapse) * * *'' The exemption states, however, that in such cases ''occupants shall be protected from exposure to lead in dust and debris generated by such emergency actions to the extent practicable.'' It is HUD's intent that such protection would include a thorough cleanup. The exemption extends only to the completion of repairs necessary to respond to the emergency; after that, the requirements of the rule apply.

g. *Law Enforcement Seized Property.* A spokesperson for the Treasury Department's Asset Forfeiture Program urged that law enforcement agencies seizing real properties should be able to dispose of those properties without the financial burden of compliance with the rule, with only a duty to warn potential transferees or purchasers of the possible presence of a lead-based paint hazard. The Justice Department's U.S. Marshals Service made similar comments, adding that the regulations will create ''an economic disincentive to seizing and forfeiting pre-1978 residential property.''

In view of the special nature of law enforcement, HUD has added a provision in subpart B of the final rule that exempts seized properties owned for 270 days or less from the evaluation and hazard reduction requirements of subpart C of this rule, which sets requirements for the disposition of residential properties owned by Federal agencies other than HUD. For seized properties owned longer than 270 days, the requirements of subpart C will apply. Ownership begins upon receipt of a judicial order of forfeiture. Approximately 400 seized, pre-1978 dwelling units are disposed of annually by the Department of the Treasury and the Federal Marshals Service of the Department of Justice combined. HUD expects that the Federal law enforcement agencies, in exercising their managerial responsibilities over seized residential property, will make every reasonable effort to maintain the property in a lead-safe condition.

h. *Emergency Rental and Foreclosure Prevention Assistance.* Some State and local agencies urged that programs providing emergency rental assistance or foreclosure prevention assistance be exempted. The final rule provides a limited exemption for such programs subject to subpart K, Acquisition, Leasing, Support Services, or Operation. The exemption for any specific dwelling unit expires after 100 days. 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.

i. *Adverse Weather.* In the proposed rule, the subparts covering disposition of HUD-owned single family property included an exception allowing delay of repainting if weather conditions make such work infeasible. In the final rule, the concept behind this exception has been broadened to apply to evaluation and reduction activities under all subparts, allowing delay ''for a reasonable time during a period when weather conditions are unsuitable for conventional construction activities.'' HUD intends that this exception will allow reasonable delay only and will not be an excuse for noncompliance.

j. *Historic Properties.* The National Park Service commented that HUD should provide greater flexibility to allow a balance to be achieved in specific cases between the objectives of the National Historic Preservation Act and those of the Lead-Based Paint Poisoning Prevention Act. Conflicts between the two goals, the protection of historically significant buildings and the creation of lead-safe housing, may occur where abatement is required. For example, the use of artificial siding and the replacement of historic trim and doors is generally not appropriate for historic buildings. In response, HUD has added a general exception in subpart B 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. If interim controls are conducted, ongoing maintenance and reevaluation shall be conducted as required by the applicable subpart. For comprehensive guidance on eliminating lead-based paint hazards from historic housing without removing historically significant features, see Chapter 18 of the HUD Guidelines or the National Parks Service publication, ''Preservation Brief 37: Appropriate Methods for Reducing Lead Paint Hazards in Historic Housing,'' by S.C. Park and D.C. Hicks, National Parks Service, Washington, DC 20013–7127 (1995).

k. *Insufficient Appropriations.* In the proposed rule, the Department included in the subpart covering disposition of residential property by a Federal agency other than HUD an exemption from that subpart if a Federal agency determines that sufficient funds are not appropriated to carry out the requirements of the subpart. In the final rule, this exemption, which implements a provision of section 1013 Title X, has been moved to the Exemptions section of subpart B (See Section III.A.3 of this preamble).

6. *Deference to Other Agencies.* Commenters sought, in varying forms, ''exemptions'' providing for deference to State or local agencies or other Federal agencies based on State lead-control laws or an agency's demonstrated performance.

In the final rule, the Department has provided such deference in specific situations. First, HUD is requiring that inspections, risk assessments and abatements be conducted in accordance with the work practices standards of a State or Indian Tribe with a program authorized by EPA under subpart Q of 40 CFR part 745 or, in the absence of such a program, with EPA's standards at 40 CFR part 745, subpart L. Therefore HUD is in effect incorporating the opportunity that is built into the EPA regulations for States to determine, within the EPA framework, procedures for evaluation and reduction. With regard to the policies of Federal agencies other than HUD, the final rule gives such agencies the authority to determine whether appropriations are sufficient to implement the requirements of section 1013 of Title X. (See further discussion of this matter in Section III.A.3 of this preamble, above.)

One agency suggested that high-performing public housing agencies with good property maintenance records should be exempt from the additional evaluations provided in the rule. Because the current performance rating instrument used by HUD and public housing agencies does not include a specific grade for lead-based paint activities, HUD does not believe it has a valid way to identify ''high-performing public housing agencies'' for the purposes of this rule. It is not possible, therefore, to provide such a broad exemption at this time.

7. *Changes and Deletions to Current HUD Regulations.* In the proposed rule, HUD did not include specific provisions for the deletion of existing part 35 provisions being replaced by this rule or the numerous lead-based paint requirements set out in various program regulations in Title 24. It was stated, however, in the preamble to the proposed rule that such deletions would be made, and this final rule provides such changes and deletions.

8. *Indian Housing Programs.* In the proposed rule, two subparts were applicable to Indian housing programs: the one pertaining to rehabilitation (which was to apply to the Indian Community Development Block Grant Program), and the one pertaining to public and Indian housing programs (which was to apply to housing owned and operated by Indian housing authorities under public and Indian housing programs). With the enactment of the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA, Pub. L. 104–330, 25 U.S.C. 4101 *et seq.*), it has been necessary to revise the way this rule applies to Indian housing programs. NAHASDA separated Indian housing from public housing and made funding for Indian housing under the United States Housing Act of 1937 unavailable. The primary program created by NAHASDA is the Indian Housing Block Grant Program, which can be used for many different forms of housing assistance. Therefore the following subparts have been made applicable to the Indian Housing Block Grant program: Subpart H, Project-Based Rental Assistance; subpart J, Rehabilitation (also applicable to the Indian Community Development Block Grant program); subpart K, Acquisition, Leasing, Support Services, or Operation (also applicable to the Indian Community Development Block Grant Program); and subpart M, Tenant-Based Rental Assistance. Tribes and tribally designated housing entities receiving funds from the Indian Housing Block Grant and Indian Community Development Block Grant programs must determine which subpart of this final rule applies based on the type of activity being conducted or assistance being provided to a particular dwelling unit or residential property. If more than one type of assistance is being provided, the most protective requirements apply.

9. *Applicability of Subparts to Programs and Dwelling Units.* Subparts C, D, and F through M of the final rule each set forth requirements for a specific type of Federal housing activity or assistance, such as mortgage insurance, rehabilitation assistance, project-based rental assistance, tenant-based rental assistance, or public housing. Each of these subparts applies to more than one program. For example, there are at least five HUD programs that provide tenant-based rental assistance, so all five are therefore subject to subpart M, which states the lead-based paint requirements for housing receiving tenant-based rental assistance.

In the proposed rule, HUD listed in the applicability section of each subpart the programs to which the subpart was to be applicable. This led to concern within the Department that such lists may be incomplete or go out of date. Therefore, in the final rule these lists have been removed from the applicability sections. In the applicability sections, care has been taken to try to describe clearly what types of housing assistance is and is not covered by each subpart. A current list of programs covered by each subpart is available on the internet at www.hud.gov, or by mail from the National Lead Information Center at 1–800–424–LEAD.

Several HUD housing assistance programs have more than one type of eligible activity, so some programs are subject to more than one subpart of this rule, as was mentioned above in regard to the Indian Housing Block Grant program. In fact, there are at least nine such programs at the time of this writing. These programs, with the subpart designations in parentheses, are as follows: Indian Housing Block Grant program (H, J, K, and M), Indian Community Development Block Grant program (J and K), Home Investment Partnerships program (HOME) (J, K, and M), Community Development Block Grant program (J and K), Supportive Housing Program (H, J, and K), Shelter Plus Care (H and M), Housing Opportunities for Persons With AIDS (HOPWA) (J and M), Homeownership of Multifamily Units (HOPE 2) (J and K), and HOPE for Homeownership of Single Family Homes (HOPE 3) (J and K). Grantees, participating jurisdictions, Indian tribes and other entities administering these flexible programs must decide which subpart or section of this rule applies to the type of assistance being provided to a particular dwelling unit or residential property. If more than one subpart or section applies, the one with the most protective requirements applies. To assist in making this judgment, HUD is providing in subpart B of the rule a table listing subparts and sections in order from the most to least protective initial hazard reduction requirements. In some cases, more than one program as well as more than one subpart or section may apply to a property or dwelling unit. In this case also the most protective requirements apply.

A multifamily residential property may have some dwelling units subject to one set of requirements and other units subject to other requirements. In this case, the owner has the choice of either operating the property with different sets of requirements or operating the entire property at the most protective level. An example of this situation is provided in subpart B of the rule.

B. Structure of the Rule

1. *Organization.* In the interests of simplicity and streamlining, all of the Department's lead-based paint requirements, including the disclosure rule, are now located in part 35. The proposed rule set forth lead-based paint requirements in three parts, including new parts 36 and 37 that, together with part 35, subpart H, were to comprise all of HUD's regulatory requirements for lead-based paint in a single place. Part 36 was to describe the lead-based paint requirements for each program covered under the Lead-Based Paint Poisoning Prevention Act, grouped in subparts according to the agency or office responsible and the type of assistance. Part 37 was to describe the standards and procedures for conducting the lead-based paint evaluation and hazard reduction activities required in part 36, with different activities described in different subparts.

In the preamble to the proposed rule, however, HUD indicated that it was considering consolidating parts 36 and 37 in the final rule. This has been done. The entire rule consists of 12 subparts (B, C, D, F through M, and R, with E and N through Q reserved), all in part 35. Subpart A of part 35 is the rule requiring disclosure of known lead-based paint hazards upon sale or lease of residential property (disclosure rule), which was promulgated on March 6, 1996. EPA published the same rule at 40 CFR part 745, subpart F. In this current rulemaking, HUD is moving the location of the disclosure rule from subpart H to subpart A of 24 CFR part 35. No text or section number changes are being made to the disclosure rule. The general requirements found in subpart A of the proposed rule are located under subpart B of today's final rule.

Subpart B of the final rule provides all the general requirements, definitions, exemptions, and options that apply to subparts B, C, D, F through M, and R. Subpart B does not apply to the Disclosure Rule in subpart A. All residential properties and dwelling units subject to this final rule are also subject to the Disclosure Rule. Subparts C, D, and F through M set forth the requirements for each program or type of assistance. Subpart R of the final rule contains the required standards and methods for conducting evaluation and hazard reduction activities formerly found in part 37 of the proposed rule. The provisions of subpart R are referenced in subparts B, C, D, and F through M. As explained below, the standards and methods requirements of

this rule have been streamlined considerably.

One commenter suggested that the requirements for notice to residents of the results of evaluation and hazard reduction be located at the beginning of the rule so that they need not be repeated for each program or type of housing. This has been done. The notice requirements are found in subpart B at § 35.125 and are referenced in the program-specific subparts.

2. *Simplicity and Overall Strategy.* Several commenters complained that, despite the effort to consolidate lead-paint regulations in a single rule, the format of the proposed rule remained ''program specific''. Others called it ''cumbersome''. Because community development and housing administrators must work with a variety of programs, they will be required to operate under different subparts. Calling the rule lengthy and technical, one commenter said it would be helpful if it could be organized ''in a more user-friendly fashion,'' using cross-references. Several commenters regarded the rule as ''confusing'' or in need of further consolidation.

One commenter complained that there remained ''at least 14 different requirements,'' based on the program authority or on the amount of assistance provided.

In the final rule there are seven evaluation and hazard reduction strategies for HUD housing programs. These strategies vary in stringency, costliness, and lasting effectiveness in preventing childhood lead poisoning. They are applied to the various forms of housing assistance, based generally on: (1) The amount, nature and duration of financial assistance provided under the program; (2) the risk of childhood lead poisoning in the housing (based on year of construction); and (3) whether the housing is generally rental or owner-occupied.

There are two primary differences between the strategies of the final rule and those of the proposed rule: (1) Paint repair has been replaced by paint stabilization; and (2) clearance is required in the final rule after paint stabilization, and the clearance requirement has replaced the dust-testing requirement for pre-1950 housing with tenant-based rental assistance.

In order from least to most stringent, the seven strategies are:

(1) Safe work practices during rehabilitation;

(2) Ongoing lead-based paint maintenance practices to assure that paint is maintained so that it remains intact, and that safe work practices are used (similar to the ''essential maintenance practices'' recommended by the Task Force);

(3) Visual assessment and paint stabilization;

(4) Risk assessment and interim controls (with the option of performing specified standard treatments);

(5) Lead-based paint inspection and risk assessment, and interim controls;

(6) Risk assessment and abatement of lead-based paint hazards; and

(7) Lead-based paint inspection, and abatement of all lead-based paint.

These strategies include the following fundamental principles. Whenever hazard reduction methods are employed (except for disturbances of only a small area of paint surface) clearance is required to ensure that the job is done properly. Second, ongoing lead-based paint maintenance practices are required in rental housing whenever HUD has a continuing relationship with the property. Third, to ensure that the controls are still intact and effective over time, reevaluation is required whenever a risk assessment and interim controls are required and there is a continuing HUD subsidy or ownership of rental housing. Fourth, special procedures are required in programs with a continuing subsidy or HUD ownership of rental housing whenever a child is identified with a blood lead level that calls for environmental assessment and intervention (called an ''environmental intervention blood lead level'' in the rule).

The first strategy, safe work practices during rehabilitation, is applied only to rehabilitation assistance of no more than $5,000 per unit. This is a ''do no harm'' policy that is intended to assure that low-cost rehabilitation does not generate lead-based paint hazards. It allows low-cost rehabilitation to go forward without costly lead-based paint requirements; but it does not necessarily determine whether or not the entire dwelling unit or property is ''lead safe,'' because, for this strategy, clearance must be conducted only for the worksite, which may not include the entire unit.

The goal of the second strategy, ongoing lead-based paint maintenance only, is to ensure that paint is kept stabilized and that the work is done in a safe manner. Clearance is required only of the worksite. This strategy does not provide full assurance that a property is free of lead-based paint hazards, but it will minimize such hazards over time. It is applied to properties that are subject to an application for multifamily mortgage insurance and were built between 1960 and 1977. These are rental properties with no subsidy, only mortgage insurance, but there is a continuing relationship between the Department, the borrower and the lender through the insurance agreement. These properties were built toward the end of the period when lead-based paint was used in housing and are less likely to have lead-based paint hazards than older housing. This strategy is also applied as a transitional requirement for multifamily properties receiving project-based assistance during the phase-in period before a risk assessment is conducted.

The third strategy, visual assessment, paint stabilization and clearance, provides assurance that the housing to which it is applied is ''lead safe.'' To provide such assurance, HUD intends that clearance be unit-wide, not just for the worksite. It should be noted that clearance is required only if paint stabilization is performed, so a unit that passes the initial visual assessment (i.e. no deteriorated paint is identified) undergoes no dust testing. Also, if the housing is in poor physical condition, or if there are high levels of lead in the soil, lead-based paint hazards may reappear. Therefore, ongoing maintenance is required whenever HUD has a continuing relationship with rental property. The final rule applies this strategy to HUD-owned single family housing that is sold with a mortgage insured by HUD; properties with acquisition, leasing, support services, or operation assistance; tenant-based rental assistance programs where a child of less than 6 years of age resides; multifamily housing receiving up to and including $5,000 per unit per year in project-based rental assistance; and single family properties assisted under the project-based certificate or voucher program, the moderate rehabilitation program, or another HUD-funded project-based rental assistance program.

The fourth strategy, risk assessment and interim controls, with the option to conduct standard treatments, provides assurance that all lead-based paint hazards have been eliminated. Unit-wide clearance is always required. Ongoing maintenance of painted surfaces is required whenever HUD has a continuing relationship with the property; and reevaluation is required if HUD is the owner, if there is project-based rental assistance in a multifamily property exceeding $5,000 per unit per year, and in public housing. This strategy is applied to properties that are subject to an application for multifamily mortgage insurance and were built before 1960, housing receiving multifamily project-based assistance of more than $5,000 per unit annually, and housing receiving rehabilitation

assistance of $5,000—$25,000 per unit. A risk assessment and interim controls are also required in public housing developments that have lead-based paint that has not yet been abated.

The fifth strategy, lead-based paint inspection, risk assessment, and interim controls, is applied only to HUD-owned multifamily housing. It differs from the fourth strategy in that it requires a lead-based paint inspection as well as a risk assessment. Most of these properties are being sold, frequently without HUD mortgage insurance, so HUD will not have a continuing relationship with them and thus will not be able to ensure that ongoing lead-based paint maintenance practices and reevaluation are practiced. With a lead-based paint inspection, HUD will provide the buyer with information on the location of any remaining lead-based paint on the property that the buyer and later owners can use to avoid generating dust-lead hazards in the future.

The sixth strategy involves risk assessment and abatement of lead-based paint hazards. This strategy is used when Federal rehabilitation assistance is greater than $25,000 per unit. When Federal funds are used to make such a substantial investment in a property, it is logical that long-term hazard control measures be implemented at a time when substantial concurrent rehabilitation is being done. Paint testing of surfaces to be disturbed during rehabilitation is called for to ensure that new lead-based paint hazards are not inadvertently created, but the designated party has the option to presume the presence of lead-based paint on such surfaces.

The objective of the seventh strategy, lead-based paint inspection and abatement of lead-based paint, is abatement of all lead-based paint. This strategy applies to public housing and to properties that are being converted from nonresidential to residential use or are subject to major rehabilitation and are being financed with HUD/FHA multifamily mortgage insurance. This is not a new requirement for public housing. Current public housing regulations require a lead-based paint inspection and, at the time of modernization, abatement of all lead-based paint. However, because complete modernization (and therefore complete abatement) may not occur for many years in some housing developments, and because modernization (and therefore abatement of lead-based paint) can occur on a piecemeal basis (e.g., kitchens one year, bathrooms another), the final rule, like the proposed rule, adds the requirements of strategy four, risk assessment and interim controls, during the period prior to completion of abatement to assure that all public housing occupied by families will be free of lead-based paint hazards. The requirement for conversions and major rehabilitations financed with multifamily mortgage insurance is new, however. HUD believes that such properties, after undergoing such substantial renovation, should be as free as reasonably possible of any future lead-based paint hazards.

3. *Prescriptiveness.* There were several comments to the effect that the rule was too prescriptive. These commenters generally recommended a movement toward ''performance-based'' requirements, arguing that a performance-based rule would stand up better to future technical innovations.

One commenter recognized that adopting performance-based standards was not always a simple matter. Decisions to do so must be made ''requirement-by-requirement,'' but the commenter urged looking for means to use such standards wherever feasible, and cautioned against ''locking in'' requirements which new technology or research may well show to be inappropriate in the future. For example, the commenter recommended against specifying HEPA vacuuming in the rule, indicating that research underway may suggest that in some cases less specialized equipment or less extensive procedures can be just as effective. Another commenter suggested basing requirements on performance, but including a more prescriptive ''safe harbor'' optional alternative. Sometimes, the commenter observed, performance-based standards are simply unhelpful to those regulated due to lack of clarity or information about the method of obtaining the desired performance.

Several commenters recommended against ''too rigid'' regulatory requirements that would require ''full-blown'' future rule making proceedings to overturn. Some suggested incorporation of guidelines into the rule by reference.

Although the proposed rule included prescriptive requirements, § 37.1(b) of the proposed rule stated that those requirements did *not* apply to lead-based paint inspections, risk assessments and abatements performed by inspectors, risk assessors, abatement supervisors and workers certified in accordance with EPA regulations under the Toxic Substances Control Act (TSCA). Rather, the prescriptive standards in proposed part 37 were to apply only when such activities were performed by individuals who were not certified in accordance with EPA requirements, should certification mechanisms not be in place.

The effective date of the EPA certification requirements and the EPA work practices standards is August 31, 1999. By that date, individuals conducting inspections, risk assessments and abatement must be certified and all such activities must be performed pursuant to the work practices standards in that regulation or in requirements of EPA-authorized State or Tribal programs. There is no need for HUD to issue detailed requirements for risk assessment, inspection and abatement. They have been omitted, therefore, from the final rule, except for interim dust and soil standards.

This leaves the question of whether the proposed requirements for interim controls and related procedures that are not covered by the EPA regulations are too prescriptive. Related procedures include standard treatments, occupant protection and worksite preparation, clearance, ongoing lead-based paint maintenance, reevaluation, and safe work practices. In the final rule, HUD has tried to strike a balance between the need to assure that the procedures will be effective in preventing childhood lead poisoning and the goal of providing flexibility and avoiding rigidity.

C. Effective Date

The proposed rule included an effective date of 12 months after publication of the final rule, and the Department explained in the preamble that this time period was chosen to allow all affected parties time to prepare for implementation of the new requirements.

Some commenters urged that the effective dates in the rule be moved up in whole or in part, while others asked for a further delay to allow affected parties to secure expert assistance or training opportunities. One commenter urged waiting to make the rule effective until EPA's upcoming rule on health-based standards for lead in dust and soil was promulgated and made effective.

Advocates of rapid effectiveness pointed out that the rule already was ''overdue,'' and claimed that important health benefits could be realized by the regulation's becoming operational sooner rather than later. Several commenters advocated immediate effectiveness for portions of the rule dealing with occupant protection, worksite preparation and the prohibitions against unsafe practices.

HUD considered imposing an immediate effective date because the statutory effective date of January 1, 1995 had already passed and because of the risk to the health of children from

a further delay in implementing these requirements. On the other hand, HUD noted that program administrators at all levels of government, as well as property owners and contractors performing lead-based paint activities, would not have adequate time for education, training, planning and budgeting to implement fully the new technical standards, requirements and procedures with an effective date earlier than proposed.

After thorough consideration of these varying points of view HUD has decided to retain the proposed 12-month time period following publication for a phasing in of the effective date of the final rule, with one exception: the prohibition of certain methods of paint removal or surface preparation set forth in § 35.140 shall be effective 60 days after publication of this final rule. In addition, designated parties may choose to comply with the requirements of this final rule before the effective date, instead of complying with existing requirements, if they desire and provided there is not a programmatic limitation that would preclude such an action.

The exception to the 12-month phase-in policy is appropriate for prohibited practices. These are already well known; many are in HUD's current regulations and guidance and are prohibited by the EPA final rule on training and certification, which was published on August 29, 1996. Many States already prohibit these practices, and other safer paint removal methods are well known. (See Section III.E.2.g. of this preamble.)

One commenter requested clarification of the effective date's impact on pre-rule lead-based paint control activities already undertaken and partially completed, and urged that it be made clear that this ongoing work could be carried forward after the effective date ''without revision.'' The Department's policy on this matter varies somewhat from program to program, because of differences in regulations and administrative procedures. Therefore the applicability sections of subparts F through M include statements specific to each program. In subpart F, pertaining to HUD-owned single family housing, any property to be sold with a HUD-insured mortgage and which is offered for sale on or after the effective date of this final rule must comply with the requirements of the rule. In the case of subpart G, pertaining to multifamily mortgage insurance, any property for which a HUD or FHA commitment is made on or after the effective date must comply with the rule. With regard to subpart H, project-based rental assistance, properties that are receiving Section 8 assistance on or after the effective date of this rule must comply. In the case of competitively awarded grants under the HOPWA, Supportive Housing, and Shelter Plus Care programs, the requirements apply to grants awarded pursuant to NOFAs issued on or after October 1, 1999. For formula grants under HOPWA, the requirements apply to activities for which program funds are first obligated on or after September 15, 2000. Subpart I states that HUD-owned multifamily properties and properties for which HUD is mortgagee-in-possession must comply with the rule if they are offered for sale or held or managed by HUD on or after the effective date of this rule. Subpart J, pertaining to rehabilitation assistance, includes program-specific information on the effective date for projects funded under the HOME program, the Community Development Block Grant (CDBG) programs, the Indian Housing Block Grant (IHBG) program, HUD-administered homelessness assistance programs, and the Indian Community Development Block Grant program. Project-specific effective date policies for housing subject to subpart K, Acquisition, Leasing, Support Services, or Operation, are the same as for subpart J. With regard to public housing, subpart L states that all housing to which the subpart applies is covered by the rule as of the effective date of this final rule. Finally, subpart M, which pertains to tenant-based rental assistance, states that housing receiving such assistance becomes subject to the requirements of this rule at the time of an initial or periodic inspection that occurs on or after the effective date of this final rule. (The initial or periodic inspection referred to in the previous sentence is the inspection conducted by the public housing agency (PHA) or other administering agency to determine whether the housing unit meets the requirements of the program. It is not a lead-based paint inspection.)

D. Other General Issues

1. *Policy on Abatement.* Some commenters saw in the proposed rule an undue emphasis on abatement, as opposed to more limited lead hazard control measures. ''As such,'' one organization declared, ''the rule appears inadequately protective of children's health, and unlikely to realize the full benefits predicted by the Economic Analysis as justification for the costs of compliance.'' Abatement should not be a defined term in the rule, nor used at all, this commenter stated. The recommended term was ''hazard abatement,'' used to mean ''any set of measures to permanently eliminate lead-based paint hazards.'' This should be the ''maximum requirement'' of the rule. While abatement of intact lead-based paint would always remain an option, it need not and should not be required, the commenter urged.

The same commenter urged that the definition of abatement should *not* include reference to lead-based paint (i.e., intact paint). By doing so, there is a deviation from the definition of abatement in Title X itself. Failing to make the distinction between intact LBP and lead hazards is likely to ''recreate * * * the scenarios that Title X was supposed to end: Paralyzed non-compliance because of the costs and burdens of performing abatement of non-hazardous intact LBP.''

A commenter who felt the rule didn't stress abatement enough was ''troubled by the rule's implicit acceptance that it is infeasible to abate lead paint from housing.'' Arguing that the societal returns more than justified the cost, the commenter declared that the obstacles to abatement as a predominant policy were ''not economic, but political.''

HUD agrees that abatement should be targeted toward hazards, not the mere presence of lead-based paint, except in public housing, where lead-based paint abatement is required by statute, and for conversions and major rehabilitation projects seeking HUD/FHA multifamily mortgage insurance. The final rule defines abatement accordingly but retains the existing lead-based paint abatement requirements for public housing. The legislative history of Title X shows that Congress did not intend for the existing public housing program requirements to be changed.

2. *Cost of Compliance.* Many commenters—particularly State and local funded agencies, housing developers, and their national and regional spokespersons—expressed serious concerns about the rule's cost.

While many suggestions for change in details of the rule were provided by these commenters, the tenor of their comments was not so much against the rule as against the idea of carrying out its mandate without separate funds earmarked solely for that purpose.

Some commenters felt that HUD had grossly underestimated the costs of compliance and that these costs, in many circumstances, would divert already-limited funding from its principal purpose of providing shelter. Rural housing suppliers, especially, lamented the anticipated problems the rule would bring. One commenter expressed the fear that the rule would ''severely hamper rehabilitation in rural,

small communities and would potentially drive the cost of doing business so high that many communities may decide that it is simply not worth it to try and repair existing, older substandard housing.''

Some commenters suggested that the dangers of lead paint were exaggerated or that local health department controls were adequate to locate children with high blood lead levels and cope with the problem on a case-by-case basis.

Other public agency commenters were more positively disposed toward the goal of preventing childhood lead poisoning *before* a child is poisoned, instead of waiting until the damage has already been done, but still worried about funding. Typical of these comments was that of a middle sized city with an active lead-hazard control program. Calling the rule (and Title X) an ''unfunded mandate,'' the commenter cited the staff costs associated with the rule's monitoring expectations, calling them unrealistic: ''If additional funds were provided for hard and soft rehabilitation as well as staff costs, this [rule] would be a good policy initiative that we could fully support and implement. However, without additional funds, * * * it presents a major problem for cities trying to address an overall need for affordable housing.''

A frequent suggestion was that the rule would cause ''redundant and unnecessary'' lead-based paint work to be performed. The focus, these commenters argued, should be on reducing and controlling lead hazards in units occupied by small children or children who had already been lead poisoned.

A major housing industry organization asserted that the proposal contains unnecessary impediments to the performance of paint repair work and interim control tasks by employees of owners and managers, or by the owners themselves, and urged the Department to eliminate these wherever feasible.

One commenter, a municipal health department lead poisoning prevention program, predicted that the proposed rule's changes would ''seem daunting'' to community-based agencies at first. The commenter generally agreed with the rule's approach and predicted that compliance costs would be ''minimal.'' The commenter said, however, that ''government support and leadership to ensure that training, inspection/risk assessment services, and dust wipe resources are available and sometimes subsidized could prove to be instrumental in effective implementation.''

In response to these comments, HUD does not believe that the childhood lead poisoning problem has been ''overblown,'' in light of the results of the National Health and Nutrition Evaluation Survey (described in Section II.A of this preamble, above) showing that approximately 900,000 children still have blood lead levels equal to or greater than 10 μg/dL, the CDC level of concern. HUD also disagrees that the rule should impose requirements only on units housing young children. HUD believes that it is not practical in most housing programs to expect managers to know when children are or are not residing in particular units, especially in light of the significant resident turnover rates and inconsistencies in program administration among comparable units receiving comparable Federal assistance. Title X holds that it is far better to identify and correct lead-based paint hazards before a child is poisoned. Such prevention is especially important, because some effects of lead poisoning appear to be irreversible. The one exception to this policy is in the tenant-based rental assistance programs, in which income certification requirements facilitate the determination of childhood occupancy and for which there is legislative history indicating Congressional concern that lead-based paint requirements could deter landlords from program participation.

With regard to the cost of the rehabilitation requirements, it is important to note that the requirements of the rule are limited for housing receiving up to and including $5,000 per unit in rehabilitation assistance. Also, the option to perform standard treatments instead of a risk assessment and interim controls may reduce costs in certain situations. (See further discussion below in Section III.E.10 of this preamble.) HUD intends to work closely with local housing and community development agencies to further develop ways to efficiently meld lead-based paint hazard reduction with rehabilitation.

With regard to the public housing program, HUD does not believe that long-term annual cost increases will be significant, although there will be one-time risk assessment and interim control costs in the short term for some housing agencies. HUD encourages public housing agencies to schedule completion of abatement of lead-based paint in order to put this issue behind them.

3. *TUse of Task Force Recommendations.* Numerous commenters called upon HUD to assure that the rule maintain consistency with the 1995 report of the Task Force on Lead-Based Paint Hazard Reduction and Financing (Task Force), which was a Federal advisory committee appointed by the Secretary of HUD pursuant to section 1015 of Title X.

Two recommendations of particular interest are the standards or procedures referred to as ''essential maintenance practices'' and ''standard treatments.'' These procedures were directed toward rental housing. Essential maintenance practices are the steps the recommended steps that a landlord should take to reduce the risk of childhood lead poisoning in pre-1978 dwelling units and associated common areas. Standard treatments are more aggressive measures to assure that possible lead-based paint hazards are controlled in older housing. These procedures were not incorporated by name in the proposed rule, although many of their elements or concepts were included.

In the final rule, HUD is requiring that all rental housing which has a continuing financial or regulatory involvement with HUD must be maintained in a manner similar to that recommended in the Task Force's essential maintenance practices. Also, the Department has adopted the concept of standard treatments, as set forth in the Task Force report, as an option to the basic requirement of a risk assessment and interim controls. This option is set forth in § 35.120(a). Clearance testing is required after standard treatments as well as interim controls.

Another Task Force recommendation mentioned favorably by some commenters is the ''lead hazard control plan,'' which is a plan to be developed by a property owner that lays out when and where certain hazard control measures will be conducted within a residential property. The plan allows an owner to prioritize the work and undertake the most important tasks or dwelling units first, followed by lower priority work later, as for example at apartment turnover. The proposed rule did provide for a hazard reduction plan for multifamily properties receiving more than $5,000 per unit in HUD project-based assistance.

Although the lead hazard control plan was intended to provide property owners with flexibility in scheduling lead-hazard control work, many commenters perceived the plan requirement as ''red tape'' of limited value and questioned whether HUD would have the staff resources and expertise to review and approve such plans on a timely basis. HUD shares these concerns and, in the interests of regulatory streamlining, has decided to

delete the plan requirement. The Department continues to believe that it would be a useful document for property managers, especially those with responsibility for large multifamily developments, and encourages owners to develop such plans. The American Society for Testing and Materials (ASTM, West Conshohocken, PA 19428–2959) has developed a Standard Guide for Evaluation, Management, and Control of Lead Hazards in Facilities, and is developing an accompanying user guidebook. These materials can provide the basis for developing a lead hazard control plan. They are particularly appropriate for owners of multifamily dwellings.

4. *De Minimis Exceptions.* The proposed rule included de minimis levels of paint deterioration, consistent with the HUD Guidelines, below which no action would be required. These de minimis levels were defined as not more than 10 square feet of deteriorated paint on an exterior wall; not more than 2 square feet on an interior component with a large surface area including, but not limited to, interior walls, ceilings, floors and doors; or not more than 10 percent of the total surface area on an interior or exterior component with a small surface area including, but not limited to, window sills, baseboards and trim.

Commenters objected to the de minimis levels on four grounds: (1) That the de minimis exception is arbitrary and not supported by science; (2) that the levels are too large, potentially allowing a total of over ten square feet of defective paint per room (counting four walls plus a ceiling plus small components); (3) that some owners or inspectors may use the de minimis exception as an excuse for overlooking hazardous conditions; and (4) that it is likely to shift the attention of workers from the importance of practicing lead hazard control and maintaining painted surfaces in a lead-safe manner to measuring the size of defective paint surfaces in order to document that surfaces fall above or below the de minimis level.

HUD acknowledges the merit of these comments, and after careful consideration has decided to eliminate the de minimis exception for deteriorated paint from the final rule. All deteriorated lead-based paint (either known or presumed to be lead-based paint) must be addressed. This will simplify the rule's implementation considerably. HUD *did* retain, however, a de minimis exemption for safe work practices and clearance, which is consistent with the EPA provision at 40 CFR 745.227(e) that allows dry scraping during abatement on surfaces totaling no more than 2 square feet per room or 20 square feet on exterior surfaces. This de minimis exemption is separate from the safety-related exception allowing dry scraping in conjunction with the use of heat guns or within 1 foot of electrical outlets; that is, the area covered by the safety-based exception is not part of the area covered by the safe work practices de minimis exemption).

5. *Distinction Between HUD Programs and Those of Other Federal Agencies.* Several commenters asserted that the rule distinguishes between HUD-assisted housing and that assisted by other Federal agencies without any statutory basis and without providing any justification. The Department's response is that, although the Secretary is given authority to develop regulations for other agencies (with respect to project-based assistance and Federally-owned property), HUD cannot and should not make lead-based paint policy decisions for other agencies beyond what is set forth in Title X. HUD does not have the knowledge of other agencies' housing programs that is necessary to draft detailed lead-based paint regulations for all other Federal agencies, and achieving consensus among all agencies on such regulations is unlikely. The sections concerning HUD project-based assistance and HUD-owned property, therefore, should remain separate from the sections provided for other agencies. Other Federal agencies can be expected to develop their own regulations or guidance, using HUD's regulations as a starting point.

6. *Response to Children with Lead Poisoning.* The Department's primary focus in this rule is on prevention of childhood lead poisoning, not on case management of children who have already been poisoned. Title X specifically calls for the identification and correction of hazards in all housing. Nevertheless, HUD feels special requirements are needed for lead-poisoned children who have already been poisoned by lead-based paint hazards. HUD cannot ignore the possible connection between a child's blood lead level and the condition of the dwelling unit where the child lives, particularly in view of research on the relation of dust-lead to blood-lead levels (see Section III.E.15.b of the preamble, below). Therefore, in housing where the Federal Government maintains a continuing financial or ownership relationship, requirements were included in the proposed rule to evaluate and reduce lead-based paint hazards when a child with an elevated blood lead level (EBL) is identified. Such requirements have existed in current HUD regulations for many years. In the final rule, as in the proposed rule, they are included in the subparts pertaining to project-based rental assistance, disposition of HUD-owned and mortgagee-in-possession multifamily housing, public housing, and tenant-based rental assistance.

Commenters addressing EBL-related requirements raised several different concerns: The measurement standards that trigger environmental intervention, the terminology used to refer to such a level, information exchange requirements between housing authorities and health departments, hazard control requirements for units occupied by young children with an EBL condition, reoccupancy requirements for dwelling units that were previously occupied by an EBL child but have not undergone evaluation or hazard reduction, relocation requirements, and the potential for discrimination by landlords against families with young children generally and EBL children in particular.

In the proposed rule, HUD defined ''elevated blood lead level (EBL) (requiring the evaluation of lead hazards)'' as meaning ''an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20 μg/dL (micrograms of lead per deciliter of whole blood) for a single venous test or of 15–19 μg/dL in two consecutive venous tests taken 3 to 4 months apart.'' One commenter argued that HUD should not use a standard other than 10 μg/dL, which is the basic CDC level of concern, because it is ''illogical to take no action when we know a child is poisoned * * * but instead to wait until the child is more poisoned,'' and because defining an EBL at a level higher than that known to cause adverse effects will create potential liability for public housing authorities and assisted owners.

HUD has consulted again with CDC and has concluded, as it did prior to issuance of the proposed rule, that CDC did not and does not intend to recommend a full home inspection or assessment in response to blood lead levels below 15 μg/dL. CDC advises that a blood lead level of 10–14 μg/dL should trigger monitoring, certain parental actions, and perhaps community-wide education, but not hazard control in an individual child's home. CDC recommends follow-up blood lead testing of such children in about 3 months, the provision of information to parents on lead hazards, nutrition and housekeeping if appropriate, and the taking of an environmental history to try to identify

an obvious source of lead exposure (CDC 1997).

EPA noted that it is confusing to define the term ''elevated blood lead level'' or ''EBL'' differently than normal usage. The agency pointed out that CDC, in their 1997 screening guidelines, uses the term to refer 10 μg/dL or greater and that most public health agencies and others in the field of lead poisoning prevention do the same. HUD agrees that this is potentially confusing and has therefore substituted in the final rule the term ''environmental intervention blood lead level'' to replace ''elevated blood lead level'' or ''EBL'' when the latter terms refer to the blood lead level requiring evaluation and hazard reduction of the child's home.

One State public health department urged HUD to modify the rule's standards for determining when environmental intervention is needed. Requiring tests showing *two* blood lead levels of 15–19 micrograms per deciliter in consecutive tests three to four months apart is ''problematic,'' the commenter said, because many children do not get follow-up tests at the required three-four month interval, but rather more frequently—or less. Two tests showing levels of 15 or higher, *whether or not consecutive, and whether or not at a fixed time interval,* should be adequate to identify the child, and it is important that the rule not define the test intervals too strictly. It is not in the best interests of the child to recognize test results that come in only at precise intervals, the commenter said. A child may have two tests of 15–19 μg/dL, but because of seasonal variations in lead exposure, the high-level results may not be consecutive. At least two commenters recommended that this standard should be consistent with CDC guidance.

HUD agrees. In the final rule, the Department has defined environmental intervention blood lead level to conform to the new guidelines by CDC issued in 1997 (CDC 1997b). The revised definition is ''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 of 15–19 μg/dL in two tests taken at least 3 months apart.'' This revision removes the word, ''consecutive,'' and allows for nonconsecutive readings that are more than 3 months apart. The final rule has also removed the requirement that blood lead levels be determined only by venous blood specimens. This decision is best left to the child's health care provider, and may be affected by technological advances. HUD expects housing agencies, grantees, property owners, and other parties to which this rule applies to rely on medical health care providers where judgment is required in interpreting this definition.

Another issue is how best to make housing agencies aware of when there is a child with an environmental intervention blood lead level living in a dwelling unit under tenant-based rental assistance or under another program to which the requirements of subpart M of this rule apply. The proposed rule required that, to the extent practicable, the housing agency or other administering agency would attempt to obtain annually from the State or local health department the names and addresses of children less than age 6 identified with environmental intervention blood lead levels. The housing agency was then required to match this information with the names and addresses of families receiving Federal assistance. If a match occurred, the agency was to require a risk assessment and interim controls in the child's home. These requirements are similar to those currently in HUD regulations pertaining to tenant-based rental assistance. They were issued in response to the United States General Accounting Office report entitled ''Children in Section 8 Tenant-Based Housing are not Adequately Protected'' (GAO/RCED–94–137, May 13, 1994). The intent of this requirement is to ensure that families with young children that receive tenant-based rental assistance are obtaining housing free of lead-based paint hazards. At the same time, the CDC is urging local public health departments to provide environmental intervention blood lead level-related information to housing agencies.

A few commenters indicated that they had encountered difficulty in securing the cooperation of health authorities in making these records available because of the authorities' concerns about the privacy of medical information. While these access problems can be overcome, one commenter said, by securing a release signed by the child's parent or guardian, there are other concerns besides the question of invasion of privacy. If the agency administering the tenant-based assistance program has information concerning the environmental intervention blood lead level status of a family's children and the information is disclosed to potential landlords, the information ''becomes a barrier for the family in its housing search,'' because some landlords may illegally refuse to rent to the family.

Several other commenters expressed concern about the potential for housing discrimination against families with children in general, and those with children with identified environmental intervention blood lead levels in particular. These comments ranged from suggestions to penalize the landlords involved to indications that, in the absence of funding assistance, it was unfair to ''penalize (owners) for participating in the Section 8 (Voucher and Certificate) Program in a way *not required of owners in the private market.*'' (Emphasis in original.) In response, HUD believes that the environmental intervention blood lead level requirements in this rule are *not* in fact fundamentally different than those covering private-sector owners who do not receive subsidies. Local ordinances often permit health or housing departments to order lead hazard control work in any home where an environmental intervention blood lead level child is identified. For an explanation of the antidiscrimination provisions of the Fair Housing Act, see Section IV.D.7 of this preamble.

The Department has concluded that it is very important that local housing agencies know when there is a child with an environmental intervention blood lead level residing in an assisted unit and that owners comply with requirements designed to make the units free of lead-based paint hazards. It is well known that, while local health departments are able to identify poisoned children, they often do not have the resources to correct the cause.

HUD is making, therefore, the following changes to the requirements pertaining to exchange of information on environmental intervention blood lead level conditions:

(1) The housing agency or other local agency administering tenant-based rental assistance must attempt at least quarterly (instead of annually as in the proposed rule) to obtain from the State or local public health department, or the Indian Health Service as applicable, the names and/or addresses of children of less than 6 years of age with environmental intervention blood lead levels. This change is being made to assure that poisoned children will receive help on a more timely basis. The Department encourages health departments and housing agencies to voluntarily enter into agreements to exchange information more frequently, e.g., monthly, especially in jurisdictions in which childhood lead poisoning is a frequent occurrence in housing occupied by families receiving tenant-based rental assistance.

(2) Also on a quarterly basis, the housing agency or other local agency administering the tenant-based rental assistance must provide health departments with addresses of assisted units (as well as attempt to obtain

addresses of environmental intervention blood lead level children from the health department), except that such a report to the health department is not required if the health department states that it does not wish to receive it.

(3) The address match may be done by either the housing or the health agency. HUD's intent is to encourage workable cooperative arrangements between the two types of agencies for the purpose of matching environmental intervention blood lead level and housing assistance information on a timely basis.

With regard to the evaluation and hazard reduction that must be done if a child with an environmental intervention blood lead level is found to be residing in a HUD-assisted or HUD-owned unit, the final rule sets one uniform requirement for all programs: risk assessment and interim controls, followed by ongoing lead-based paint maintenance. One commenter complained that the proposed rule failed to require anything beyond interim controls—a standard, the commenter said, that is ''too low and ineffective in the face of a poisoned child.'' Current information shows that interim controls are as effective as abatement methods in the short term and will continue to provide adequate protection if continuing maintenance standards are met (National Center 1998). In the final rule, ongoing lead-based paint maintenance is required in all HUD housing programs for which there is also a requirement that interim controls be conducted in response to a case of a child with an environmental intervention blood lead level. To ensure that these requirements are not avoided, the rule states that the requirements apply regardless of whether the child with the environmental intervention blood lead level is or is not still living in the assisted unit. Furthermore, it is HUD's intent that the requirements apply to the unit even if no child of less than six years of age resides in the unit, because the requirements were triggered when a child was in residence. Also, if a public health department performs the evaluation of the dwelling unit or, after the hazard reduction work is performed, certifies the unit to be lead safe, it is not necessary for the housing agency or other designated party to perform those functions. Finally, in the case of housing to which subpart M (tenant-based rental assistance) applies, if the hazard reduction is not performed, the unit does not meet Housing Quality Standards.

Some local housing agencies have asked for guidance on what their response should be to information on a child's blood lead level if the information is brought to the agency by a party other than a medical health care provider. In response, the Department is including a provision requiring verification of such data with the public health department or other medical health care provider. If it is verified that a child has an environmental intervention blood lead level, the agency, owner, or HUD (as the case may be) must complete a risk assessment and conduct interim controls of identified hazards.

7. *Fair Housing Requirements.* Several commenters expressed concern about the potential for housing discrimination against families with children in general, and those with children with environmental intervention blood lead levels in particular. Therefore HUD is providing the following discussion of the application of the Fair Housing Act and other laws pertaining to persons with disabilities to lead-based paint issues.

The Fair Housing Act prohibits discrimination in housing based on race, color, national origin, religion, sex, disability, and familial status. Familial status, for purposes of the Fair Housing Act, includes children under 18 (regardless of age or number), pregnant women, and people seeking custody of children under 18. Only providers of housing that meets the specific definition of housing for older persons may refuse to rent to families with children. Children with elevated blood lead levels and persons with Multiple Chemical Sensitivity (MCS) may fall under the definition of persons with disabilities. Among the actions prohibited under the Fair Housing Act are any action which differentiates on a prohibited basis for any of the following: Refusal to rent or sell housing; refusal to negotiate for housing; making a dwelling unavailable; denying a dwelling; providing different housing services or facilities; falsely stating that housing is not available for inspection, sale, or rental; refusing to make a mortgage loan; imposing different terms or conditions on a loan; setting different terms, conditions, or privileges for sale or rental of a dwelling; segregating a portion of the population into special buildings or areas; maintaining different lease conditions; and advertising or making any statement that indicates a limitation or preference based on any prohibited basis of the Fair Housing Act.

Based on this law, it is illegal for owners of housing to discriminate against families with children, or EBL children, even if the unit is known to have lead-based paint hazards. The prohibitions of the Fair Housing Act would further make it inadvisable to ask questions about EBL status, pregnancy, or intentions to become pregnant. Restrictive covenants against children, including EBL children, are also illegal. Therefore, no renter or buyer may be asked to sign a statement that a child, or EBL child, is not expected to reside in the dwelling. Owners of rental housing may eliminate lead-based paint hazards in a percentage of units and hold those units available for families with children and affirmatively market them to appropriate families. An owner may also tell families of the danger of moving into a unit which has not been treated and recommend an alternative comparable unit. In no case may an owner refuse to allow a family to occupy the unit, however, because of the presence of a child or require that a family move because lead is found. Laws against discrimination will be enforced by HUD.

Title II of the Americans With Disabilities Act (ADA) establishes a clear and comprehensive prohibition against discrimination on the basis of disability in State and local government services. Section 504 of the Rehabilitation Act of 1973 provides for nondiscrimination against persons with disabilities in Federally-assisted housing. Both laws define a person with a disability 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. Under both laws, EBL children and persons with MCS may fall under the definition of persons with disabilities. Among the actions prohibited under Title II of the ADA and Section 504 are those which discriminate, on the basis of disabilities, in Federally-assisted programs, services, and activities. Such actions include a refusal to (1) allow participation in a program, service, or activity; (2) provide programs, services and activities in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity; (3) eliminate unnecessary eligibility standards or rules that deny an equal opportunity to enjoy a program, service or activity unless ''necessary'' for the provisions of the program, service or activity; (4) make reasonable modifications in policies, practices, and procedures that deny equal access, unless a fundamental alteration in the program would result; (5) make reasonable accommodations, unless an undue burden or fundamental alteration would result, e.g., furnish auxiliary aids and services when necessary to ensure effective

communication (e.g., interpreters, or accessible formats, such as braille, large print, or audio cassette) and/or provide notice to and relocate residents with MCS prior to removing lead-based paint hazards with harmful toxic chemicals; and (6) operate programs so that, when viewed in their entirety, they are readily accessible to, and usable by, individuals with disabilities. A covered housing provider must not impose special charges to pay for measures necessary to ensure nondiscriminatory treatments, such as relocation expenses when necessary to remove lead-based paint hazards, or making modifications to provide accessibility. Finally, it is unlawful under these laws for a covered housing provider to make inquiries into the nature and severity of a person's disability, although that information may be volunteered when a reasonable accommodation is requested.

8. *Qualification Requirements.* The proposed rule required that most lead-based paint inspections, risk assessments and abatements be conducted by individuals or firms that are certified in accordance with national EPA requirements for lead-based paint activities developed pursuant to sections 402 and 404 of the Toxic Substances Control Act (TSCA). EPA published a final rule on August 29, 1996 that takes full effect on August 29, 1999. After that time, all lead-based paint inspections, risk assessments, and abatements nationwide will have to be conducted in accordance with the EPA work practices standards at 40 CFR 745.227 or State or tribal standards that have been authorized by EPA under procedures set forth at 40 CFR part 745, subpart Q. Recognizing that there might be temporary limitations on the supply of certified personnel, HUD proposed to provide for the possibility of temporary qualifications.

The proposed rule included two apparent exceptions to this general certification requirement. Public and Indian housing agencies (''HAs'') conducting dust and soil testing for public and Indian housing were not required to be certified in accordance with the EPA requirements. The Department pointed out that HAs were required to complete lead-based paint inspections by December 6, 1994, and that many HAs have already taken the initiative to conduct risk assessments in housing projects. Further, HUD did not extend the certification requirement to dust testing conducted by HAs for the Section 8 tenant-based rental assistance program. The Department, however, did require that a risk assessment conducted in response to an identified environmental intervention blood lead level child be conducted by a certified risk assessor.

Certification requirements in the proposed rule were somewhat different for interim controls than for abatement. Recognizing that the EPA regulations do not cover interim controls, HUD proposed that all workers performing interim controls be trained in accordance with the basic Occupational Safety and Health Administration (OSHA) hazard communication standard at 29 CFR 1926.59 and supervised by a certified abatement supervisor.

Comments on the qualifications requirements dealt with five issues: (1) Whether housing agency personnel had to be certified to perform dust and soil testing; (2) the availability of qualified personnel and firms, and temporary qualifications in case of an inadequate supply of certified personnel; (3) qualification requirements for interim controls; (4) the independence of the clearance examiner; and (5) the authority of a trained technician to perform clearance examinations.

EPA objected to the exemption of public and Indian housing authorities from certification requirements related to dust and soil testing. EPA did not accept HUD's rationale for suggesting that noncertified personnel could perform lead-based-paint-related functions for public and Indian housing agencies, other than under emergency circumstances. On the other hand, another commenter said he was ''pleased'' that dust testing would be permitted in that program by non-licensed Housing Quality Standards (HQS) inspectors trained in lead-hazard evaluation. The commenter recommended that ''non-licensed, but trained'' rehabilitation inspectors similarly be allowed to accomplish clearance testing in the funded rehabilitation programs. A public interest commenter remarked that ''HUD should begin the process of educating these workers at once, so that a qualified work force is available when the requirements go into effect.''

A local funded agency indicated that its State law would not allow Section 8 housing inspectors to perform inspections requiring dust wipes, and the agency went on to say that licensure for inspectors costs $250, renewable every two years, and that risk assessment training ran to $300 per person. Costs to housing authorities, and to landlords, for importing licensed personnel to perform inspections and assessments were regarded as prohibitive by the commenter.

The Department has decided to require in the final rule that dust and soil testing in public housing be conducted by personnel certified in accordance with an EPA-authorized State or tribal program or EPA regulations, a provision that is also in accordance with many State laws. Also, dust testing in housing assisted through tenant-based rental assistance will not be required at the evaluation stage, so the qualification issue for that function is no longer relevant; but clearance of the dwelling unit (or, in some cases, only the worksite) will be required if paint stabilization, interim controls or abatement is required. See the discussion below of the authority of trained technicians to perform clearance examinations.

There was much concern among commenters about the availability of a qualified (and affordable) work force of persons certified (or otherwise adequately trained) to perform the necessary work called for in the rule. Rural housing suppliers claimed such trained people would have to be imported from far away—and at premium rates. There were also calls for reciprocity for State-approved training programs until the EPA-approved programs are implemented.

HUD expects that most States will have EPA authorized certification programs by the effective date of this rule. Those that do not will be covered by the EPA certification program directly. After August 29, 1999, inspections, risk assessments and abatements must be done in accordance with the standards of EPA or an authorized State or tribal program. While this fact does not in itself eliminate the possibility that there will be shortages in the supply of certified personnel for inspections, risk assessments and abatements in some parts of the country, it increases the likelihood that the certification mechanisms will be in place in most of the nation when this rule becomes effective. At the time of this writing, 37 States have already enacted lead-based paint hazard control laws. In the final rule, the Department has made one change to the qualifications requirements that may result in increased availability of persons qualified to perform clearances. See the discussion below of the authority of technicians to perform clearance examinations.

The Department intends to monitor the availability of qualified personnel. One source of information is likely to be the ''Lead Listing,'' a nationwide listing of inspectors and risk assessors developed by the National Lead Assessment and Abatement Council (NLAC) with HUD assistance. The

''Lead Listing'' can be accessed by calling 1–888-LEADLIST (this is a toll-free number) or can be found on the Internet at www.leadlisting.org. HUD notes the constructive suggestion by one commenter that such monitoring should be done in cooperation with the States, as is being done with the development and maintenance of the Lead Listing. HUD would also expect to coordinate with EPA in the development of such information and in determining whether any further Federal response is needed.

One national organization questioned the requirement that workers performing ''interim control treatments'' be supervised by a certified abatement supervisor. Arguing that the definition of ''interim controls'' was too broad, the commenter recommended breaking the definition down so that ''painting, maintenance and similar routine tasks'' could be performed without a certified supervisor. Such a change, the commenter said, would be in accord with Congress' intent that certification requirements not be imposed on interim control workers, and the change would decrease routine property maintenance costs. A similar complaint was directed at the requirement that the appropriate worksite preparation be determined by a certified risk assessor, abatement supervisor or planner/designer. The commenter feared that the rule could be construed as requiring professional worksite design for ''mere paint repair work and for such basic interim control tasks as rehanging of doors. . .'' and asked that the rule be clarified to eliminate the worksite preparation requirement for interim control work.

Noting that the Task Force had recommended a one-day training course for maintenance supervisors, one commenter advocated HUD/EPA cooperation in developing a short course geared for maintenance workers that is inexpensive, requires one day or less to complete, and is frequently offered. Other commenters endorsed the short training course idea. The idea was a popular one, not only among cost-conscious funded agencies, but with public interest organizations as well.

A national environmental group disagreed with the emphasis on limiting the occasions for use of expert personnel. All hazard control activities, *including* paint repairs, should be conducted by trained personnel, the organization declared. A landlord who has permitted paint to become deteriorated to the point that it presents a lead hazard is ''unlikely to have the skills or inclination to perform a paint repair in a manner that does not increase exposure,'' the group said.

HUD agrees that persons performing interim controls should be prepared to protect themselves and the occupants from exposure to lead, should know how to protect interior and exterior environments from contamination and how to clean up the worksite, and should understand the importance of an independent clearance examination. In the final rule, HUD is requiring that persons performing interim controls, including paint stabilization, be trained in lead hazards in accordance with OSHA regulations at 29 CFR 1926.59 and either be supervised by a certified abatement supervisor (the requirement of the proposed rule) or successfully complete one of the following training courses: (1) An accredited abatement supervisor course; (2) an accredited lead-based paint worker course; (3) the Lead-Based Paint Maintenance Training Program, developed by the National Environmental Training Association for EPA and HUD; (4) the Remodeler's and Renovator's Lead-Based Paint Training Program, prepared by HUD and the National Association of the Remodeling Industry (NARI); or (5) another course approved for this purpose by HUD after consultation with EPA. HUD intends that any person performing hands-on, interim controls work on the worksite in compliance with the final rule must have satisfied one of the optional requirements. With regard to the OSHA training requirements, OSHA regulations at 29 CFR 1926.62 require that workers exposed to airborne lead below the OSHA action level of 30 μg/cu.m. be trained under the hazard communication construction standard, which is at 29 CFR 1926.59. If airborne lead is at or above the action level, OSHA requires a more complete training program. Workers performing interim controls of lead-based paint hazards are not expected to be exposed to airborne lead above 30 μg/cu.m. Therefore the final rule states that the required training must be in accordance with 29 CFR 1926.59.

A national housing organization questioned the language barring a clearance examiner from being ''affiliated with, paid, employed or otherwise compensated by the entity performing the hazard reduction and cleanup.'' The provision assumes, the commenter said, that the hazard reduction work has been performed by an independent contractor. In the case of paint stabilization and interim controls, this assumption will often be incorrect. Where only paint stabilization and simple interim controls are required, it was argued, the rule should permit owners and their employees to perform the work themselves. The ''independence'' provision would make this impossible. The commenter recommended, first, eliminating the clearance testing requirement for hazard reduction work involving only ''basic interim controls.'' A second solution would be to remove from the quoted provision the words ''paid'' and ''or otherwise compensated'', so that clearance testing by employees and affiliates of a contractor would be prohibited, but the owner could retain an independent, certified risk assessor to perform the clearance testing work.

HUD agrees that a property owner or manager should be able to employ both hazard reduction and clearance personnel. The final rule requires that clearance examinations and hazard reduction activities be conducted by entities that are independent of each other unless the owner or designated party uses qualified in-house employees to conduct clearance. The final rule, however, does not permit the same individual employee to conduct both hazard reduction and clearance, due to the clear conflict of interest this would pose.

As mentioned, HUD has made a change in the final rule that may increase the availability of persons qualified to perform clearance examinations, and thus may reduce the cost. The proposed rule required that clearances be performed by either a certified risk assessor or a certified lead-based paint inspector. One group of commenters urged that a technician with less training than a risk assessor or inspector be authorized to perform clearances in situations where interim controls of lead-based paint hazards or ongoing lead-based paint maintenance has been conducted. These commenters argued that the skills needed for the clearance function are modest compared to those required for lead-based paint inspections or risk assessments and, further, that the speed and affordability of clearance is of critical importance to the practical workability of the system of requirements to be set forth in the rule.

In the conference report on the VA–HUD–Independent Agencies Appropriations Act for FY 1999, the Congress urged EPA ''to develop a relevant one-day sampling technician training course and to encourage the recognition of this discipline.'' As of this writing, it is HUD's understanding that EPA plans to develop such a course and that an important purpose of the course will be to train people to perform clearance examinations. Therefore, anticipating that trained clearance technicians may be available, HUD is

providing in the final rule two ways they could perform clearances following interim controls or maintenance: first, as a technician who is uncertified or unlicensed and whose work must be approved in writing by a certified risk assessor or lead-based paint inspector; or, second, as a technician who is certified or licensed to perform clearance examinations without the approval of a risk assessor or inspector. Uncertified or unlicensed clearance technicians must have successfully completed a training course on clearance examinations (or similar title) that is developed or accepted by EPA or by a State or tribal program authorized by EPA pursuant to 40 CFR part 745, subpart Q (the EPA regulations implementing TSCA section 404). The course must be given by a training provider accredited by a State, Indian tribe or the EPA for training in lead-based paint inspection or risk assessment. HUD assumes that certified or licensed clearance technicians would also be required to complete such training. Certification or licensing of clearance technicians must be by a State or Indian tribe or EPA.

With regard to the training course taken by an unlicensed or uncertified clearance technician, there are several possible arrangements that are acceptable to HUD under this rule. The course can be developed by EPA, or it can be developed by a State or Indian tribe with a program authorized by EPA pursuant to TSCA section 404. A State or Indian tribe may adopt or accept a course prepared by another EPA authorized State or tribe. While the training provider from whom the course is taken must be accredited by EPA or an EPA-authorized State or tribal program, it is not necessary from HUD's point of view that the technician be trained within the State or Indian nation where the clearance is being performed or by a training provider accredited by that State or tribe. The ultimate responsibility for quality control rests with the certified lead-based paint inspector or risk assessor who approves the work of the technician and signs the clearance report.

Under this policy, an unlicensed or uncertified but properly trained clearance technician could perform a clearance examination on site, prepare the report, and send the report (by e-mail, fax, or other method) to a certified risk assessor or certified lead-based paint inspector, who may be located in another area. The risk assessor or inspector could review and sign the report and forward it to the client, taking responsibility for the quality of the clearance examination and report. The Department assumes that the risk assessor or lead-based paint inspector would require the technician to work as an apprentice until the inspector or assessor is satisfied that the technician's work is of satisfactory quality, but HUD leaves that process and decision to the risk assessor or inspector. In the rule, HUD places no restrictions on the scope or scale of clearance examinations that could be performed in this manner.

HUD is setting a limitation, however, on the authority of a certified or licensed technician who is taking full responsibility for the clearance examination without written approval of a risk assessor or lead-based paint inspector. In this case, the authority extends, under the HUD rule, only to clearances of single family units or individual units and associated common areas in a multi-unit property. The authority does not extend to clearance examinations of multifamily properties, or parts thereof, in which the clearance examiner engages in random sampling of dwelling units and common areas. In the opinion of the Department, it is unlikely that a one-day course will be adequate to teach all the techniques, procedures and judgments required to conduct random sampling of dwelling units and common areas in large multifamily clearance examinations. Under the HUD final rule, however, clearance technicians may perform multifamily clearances involving random sampling with the written approval of a certified risk assessor or lead-based paint inspector. Furthermore, certified clearance technicians may, without written approval of an inspector or risk assessor, conduct clearance examinations of any number of individual dwelling units and associated common areas in multifamily properties, provided results from the units and areas in which clearance examinations are conducted are not used to represent units and areas for which no examination or testing has been conducted.

Under this policy on technicians, people can prepare themselves to perform clearances with less investment in training and equipment than is required to become a risk assessor or lead-based paint inspector. HUD is hopeful, therefore, that the policy will contribute to an increased availability of persons authorized to perform clearances and a reduction in the cost of clearances. The policy retains the reliance on a certification or licensing process. Certification by a State or other entity provides a way to take action against fraudulent or otherwise unprofessional clearance examiners.

HUD recognizes that performance of clearance examinations by a certified or uncertified technician may not be permissible under some State or tribal regulations, even with the written approval of a risk assessor or lead-based paint inspector. Where that is the case, the State or tribal regulation would apply. HUD also recognizes that EPA may, in the future, establish certification procedures for clearance technicians (or a similar discipline) and, at that time, may make it illegal nationwide for uncertified technicians to perform the on-site work of a clearance examination. However, HUD thinks it will be efficient to have trained technicians, certified or not, working with higher level certified personnel and encourages other regulatory entities to permit it.

9. *Paint Stabilization vs. Paint Repair*. The proposed rule established a procedure called ''paint repair,'' which was a repainting of a deteriorated paint surface using safe work practices to minimize the generation of dust, protect occupants and the environment, and leave the site clean. The procedure was widely used in the rule; it was required in the subparts or sections applicable to single family mortgage insurance, disposition of HUD-owned single family property (without sufficient appropriations), multifamily insured property, disposition of HUD-owned and mortgagee-in-possession property (without sufficient appropriations), residential property receiving an average of less than $5,000 per unit in Federal rehabilitation assistance, CPD non-rehabilitation, and tenant-based rental assistance.

Many commenters questioned this procedure. The most common position was a caution against leaving anything in the rule that implied that ''mere overpainting'' of surfaces, without addressing the substrate, could ever be considered an appropriate course of action. A typical comment was the following: ''HUD's final regulations should require that whenever deteriorated paint is repaired, the cause of the deterioration must be corrected and the substrate stabilized.'' Another commenter argued that paint repair, by itself, was ''inconsistent with the HUD Guidelines.''

HUD agrees that it can be ineffective to try to put paint on a damaged substrate, such as crumbling plaster. Old lead-based paint on such a surface could shortly become deteriorated again after repainting. On the other hand, HUD is aware that substrate stabilization requires case-by-case judgment in the field as to when substrate repair is necessary and what extent and method of repair is

appropriate. There is reason to be concerned that cautious administrators may sometimes insist on repairs that are overly expensive or that others will not correct the underlying problem.

After careful consideration, the Department has eliminated ''paint repair'' throughout the final rule and instead is requiring ''paint stabilization,'' which calls for the repair of any physical defect in the substrate of a painted surface or component that is causing deterioration of the surface or component. It should be noted that the purpose of this requirement is not complete renovation but merely to try to assure that the integrity of the repainting will survive for a reasonable period of time. Also, if a substrate is being damaged because of a water leak, repair of the leak would be necessary in any case to meet housing or building codes. In situations in which a costly repair may be necessary to stabilize a damaged substrate, designated parties should always determine through paint testing whether or not the surface has lead-based paint. Frequently the paint will not be leaded at the Federal standard of 1.0 mg/sq.cm., so paint stabilization will not be required under this rule. If the deteriorated paint is lead-based paint, the designated party may consider alternative methods for controlling the hazard, such as enclosure of the surface.

E. Subparts

1. *Subpart A—Disclosure of Known Lead-Based Paint Hazards Upon Sale or Lease of Residential Property*. This subpart contains the requirements for disclosure of known lead-based paint and/or lead-based paint hazards in the sale or lease of target housing. This joint HUD/EPA regulation was promulgated as required by section 1018 of Title X (42 U.S.C. 4852d), and was originally published at 24 CFR part 35, subpart H. Subpart H has been transferred unchanged to this subpart A, so the regulations implementing sections 1012 and 1013 of Title X can be published in consecutive subparts B, C, D, F through M, and R.

2. *Subpart B—General Lead-Based Paint Requirements and Definitions For All Programs*. This subpart sets out general requirements for federally owned residential property and housing receiving Federal assistance.

a. *Definitions*. In the proposed rule, HUD used the definitions, where possible, that were included in section 1004 of Title X (42 U.S.C. 4851b). In cases where the statute either failed to define terms, or where the definition was inadequate for the purpose of a regulation, the Department drew definitions from the HUD Guidelines, existing HUD or EPA regulations, and from definitions compiled and set forth by the American Society for Testing and Materials (ASTM), West Conshohocken, PA 19428–2959, in a document entitled ''Standard Terminology Relating to Abatement of Hazards from Lead-Based Paint in Buildings and Related Structures'' (ASTM Standard E 1605–94).

In most cases public comments on definitions concerned the scope of the definition rather than the meaning, and the commenters wanted the scope to be either expanded or limited. In response to comments, the definition of *residential property* was revised in the final rule to more precisely define its scope to ''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'' rather than the proposed rule language of ''a dwelling unit, common areas and any surrounding land belonging to an owner and accessible to occupants.'' Paint striping on parking lots, garages, and roadways will not be covered by this rule. *Common area* was expanded in scope to mean ''a portion of a residential property that is available for use by occupants of more than one dwelling unit'' rather than ''generally accessible to occupants of all dwelling units''. Throughout the final rule, HUD has avoided using the term ''accessible'' if its meaning might be confused with that in regulations implementing the Americans With Disabilities Act. *Hazard reduction* was expanded to include standard treatments. *Paint testing* was added, replacing the proposed-rule's *limited paint inspection* for reasons explained below in the discussion of options in Section III.E.2.c.(4) of this preamble.

The publication of the EPA regulation at 40 CFR part 745, subparts L and Q, significantly affected the definitions section as it did the remainder of this regulation. The definitions of several technical terms have been deleted from the final rule, since they were associated with the evaluation and hazard reduction activities now covered by the EPA regulation.

In the definition of *abatement*, the statement that ''permanent means at least 20 years effective life'' was relocated to a separate definition of ''permanent.'' This was done to conform the definition of abatement more closely to that in Title X. Also the terms ''lead-contaminated dust'' and ''lead-contaminated soil'' were changed to ''dust-lead hazard'' and ''soil-lead hazard'' respectively to conform with terminology being used by EPA in their proposed regulation implementing TSCA section 403, which was published on June 3, 1998 (63 FR 30301–55). The latter change of terminology has been made throughout this final rule; the definitions of *lead-contaminated dust* and *lead-contaminated soil* have been replaced with definitions of *dust-lead hazard* and *soil-lead* hazard respectively, and the same substitution of terms has been made in the definition of *lead-based paint hazard*. In the proposed section 403 rule, EPA has adopted the position that ''lead-contaminated dust'' and ''lead-contaminated soil'' are general terms referring to dust and soil with varying levels of lead concentration but not necessarily to levels that are considered hazardous. In the definition of ''soil-lead hazard'' in this final rule, HUD is including a de minimis area of bare soil outside of play areas that is not considered a hazard. To be considered a soil-lead hazard according to this definition, spots or areas of bare soil outside of play areas must total more than 9 square feet per residential property and have a lead concentration of an average of equal to or exceeding 2000 micrograms per gram.

The term *accessible (chewable) surface* has been replaced with *chewable surface*. This was done for two reasons: (1) It avoids confusion with the use of the word ''accessible'' in regulations and guidance implementing the Americans With Disabilities Act (ADA), which is an important law affecting residential real estate; and (2) it substitutes an easily understood term, ''chewable,'' for a somewhat ambiguous term, ''accessible,'' that might imply ''reachable'' as well as ''chewable.'' The substitution of ''chewable'' for ''accessible'' was also made in the definition of ''lead-based paint hazard.'' In response to many requests for further clarity as to what constitutes a chewable surface, HUD has added to the definition of ''chewable surface'' a statement that, ''Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.'' In most homes, the only chewable surfaces are likely to be protruding, interior wooden window sills.

A new term, *designated party*, has been added to simplify and reduce the length of the rule. It means ''a Federal agency, grantee, subrecipient,

participating jurisdiction, housing agency, CILP recipient, tribe, tribally designated housing entity (TDHE), sponsor, or property owner responsible for complying with applicable requirements.'' The definition of the term *dwelling unit* has been changed to conform to the Title X definition of ''residential dwelling.'' The substantive meaning does not change. As in the proposed rule, HUD prefers to use ''dwelling unit'' instead of ''residential dwelling'' because the former term is more commonly used and understood and is more distinct from a related term used in the rule, ''residential property.'' As explained in Section III.D.6 of this preamble above, in the discussion of policy on responding to children with elevated blood lead levels, the defined term *elevated blood lead level (EBL)* has been changed to *environmental intervention blood lead level*, and the definition has been changed slightly to conform to CDC guidance. The term *emergency repair* has been removed from the definitions section, because it is only used once in the rule, in the section later in subpart B setting forth the exception for emergency actions; and its meaning there is clear.

The definition of *evaluation* has been changed. Title X defines this important term as meaning a risk assessment, inspection, or combination of the two. The proposed rule added ''visual evaluation'' and made the determination of the presence of deteriorated paint one of the purposes of evaluation as well as the determination of the presence of lead-based paint hazards and lead-based paint. In the final rule, HUD has removed ''visual evaluation'' from the definition of ''evaluation,'' has removed the related purpose of identifying deteriorated paint, and has added ''lead hazard screen'' and ''paint testing'' as evaluation methods. ''Visual evaluation'' was removed because it is quite different from the activities mentioned in the statutory definition of ''evaluation.'' It does not involve any testing of paint, dust or soil for lead concentration, nor does it determine the presence or absence of lead-based paint hazards or lead-based paint. Therefore it does not produce ''evaluation'' results that, in the opinion of the Department, have to be reported to occupants. For additional clarity, HUD has changed the term *visual evaluation* to *visual assessment*. A ''lead hazard screen'' and ''paint testing,'' however, do involve testing and produce reportable results. *Lead hazard screen* means a limited risk assessment that involves paint testing, dust testing and soil testing. If a property passes a screen using the criteria in subpart R, it is not necessary to conduct a full risk assessment. This term was not defined or used in the proposed rule, but HUD now believes that the option to conduct such a screen should be available, because it is potentially less costly than and often as effective as a full risk assessment, especially in housing built after 1959 that is in good condition. The term *paint testing* replaces the proposed-rule term *limited paint inspection* in response to a comment from EPA that it would be helpful to differentiate more clearly between a full ''inspection,'' as specified in the EPA rule implementing TSCA section 402, and a more limited procedure to determine the presence of lead-based paint only on deteriorated paint surfaces or surfaces to be disturbed by rehabilitation.

Title X exempts housing for the elderly and persons with disabilities unless a child of less than 6 years of age resides or is expected to reside in such housing. Believing that *expected to reside* requires interpretation, the Department is introducing in this final rule a definition stating that ''expected to reside'' means there is actual knowledge that a child will reside and that if a resident woman is known to be pregnant there is actual knowledge that a child will reside in the dwelling unit. (As mentioned, it is not advisable to inquire as to pregnancy status in most real estate transactions. See Section III.D.7 of this preamble, above, on fair housing requirements.)

Firm commitment, a term used only in subpart G, Multifamily Mortgage Insurance, is defined for purposes of clarity to mean 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. In this rule, *grantee* is a term used only in subparts J, Rehabilitation, and K, Acquisition, Leasing, Support Services or Operation. It is defined to mean any State or local government, Indian tribe, IHBG recipient, or insular area that has been designated by HUD to administer Federal housing assistance under a program covered by subparts J and K, except the HOME program or the Flexible Subsidy-Capital Improvement Loan Program (CILP). The defined term *participating jurisdiction* is used in the HOME program, and *CILP recipient* is the defined term used to mean an owner of a multifamily property which is undergoing rehabilitation funded by the CILP program. The definition of *hard costs of rehabilitation* has been changed, in response to comments requesting greater clarity, to add the following statement: ''Hard costs do not include administrative costs (e.g., overhead for administering a rehabilitation program, processing fees, etc.).''

The definition of *HEPA vacuum* has been made more precise. The proposed rule definition was ''a vacuum with an attached high-efficiency particulate air (HEPA) filter capable of removing particles of 0.3 microns or larger from air at 99.97 percent efficiency.'' The final definition requires that a HEPA filter be integral to the vacuum cleaner and gives an actual-performance, rather than potential-performance, definition of HEPA filter. Both definitions use performance measures of filter collection efficiency, with values common in the hazardous dust standard setting, e.g., EPA in asbestos rules (40 CFR 763.83, 763.121), OSHA in a lead rule (29 CFR 1926.62(f)(3)), and DOE in a HEPA filter specification (DOE-STD–3020–97). Current technology for assessing personal respirator filter performance is used by NIOSH in its respirator rule (42 CFR 84.181), by OSHA in citing the NIOSH rule (63 FR 1297, January 8, 1998), and by DOE in the specification cited above.

The technological precision reflected in the regulations just cited is not seen in the HEPA vacuum industry, however, so the rule can not specify the procedure for testing conformance. Performance and operational criteria of the manufacturer(s) of the filter and the vacuum unit as a whole are to be used for filter efficiency and particle size criteria. HUD is promoting research and development of standards on collection efficiency measurement applicable to HEPA vacuums. For example, it supports research at the University of Cincinnati (Cincinnati, OH 45267–0056) on vacuum cleaner dust penetration. HUD staff participates on the American Society for Testing and Materials' (West Conshohocken, PA 19428–2959) Task Force F11.23.01 on vacuum cleaner system filtration efficiency working on a vacuum dust penetration measurement standard. HUD is aware of the American Society of Mechanical Engineers' (New York, NY 10017–2392) Air and Gas Cleaning Group work on protocols to assess HEPA filter application performance. DOE cites the testing procedures of ASME Code AG–1, Section FC, HEPA Filters. Because the standards above are not yet directly applicable to fully assessing HEPA vacuums, HUD will monitor and support research and standards development, and revise its definition as needed. HUD welcomes data on research and measurement criteria for HEPA vacuums and HEPA filters.

The proposed-rule definition of *HUD-owned property* has been changed to

conform to the definition of *federally owned property* that is in Title X. The definition in the final rule is ''residential property owned or managed by HUD, or for which HUD is a trustee or conservator.'' The Department acknowledges, however, that although this definition conforms word for word to the Title X definition, it does not represent common usage. For practical and programmatic purposes, HUD considers property it owns to be only that to which it has title; it distinguishes between owned and managed property. However, this distinction does not affect the application of the rule. The rule covers both HUD-owned and HUD-managed property. Subpart I of the rule applies to multifamily property that is HUD-owned or for which HUD is ''mortgagee-in-possession.'' A property for which HUD is mortgagee-in-possession is one for which title has not passed to HUD but which is being managed by HUD prior to foreclosure.

The definition of *Indian tribe (tribe)* has been changed to conform to the Native American Housing Assistance and Self Determination Act of 1996 (Pub. L. 104–330). The proposed rule term ''paint inspection'' has been changed to *lead-based paint inspection* in the final rule to avoid confusion with inspections of paint that are conducted for purposes other than determining the presence of lead-based paint. The definition of *project-based assistance* is changed for purposes of clarity to indicate that the term applies to *rental* assistance and that it does not include Federal rehabilitation assistance or assistance to public housing developments. In the proposed rule, the definition of *risk assessment* was identical to that in Title X. In the final rule, the specificity of this definition has been reduced to minimize regulatory rigidity and to avoid potential conflict with EPA regulatory definitions and work practices standards.

Finally, the definition of *lead-based paint* has been edited somewhat. Although no substantive change has been made, one modification is worthy of note. The definition in the proposed rule, after the phrase ''equal to or exceeding 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million,'' included the phrase ''or another level that may be established by the Secretary.'' The latter phrase has been removed from the definition in the final rule to avoid possible confusion that might result from the absence of such a phrase in other recent regulations promulgated pursuant to Title X. Its inclusion in the proposed rule was based on the statutory provision found in section 302(c) of the Lead-Based Paint Poisoning Prevention Act, which states that ''the Secretary (of HUD) shall periodically review and reduce the level below 1.0 milligram per centimeter squared or 0.5 percent by weight to the extent that reliable technology makes feasible the detection of a lower level and medical evidence supports the imposition of a lower level.'' While HUD has no plans to propose a lower level, the statutory responsibility remains whether it is mentioned in the rule or not.

b. *Exemptions*. A detailed discussion of the exemptions provided in subpart B is found in Section III.A.5 of this preamble, above.

c. *Options*. In addition to exemptions, the final rule provides several options that HUD believes will provide owners and other parties with flexibility and thus greater efficiency in carrying out evaluation and hazard reduction activities.

(1) *Standard treatments.* Where interim controls are required, the designated party has the option to presume that lead-based paint or lead-based paint hazards or both are present throughout the property, omit the risk assessment or lead-based paint inspection or both, and conduct standard treatments in accordance with requirements set forth in subpart R of part 35 in lieu of interim controls. Standard treatments are: (a) Stabilization of all deteriorated paint, interior and exterior; (b) the provision of smooth and cleanable horizontal hard surfaces; (c) the correction of dust-generating conditions (i.e., conditions causing rubbing, binding, or crushing of surfaces known or presumed to be coated with lead-based paint); and (d) treatment of bare soil to control known or presumed soil-lead hazards. Safe work practices and clearance are required. Individuals performing standard treatments must be trained in how to control lead-based paint hazards. The training requirement is identical to that for interim controls. This option, which was not provided in the proposed rule, derives from a recommendation by the Task Force on Lead-Based Paint Hazard Reduction and Financing. The Task Force recommended standard treatments as an option to the risk assessment/interim control approach because standard treatments ''offer the advantage of devoting resources directly to hazard control—and their cost may be minimal for units in good condition.'' Also, the Task Force noted that standard treatments can be carried out by ''in-house maintenance staff who have sufficient knowledge of lead-based paint hazards.'' On the other hand, because no risk assessment is done, standard treatments may be implemented in some units that have no lead-based paint hazards, and resources may be expended unnecessarily. HUD is including the standard treatments option in the final rule in response to public comments that certified risk assessors may be in short supply in some parts of the nation, that the cost of risk assessments may be excessive, and because the decision to test is best left to the discretion of the designated party.

(2) *Presumption in the case of abatement.* Where abatement is required, the designated party may presume that lead-based paint or lead-based paint hazards or both are present throughout the property, omit the evaluation, and conduct abatement on *all* painted surfaces. This option, however, is not available in public housing, because a lead-based paint inspection has been a statutory requirement for all target housing that is public housing since 1994.

(3) *Lead hazard screen.* Where a risk assessment is required by this rule, the designated party may choose to first conduct a lead hazard screen to determine whether a full risk assessment is necessary. The lead hazard screen is a limited risk assessment activity that involves dust sampling and soil sampling, and may include paint testing on deteriorated paint surfaces (if present). The screen must be conducted in accordance with State or tribal work practices standards under an EPA-authorized program or in accordance with EPA standards at 40 CFR part 745, subpart L. Because EPA regulations do not include specific standards for dust lead in lead hazard screens, HUD, in this final rule, is setting such standards at approximately one-half those of a full risk assessment (see Section III.E.15.a and b of this preamble, below). The standards for soil are the same for a lead hazard screen as for a risk assessment. If State or tribal standards for a lead hazard screen are more stringent than those in this rule, the State or tribal standards prevail. If they are less stringent, the standards of this rule apply. The standard for lead-based paint is the same for the screen as for a risk assessment or lead-based paint inspection. If a dust sample is found to be positive, i.e. have a level of lead equal to or greater than the dust-lead standards for the lead hazard screen, or there is lead-based paint on a deteriorated paint surface, a full risk assessment must be performed. If the lead hazard screen is negative, the risk assessment is not required. The lead

hazard screen option was not provided in the proposed rule because the cost differential between a full risk assessment and a screen was perceived to be small (essentially the cost of soil testing and a somewhat more elaborate report) and because HUD felt that a certified risk assessor would be empowered by EPA and/or State or tribal regulations to use a screen anyway. HUD is including explicit mention of the screen in the final rule to assure that all parties will be aware that the option is available to try to achieve cost savings, which are most likely in post-1959 properties in good condition.

(4) *Paint testing.* Under the proposed rule the requirements of certain subparts of the rule would not apply for a specific deteriorated paint surface to be disturbed if a ''limited paint inspection'' indicated the absence of lead-based paint on that surface. EPA objected to the proposed rule's definition of ''limited paint inspection,'' noting that EPA work practices standards for inspections (40 CFR 745.227) do not include or envision a ''limited'' paint inspection or any other inspection activity not including a ''comprehensive inventory of all of the lead-painted surfaces in a residential dwelling.'' Accordingly, a ''limited'' paint inspection would be a violation of EPA work practice standards. If a similar procedure is retained, EPA said, the use of the word ''inspection'' in the definition should be dropped, and HUD should identify the circumstances under which this ''limited'' activity would be conducted, set out procedures and requirements for conducting it, and state the qualifications required for individuals who would conduct the activity. Another comment from a legal services organization recommended elimination from the regulation of the ''limited paint inspection'' option.

In the final rule, the term ''limited paint inspection'' has been replaced with the term ''paint testing.'' Where paint stabilization or interim controls of a deteriorated paint surface is required by this rule, paint testing of non-intact paint surfaces may be conducted to determine the presence of lead-based paint instead of conducting a complete lead-based paint inspection or presuming the presence of lead-based paint. Paint testing may also be employed to determine if intact paint on a surface to be disturbed during rehabilitation contains lead-based paint. If the paint testing indicates the absence of lead-based paint, paint stabilization, interim controls or abatement of that surface is not required. Paint testing must be performed by a certified lead-based paint inspector or risk assessor.

d. *Notice of Evaluation and Hazard Reduction Activities.* Title X requires the provision of notice to occupants describing the nature and scope of any risk assessment, lead-based paint inspection, or hazard reduction activities undertaken. In general, the Department believes that detailed matters of notice, format and distribution are best determined by the property owner or other recipient of Federal housing assistance, under the general framework provided in this rule. In the final rule as well as the proposed rule, the Department has interpreted this provision to require the following: (1) Within 15 calendar days of receiving a risk assessment, lead-based paint inspection, or paint testing report, a written notice must be provided to occupants containing a summary of the nature, scope and results of the evaluation and a contact for more information or access to the actual reports; and (2) within 15 calendar days of completing hazard reduction activities, a notice must be provided to occupants of actual hazard reduction activities conducted. The notice must contain a summary of the nature, scope and results of the hazard reduction activities, a contact for more information, and information on any identified remaining lead-based paint on a surface-by-surface basis. This notice shall be updated, based on any reevaluation of the dwelling unit or if additional lead-based paint hazard reduction work is conducted. The notices must be posted in centrally located common areas or distributed to each occupied dwelling unit, must be of a size and type that are easily read by occupants, and must be made available in a format accessible to persons with disabilities, to the extent practicable. The proposed rule required that, if possible, the notice must be provided in the occupant's primary language. The final rule, in response to comments that some apartment projects may have more than a dozen primary languages represented, deleted the ''if possible'' phrase and added the option to provide the notice in the language of the occupant's contract or lease.

The statute does not specifically require that separate notices be provided to occupants after an evaluation has been conducted and again after hazard reduction activities have been undertaken. In the Department's view, however, withholding information of the results of an evaluation until after hazard reduction activities have been performed poses a potential risk to occupants. The sooner occupants are provided with this information, the better they can protect their children and themselves.

The Department requested comment on the content, format and distribution of the notices. One commenter suggested that the notice be provided both when evaluation has taken place, and then again before hazard reduction activities are undertaken. HUD has not adopted this suggestion, because it believes it should not regulate tenant-landlord relations this closely. This comment was made to insure that occupants can prepare their units for hazard reduction activities. Actually, all hazard reduction activities require occupant protection by the owner (or contractor), who would coordinate these actions with the occupant even if no separate notice is provided.

Some commenters recommended that the notice be given to each occupant. HUD continues to believe that it is reasonable to expect that occupants can read the notice if it is posted in central locations. In the final rule, this decision is left to the discretion of the owner or other designated party, except that the notice must be distributed to the dwelling unit of a head of a tenant household if the owner knows that the head of household is a person with a disability that would make a posted notice inaccessible to that person.

One commenter asked for more time to provide occupants with the notice of evaluation results. The commenter felt that 15 days is not enough time for management to digest the evaluation and prepare the documentation needed to explain the results to residents. In response, HUD has added to the final rule a strong recommendation, but not a requirement, that paint inspectors and risk assessors provide summary statements of inspections and risk assessments suitable for posting or distribution. This provision is located in § 35.1320, in subpart R. For further discussion and sample formats, see Section III.E.15.c, of this preamble below, and appendices B through E of the rule.

One commenter noted that the proposed rule did not include notice requirements for HUD-owned properties. In the final rule, HUD has included notice requirements for HUD-owned properties that are similar to those for other housing programs, even though such a requirement is not called for by statute.

e. *Lead Hazard Information Pamphlet.* Title X requires that the lead hazard information pamphlet developed by EPA, CPSC and HUD pursuant to TSCA section 406(a) be provided to purchasers

and tenants of housing affected by section 1012 of the statute. Provision of the pamphlet is not required for housing affected only by section 1013 of Title X. In response to comments, the Department has made three types of changes to the pamphlet-provision requirement that was in the proposed rule. The first change is largely editorial and is intended to increase policy consistency across programs and to reduce the length of the rule. HUD has provided a statement of the general requirement in subpart B, § 35.130, and referenced that section in each of the program-specific subparts where pamphlet provision is required. Section 35.130 states that the designated party shall provide the pamphlet to each occupied dwelling unit. Acknowledgment of receipt is not required, but it is recommended. The program-specific subparts of the rule state more explicitly who shall provide the pamphlet—e.g., the public housing agency, the owner, the sponsor, the grantee, or the participating jurisdiction.

Second, HUD has made substantive changes to further minimize duplicative requirements for the provision of the pamphlet. Section 1012 is one of three different sections of Title X that call for provision of the pamphlet. The other two are section 1018 (which requires provision of the pamphlet and disclosure of known lead-based paint hazards prior to sale or lease), and TSCA section 406(b) (which requires persons performing renovation for compensation to provide the pamphlet before beginning the renovation). The proposed rule recognized potential overlap with the HUD-EPA rule implementing section 1018 (the disclosure rule) but did not discuss EPA's then-proposed rule implementing section 406(b) (the renovation rule).

For most rental housing, HUD's proposed rule required that the pamphlet be provided only if the tenant had taken residence before the effective date of the disclosure rule (which was either September or December 1996, depending on the number of housing units owned by the landlord). This policy did not address the case of a tenant who took residence before the effective date of the disclosure rule but received the pamphlet at the time of renewal or revision of the lease. The proposed-rule policy also did not address the case of a landlord who, acting as a renovator's designated representative, provided the pamphlet to a tenant before renovation in compliance with the renovation rule. Therefore, to allow landlords the flexibility to minimize duplication of pamphlet provision, the final rule, in § 35.130, states simply that it is not necessary to provide the pamphlet if it can be demonstrated that it has already been provided in accordance with the disclosure rule or the section 406(b) renovation rule. Prior provision of the pamphlet is best demonstrated by retaining an acknowledgement by the occupant of receipt of the pamphlet. Such acknowledgment is required by the disclosure rule and, with some exceptions, by the renovation rule.

In the proposed rule, the two subparts pertaining, respectively, to rehabilitation assistance and to CPD non-rehabilitation programs required provision of the pamphlet to the tenant, owner occupant or purchaser regardless of whether the pamphlet had been provided under the disclosure rule. In the final rule, this has been changed to conform with the general policy in § 35.130. HUD expects that most local and State rehabilitation programs will be administered so that provision of the pamphlet by the renovator in compliance with the renovation rule will also meet the requirements of this final rule.

Third, some commenters requested that EPA-approved State equivalents to the pamphlet be specifically permitted. In the interest of streamlining and simplicity, the final rule includes such a provision.

f. *Use of Paint Containing Lead.* The final rule continues the prohibition against use of new paint containing more than 0.06 percent by weight of lead in federally owned or assisted housing. This provision has been in HUD regulations since the late 1970's and is based on the 1977 regulation promulgated by the Consumer Product Safety Commission (16 CFR Part 1303).

If a State or local jurisdiction banned the residential use of paint containing lead before 1978, the rule allows the Secretary to apply a date earlier than 1978 to activities covered by this rule in that jurisdiction.

g. *Prohibited Methods of Paint Removal.* The final rule includes the same prohibited practices as in the proposed rule (open flame burning, machine sanding without HEPA exhaust control, abrasive blasting without HEPA local exhaust control, heat guns operating above 1100 degrees Fahrenheit, dry scraping or sanding except in certain situations), plus one addition: paint stripping using a hazardous volatile substance in a poorly ventilated space. OSHA says that adults exposed to methylene chloride ''are at increased risk of developing cancer, adverse effects on the heart, central nervous system and liver, and skin or eye irritation. Exposure may occur through inhalation, by absorption through the skin, or through contact with the skin.''(62 FR 1493, January 10, 1997).

The Consumer Product Safety Commission/EPA consumer notice, What You Should Know About Using Paint Strippers (CPSC Document 4423, EPA document EPA 747-F–95–002), recommends to persons who ''use paint strippers frequently, (that) it is particularly important that you...Never use any paint stripper in a poorly ventilated area. If work must be done indoors under low ventilation conditions, consider having the work done professionally instead of attempting it yourself.'' This is of particular importance in lead-based paint removal work larger than the de minimis level (such as 2 sq. ft. per room). CPSC and EPA recommend that persons who strip paint ''cross-ventilate (the worksite) by opening all doors and windows (and m)ake sure there is fresh air movement throughout the room.'' This practice deviates from the worksite protection for larger lead-based paint stripping projects, which typically involves protecting the work area and occupants from dispersal of lead debris and dust by sealing off ventilation systems and/or erecting barriers between the work area and the rest of the residence to reduce ventilation (see the HUD Guidelines, chapter 8). The CPSC/EPA notice also recommends precautions for firesafety, eye protection, skin protection, and waste disposal for paint strippers.

Some paint strippers are hazardous, and are addressed as such by regulatory agencies. HUD has considered the type of work in identifying the applicable definition to consider. The definition of ''hazardous substance'' used by the CPSC (see 16 CFR 1500.3), based on the Federal Hazardous Substances Act (15 U.S.C. 1261–74), applies to paint stripping work that does not involve employment, such as paint stripping by the owner of HUD-assisted housing who performs the work personally. The definition of ''hazardous chemical'' used by the Occupational Safety and Health Administration, and based on the Occupational Safety and Health Act (29 U.S.C. 655(a)), applies to paint stripping that does involve employment. OSHA's definition for the general industry at 29 CFR 1910.1200 currently applies to building maintenance, custodial, or construction work, because OSHA's hazard communication standard for the construction industry, at 29 CFR 1926.59, is identical to that for general industry.

Employers of paint removal workers are expected to know that OSHA

recently reduced its permissible exposure limit for methylene chloride in air from 500 to 25 parts per million (29 CFR 1910.1052 for general industry, and the identical 29 CFR 1926.1152 for construction, 62 FR 1492–1619, January 10, 1997). Methylene chloride can not be detected by odor at the permissible exposure limit, and organic vapor cartridge negative pressure respirators are generally ineffective for personal protection against it. Alternative paint strippers may be safer but have their own safety and/or health concerns, as indicated in the CPSC/EPA notice, so caution in the selection and use of any paint stripper is prudent. Paint stripping in a poorly ventilated space using a volatile substance that is hazardous should be done in accordance with CPSC regulations (16 CFR 1500.3), and/or OSHA's hazard communications standards (29 CFR 1010.1200 or 29 CFR 1926.59, which are currently identical), and with any substance-specific standards applicable to the work.

h. *Compliance With Other State, Tribal, and Local Laws.* In response to comments urging deference to State, tribal and local laws and regulations, HUD has added a provision to the final rule that makes it clear that HUD may modify or waive requirements of subparts B, C, D, F through M, and R, if the Department determines that a State, tribal, or local law provides a comparable level of protection and that such a modification or waiver will promote efficiency.

The final rule also indicates that this regulation is not intended to relieve program participants from compliance with State, tribal or local law.

i. *Minimum Requirements.* The final rule retains the policy included in the proposed rule that the requirements of subparts B, C, D, F through M, and R, are intended to be minimum requirements. Nothing in this rulemaking is intended to preclude designated parties from conducting a more protective method than the one required. Thus, for example, if the requirement is interim controls, a designated party may choose to use an abatement method instead.

Similarly, where more than one requirement covers a condition or activity, the most protective shall apply.

j. *Waivers.* Also retained from the proposed rule is the authority of the Secretary of HUD to waive any provision of this rulemaking, subject to statutory limitations. This conforms to, and cites, § 5.110, the general waiver section for HUD programs under title 24.

k. *Prior Evaluation or Hazard Reduction.* Some commenters requested clarification as to the validity under HUD's rule of lead-based paint activities conducted prior to the effective date of the rule. In the final rule, conditions under which a prior evaluation or hazard reduction meets the requirements of the rule have been specified.

Section 1013 of Title X gives the Secretary authority to waive the lead-based paint inspection and risk assessment requirement for federally owned housing built between 1960 and 1978 if a federally funded risk assessment by a certified contractor shows an absence of lead-based paint hazards. The Department believes case-by-case waivers to be inefficient and inappropriate and therefore has developed a broader policy on prior activities that covers all properties for which an acceptable risk assessment, lead-based paint inspection, abatement, or clearance has been performed. The Department believes that the conditions set forth in this section provide the necessary quality control measures for prior lead-based paint activities while avoiding unnecessary duplication.

A lead-based paint inspection or a risk assessment conducted at a residential property or dwelling unit prior to the property or unit becoming subject to the requirements of subparts C, D, F through M, and R, need not be repeated if it was conducted in the following manner or under the following circumstances:

(1) If the lead-based paint inspection or risk assessment was conducted prior to August 30, 1999 (the effective date of the EPA regulations at 40 CFR 745.227), results of the evaluation may be used if it was conducted in accordance with 40 CFR 745.227 or by an individual or firm otherwise certified under a State or Indian tribal lead-based paint inspector or risk assessor certification program, except that the risk assessment must be no more than 12 months old to be considered current; and furthermore a lead-based paint inspection of public or Indian housing meets the requirements of this rule if it was accepted by the housing agency in fulfillment of the lead-based paint inspection requirement of the public and Indian housing program prior to the effective date of this rule.

(2) If the inspection or risk assessment was conducted after August 29, 1999, the results of the evaluation may be used if it was conducted in accordance with 40 CFR part 745, subparts L and/or Q, except that the risk assessment must have been completed no more than 12 months prior to the date of reference.

The provisions in subpart B regarding prior risk assessments do not apply in cases where a risk assessment is required in response to the identification of a child under 6 years of age with an environmental intervention blood lead level. In such cases the risk assessment must be conducted in the child's dwelling unit shortly after the child's blood was last sampled.

Interim controls conducted prior to a property or unit becoming subject to the requirements of subparts B, C, D, F through M, and R, need not be repeated if such controls were conducted in accordance with a risk assessment that meets the requirements of this rule; however, ongoing lead-based paint maintenance and reevaluation must be conducted as required by this final rule.

Abatements conducted before August 30, 1999 and before the property or unit becomes subject to the requirements of subparts B, C, D, F through M, and R, need not be repeated if conducted by an abatement supervisor approved by a State or Indian tribe to perform abatement of lead-based paint or lead-based paint hazards. It is not necessary that the State or tribal approval program had EPA authorization. Abatements conducted after August 29, 1999, must have been conducted by a lead-based paint abatement supervisor certified by a State or Indian tribe with an EPA-authorized lead-based paint certification program or by EPA in accordance with 40 CFR 745.226. State law may impose different requirements. A lead-based paint abatement project meets the requirements of this rule if it was accepted by the housing agency in fulfillment of the abatement requirement of the public or Indian Housing program prior to the effective date of this rule.

With regard to the policy on prior lead-based paint inspections in public and Indian housing, it should be explained that in the late 1980's, pursuant to a statutory requirement, HUD began requiring public and Indian housing agencies to conduct lead-based paint inspections in all pre-1978 family developments. All inspections had to be completed by December 1994. Abatement of any lead-based paint was required at the time of modernization. HUD estimates that by 1998, virtually all of the pre-1978 family developments have been inspected, representing approximately 900,000 dwelling units. Also, HUD estimates that housing agencies have completely abated lead-based paint in over 200,000 units. The Department does not think it would be acceptable now to require that all lead-based paint inspections be redone. However, the rule does recommend that housing agencies conduct quality

assurance testing for all inspections that might be questionable.

l. *Enforcement.* Every commenter who addressed the question of enforcement of the rule remarked that penalties for noncompliance needed to be spelled out in the rule. The Lead-Based Paint Poisoning Prevention Act does not provide any independent enforcement provisions. Remedies will vary based on which program's requirements have been violated. For example, a designated party that is not in compliance with this rule may be considered in default of the regulatory agreement or housing assistance payments contract with the Department, may be debarred from receiving assistance from the Department or denied future participation in HUD programs, may be forced to surrender grant funds or may be otherwise subject to civil money penalties or other sanctions. Recipients of assistance under the Community Development Block Grant program will find enforcement provisions at 24 CFR 570.910, 570.911 and 570.913; those for other programs are found in other parts and sections of the CFR. HUD does not think it necessary to restate each program's sanctions in this lead-based paint rule but has included a general provision under § 35.160 that states the consequences of noncompliance with this regulation. HUD intends to vigorously enforce all requirements of this regulation.

m. *Records.* HUD has retained a record keeping requirement in this final rule for designated parties conducting lead-based paint activities. The Department strongly recommends that designated parties keep for the life of the property a copy of each notice to occupants of the results of evaluation and hazard reduction (including clearance) and each report from a certified individual or firm performing lead-based paint inspections, risk assessments, abatement, or clearance. Such notices and reports document compliance in case of a legal or administrative question; and evaluation and hazard reduction reports provide information on where lead-based paint may remain on the property so it can be managed safely, or, if such reports document that there is no lead-based paint remaining on the property, they can be used to support exemption from the requirements of this rule and the disclosure rule. At a minimum, the Department requires that such documentation be retained for three years. Records applicable to a portion of a residential property for which ongoing maintenance and/or reevaluation activities are required shall be kept until at least three years after such activities are no longer required. This policy is designed to provide a basis for helping ensure that Federal funds have been expended properly.

3. *Subpart C—Disposition of Residential Property Owned by a Federal Agency Other than HUD.* This subpart establishes minimum lead-based paint requirements for residential property built before 1978 that is owned and to be sold by a Federal agency other than HUD and is consequently subject to the requirements of section 1013 of Title X. The subpart basically restates the requirements set out in section 1013 of Title X, with minimal elaboration. The Department believes that the details of how another Federal agency should carry out the requirements of section 1013 are best determined by the affected agency.

The proposed rule required that for residential property built before 1960, the Federal agency shall conduct a lead-based paint inspection and a risk assessment, and shall abate all lead-based paint hazards. In the case of a purchaser who is not to be an owner occupant, the agency could make abatement a condition of sale with sufficient funds escrowed. For properties built after 1959 and before 1978, the proposed rule required that the agency conduct a risk assessment and a lead-based paint inspection. Under the disclosure rule implementing section 1018 of Title X, the agency would be required to provide the results of the risk assessment and inspection to the purchaser.

The Department of the Navy commented that the requirement that both a risk assessment and a lead-based paint inspection be conducted appeared to exceed the statutory requirement. Section 1013 calls for ''the inspection and abatement of lead-based paint hazards'' in pre-1960 housing and ''an inspection for lead-based paint and lead-based paint hazards'' in housing built between 1960 and 1978. HUD is calling for both an inspection and a risk assessment because the statutorily defined term ''inspection'' refers to a procedure that identifies the location of lead-based paint, if any, on a property but does not identify the location of ''lead-based paint hazards,'' as that term is defined in the statute. Identification of lead-based paint hazards is the function of a risk assessment. Thus, because lead-based paint hazards must be identified to comply with section 1013, a risk assessment must be conducted as well as an inspection. HUD expects that the two evaluation procedures will be performed concurrently.

The Air Force, Army and the General Services Administration (GSA) all asked for greater flexibility to permit negotiation with transferees regarding hazard control requirements ''built into the contract of sale.'' These agencies argued that, while the proposed rule allowed abatement to be made a condition of sale, it required the escrow of sufficient funds, and it may not be feasible for a bidder on large blocks of units to escrow large sums for long periods of time. It was pointed out that purchasers do not always know at the time of transfer what the reuse of a property, or a part thereof, will be. It was recommended that other conditions be permitted to be attached to the sale—for example, certification and indemnification requirements not requiring escrow deposits, and deed restrictions. GSA also complained that limiting an agency's authority to make abatement a condition of sale to when the purchaser is not an owner occupant could cause unnecessary complications in the bidding process. Bidders intending not to be owner occupants might discount their bids to account for the cost of the evaluation, while those intending to be owner occupants would not.

HUD believes that allowing the Federal agency a choice of conducting the abatement itself or making it a condition of sale facilitates efficiency and timeliness in the disposition process. The Department finds the agencies' comments about making abatement a condition of sale in pre-1960 properties to be reasonable and has changed the relevant provision to allow that ''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 the abatement is carried out by the purchaser before occupancy* of the property as target housing'' (emphasis added) and in accordance with the requirements of either a State or tribal program authorized by EPA under subpart Q of 40 CFR part 745 or EPA's requirements at subpart L of 40 CFR part 745. This revised wording is intended to provide agencies more choice, while retaining their responsibility to assure compliance with the statute; and it eliminates the potential for confusion and complications in the bidding process by removing the provision that confined the authority to make abatement a condition of sale only to those sales in which the purchasers will not be owner occupants of the property. Further, it should be noted that it is HUD's interpretation that abatement

will not be required if the reuse is not to be target housing.

With regard to disposal of military property, HUD recognizes that there are several statutory, regulatory and policy requirements pertaining to the cleanup, disposal and reuse of BRAC (base realignment and closure) properties and that agencies of the Department of Defense are using provisions in contracts for sale and deeds to assure that lead-based paint hazards in target housing built before 1960 will be abated prior to occupancy. Typical of such contract or deed provisions is the following: ''Purchaser agrees that purchaser will be responsible for the abatement of any lead-based paint hazards (as defined in Title X and implementing regulations) by a certified contractor in accordance with Title X and implementing regulations before the use and occupancy of such improvements as a residential dwelling (as defined in Title X).'' To document compliance with such a provision, HUD recommends that Federal agencies include as a contractual condition the requirement that the purchaser send a copy of the certified abatement report, including clearance, to the agency.

The Department of the Army recommended that the rule be changed to allow the lead-based paint inspection and risk assessment, as well as the abatement, to be conducted following the sale of the property. HUD is of the opinion that evaluation must be conducted by the Government before the sale for two reasons: (1) Unless the evaluation is done prior to bidding, bidders will be unable to estimate the cost of abatement in pre-1960 properties and to consider that amount in calculating their bids; and (2) 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.''

One advocacy organization argued that the regulations should do away with the artificial distinction they create between HUD-owned property and housing owned by some other Federal agency stating that ''the Federal government must provide consistent leadership in ensuring that all housing it sells or * * * disposes of is free of lead hazards.'' HUD's rationale for distinguishing between HUD Programs and those of other Federal agencies is discussed under Section III.D.5 of this preamble, above.

As mentioned above, in Section III.A.3 of this preamble, the statute states that the requirements of section 1013 do not apply ''in the absence of appropriations sufficient to cover the costs.'' Therefore this final rule provides in subpart B, at § 35.115, that each Federal agency other than HUD must determine whether appropriations are sufficient.

With regard to a sale of housing owned by Federal agencies other than HUD and in which more than one Federal agency is party to the sale, HUD leaves to the agencies involved the responsibility to determine which Federal agency is responsible for compliance with this subpart.

4. *Subpart D—Project-Based Assistance Provided by a Federal Agency Other Than HUD.* This subpart sets out minimum requirements, consistent with section 1012, for Federal agencies other than HUD that have housing programs and provide more than $5,000 of project-based assistance. The subpart basically restates the minimum requirements set out in section 1012. Few comments were received on this subpart of the proposed rule and therefore, the requirements remain largely unchanged.

HUD has modified the proposed-rule requirements for notification of occupants about the results of evaluation and hazard reduction. In the final rule, the notification requirements that apply to this subpart are basically the same as those that apply to HUD-assisted housing instead of the more general proposed version. The Department believes that this change will result in more uniform and complete notification practices among all federally owned and assisted housing, consistent with government-wide regulatory streamlining.

In response to a question from the Department of Agriculture regarding how the ''more than $5,000'' figure is to be applied, HUD is indicating in the final rule that the requirements apply to housing that receives annually more than $5,000 *per project.*

5. *Subpart E reserved.* This subpart is reserved for possible future rulemaking on lead-based paint poisoning prevention requirements in single family housing covered by an application for HUD mortgage insurance or guarantee. Existing requirements at 24 CFR part 200, subpart O, as revised by this final rule, shall continue to apply to housing covered by an application for single family mortgage insurance.

6. *Subpart F—HUD-Owned Single Family Property.* This subpart sets out the requirements for HUD-owned single family property. In the proposed rule, two subparts addressed HUD-owned single family property; one subpart set out the requirements when sufficient appropriations were available, and another set out the requirements for such property in the absence of sufficient appropriations. In the case of sufficient appropriations, the requirements were identical to those of section 1013 of Title X: for housing built before 1960, a risk assessment and lead-based paint inspection followed by abatement of lead-based paint hazards; for housing built between 1960 and 1978, a risk assessment and lead-based paint inspection, followed by disclosure as required under the disclosure law. In the case of insufficient appropriations, the requirements were a visual-assessment for deteriorated paint followed by paint repair and cleanup. The Department has removed the appropriations distinction, and set forth a single policy under subpart F, as explained in Section III.A.3 of this preamble, above.

A childhood lead poisoning prevention advocacy group argued for stronger protection in both the single-family and multifamily subparts, asserting that HUD and other Federal agencies selling residential properties have a ''particular responsibility'' to ensure that sold properties contain no lead-based paint hazards. The commenter declared, ''HUD has complete discretion and ample existing authority to require the evaluation and control of lead hazards before the sale of federally owned housing.'' An environmental organization joined in all these points, and remarked that ''one of the most obvious opportunities for lead hazard control is during turnover, such as that accompanying change of ownership. HUD can, and should, be a leader in assuring that hazards are corrected at the time of sale * * *'' The groups called for revisions to include the requirement of a risk assessment and hazard identification and control for any older structure.

In the final rule, the requirements for HUD-owned single family properties being purchased with a mortgage insured by HUD are: a visual assessment to identify deteriorated paint, paint stabilization, and unit-wide clearance. HUD has added the clearance requirement to provide assurance that the work is done properly and that no hazards remain after paint stabilization. Clearance is required only if paint stabilization is conducted. The Department has the option to test deteriorated paint and to confine paint stabilization only to those surfaces with deteriorated lead-based paint. No requirements are established for properties being purchased without a HUD-insured mortgage, except for the requirements of the disclosure rule. Many of the properties purchased

without HUD-insured mortgages are in need of major rehabilitation. The cost of paint stabilization and cleanup would be substantial relative to the value of the property, and there is a high likelihood that subsequent rehabilitation would negate the effectiveness of the cleanup in removing dust-lead hazards. HUD will acquaint purchasers of the risks of generating lead-based paint hazards during rehabilitation; this will occur during the notification and disclosure required by subpart A of 24 CFR part 35. Approximately one-half of all HUD-owned single family properties are purchased with HUD-insured mortgages.

This subpart does not require specific action regarding an environmental intervention blood lead level child. Less than 1 percent of single family properties are occupied when HUD acquires ownership, and, in most cases, HUD-owned single family property is vacant within three months of the transfer of ownership to HUD. Further, HUD-owned single family properties are generally sold within six months after acquisition. Because of the limited occupancy and relatively short HUD involvement with these properties, the Department finds it impracticable to impose environmental intervention blood lead level requirements.

7. *Subpart G-Multifamily Mortgage Insurance.* This subpart sets out the requirements for the Department's multifamily mortgage insurance programs. As in the proposed rule, applications for mortgage insurance in connection with a refinancing transaction are excluded from coverage if an appraisal is not required under the applicable procedures established by HUD. This exemption, which affects applications under section 223(a)(7) of the National Housing Act, is sensible because the properties are already under mortgage insurance, the mortgage amount is not being changed, there is no equity-take out, and the processing is very streamlined, often involving no on-site inspection by HUD.

The proposed rule required visual assessment for deteriorated paint, paint repair and cleanup for these programs. One commenter said that the HUD regulation will serve as ''a model standard of care for the private mortgage insurance industry'' and asked that HUD require the implementation of essential maintenance practices, risk assessments and lead hazard controls in all pre-1960 multifamily insured properties, and essential maintenance practices and risk assessments in all other federally insured properties. HUD agrees that rental housing must receive greater protection from lead-based paint hazards than owner-occupied housing because tenants have less ability than owners to make the repairs necessary to reduce hazards. The Department has revised, therefore, the procedures of the proposed rule to ensure, to the extent HUD considers practicable, that pre-1960 units are free of lead-based paint hazards and that the risk of lead exposure is minimized in housing built after 1959.

A major housing industry organization pointed out that it would not be practicable to implement the proposed-rule requirement that deteriorated paint in a multifamily property be repaired ''before the issuance of a firm commitment,'' because it would compel a mortgagor to expend sums on paint repair ''based on chance and speculation.'' Other factors could prevent issuance of the commitment, or market conditions might prevent closing on the commitment's terms. It was suggested that HUD escrow 125–150% of the estimated cost of the repair work, and permit the paint to be repaired within 90 days after closing, using a repair escrow. The Department has addressed this comment by providing for a repair escrow in the final rule.

In the final rule, a multifamily insured property constructed before 1960 must have a risk assessment before the issuance of a firm commitment, and interim controls of identified lead-based paint hazards must be completed before firm commitment or made a condition of the sale and insurance agreement with sufficient funds escrowed. Also, there must be notices to occupants regarding the results of the evaluation and hazard reduction. The sponsor must also agree to incorporate ongoing lead-based paint maintenance into regular building operations. Ongoing maintenance activities in this final rule are comprised of many of the same elements as the essential maintenance practices recommended by the Task Force. The Department is not requiring reevaluation in housing covered by this subpart, because there is no continuing Federal subsidy. For a multifamily insured property constructed after 1959 and before 1978, no evaluation or hazard reduction is required in the final rule; but for these properties, the sponsor must agree to incorporate ongoing lead-based paint maintenance practices into regular building operations. Due to the limited relationship between the purchaser and the Federal government, HUD deemed it impracticable to include in this subpart requirements for responding to a child with an environmental intervention blood lead level. In cases where multifamily mortgage insurance is combined with another HUD program (e.g., project-based assistance), the environmental intervention blood lead level requirements for that program would apply.

A new section has been added to this subpart of the final rule to clarify Departmental mortgage insurance policy on lead-based paint in buildings being converted from nonresidential use to multifamily residential use (conversions) and in multifamily residential properties undergoing major rehabilitation. Major rehabilitation is defined as rehabilitation that is estimated to cost more than 50 percent of the estimated replacement cost after rehabilitation. The requirement for both types of property is that all lead-based paint be abated and that the abatement methods be, to the extent practicable, paint removal or component replacement. Enclosure or encapsulation may be used if paint removal or component replacement are not practicable, as for example if they would damage substrate material considered architecturally significant. If the building is an historic property, interim controls can be used at the request of the State Historic Preservation Office (as explained in Section III.E.2.b of this preamble, above).

HUD considers conversions and major rehabilitations a special case because they usually involve major renovation of the interior, including new partitioning, new heating, ventilating, mechanical and electrical systems, plus new windows and doors. Also, conversions are, in effect, newly built housing. Such major construction activity provides an opportunity to remove lead-based paint and thus assure that such properties will be free of any possibility that lead-based paint hazards will be generated in the future as a result of the disturbance of paint during building operations, maintenance or future renovations. The incremental cost of abatement of all lead-based paint relative to the total conversion or rehabilitation cost will, in most cases, be modest, and, once done, the properties will be free of lead-based paint requirements, except to monitor any encapsulation or enclosure treatments or to engage in ongoing lead-based paint maintenance if interim controls are used in an historic property.

8. *Subpart H-Project-Based Rental Assistance.* This subpart sets out the requirements for the Department's project-based rental assistance programs. The Indian Housing Block Grant Program has been added as a covered program under this subpart.

The legislative history of Title X indicates that it was the intent of Congress that the requirements of a risk assessment and interim controls would apply to housing receiving project-based assistance. Therefore these procedures are required in the final rule, as they were in the proposed rule. The final rule also requires ongoing maintenance and reevaluation to assure that the housing remains lead safe, which is similar to the monitoring requirement in the proposed rule, and it has additional requirements to respond to a case of a child with an environmental intervention blood lead level, as did the proposed rule.

There is ample evidence, however, in the statute and in legislative history that Congress felt that evaluation and hazard reduction requirements should be reasonably related to the level of Federal financial assistance. Therefore, as in the proposed rule, the requirements of a risk assessment and interim controls apply only to multifamily properties receiving more than $5,000 per dwelling unit annually in project-based rental assistance, calculated as an average of per assisted unit. For all other properties receiving project-based rental assistance under a HUD program, the initial evaluation and hazard reduction requirements are: A visual assessment to identify deteriorated paint, stabilization of deteriorated paint, and clearance (if paint stabilization is required). This less stringent requirement applies to multifamily properties receiving an average of up to and including $5,000 per assisted dwelling unit annually in project-based rental assistance and all single family properties receiving Section 8 Moderate Rehabilitation or Project-Based Certificate assistance or project-based rental assistance from another HUD program. The stringency of the requirement is less for these properties because the amount of financial assistance is less and because the Department wanted to relieve owners of single family rental property with limited financial resources from the more extensive lead-based paint requirements that apply to owners of large multifamily projects with a high level of rental assistance. On average, the costs per dwelling unit of evaluation and hazard reduction are significantly higher for single family than for multifamily housing.

A commenter believed that the rule's definition of ''project-based assistance'' could be read to include assistance delivered by local governments using HUD's Community Planning and Development (CPD) program funds. It is the Department's expectation and intent that most housing-related programs using CPD program funds will be covered by subparts J (rehabilitation), K (acquisition, leasing, support services, and operation), and M (tenant-based rental assistance). However, a CPD-funded program may be covered by subpart H if it is providing rental assistance that is tied to a particular property through contract or agreement.

The Department has decided that the term ''project-based'' should be given its traditional meaning of housing assistance payment programs where the funding is tied to the residential property and not to the tenant. Further, the requirement for risk assessment only makes sense when it is applied to traditionally ''project-based'' housing assistance payment programs, where HUD maintains an ongoing relationship with the owner and is able to require a phase-in of risk assessment requirements.

Section 1012 of Title X (at 42 U.S.C. 4822(a)(1)(B)) sets out a schedule in which risk assessments and interim controls must be performed, i.e., all pre-1960 dwelling units before January 1, 1996; 25 percent of 1960–1978 dwelling units by January 1, 1998; not less than 50 percent of 1960–1978 dwelling units by January 1, 2000; and the remainder by January 1, 2002. The Department is not issuing a final lead-based paint rule in time to meet the January 1, 1996 deadline. Therefore, the Department has delayed the start of the risk assessment schedule but is establishing an expedited phase-in schedule that is somewhat simpler than that in the statute: September 17, 2001, for properties constructed before 1960, and September 15, 2003, for properties constructed after 1959 and before 1978.

This risk assessment phase-in schedule applies only to multifamily properties receiving more than $5,000 per unit annually in project-based rental assistance. The schedule for all other properties covered by subpart H is based on the schedule of initial or periodic inspections.

The revised schedule for risk assessments is based on the comments received on the proposed rule's risk assessment schedule, and it also takes into account the delay in meeting the deadlines established by the Congress. It is HUD's view that the revised schedule still provides adequate time for education and training in order to implement the new technical standards, requirements and procedures. The proposed rule provision that allows the Secretary to develop an alternative schedule, if necessary, remains in this subpart. The provision was included to provide the Department with flexibility in working with HUD clients whose housing assistance payment contracts are due to expire close to the required date for completing risk assessments—an issue raised by commenters.

The final rule does not include the proposed rule's requirement that an owner develop a hazard reduction plan. The hazard reduction plan, a concept suggested by the Task Force, was intended to provide the owner with flexibility to design his or her own schedule for completing interim controls. However, it was perceived by commenters and by the Department to be a paperwork requirement that could be a burden for owners and an unsolvable administrative problem for the Department. HUD has established, therefore, the following schedule for interim controls: Dwelling units occupied by families with children under 6 years of age and common areas servicing those units shall have interim controls completed no later than 90 days after the completion of the risk assessment for those units. Dwelling units not occupied by families with children under 6 years of age, common areas servicing those units, shall have interim controls completed within 12 months of the completion of the risk assessment for those units. If the owner chooses to conduct standard treatments rather than a risk assessment and interim controls (see ''Options'' above), standard treatments for units occupied by children of less than 6 years of age must be completed no later than 90 days after the final date for completion of a risk assessment, and for other units no later than 12 months following the final date for completion of a risk assessment. Completion of standard treatments as well as interim controls includes clearance testing.

These policies regarding interim controls and the standard treatment option must be complied with only by owners of properties receiving more than $5,000 per unit annually in project-based rental assistance. Other properties must complete paint stabilization and clearance, if needed, within 30 days of receiving notification of the results of the visual assessment.

HUD assumed in drafting the proposed rule that multifamily properties receiving more than $5,000 per unit annually in project-based rental assistance would be subject to the same lead-based paint requirements that currently apply until they are required to comply with this new regulation. Commenters pointed out that more clarity and precision is needed on requirements during the phase-in period. Therefore the Department is adding to this subpart a paragraph on transitional requirements that will be

effective on September 15, 2000. Until the phase-in date that is applicable to a property, or until the owner conducts a risk assessment, whichever is first, the owner must practice ongoing lead-based paint maintenance. This consists mainly of three activities: (1) Visually assessing, at least once a year, the condition of painted surfaces to identify deteriorated paint; (2) stabilizing any deteriorated paint; and (3) using safe work practices when performing any maintenance or renovation that disturbs paint that may be lead-based paint.

As explained in Section III.D.6 of this preamble, above, environmental intervention blood lead level requirements that apply to this subpart have been revised.

9. *Subpart I-HUD-Owned and Mortgagee-in-Possession Multifamily Property.* In the proposed rule, two subparts addressed the disposition of HUD-owned multifamily property; one subpart set out the requirements that would apply when sufficient appropriations were available to comply with the statutory requirements of section 1013, and another set out the requirements in the absence of sufficient appropriations. The section 1013 requirements are: for pre-1960 properties, an inspection and risk assessment followed by abatement of lead-based paint hazards, and, for properties built after 1959 and before 1978, an inspection and risk assessment followed by disclosure. In the absence of sufficient appropriations, the proposed rule called for a visual evaluation to identify deteriorated paint followed by repair of deteriorated paint and cleanup of the worksite. Additional requirements were included in the case of a child with an environmental intervention blood lead level, and monitoring of paint conditions was required for properties retained in the HUD-owned inventory for more than one year. No distinction was made for the period of construction, e.g., before or after 1960.

In the final rule, the Department has removed the appropriations distinction, and set forth a single policy under this subpart, as discussed under Section III.A.3 of this preamble, above. The Department's intent in setting lead-based paint policy for HUD-owned and mortgagee-in-possession multifamily property in this final rule is to make the requirements similar to those for multifamily properties receiving more than $5,000 per unit annually in project-based rental assistance while recognizing the intent of Congress as expressed in section 1013 of Title X. HUD finds no reason to require of itself a less stringent standard than it requires of private owners of assisted multifamily housing. The Department must conduct a lead-based paint inspection and risk assessment before publicly advertising the property for sale, followed by interim controls of all identified lead-based paint hazards. A lead-based paint inspection is required as well as a risk assessment so information on the location of lead-based paint can be given to the purchaser pursuant to the disclosure rule at subpart A of 24 CFR part 35, who can then use it to assure that lead-based paint hazards are not generated inadvertently during future maintenance or renovation work. For dwelling units occupied by families with children of less than 6 years of age and common areas servicing such units, interim controls shall be completed no later than 90 days after the completion of the risk assessment; while dwelling units not occupied by families with children younger than 6 and associated common areas must have interim controls and clearance completed no later than 12 months after the risk assessment. If a unit becomes newly occupied by a family with a child of less than 6 years of age or such a child moves into a unit, interim controls must be completed within 90 days after said move-in if they have not already been completed. The schedule for completion of standard treatments is also the same as for multifamily housing receiving more than $5,000 per unit annually in project-based rental assistance. The Department must provide a notice to occupants if evaluation or hazard reduction is undertaken.

If conveyance of the title by the Department at a sale of a HUD-owned property or a foreclosure sale caused by the Secretary when HUD is mortgagee-in-possession occurs before the required schedule for completion of interim controls or standard treatments, the Department must complete the hazard reduction before conveyance or foreclosure sale, or the Department shall be responsible for assuring that interim controls are carried out by the purchaser according to the following schedule: (1) In units occupied by families with children of less than 6 years of age and common areas servicing such units, no less than 90 days after the date of closing of the sale or 90 days after a family with a child less than 6 moves in; and (2) in all other units and associated common areas, no later than 180 days after the closing of the sale. The schedule for completion of hazard reduction by the purchaser is keyed to the closing date, because it is only at that time that the purchaser can begin to make firm arrangements to conduct the treatments; but the duration of time from the closing date is somewhat less than that which HUD must meet in relation to the risk assessment date because of concern that the risk assessment may go out of date. Similar to requirements for multifamily properties receiving project-based assistance, ongoing maintenance and reevaluation are required under this subpart if the Department retains ownership of the property for more than 1 year.

This subpart requires specific actions in response to a child with an environmental intervention blood lead level; the requirements are similar to those for housing receiving project-based rental assistance.

10. *Subpart J–Rehabilitation.* This subpart sets out the requirements for the Department's programs which provide assistance for housing rehabilitation. The majority of this assistance is provided through programs administered by the Office of Community Planning and Development (CPD), principally the Community Development Block Grant program and the HOME program. Other rehabilitation assistance is provided under the Flexible Subsidy-Capital Improvement Loan Program (CILP) and the Mark-to-Market Program for multifamily property. Rehabilitation assistance may also be provided under the Indian Community Development Block Grant Program and the Indian Housing Block Grant Program. This subpart does not apply to the following HUD programs that may have rehabilitation activities: Mortgage insurance programs, the Section 8 Moderate Rehabilitation program, and the public housing modernization programs. Those programs are covered by other subparts.

The requirements of Title X pertaining to federally assisted residential rehabilitation are quite specific. The statute sought to take advantage of the rehabilitation event as a cost-effective opportunity to sharply reduce lead-based paint hazards in the assisted stock. Many types of rehabilitation, such as window replacement or installation of new walls or doors, often reduce lead-based paint hazards. Section 1012 requires at a minimum: (1) Inspection for the presence of lead-based paint prior to federally-funded renovation or rehabilitation that is likely to disturb painted surfaces; (2) interim controls of lead-based paint hazards in housing receiving less than $25,000 per unit in Federal rehabilitation assistance; and (3) abatement of lead-based paint hazards

in housing receiving more than $25,000 per unit.

Among those commenters on the proposed rule who directed their remarks towards specific HUD programs, the rehabilitation programs drew by far the most attention, largely because compliance was perceived as complex and costly. Some commenters felt that the rule would reduce the impact that rehabilitation assistance funds can have on the community and would make smaller communities determine that rehabilitation projects are ''not worth it.'' Pointing out that some local rehabilitation assistance is provided in the form of a loan, local agencies feared that they would have difficulty getting homeowners to borrow the additional funds needed to comply with the lead-based paint hazard reduction requirements. As a long time proponent and funder of housing rehabilitation, the Department understands and shares these concerns and has attempted to provide local agencies with ways to incorporate as efficiently as possible the statutory requirements of Title X into their rehabilitation programs.

At the outset, it should be noted that rehabilitation that does not disturb a painted surface is exempt from this rule. Thus, for example, roof repairs or heating system improvements are likely to be exempt unless such activities disturb painted surfaces.

In both the proposed rule and the final rule, HUD has interpreted the statutory requirement of a lead-based paint inspection to apply only to surfaces to be disturbed by rehabilitation. In the proposed rule this procedure was called a ''limited paint inspection.'' In response to concerns of EPA regarding possible confusion if the word ''inspection'' is used differently than in EPA regulations, HUD is using the term ''paint testing'' instead (see Section III.E.2.c. of this preamble, above). Furthermore, HUD provides the option of either conducting paint testing of the painted surfaces to be disturbed or replaced during rehabilitation or presuming that all such painted surfaces are coated with lead-based paint. Paint testing is not necessary if a complete lead-based paint inspection has been conducted of the property.

In the final rule as well as in the proposed rule, the Department has added a category of housing receiving up to and including $5,000 per unit in Federal rehabilitation assistance to allow a lower level of lead-based paint treatment for rehabilitation of modest expenditure. HUD's intent in setting requirements for housing in this category of assistance is to allow low level rehabilitation to occur without incurring the full expense of the statutory lead-based paint requirements but at the same time to minimize the possibility of exposure to lead-based paint hazards as a result of the assisted rehabilitation work. This has been referred to as a ''do-no-harm'' policy. The impact of this policy is significant. HUD estimates that the average amount of rehabilitation assistance per unit from the Community Development Block Grant program is between $5,000 and $6,000. The proposed rule would have required visual assessment to identify deteriorated paint on surfaces to be disturbed by rehabilitation, repair of such deteriorated paint surfaces, and cleanup of the worksite. The final rule requires paint testing of surfaces to be disturbed or presumption of lead-based paint, and, if the paint is found or presumed to be lead-based paint, the following are required: safe work practices (as specified in subpart R of the final rule) during rehabilitation, repair of any paint disturbed during rehabilitation, and clearance of the worksite. The main differences between the proposed and final rules are (1) the more explicit emphasis on safe work practices during rehabilitation as the way to avoid causing exposure to lead-based paint hazards, and (2) the clearance requirement, which assures that no lead-based paint hazards are left at the worksite. The worksite consists of only those rooms or areas where the rehabilitation is conducted. Safe work practices include the following: Not using prohibited practices of paint removal, occupant protection and worksite preparation, and specialized cleaning. These practices were included in the requirements of the proposed rule for paint repair. HUD estimates that the average cost per unit of complying with today's rule for housing receiving no more than $5,000 in Federal rehabilitation assistance will be approximately $150 for single family and $115 for multifamily units.

For housing receiving more than $5,000 and up to and including $25,000 in Federal rehabilitation assistance, the final rule makes one significant change to the requirements in the proposed rule (which derive directly from the statute), and that is the standard treatment option. This option allows the use of standard treatments (as suggested by the Task Force; see Section III.D.3 of this preamble, above) instead of conducting a risk assessment and interim controls. If standard treatments are used, no evaluation is required. Standard treatments include stabilization of deteriorated paint, the provision of smooth and cleanable horizontal surfaces, the correction of conditions causing rubbing, binding or crushing of painted surfaces, and the treatment of bare soil—all using safe work practices and followed by clearance. When conducted as a part of rehabilitation, standard treatments must include stabilization of paint disturbed as a result of the rehabilitation work, and clearance must be conducted after completion of rehabilitation, as is the case if interim controls are conducted. Standard treatments may be an appropriate option in housing in which experience indicates there is a high likelihood of extensive lead-based paint hazards. In such housing the risk assessment would just confirm what is expected. Standard treatments may also be appropriate in housing that is otherwise in good condition but is undergoing rehabilitation in one or more confined areas, in which case the extent of deteriorated paint, surfaces that are not smooth and cleanable, and dust-generating conditions might be minor. Another potential advantage of standard treatments is that they are a known and limited group of activities that crews can be trained to perform efficiently. A possible disadvantage is that such treatments may be performed unnecessarily on surfaces without lead-based paint, because no testing is conducted.

In Title X, the statutory requirement for hazard reduction in properties receiving more than $25,000 per unit in Federal rehabilitation assistance is ''abatement of lead-based paint hazards in the course of substantial rehabilitation projects.'' In the proposed rule, the statutory phrase ''in the course of * * * rehabilitation'' was interpreted to mean that lead-based paint hazards on surfaces to be disturbed by rehabilitation were to be abated (i.e. permanently eliminated), while hazard reduction (which includes less costly, but more temporary, interim controls as a minimum) could be conducted on lead-based paint hazards on other surfaces. This interpretation was questioned by those who thought the Congress meant that all lead-based paint hazards should be abated in these major rehabilitation projects, regardless of whether the surface was or was not being disturbed by the rehabilitation. Supporters of the proposed-rule interpretation claimed that the cost of abating lead-based paint hazards on the exterior of old houses with wood siding would be exorbitant. In the final rule, the Department has revised the proposed-rule requirement to require abatement of all lead-based hazards

identified by paint testing and/or a risk assessment and any lead-based paint hazards created as a result of the rehabilitation work, *except* that interim controls are acceptable on exterior surfaces that are not disturbed by rehabilitation.

HUD believes that the exemptions and options in this rule provide designated parties with enough flexibility to achieve the statutory objectives with maximum efficiency. For instance, in very old housing with a high likelihood of extensive lead-based paint and undergoing Federally assisted rehabilitation of between $5,000 and $25,000 per unit, the grantee, participating jurisdiction or CILP recipient may find it most efficient to forego the evaluation, presume the presence of lead-based paint and lead-based paint hazards, and conduct standard treatments using trained and efficient crews. Conversely, if the presence of lead-based paint or lead-based paint hazards is questionable, a grantee, participating jurisdiction or CILP recipient may choose to test the paint and conduct a risk assessment to determine whether it is necessary to treat all, some or any of the paint as lead-based paint.

Beyond the broad objections regarding the cost impact of the rule, commenters had many questions and concerns. A frequent complaint among commenters was their inability to determine, from the proposed rule, ''exactly what rehabilitation is, what are rehab soft costs, and exactly what activities are to be used to determine the various types of costs.'' In the final rule, HUD has adopted the policy that the determination of the category of assistance (up to and including $5,000, more than $5,000 and up to and including $25,000, or more than $25,000) will be based on the hard costs of ordinary rehabilitation, not including the additional costs of complying with this rule. The Department has made efforts to clarify the definition of hard and soft rehabilitation costs through the use of examples.

A commenter also questioned the Department's decision not to include additional provisions for dwellings occupied by children with environmental intervention blood lead levels under rehabilitation-related rules. In general, the requirements for units receiving rehabilitation assistance of more than $5,000 (risk assessment and either interim controls or abatement of lead-based paint hazards) are similar to or more stringent than the activities that would be required in the case of an environmental intervention blood lead level child. Also, rehabilitation assistance is usually provided at one point in time, so there is often no continuing financial involvement of HUD with the property. However, in the case of a multifamily property receiving Federal rehabilitation assistance under the HOME program or the Flexible-Subsidy-CILP program, the grantee, participating jurisdiction or CILP recipient must require the property owner to incorporate ongoing lead-based paint maintenance activities into regular building operations. Ongoing lead-based paint maintenance practices are designed to ensure that new lead-based paint hazards do not occur in the property.

A commenter representing developers noted that ''subrecipient'' was defined to exclude an owner or developer receiving rehabilitation assistance. ''Thus the responsibility of performing subrecipient duties must fall on the local government grantee.* * *'' The commenter urged that the final rule permit duties to be delegated to the owner or developer, with only monitoring and oversight functions necessarily remaining with local government grantees. Although many of the requirements under this subpart refer to the grantee or participating jurisdiction, as is the case with many CPD programs, it is the Department's intent that the grantee or participating jurisdiction may require virtually all of these functions to be performed by a subrecipient or other designated party. The exclusion of an owner or developer, however, from the definition is retained in the final rule to permit at least some degree of independent oversight of the use of public funds.

Another funded agency commenter said that the rule's requirements would ''cripple'' the agency's ancillary programs. The commenter stated that the agency provides funds to an organization that implements an emergency rehabilitation program for county residents. This program, the commenter argued, is staffed by volunteers, and will not be able to comply with the extensive lead-based paint requirements. The Department has attempted to respond to this concern by tailoring the requirements to the amount of Federal assistance. While even the minimum requirements of the $5,000-or-less category may require workers to undergo a modest amount of training, such training may be necessary to protect children who may live in the unit, and it should not be inefficient where such workers are volunteers who work on multiple projects.

In the final rule, the Department has established separate requirements for insular areas operating rehabilitation programs under the HOME and Community Development Block Grant (CDBG) programs. Insular areas include the U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa. The requirements for insular areas are less stringent than the regular requirements for properties receiving more than $5,000 per dwelling unit in Federal rehabilitation assistance. There is no difference in requirements for properties receiving up to $5,000 per unit in rehabilitation assistance. The rationale for the lesser requirements is that insular areas do not currently have the capacity to comply with more stringent requirements applicable to other CDBG grantees and HOME participating jurisdictions, nor is it likely that capacity can be developed in the foreseeable future. The remote location of the insular areas, their small populations and the limited volume of HOME- and CDBG-funded housing activity makes the development of a competitive lead ''industry'' (i.e., certified lead inspectors, risk assessors and contractors) unlikely.

For properties receiving more than $5,000 per unit in rehabilitation assistance, the final rule requires, in insular areas, stabilization of all deteriorated paint and paint being disturbed by rehabilitation instead of the normal requirements of a risk assessment and interim controls or abatement of lead-based paint hazards. (As is always the case, stabilization is not required of paint found by a certified lead-based paint inspector not to be lead-based paint.) Safe work practices must be used, including occupant protection, worksite preparation and clearance. HUD believes that clearance is very important and that, if laboratory analysis of dust samples is not available on an island, it can be obtained at reasonable cost through air mail of samples and electronic response by the laboratory, as is often the practice elsewhere in the United States.

These separate requirements for rehabilitation assistance of more than $5,000 per unit in insular areas are protective of children and other occupants. They are the same as those in the final rule for units receiving tenant-based rental assistance (subpart M), assistance for acquisition, leasing, support services or operation (subpart K), and HUD-owned single family properties at disposition (subpart F). However, when undertaking Federally-funded rehabilitation, the Department encourages insular areas to use, to the maximum extent feasible and in consultation with their respective Field Office, the more rigorous and thorough

methods and procedures required of other grantees and participating jurisdictions in subpart J.

Finally, subpart J requires that all occupants shall be provided with the lead hazard information pamphlet by the grantee, participating jurisdiction or CILP recipient (or their representative). In all cases where evaluation or hazard reduction or both are undertaken, each grantee, participating jurisdiction or CILP recipient shall post or distribute a notice to occupants of the results of the evaluation. The grantee, participating jurisdiction or CILP recipient shall also post or distribute a notice of the results of the hazard reduction activities.

11. *Subpart K—Acquisition, Leasing, Support Services, or Operation.* This subpart sets out the requirements for certain CPD programs and the Indian Community Development Block Grant program and the Indian Housing Block Grant program when such programs are providing Federal funding for acquisition, leasing, operating or support services for a residential property. In the proposed rule, this subpart was entitled ''Community Planning and Development (CPD) Non-Rehabilitation Programs.'' The title has been changed because of the addition of Indian programs to the coverage of the subpart and because the new title is more descriptive than the term, ''non-rehabilitation,'' used in the proposed rule. The main CPD programs that fund activities covered by this subpart are the HOME program, the Community Development Block Grant program, the Supportive Housing program, the Emergency Shelter Grant program, and Housing Opportunities for Persons with AIDS (HOPWA). Persons with AIDS are considered persons with disabilities, so assisted housing for them is exempt from the rule except when there is a child of less than 6 years of age who resides or is expected to reside in the dwelling unit.

Examples of the types of housing assistance to which subpart K applies are acquisition or leasing of a homeless facility, downpayment assistance, mortgage and utility payments for persons with AIDS (if a child under 6 resides), and payment of security deposits. Other examples are payment of the day-to-day operating expenses of housing for the homeless and assistance for various support services that are provided on site at a residential facility, such as child care, employment assistance, outpatient health care including drug treatment or counseling, case management, nutritional counseling, security arrangements, and assistance in getting permanent housing.

For properties built between 1950 and 1978, the lead-based paint requirements for these activities in the proposed rule were visual assessment, paint repair and cleanup. For properties built before 1950, the requirements were visual assessment, dust testing for the presence of dust-lead hazards, paint repair, cleanup of the dwelling unit if the dust testing finds dust-lead hazards, or cleanup only of the paint-repair worksite if the dust testing does not find dust-lead hazards. In certain instances, ongoing monitoring of paint conditions was required. For all activities, provision of the pamphlet developed by EPA under TSCA section 406 was required.

Some commenters expressed concern regarding the adverse impact that these requirements would have on small-grant acquisition assistance programs. The Department believes that families receiving such assistance should be able to move into lead-safe housing. HUD has a statutory responsibility under the Lead-Based Paint Poisoning Prevention Act to establish procedures that achieve that objective to the extent practicable.

In the final rule, as in the proposed rule, HUD has set requirements for this subpart that are the same in most aspects as those for tenant-based rental assistance, which is covered by subpart M. The basic strategy set forth in the final rule consists of a visual assessment to identify deteriorated paint, stabilization of deteriorated paint, clearance of the dwelling unit, and, where there is a continuing and active financial relationship with the property, ongoing lead-based paint maintenance. This procedure is the minimum needed to assure that the housing is lead-safe. Many of the households inhabiting residential properties assisted through programs covered by subpart K include young children. Many of the assisted households are homeless. A basic level of protection against exposure to lead-based paint hazards is essential.

In the final rule, HUD has changed the proposed rule's requirement of paint repair to paint stabilization, as it has throughout the final rule. This is explained above in Section III.D.9 of this preamble. Also, the dust testing requirement in pre-1950 housing has been eliminated, and in its place the Department has required clearance of the dwelling unit, as it has for all other HUD-assisted and HUD-owned housing. Clearance is required, however, only if paint stabilization is required. Also, the final rule eliminates the proposed rule's distinction between pre-1950 and post-1949 housing. In the interest of regulatory streamlining, a single set of requirements applies to all pre-1978 housing. As in the proposed rule, the grantee or participating jurisdiction must provide the lead hazard information pamphlet to all occupants except those who have received the pamphlet under the disclosure rule. Also, each grantee or participating jurisdiction must provide a notice to occupants describing the results of the clearance examination. The notice requirement does not apply to the visual assessment but does apply to clearance results after paint stabilization, because the clearance report provides known information about the presence or absence of lead-based paint hazards. Finally, the final rule requires that ongoing maintenance of painted surfaces and safe work practices be incorporated into regular building operations, where appropriate under HUD-administered programs.

The Department has given the grantee or participating jurisdiction the discretion to determine whether the cost of paint stabilization and clearance 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. This helps to ensure maximum flexibility for local authorities and is consistent with HUD's reinvention initiative. Because the relationship between the HUD grantee or participating jurisdiction and the property owner or developer is often a one-time event, HUD deemed it impracticable to include special requirements in the case of a child with an environmental intervention blood lead level.

12. *Subpart L—Public Housing Programs.* This subpart sets forth requirements for eliminating lead-based paint hazards in public housing. The proposed rule included Indian housing under this subpart, but, as explained above in Section III.A.8 of this preamble, Indian housing programs are now covered under other subparts of this rule. Section 1012 of Title X does not specifically add new requirements to public housing. The Senate Committee Report states that Congress did not intend the changes to the Lead-Based Paint Poisoning Prevention Act introduced by Title X to pose a barrier to ongoing efforts by public and Indian housing agencies to conduct risk assessments, lead-based paint inspections and abatement activities. According to the Report, ''the changes made by Title X to the public housing provision of the LPPPA are intended merely to conform the terminology of Title X's definition of terms'' (Senate Report 102–332, page 118). Nevertheless, in order to consolidate all

of the lead-based paint requirements for HUD in a single place, the Department is including subpart L for public housing in this rulemaking. This subpart implements the requirements set out in 42 U.S.C. 4822(d)(1)(3) prior to Title X; where necessary, however, the Department has modified these requirements in order to be consistent with the intent of Title X. Such modifications are noted below.

The Lead-Based Paint Poisoning Prevention Act requires PHAs to complete lead-based paint inspections of all pre-1978 family developments by December 6, 1994. This statutory requirement has existed since 1987. HUD has data indicating that most developments have been inspected, as mandated by Congress. Those that have not must be inspected no later than the effective date of this final rule, which is September 15, 2000. Where a PHA has not complied with the statutory requirement to complete lead-based paint inspections of pre-1978 family units, the PHA is eligible only for Emergency Modernization or work needed to complete the inspections as described in 24 CFR 968.210. The Lead-Based Paint Poisoning Prevention Act also has required for many years that PHAs abate all lead-based paint found in the inspections. This is a continuing activity conducted at the time of modernization.

The Department's primary concern in developing this rule is with the safety of occupants of housing developments that have lead-based paint but have not yet been abated. In such cases, modernization (and hence abatement) may be years or decades away, and nothing is required in the interim to control lead-based paint hazards. In the proposed rule, HUD set forth the following additional requirements for these developments with the goal of assuring that they are lead-safe: visual assessment for deteriorated paint, matching the visual assessment with the lead-based paint inspection to identify the locations of deteriorated lead-based paint, dust and soil testing to determine the presence of dust-lead hazards or soil-lead hazards, and interim controls of lead-based hazards found.

A principal concern of commenters was the financial burden, the asserted ''unfunded requirement,'' the rule would place on public housing agencies. Based on these financial hardships, a group representing public housing agency interests recommended eliminating the rule's new requirements (dust and soil testing and interim controls) as they pertained to public and Indian housing. Acknowledging the need for addressing the issue of lead in the environment, one commenter asserted that most local housing agencies already had made a good faith effort to comply with the requirement to complete lead-based paint inspections by the end of 1994.

A more specific issue addressed by some commenters was the acceptance by the proposed rule of dust and soil testing by non-certified personnel. Some commenters objected to this because it appeared to violate the requirements of EPA's regulations implementing TSCA sections 402 and 404. Others urged HUD to establish a major training activity to assure that public housing maintenance staff would be able to conduct such sampling properly and interpret the results accurately.

In the final rule, HUD is requiring that, instead of soil and dust testing by non-certified personnel, risk assessments must be conducted by certified risk assessors in developments with lead-based paint that has not yet been abated. The Department has concluded after careful consideration that it would be wasteful and ineffective to allow PHAs to skirt the EPA certification requirements for dust and soil testing. For further discussion of this issue, see Section III.D.8 of this preamble, above.

Another question has to do with the reliability of the lead-based paint inspections that have already been conducted. In a study of prior inspections in public housing, HUD has found that approximately 13 percent of the inspections were of questionable accuracy. In the proposed rule HUD, therefore, encouraged PHAs to engage in quality control activities to determine whether a lead-based paint inspection is reliable. The final rule continues this policy. HUD's Office of Public and Indian Housing issued a detailed Notice in 1995 (PIH 95–8(HA)) explaining how quality control can be implemented for lead-based paint inspections that have already occurred.

The final rule also continues the proposed rule requirement that occupants be informed of the results of all evaluation and hazard reduction activities, and it continues the additional requirements that are triggered if a child with an environmental intervention blood lead level is identified in a public housing development. The basic requirement is that a risk assessment and interim controls be completed in the dwelling unit quickly. A more detailed explanation of the requirements for response to a child with an environmental intervention blood lead level is provided above in Section III.D.6 of this preamble.

Under this subpart the Department has included references to the liability insurance provisions found in the pubic housing program requirements. Also, the rule describes the circumstance under which a PHA may use financial assistance received under the modernization program for the evaluation and reduction of lead-based paint hazards, and references sections of the public housing regulations for additional information on eligible costs.

13. *Subpart M—Tenant-Based Rental Assistance.* This subpart sets out lead-based paint requirements for the Department's tenant-based rental assistance programs, including those operated under the HOME, Housing Opportunities for Persons With AIDS (HOPWA), Shelter Plus Care, and Indian Housing Block Grant programs as well as Section 8. Because there are different types of local organizations that administer tenant-based rental assistance under HUD programs, this subpart uses the general term ''designated party'' to refer to housing agencies, grantees, participating jurisdictions or Indian Housing Block Grant recipients. Unlike other subparts, this subpart applies only to housing occupied by families with children of less than 6 years of age.

The lead-based paint requirements for tenant-based rental assistance in the proposed rule were virtually the same as those proposed for the subpart now titled Acquisition, Leasing, Support Services, or Operation (formerly CPD Non-Rehabilitation). For properties built between 1950 and 1978, visual assessment, paint repair and cleanup; for properties built before 1950, visual evaluation, dust testing for the presence of dust-lead hazards, paint repair, cleanup of the dwelling unit if the dust testing finds dust-lead hazards, or cleanup only of the paint repair worksite if the dust testing does not find dust-lead hazards.

Comments ranged from declarations that it was illegal under the statute to apply the rule to tenant-based programs to assertions that stringent lead-control standards must be applied, *especially* in the case of the tenant-based programs. Commenters opposed to the requirements argued that there exists a ''statutory, program-wide exemption for housing receiving tenant-based Section 8 assistance.'' One commenter asserted that only landlords agreeing to accept assistance under a section 1011 grant (i.e., the HUD Lead-Based Paint Hazard Control Grant program) are required to adhere to requirements associated with lead-based paint testing and control. HUD disagrees. The Department's response to the question of the legality

of imposing lead-based paint requirements on tenant-based rental assistance programs is discussed above, under Section III.A.2. of this preamble.

Many commenters discussed the fair housing implications of the rule because of its focus on families with young children. Some commenters advocated simply relocating a family to another unit upon discovery of a lead hazard (leaving the unit available for other families without small children). Others advocated making special funding available in pilot programs for particular localities, to finance any necessary control or abatement activities, or providing tax or other special incentives to owners faced with unexpected repair costs arising out of the discovery of a lead hazard. Still other commenters advocated coverage for all tenant-based units without regard to family makeup.

The Department believes limiting the requirements of subpart M to dwelling units in which a family with a child less than age 6 resides is a reasonable policy because of the unique ability of designated parties to identify changes in the composition of an assisted family through the income certification process. In addition, the designated parties are able to monitor the property owner's compliance with lead-based paint requirements through initial and periodic dwelling unit inspections. These two safeguards will help to ensure that a designated party will know whether a child of less than 6 years of age resides in a dwelling unit. An owner who refuses to rent a dwelling unit to a family with a child under the age of 6 may be in violation of the provisions of the Fair Housing Act prohibiting discrimination on the basis of familial status. The same possibility applies to a designated party that requires that a family with a young child make an involuntary relocation. (See the discussion of the requirements of anti-discrimination statutes in Section III.D.7 of this preamble above.)

Comments included repeated expressions of fear that the cost of compliance with this subpart would result in a ''shortfall'' of housing available to families with tenant-based rental assistance, and assertions that new contractual duties were being imposed on owners that were not a part of the owners' existing agreements with the designated party. Landlords will be discouraged from participating, commenters claimed, and the rule will drive up their operating costs, without any certainty of additional compensation. Both rural housing authorities and agencies in the largest cities worried about tight rental markets and the inability of participating families to locate lead-safe units.

Taking the more protective point of view, other commenters noted that the rule's requirements for tenant-based programs were less demanding than those set out for project-based programs and advocated applying the stricter standards uniformly. Some commenters urged that HUD impose the same protection that the Task Force on Lead-Based Paint Hazard Reduction and Financing recommended for all private units. A health department believed that because housing assistance programs were shifting toward tenant-based assistance, ''the most stringent of requirements probably should be on this (type) of housing.''

In considering how to respond to these comments, HUD took into account the recommendations of the Task Force. In their report, the Task Force recognized most of the concerns expressed by commenters on the proposed rule, not the least of which was the fear that expensive standards could reduce participation in the program by private landlords. It is noteworthy that the Task Force concluded that lead-based paint requirements for tenant-based assistance programs should be similar to the standards recommended by the Task Force for rental housing in general.

Under current regulations, HUD requires that designated parties administering tenant-based rental assistance programs visually inspect pre-1978 dwelling units that are to be occupied by children under the age of 6 to identify defective paint, and that owners correct any defective paint surfaces and clean up the worksite carefully. Except for the explicit cleanup requirement, which was issued in 1995, these requirements have been part of the Housing Quality Standards (HQS) for over ten years.

In the final rule, as in the proposed rule, HUD is retaining the requirement of a visual assessment to identify deteriorated paint to be performed usually by a housing quality inspector at initial and periodic inspections. (There is no effective difference between the meaning of ''defective paint,'' the term used in the current regulations, and ''deteriorated paint,'' which is the term used in Title X.) Also, the final rule retains the proposed rule requirement that such inspectors be trained to perform the activities required of them by this rule. The Department is developing a training course that will enable such inspectors to meet this requirement. The purpose of the course is to assure that persons performing the visual assessment understand why they are doing it, what they should look for, and why deteriorated paint should be stabilized. The course was pilot tested in 1998 and will be available well before the effective date of this final rule.

The basic concept of treating defective paint is being retained, but the final rule modifies the details of the standard applying to that requirement. First, as explained above in Section III.D.4 of this preamble, the minimum area of defective paint that must be treated has been changed. The minimum that was promulgated in the Housing Quality Standards in 1995, and was included in the proposed rule, is being withdrawn at the request of many housing agencies, health departments and other commenters who found it complicated, difficult to administer, and contrary to the purpose of the regulations. As was the case before 1995, all deteriorated paint must be treated.

Second, the painted surfaces that are subject to the rule have changed.

Current requirements apply to all interior surfaces within the dwelling unit, the entrance and hallway serving the unit in a multi-unit building, and exterior surfaces up to five feet from the floor or ground that are readily accessible to children under 6 years of age, but excluding outbuildings. The proposed rule was the same as the current regulations, except for the addition of playground equipment and fences surrounding an exterior play area. The final rule sets no limits to the surfaces covered by the requirement, saying only that the designated party shall conduct a visual assessment of ''all painted surfaces.'' It is HUD's intent that such surfaces shall include all surfaces within the dwelling unit, all surfaces on the exterior of the structure regardless of height from the ground, and all common areas servicing the dwelling unit. The definition of ''common area'' in the rule includes all areas on the property available for use by occupants of more than one unit, including outbuildings such as garages.

Third, in the final rule the details regarding the method of treatment are somewhat different than those in current regulations and in the proposed rule. Current regulations require removal of defective paint (using specified acceptable methods) and covering surfaces ''with durable materials with joints and edges sealed and caulked as needed to prevent escape of dust.'' The proposed rule called for ''paint repair'', which was repainting with proper surface preparation using safe practices and including occupant protection and cleanup. The final rule requires ''paint stabilization,'' which is the same as

paint repair except that it includes the additional requirement that any physical defect in the substrate that is causing deterioration be repaired. Such defects include dry-rot, rust, moisture, crumbling plaster, and missing siding or other components that are not securely fastened. As discussed above in Section III.D.9 of this preamble, HUD is uniformly requiring paint stabilization across this final rule, because otherwise the treatment of the deteriorated paint will be ineffective.

The fourth change to the standard for treating deteriorated paint is the requirement in the final rule that there be clearance of the dwelling unit if paint stabilization is conducted. As explained above, this is also a uniform requirement across this rule whenever hazard reduction is conducted. It does not exist in current regulations nor was it required for tenant-based rental assistance programs in the proposed rule. HUD believes unit-wide clearance is an essential factor in establishing that a dwelling unit is lead safe, and therefore is requiring that clearance tests be conducted by certified risk assessors or certified lead-based paint inspectors. The final rule eliminates the dust testing requirement for pre-1950 housing that was in the proposed rule and the distinction between pre-1950 and post-1949 housing. In the interest of regulatory streamlining, a single set of requirements applies to all pre-1978 housing.

All occupants shall be provided the lead hazard information pamphlet by the owner, except that a pamphlet does not have to be provided if it has already been provided by the owner or other designated party pursuant to the disclosure rule. Also, the owner must provide a notice to occupants describing the results of the clearance examination. Finally, the final rule requires that ongoing maintenance of painted surfaces and safe work practices be incorporated into regular building operations, where appropriate under HUD-administered programs.

HUD estimates in the Economic Analysis for this rule that the average cost of the new requirements imposed by this subpart will be approximately $250 per unit in single family units and $100 per unit in multifamily units during the first year after the effective date. In subsequent years, costs will doubtless be less. Net benefits are clearly positive. For single family units, the estimated average net benefit (benefits minus costs) is $850 per unit using a discount rate of three percent for increased lifetime earnings and $125 per unit using a seven percent rate. For multifamily units, the comparable net benefits are $840 and $150. For further information on costs and benefits of the rule, see Section VI. of this preamble, below.

Another subject of public comment was the policy on responding to the existence of an environmental intervention blood lead level child in the home of a family receiving tenant-based rental assistance. Some commenters felt that the proposed policy of requiring a risk assessment and interim controls would reduce participation in the program by property owners. HUD believes that compliance with the basic policy of paint stabilization and unit clearance, combined with ongoing maintenance is so inexpensive and will so reduce the likelihood of environmental intervention blood lead level cases in these dwellings that landlords will not leave the program. To ensure that the designated party is aware of environmental intervention blood lead level cases in assisted families, the final rule clarifies the requirements of the proposed rule for exchanging information between public health departments and designated parties and matching environmental intervention blood lead level addresses with those of assisted families. (See further discussion in Section III.D.6 of this preamble, above.) Also, for purposes of clarity, the rule states that if a dwelling unit does not comply with the requirements of this rule, the unit does not meet Housing Quality Standards (HQS). If a family is occupying a unit that is out of compliance, the designated party may offer the family the right to move to another unit. If the family refuses to move, the designated party may curtail assistance.

14. *Subparts N–Q reserved.*

15. *Subpart R—Methods and Standards for Lead—Based Paint Hazard Evaluation and Reduction Activities.* This subpart replaces part 37 of the proposed rule. It is shorter than the proposed part 37 because it references methods and standards established by EPA-authorized State or tribal programs or by EPA itself for risk assessment, lead-based paint inspection and abatement. Revised, streamlined sections are provided on interim controls (including paint stabilization), occupant protection and worksite preparation, and ongoing lead-based paint maintenance and reevaluation (called ''monitoring'' in the proposed rule). New sections are provided on standard treatments and safe work practices, concepts recommended by the Task Force (see Section I.D.2 of this preamble, above).

a. *Standards.* Although HUD defers to a large extent to methods and standards set by States, Indian tribes or EPA for lead-based paint inspections, risk assessments, lead-hazard screens and abatements, the Department is requiring that Federal standards for lead-based paint, dust-lead hazards and soil-lead hazards be used when conducting evaluations and hazard reductions in housing covered by this final rule unless a State, tribal or local government requirement is more protective.

As explained above in Section III.D.4 of this preamble, above, the standard for deteriorated paint in the proposed rule contained de minimis areas that are not included in the final rule. The definition of lead-based paint, however, is the same. HUD is including interim standards for dust-lead hazards and soil-lead hazards pending effective EPA standards pursuant to TSCA section 403. The interim standard for soil-lead hazards, and the concentration for abating bare soil, are unchanged from the proposed rule; but the interim dust-lead standards have changed. The proposed dust-lead standard for risk assessments and reevaluations was 100 μg/sq.ft (micrograms per square foot) for interior floors (both hard and carpeted) and 500 μg/sq.ft for interior window sills; there was no proposed standard for window troughs (sometimes called window wells); the standards for clearance were the same as for risk assessments; and there was no standard for lead hazard screens, which were not recognized in the proposed rule. In the final rule, the interim dust-lead standard for risk assessments and reevaluations is 40 μg/sq.ft for interior floors (both hard and carpeted) and 250 μg/sq.ft for interior window sills. Risk assessments and reevaluations do not have a standard for window troughs. Standards for clearance and lead hazard screens are also provided. Exterior floors, such as unenclosed porches, and patios, do not have a standard; the floor standard applies to enclosed porches. A complete discussion of dust-lead standards is provided below in Section III.E.15.b of this preamble, ''Adequacy of Dust-Lead Standards.''

One commenter questioned the advisability of HUD specifying a dust standard in the proposed rule for carpets, arguing that there is no consensus about how to test for dust hazards in carpets or what level of lead is dangerous. HUD agrees with the commenter that research on this question is needed, and it initiated such studies in 1997. It is known, however, that carpeting can be a dust reservoir with significant amounts of lead (Battelle 1997). The Department believes that it would be wrong to do nothing to protect children in this situation. The

effect of failing to provide a standard for carpeted floors would mean that the children who happen to be living in homes that are covered by the rule and have wall-to-wall carpeting would remain unprotected from floor dust-lead hazards, and the children living with area rugs would be only partially protected. Preliminary data from the HUD Evaluation of the Lead-Based Paint Hazard Control Grant program indicate that about 25–30 percent of the bedrooms and living rooms in the study had carpeting, with the percentage much higher in certain areas.

HUD acknowledges that the proposed EPA rule implementing TSCA section 403 did not include a dust-lead standard for carpets because EPA felt that currently available data are insufficient for establishing a health-based standard and because it is not clear what hazard reduction methods are effective. EPA acknowledged that ''the lack of a standard for carpeted floors is a significant limitation'' and requested comment on the impact of not having a standard and on information that would be helpful in setting such a standard.

As explained below under ''Adequacy of Dust-Lead Standards,'' a study by the University of Rochester (Lanphear 1996) shows a significant correlation between dust lead in carpets and children's blood lead. Furthermore, HUD provides in subpart R of the rule a method for dust-lead hazard control in carpets or rugs. This method relies on thorough vacuuming and is based on the HUD Guidelines and on recent data from the Evaluation of the HUD Lead-Based Paint Hazard Control Grant program. The feasibility of removing dust lead from carpets to achieve the interim standard is discussed below in Section III.E.15.b. of this preamble. Therefore, HUD is including in the final rule an interim standard for dust lead in carpeting using a wipe sampling method, pending the issuance by EPA of a health-based standard pursuant to TSCA section 433.

The HUD interim standard for clearance in the final rule is the same as for risk assessments on floors and interior window sills, but a clearance standard of 800 μg/sq.ft is added for window troughs. The Department's intent in setting a clearance standard for window troughs is to encourage their cleaning. It is not unusual for window troughs to have very high loadings of lead in dust, perhaps because they are perceived as an exterior surface and are rarely cleaned, and perhaps because lead-based paint on window friction surfaces contributes to the dust lead loading in the trough. In the evaluation of HUD's Lead-Based Paint Hazard Control Grant Program, the median pre-intervention dust-lead loading on troughs for occupied dwelling units was over 11,500 μg/sq.ft, and 10 percent of the units had loadings over 100,000 μg/sq.ft. Comments were both for and against sampling troughs. A large city housing agency agreed with the policy on troughs in the proposed rule. A State agency disagreed, pointing out that, in the Rochester study of the relationship between dust lead and childhood blood lead, dust lead in troughs correlated well with blood lead.

In the final rule HUD has included an option to conduct a lead hazard screen, and, as in the HUD Guidelines, the dust-lead standard is set at approximately one-half the risk assessment standard: 25 μg/sq.ft. for floors and 125 μg/sq.ft. for interior window sills. The floor standard for the lead hazard screen was set at 25 μg/sq.ft. instead of 20, reflecting practical laboratory detection limits.

Several commenters addressed aspects of the proposed rule's treatment of soil-lead standards or soil treatments. EPA questioned HUD's interpretation of the soil-lead levels in EPA's guidance on lead in soil (60 FR 47248, September 11, 1995). In its guidance, EPA recommended that when lead levels in bare soil exceed 400 ppm at ''areas expected or intended to be used by children,'' interim controls be undertaken to change use patterns and/or create barriers between children and contaminated soil. ''Where bare soil-lead levels are found to be 2,000 ppm or more, interim controls should be implemented even if the area is not frequented by children.'' At 5,000 ppm or more, EPA recommended abatement of bare soil. In the proposed rule, HUD applied the 400 ppm standard to bare soil ''in play areas;'' the 2,000 ppm standard was applied to bare soil in ''other areas.'' EPA called this interpretation incorrect, indicating that permitting 2000 ppm levels anywhere near areas occupied by children ''may present an unreasonable risk.'' The Agency recommended that the 400 ppm standard apply to the entire yard. HUD believes that its interpretation of the guidance is reasonable and also that it reflects the guidance on this matter given in the HUD Guidelines, which is referenced in the EPA regulation. In the final rule, HUD has retained, therefore, the same interpretation as in the proposed rule. The standard for soil-lead hazards addresses bare soil in play areas frequented by children under 6 years of age. HUD intends that these play areas include those intended for these children's routine use, as demonstrated by such evidence as the presence of play equipment or similar attractions, collections of toys or other children's possessions, or observations of children's play patterns.

EPA questioned the basis for the proposed rule standard of no more than 200 μg/g for material used to cover soil-lead hazards. While conclusive scientific data on which to base the standard are not available, HUD believes that a standard is needed and that making it one-half of the level considered to be a soil-lead hazard in children's play areas is reasonable.

Throughout the rule, units of measurement are provided in metric forms as well as corresponding conventional unit values, in accordance with the Metric Conversion Act of 1975, as amended by Public Law 100–418, at 15 U.S.C. 205b; and Executive Order 12770, ''Metric Usage in Federal Government Programs'' (56 FR 35801, July 25, 1991). Persons covered by the rule should consistently apply the units they use routinely in their work. For example, lead-based paint professionals who use conventional units (such as feet) in their work should use the risk assessment standards of micrograms per square foot ($\mu g/ft^2$); professionals who use metric units (such as meters) in their work should use the fully metric standards of micrograms per square meter ($\mu g/m^2$).

HUD is aware of efforts by voluntary consensus standards bodies to develop private-sector standards in the lead-based paint hazard evaluation, management and control areas, and on related subjects. HUD has been supportive of, and participated in, some of these efforts. For example, over a dozen standards of the American Society for Testing and Materials (ASTM, West Conshohocken, PA 19428–2392) are cited in the HUD Guidelines. The Guidelines, in turn, are cited by subpart R itself and in the EPA rule on lead hazard control work practices (40 CFR 745.227(a)(3)), which is cited by subpart R. ASTM and other committees are continuing to develop standards in the lead-based paint hazard field (such as occupant notices with more detail). The Department will review these standards, when issued, for their applicability to and practicality for the programs covered by this rule.

b. *Adequacy of Dust-Lead Standards.* One commenter stated that the permissible levels of lead in dust referenced in the proposed rule would not be sufficiently protective of children and cited several recent scientific studies as evidence. Other commenters stated that HUD failed to require clearance testing in all programs to determine if housing units undergoing lead hazard reduction activities were

safe to reoccupy. The proposed rule contained standards for lead in dust of 100 μg/ft² on floors and 500 μg/ft² on window sills for both risk assessment and clearance purposes. The proposed rule eliminated an earlier standard of 800 μg/ft² for window troughs. In preparing the final rule, HUD considered the health benefits and feasibility of lead dust standards for both clearance and risk assessment purposes.

(1) *Health Benefits.* Clark and coworkers reported a study of 23 homes in Cincinnati where the floor dust-lead level required to prevent 95% of the children from exceeding a blood lead level of 10 μg/dL was found to be almost an order of magnitude lower than the existing standard of 100 μg/ft ² (Clark 1996). In a study of 205 children in Rochester, NY, Lanphear et al. found that approximately 20% of children exposed to a floor dust-lead level of 40 μg/ft ² had blood lead levels greater than 10 μg/dL (Lanphear 1996).

Earlier studies have demonstrated the importance of establishing adequate dust-lead standards. From data collected in 1990, Ashengrau reported an *increase* in blood lead level of 6.5 μg/dL (p=0.05) in children who had baseline blood lead levels below 20 μg/dL and whose houses were treated for lead-based paint hazards using a floor clearance standard of 200 μg/ft² (Ashengrau 1997). These houses were also treated mainly through extensive dry scraping, which under this rule is now a prohibited method of paint removal in federally-assisted or federally-owned housing.

In a study conducted between 1987 and 1990 where clearance testing may not have been conducted at all and where children had baseline blood lead levels less than 20 μg/dL, only 35% of the children had lower blood lead levels following hazard control work. The mean blood lead level *increased* significantly from 16.8 μg/dL to 19.3 μg/dL ($p<0.05$) (Swindell 1990).

These studies demonstrate that without clearance testing and without adequate dust-lead standards, children's blood lead levels may worsen as a result of lead-based paint hazard control work in housing. Therefore, HUD has provided for clearance testing when lead hazard control work is done in housing covered by this rule.

Although each of the studies cited above have limitations, it is clear that the weight of the scientific evidence suggests that children may not be adequately protected under the dust-lead standards in HUD's proposed rule. As a result of such studies, HUD has progressively lowered its dust-lead standard over the years. In 1990, HUD used a floor dust-lead standard of 200 μg/ft² in its Interim Guidelines, based primarily on a standard adopted by the State of Maryland and research conducted at Johns Hopkins University (Farfel 1990).

At that time, the Centers for Disease Control and Prevention (CDC) had established a blood lead level of concern of 25 μg/dL. In 1991, CDC adopted a new multi-tier blood lead level response system. That system indicated that blood lead levels of 10–14 μg/dL in many children in a community should trigger community-wide childhood lead poisoning prevention activities. A blood lead level of 15–19 μg/dL that persists in an individual child should result in an environmental investigation and intervention. Higher blood lead levels require more intensive medical evaluation and pharmacologic treatment. Because CDC lowered the blood lead level of concern, it is logical that dust-lead standards would also need to be reduced. Consequently, HUD reduced its floor dust-lead standard to 100 μg/ft² in its 1994 draft Guidelines, which was released in final form in 1995. EPA adopted the same guidance dust-lead level in 1994 and published it the next year (60 FR 47248, September 11, 1995).

Dust-lead standards in this rule will be used in risk assessments to determine whether hazard reduction should be conducted and in clearance examinations to determine whether dust in housing units, common areas and/or work sites has been properly cleaned and removed after hazard reduction activities. The goal of these activities is to protect children from exposure to lead at or above the CDC level of concern, 10 μg/dL. As explained below, HUD has considered both cost and feasibility in setting the interim standards.

To better understand the existing science, HUD conducted a study pooling the data from virtually all available epidemiological studies that examined the relationship between dust-lead and blood-lead levels, taking into account differences across the studies (Lanphear et al. 1998). After combining data sets from each study, a cohort of 1,861 children aged 6 to 36 months was created. This age group has been found to have the clearest relationship between dust lead and blood lead. The pooled analysis excluded children who had been individually selected for study on the basis of high blood lead, due to the bias this could introduce. Environmental lead measurements and other variables (season, presence of industrial sources of exposure, year of study, race, sex, socioeconomic status and measurement error) were standardized across all studies.

The pooled analysis of epidemiological studies estimated the expected prevalence rate of blood lead levels greater than or equal to 10 and 15 μg/dL in young children using a number of different candidate dust-lead standards and holding all other environmental variables and other covariates at their national averages. Table 1 shows the results of this analysis.

TABLE 1.—FLOOR DUST LEAD AND CHILDREN'S BLOOD LEAD LEVELS

Floor dust-lead loading (μg/ft²)	Percentage of children with blood lead levels greater than or Equal to 10 μg/dL (95% confidence intervals)	Percentage of children with blood lead levels greater than or equal to 15 μg/dL (95% confidence intervals)
1	1.0 (0.3–3.8)	0.1 (0.0–0.6)
5	4.4 (1.7–11.0)	0.7 (0.4–2.6)
10	7.4 (3.1–16.5)	1.4 (0.4–4.6)
20	12 (5–24)	2.7 (0.9–7.8)
25	14 (6–27)	3.2 (1–9)
40	18 (9–33)	4.7 (2–13)
70	24 (12–42)	7.2 (3–18)

TABLE 1.—FLOOR DUST LEAD AND CHILDREN'S BLOOD LEAD LEVELS—Continued

Floor dust-lead loading (μg/ft²)	Percentage of children with blood lead levels greater than or Equal to 10 μg/dL (95% confidence intervals)	Percentage of children with blood lead levels greater than or equal to 15 μg/dL (95% confidence intervals)
100	28 (14–48)	9.3 (4–23)

The pooled analysis indicates that, using the old standard (i.e., 100 μg/sq.ft. on floors), 28 percent of young children may have a blood lead level greater than or equal to 10 μg/dL, and nearly 10 percent may have a blood lead level equal to or greater than 15 μg/dL. Using a floor dust-lead standard of 40 μg/sq.ft., 18 percent of young children may have a blood level of 10 μg/dL or greater, and less than 5 percent will be a 15 μg/dL or greater. To achieve a prevalence of only 5 percent of young children with blood levels at 10 μg/dL or greater, the analysis indicates that dust-lead loadings on floors would have to be at 5 μg/sq.ft.

For reasons of feasibility, HUD is setting an interim dust-lead standard for floors of 40 μg/sq.ft. The feasibility issues are discussed in the following paragraphs. It is noteworthy that, based on Table 1, a standard of 40 μg/sq.ft. is expected to protect more than 95 percent of young children against exposure to lead in blood equal to or greater than 15 μg/dL, which is the level recommended by CDC at which environmental intervention should be conducted. This is also the environmental intervention blood lead level used in this rule, as explained above in Section III.D.6 of this preamble.

With regard to carpeted floors, Lanphear *et al.* found a significant correlation between dust lead in carpets (using wipe sampling) and children's blood lead levels (Lanphear 1996). Furthermore, the study showed that about 19.8 percent of children would have blood lead levels at or above 10 μg/dL with carpeted floors at 40 μg/sq.ft., a percentage that is not significantly different from the 18 percent found with hard-floor dust lead at 40 μg/sq.ft. Therefore HUD is setting an interim dust lead standard for carpeted floors that is the same as that for hard floors.

(2) *Feasibility.* There are two issues that affect the feasibility and cost of any given dust-lead standard: (1) The ability of cleaning techniques to meet a given level of cleanliness and the percentage of houses that can be expected to pass and maintain a given dust-lead standard; and (2) the ability to measure dust-lead levels in the range of interest using readily available analytical techniques (and the increased cost of using more sensitive detection methods if needed).

The largest study of residential lead hazard control conducted to date is HUD's on-going evaluation of its first 14 grantees under the Lead-Based Paint Hazard Control Grant program. These grantees are State and local governments receiving grants to address lead-based paint hazards in low-income, privately owned dwelling units. Almost 3,000 dwelling units are enrolled in this evaluation. Using modern hazard control techniques, this study provides important insights into the degree of cleanliness that is feasible using current measurement, cleaning and hazard reduction technologies. The final report will not be issued until after the year 2000 due to on-going evaluation of the dwellings and the children who live in them.

Interim results show that, on average, initial floor dust-lead levels are below 20 μg/ft² (National Center 1998). Furthermore, the data show that dust-lead levels on floors do not reaccumulate continuously, as assumed in the Economic Analysis for the proposed rule, which was prepared before these reaccumulation data were available. The new data show that median dust-lead levels on floors continue to drop for at least the first year following the hazard control work, from 19 μg/ft² to 14 μg/ft² twelve months later. The average dwelling unit undergoing lead hazard control had a median floor dust-lead level of 17 μg/ft² immediately following hazard control work. That level declined to 14 μg/ft² six months later and remained at the same level one year following the work. Therefore, it is feasible to reach and maintain a floor dust-lead standard of 40 μg/ft².

The pooled epidemiological analysis also shows that a floor dust-lead standard of 5 μg/ft² would be required to ensure that 95 percent of children do not have a blood lead level greater than or equal to 10 μg/dL. However, modern hazard reduction techniques do not appear to be capable of reaching a floor dust-lead level of 5 μg/ft² routinely, since the median level following hazard control work is three to four times greater (see also the discussion below about detection limits).

Importantly, many of the units treated under the HUD lead hazard control grant program are high-risk houses and often initially contain children with seriously elevated blood lead levels. In more typical dwelling units, it is likely that even lower dust-lead levels can be achieved. Indeed, HUD's 1990 National Survey of Lead-Based Paint Hazards in Private Housing found that the average dust-lead loading on floors (converted to wipe sampling) was estimated to be only 5 μg/ft². This survey did not include houses where lead hazard reduction had occurred.

The HUD Evaluation Study data show that 17.4 percent of these high risk houses have floor dust-lead levels above 100 μg/ft² (the existing standard). A dust-lead standard of 40 μg/ft² would increase the percentage of ''high risk'' houses above the standard to about 26 percent. This is fairly consistent with the blood lead levels found in this population, because 28.9% of the children enrolled had environmental intervention blood lead levels.

More typical houses that are served by other HUD programs are likely to have a far lower percentage failing the reduced dust-lead interim standard, because these programs do not target housing with lead-poisoned children. For example, data from HUD's National Survey show that the percentage of all U.S. housing exceeding a floor dust-lead level of 100 μg/ft² is 7.6 percent in ''dry'' rooms (i.e., rooms without plumbing fixtures). The percentage exceeding a floor dust-lead level of 40 μg/ft² is 10.2 percent in dry rooms. In short, the lower floor dust-lead interim standard of 40 μg/ft² will increase the percentage of houses requiring hazard control by a modest 2.6 percent.

With regard to carpeted floors, preliminary data from the HUD Evaluation indicate that only 15 percent of carpeted entry areas and 8 percent of

other carpeted rooms had dust-lead loadings equal to or greater than 40 μg/sq.ft. based on wipe sampling. The Evaluation data also indicate that grantees were able to reduce dust-lead loadings in carpets, but the data are limited by the fact that grantees were working with a clearance standard of 100 μg/sq.ft. instead of 40 μg/sq.ft.

(3) *Detection Limits.* Detection limits of dust wipe analysis also have an effect on the feasibility of lower dust-lead standards. A standard cannot be set at a level that cannot be measured reliably. Many analytical laboratories currently report method detection limits of 25 μg/wipe. For floors, this means a method detection limit of 25 μg/ft^2, since a one square foot area is typically sampled. A method detection limit at least 4 times lower than the regulatory standard is desirable to ensure reliable results.

For all laboratories in the HUD Evaluation Study, the average method detection limit is currently 11 μg/wipe. Therefore, HUD believes that laboratories will be able to report detection limits of 10 μg/wipe without having to resort to more sensitive and more expensive types of analytical procedures. In short, no increase in analytical cost is expected in order to achieve a detection limit of 10 μg/wipe, which is one-fourth the new floor dust-lead standard of 40 μg/ft^2. This will ensure that reliable measures of dust-lead loading can be made.

A floor dust-lead standard of 5 μg/ft^2 is well below method detection limits reported by most laboratories and is therefore not feasible to implement.

(4) *Window Dust Standards.* For interior window sills and window troughs, epidemiological data are less available than for floors, because only a few studies have collected samples from these areas. For interior window sills, the final rule establishes a dust-lead standard of 250 μg/ft^2, which is based on a study in Rochester, NY (Lanphear 1996). This standard also should protect virtually all children from developing an environmental intervention blood lead level. In the high risk houses enrolled in the HUD Evaluation Study, 47.5 percent of the units had baseline window sill dust lead levels below 250 μg/ft^2, which is close to the percentage of children who had blood lead levels below 10 μg/dL in the evaluation (54.3 percent). At clearance following lead hazard control work, the median dust-lead level on window sills was 44 μg/ft^2 at the time of clearance, 83 μg/ft^2 six months later, and 88 μg/ft^2 12 months later. For more typical houses, the HUD National Survey found that the percentage of interior window sills failing a new dust-lead standard of 250 μg/ft^2 would increase by a modest 5.4 percent (compared to the current standard of 500 μg/ft^2).

In short, the window sill standard is both feasible and health-based. It is feasible because dust-lead levels at the new interim standard can be reached and maintained and because the increase in the percentage of houses failing the new standard is small. It is health-based because the percentage of houses failing the standard is about the same as the percentage of children with blood lead levels greater than 10 μg/dL in the HUD Evaluation Study.

In the proposed rule, HUD did not include the window trough standard of 800 μg/ft^2 it had established in the HUD Guidelines and the 1990 Interim Guidelines. However, several commenters indicated that a window trough standard should be retained for clearance purposes, as a way of ensuring that window troughs are cleaned and/or treated during hazard reduction work. The HUD Evaluation Study shows that median dust-lead levels in window troughs immediately following hazard reduction work is 72 μg/ft^2, indicating that it is feasible to implement a window trough clearance standard of 800 μg/ft^2.

On the other hand, development of a feasible window trough risk assessment standard is more problematic, because nearly all pre-1978 dwellings have very high window trough dust-lead levels. For example, data from HUD's Evaluation Study indicate that the median window trough dust-lead level for occupied dwelling units prior to hazard control work is more than 11,500 μg/ft^2. Because HUD believes it is important to have a reliable way to determine whether or not window troughs were cleaned during hazard reduction work, and because window trough lead dust does appear to contribute to children's exposure, HUD has reestablished a window trough clearance standard of 800 μg/ft^2 in the final rule. Because most dwelling units have window trough levels above 800 μg/ft^2, HUD believes it is not feasible to establish a window trough dust-lead standard for risk assessment and reevaluation purposes at this time. Therefore, the window trough dust standard of 800 μg/ft^2 is used for clearance purposes only. To meet this clearance requirement, window troughs should be cleaned as a routine part of all lead hazard control work.

(5) *Lead Hazard Screen Standards.* The lead hazard screen levels for floor and interior window sill dust lead in this rule are 25 μg/ft^2 and 125 μg/ft^2, respectively. These are about half of the standards used for risk assessment purposes. This ensures that the screen will be sufficiently sensitive to uncover those houses that should have a full risk assessment.

Lead hazard screens are a form of risk assessment applied to housing in good condition where lead-based paint hazards are unlikely to be present. The protocol for a lead hazard screen referenced in the HUD Guidelines involves (among other things) collection of two composite dust samples: one from floors and a second from window troughs. Each composite sample consists of 4 individual samples collected from a like surface. If a level found in the screen is more than one half of the applicable risk assessment dust-lead standard, then a full risk assessment is to be conducted to determine if lead-based paint hazards are actually present.

In this final regulation, HUD has modified slightly the lead hazard screen protocol of the HUD Guidelines regarding dust. In the final rule, interior window sills are sampled instead of window troughs for three reasons: (1) Interior window sills are easier to wipe-sample than troughs; (2) dust-lead loadings on troughs may reflect exterior sources not related to the residential structure itself; and (3) dust-wipe loadings on sills and troughs are highly correlated (the correlation coefficient of the logarithms of the loadings is 0.60, which is higher than that for any other pairs of paint- or dust-lead measurements (Lanphear 1995)). EPA made a similar judgment in deciding not to propose a window trough dust-lead hazard standard in the proposed regulations pursuant to TSCA section 403 (63 FR 30335–6, June 3, 1998). Future research or technological advances may result in different recommendations, which the Department will review.

Similarly, HUD is noting that single-wipe samples may be used instead of composite samples as part of the lead hazard screen. When two or more single-wipe samples are used for a single building component type (such as two or more interior widow sills), the dust loadings for that component type are averaged to give the equivalent composite sample result. Users may wish to take single-wipe samples, rather than composite samples, as part of lead hazard screens for several reasons: the cost of laboratory analyses is low enough for many users that they may perceive little economic benefit to analyzing composite samples instead of single-wipe samples, and the EPA's National Lead Laboratory Accreditation Program (NLLAP) does not, at the time of issuance of this rule, have a formal

quality assurance program for composite dust samples. EPA is working on this latter issue, and will advise NLLAP participants and others if and when such a program becomes available. Potential users of composite dust wipe analyses may contact the National Lead Information Center Clearinghouse toll-free at 1–800–424–LEAD for information on this subject.

If less than 125 μg/ft² (half of 250 μg/ft²) of lead dust is detected on the composite interior window sill sample, and the composite floor sample shows that less than 25 μg/ft² is present, the screen shows that lead-based paint hazards are not present. In this case, a full risk assessment is not needed. Conversely, if a lead hazard screen shows that dust-lead is present at a level equal to or greater than 125 μg/ft² on interior window sills or equal to or greater than 25 μg/ft² on floors, a lead-based paint hazard may be present and a full risk assessment should be conducted to confirm or reject the results of the screen.

HUD has also modified slightly the lead hazard screen protocol of the HUD Guidelines regarding soil. In the final rule, soil is to be sampled and analyzed, and the analyses evaluated, using the same protocol as for a risk assessment. With analytical costs having dropped since the publication of the HUD Guidelines, the cost of performing soil analyses as part of lead hazard screens for single family housing in good condition undergoing rehabilitation above $5,000 per unit (the cases where the lead hazard screens are likely to be used) has become insignificant; the additional time associated with the samples, for lead professionals already at the site, is also insignificant.

To summarize, the final rule establishes the dust-lead standards in Table 2. The dust-lead standards in this rule are interim standards until EPA promulgates and makes effective dust-lead hazard standards under TSCA section 403. When the TSCA 403 rule is effective, HUD will issue any technical amendments that are needed to make clear what standards are applicable to this rule at that time.

TABLE 2.—INTERIM DUST-LEAD STANDARDS

Evaluation method	Surface		
	Floors (μg/ft²)	Interior Window Sills (μg/ft²)	Window troughs (μg/ft²)
Risk Assessment Screen	25	125	Not Applicable.
Risk Assessment	40	250	Not Applicable.
Reevaluation	40	250	Not Applicable.
Clearance	40	250	800.

Note: ''Floors'' includes carpeted and uncarpeted interior floors.

c. *Summary Notice Formats.* Subparts D, and F through M of the final rule require that occupants be notified of the results of evaluations and hazard reduction activities (including clearance examinations). Also, if lead-based paint or lead-based paint hazards are presumed to exist, notification must be made. The major elements of these notices are described in Subpart B.

Subpart B places responsibility for any required occupant notification on the designated party. HUD recognizes that many designated parties may not have the expertise from staff or consultants to extract the pertinent information from the inspection, risk assessment or clearance reports to prepare the notices. As a result, the Department, in subpart R, makes a strong recommendation that the lead-based paint professional who prepares such a report provide the designated party with the summary notice of the results suitable for posting or distribution to occupants.

Sample (i.e., non-mandatory) notice formats that can be used are provided in Appendix A for a lead-based paint inspection, Appendix B for a risk assessment, Appendix C for presumption of the presence of lead-based paint or lead-based paint hazards, and Appendix D for completion of hazard reduction activities (including clearance). These formats include the information described in Subpart B and are based on: (1) The sample formats developed by HUD and EPA for the disclosure rule (see 61 FR 9074–5, March 6, 1998, in the preamble to the final rules implementing section 1018 of Title X, 24 CFR 35.80–98 and 40 CFR 745.100–119); and (2) formats developed by the California Department of Health Services (Emeryville, CA 94608–1939) for notices of abatement of lead hazards (DHS form 8551) and lead hazard evaluation (DHS form 8552).

Requirements for reports of evaluation or abatement clearance used to develop the corresponding notices to occupants are found in EPA's TSCA section 402/404 rule (40 CFR 745.227) and are cited by subpart R. Requirements for reports on hazard reduction activities other than abatement are in subpart R itself. Guidance on preparing these reports is found in the HUD Guidelines, chapters 5 (risk assessment), 7 (inspection), and 15 (clearance). There are currently no detailed standards for preparing these reports, and HUD-funded research on lead-based paint inspection reports has found considerable variability in them, in both format and measures of completeness and accuracy (HUD 1998). ASTM committee work developing detailed voluntary consensus standard protocols for report preparation is beginning; HUD will evaluate any standards, when issued, for their applicability to, and practicality for, the programs covered by this rule.

d. *Interim Controls.* The section on interim controls in the final rule is similar to that of the proposed rule. As mentioned above in Section III.D.8 of this preamble, the proposed rule required that workers performing interim controls be supervised by a certified abatement supervisor, and this was met with criticism by several commenters. In response to these comments, in the final rule HUD is following the Task Force recommendation that such workers be trained in the basic requirements of safe lead-based paint hazard reduction, and several choices of acceptable training courses are mentioned. All such training is designed to meet OSHA requirements; several choices meet EPA requirements as well.

Another significant modification of the proposed-rule section on interim controls is the addition of explicit factors that must be present for interim controls to be required under this rule for friction, impact and chewable surfaces. HUD developed these factors in response to comments that greater specificity is needed to prevent unnecessary, ineffective and wasteful hazard reduction actions. Friction

surfaces are required to be treated only if: (1) Dust-lead levels on the nearest horizontal surface (i.e., the surface on which the dust settles that is nearest to the friction surface) are greater than the risk assessment dust-lead standards; (2) there is evidence that the surface is subject to abrasion; and (3) lead-based paint is known or presumed to be present on the surface. Impact surfaces are required to be treated only if: (1) Paint on the surface is damaged; (2) 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 (3) lead-based paint is known or presumed to be present on the surface. HUD intends that impact as a result of misuse by occupants is not necessarily an acceptable basis for requiring treatment. Chewable surfaces are required to be treated only if: (1) There is evidence that a child of less than 6 years of age has chewed on the surface; and (2) lead-based paint is known or presumed to be present on the surface.

As in the proposed rule, interim control methods, when required, must be selected from among those identified as acceptable in a current risk assessment report. (As noted in subpart B, abatement is also acceptable when interim controls are required.) When interim controls are required and no risk assessment has been done or no risk assessment that has been done is current, a new risk assessment must be conducted (except when only paint stabilization of deteriorated paint is required, because the response has been specified in the rule). Techniques for repairing physical defects in a substrate before performing paint stabilization are discussed in the HUD Guidelines, chapter 11.

The proposed rule required a minimum two-stage cleaning process for the control of dust-lead hazards on hard surfaces: first HEPA vacuuming, then wet cleaning. Also, HEPA vacuuming was required for surfaces covered by carpeting or rugs. One commenter noted that recent research has indicated that a variety of cleaning methods may achieve clearance levels, and that one of the critical variables affecting the difficulty of cleaning is the condition of the surface. To avoid rigidity, HUD has modified the dust-lead hazard control requirements in the interim controls section of subpart R of the final rule in three ways. First, the two-stage process is no longer required; second, if hard surfaces are rough and pitted, they must be made smooth and cleanable; and third, rather than requiring HEPA vacuuming, HUD is requiring the use of a ''HEPA vacuum or other method of equivalent efficacy.'' One of the main reasons for revision of required cleaning methods is that the final rule requires clearance after all hazard reduction activities, whereas the proposed rule omitted the clearance requirement for some housing programs. In the context of this rule, the goal of cleaning should be to achieve clearance, not to comply with prescriptive regulations on how to clean. Making surfaces smooth and cleanable is an important objective, because it makes it possible for occupants to maintain their dwellings safe from dust-lead hazards in the future. Revision of the HEPA filter requirement will facilitate the application of advances in technology resulting from ongoing research on cleaning lead-contaminated surfaces. Information on the status of this field of technology is provided in Section III.E.2.a of this preamble, in the discussion of HEPA vacuums.

A commenter recommended that clearance not be required after ''basic interim controls,'' because many interim controls are like routine maintenance activities that will be performed frequently by in-house staff. In the final rule, the Department has retained the clearance requirement for initial interim controls, because clearance is the only method of determining whether a dwelling unit is free of lead-based paint hazards. HUD, however, is not requiring clearance after ongoing lead-based paint maintenance activities that are conducted after interim controls and that do not disturb painted surfaces of a total area greater than 20 square feet on exterior surfaces, 2 square feet in any one interior room or space, or 10 percent of the total surface area on an interior or exterior component with a small surface area such as window sills, baseboards and other trim.

e. *Standard Treatments.* As explained above in Section III.E.2.c of this preamble, standard treatments, when used, must include: (1) Stabilization of all deteriorated paint, interior and exterior; (2) the provision of smooth and cleanable horizontal hard surfaces; (3) the correction of dust-generating conditions (i.e., conditions causing rubbing, binding, or crushing of surfaces known or presumed to be coated with lead-based paint); and (4) treatment of bare soil to control known or presumed soil-lead hazards. Safe work practices and clearance are required. Individuals performing standard treatments must be trained in how to control lead-based paint hazards. The training requirement is identical to that for interim controls.

f. *Clearance.* Methods and standards for clearance in this rule refer to the EPA requirements for clearance after abatement at 40 CFR 745.227(e) but also specify the dust-lead loading levels to be used for clearance. To pass clearance, dust-lead levels, using wipe sampling, must be less than 40 μg/ft^2 for interior floors, 250 μg/ft^2 for interior window sills, and 800 μg/ft^2 for window troughs. The rule also specifies the content of clearance reports that must be prepared for clearances after hazard reduction activities other than abatement. For clearance of the worksite only, which is required in subpart J after rehabilitation receiving no more than $5,000 per unit and also in some ongoing maintenance activities, dust samples must be taken from the floor and windows (if available) that represent the area within the dust containment area of the worksite. Worksite clearance is not required if the rehabilitation or maintenance does not disturb painted surfaces totaling more than the safe work practices de minimis levels (see Section III.D.4 of this preamble, above). For a discussion of qualification requirements for persons performing clearance, see Section III.D.8 of this preamble, above.

While subpart R allows recleaning immediately after a clearance failure, owners, designated parties and contractors are urged to consider the cause of the failure, and to address the cause, if identified, before recleaning the affected area.

A commenter recommended that property owners (or other designated parties) be allowed to retain a certified inspector or risk assessor to perform the clearance examinations. In the final rule, HUD has allowed this, provided the clearance examiner is independent from any contractor used to perform the hazard reduction work. The property owners (or other designated parties) may, however, use in-house employees for both hazard reduction and clearance examination, provided that the same employee does not do hazard reduction and clearance.

After clearance, a report is to be prepared that documents the hazard reduction or maintenance activity as well as the results of the clearance examination. It is the responsibility of the designated party to ensure that this report is prepared, signed, and kept for at least three years. For an abatement activity, the report is an abatement report as described in EPA regulations at 40 CFR 745.227(e)(10). The abatement report includes the results of the clearance examination as well as a detailed written description of the abatement, and its preparation is the responsibility of the abatement supervisor. For another hazard reduction activity requiring a clearance

report (including interim controls, paint stabilization, standard treatments, lead-based paint maintenance, or rehabilitation), the EPA rule does not apply; so the final rule provides an outline of the required report that parallels the EPA abatement report outline. However, the designated party must make sure: (1) That a report describing the hazard reduction activity is prepared; and (2) that the clearance examiner provides a signed clearance report with the information required by the rule.

Designated parties should also bear in mind that HUD has requirements in subparts D, and F through M for occupant notification following hazard reduction activities. The major elements of this notice are described in Subpart B. A sample (i.e., non-mandatory) format that can be used for notification of the completion of hazard reduction activities, including clearance, is provided in Appendix D (see discussion, above, in Section III.E.15.c of this preamble).

g. *Occupant Protection and Worksite Preparation.* Requirements for occupant protection and worksite preparation in this final rule are similar to those in the proposed rule, which were based largely on the HUD Guidelines.

Many hazard reduction activities can be completed in one work shift. As a result, the Department has streamlined the requirements for occupant relocation for work that will be completed within one period of 8 daytime hours. For work lasting longer, the rule provides for either occupant relocation or, for work lasting up to five days, occupancy of parts of the dwelling unit outside the worksite. The five-day de minimis criterion is used in chapter 8 of the HUD Guidelines; the regulation closely parallels, but streamlines the guidance in tables 8.1, 8.2, and 8.3 of the Guidelines.

At rooms where hazard reduction activities are conducted when occupants are present; or buildings from which occupants have been relocated, a warning sign shall be posted at each entry. For exterior hazard reduction activities, the sign placement is based on the HUD Guidelines, chapter 8, but the rule is somewhat more flexible, in that the position of the sign for exterior work is not specified beyond the performance requirement of its being easily read at 20 feet (6 meters) from the edge of the worksite. The wording of the sign is that of the four-line warning sign in the OSHA lead in construction standard (29 CFR 1926.62(m)), ''WARNING / LEAD WORK AREA / POISON / NO SMOKING OR EATING.'' The OSHA wording is used by HUD for interagency regulatory consistency. Based on the approach used in subpart B for occupant notification, the warning sign is to be provided in the occupants' primary language or in the language of the occupants' lease or contract.

h. *Safe Work Practices.* A section on safe work practices has been added to this final rule to specify the practices to be observed during paint stabilization, ongoing lead-based paint maintenance, and rehabilitation receiving no more than $5,000 per unit in Federal rehabilitation assistance. Safe work practices include occupant protection and worksite preparation, specialized cleanup, and the prohibition of certain methods of paint removal (see Section III.E.2.g of this preamble, above). Safe work practices are not required if the total area of paint surfaces being disturbed is no more than the de minimis exemption levels of 20 square feet on exterior surfaces, or 2 square feet in any one interior room or space, or 10 percent of the total surface area on an interior or exterior component with a small surface area (such as window sills, baseboards, and other trim).

i. *Ongoing Lead-Based Paint Maintenance and Reevaluation.* The proposed monitoring of housing after interim controls was the subject of several comments. Commenters expressed doubts about the efficacy of the proposed monitoring requirements, regarded them as expensive to maintain and enforce, and questioned the ability of designated parties to assure, into the future, that monitoring responsibilities assigned to owners would be carried out. Monitoring, as proposed, consisted of a visual survey by the owner at least annually, repair of any deteriorated paint, and a professional reevaluation by a risk assessor for the presence of lead-based paint on a schedule based on the hazards found and the action taken.

In the final rule, the monitoring requirement has been changed in several ways. The term, ''monitoring,'' is no longer used in the rule; the visual assessment by the owner is now part of the ongoing maintenance requirement, which has been patterned after the ''essential maintenance practices'' recommended by the Task Force; and the reevaluation schedule has been simplified so that all reevaluations are on the same schedule. The new schedule calls for reevaluation at intervals of two years, plus or minus 60 days. If two consecutive reevaluations at two-year intervals find no lead-based paint hazards, no further reevaluation is required. Similarly, if the initial risk assessment found no lead-based paint hazards, no reevaluation is required.

Ongoing lead-based paint maintenance is required in specified situations in subparts F through M. This can involve such activities as visual assessment, stabilizing deteriorated paint, standard treatments, interim controls, repair of failed lead-based paint hazard controls, and notifications of evaluation and hazard reduction activities. (Sample formats and language requirements for notices are discussed above in Sections III.E.15.c and g of this preamble, respectively.)

Reevaluation is required for housing receiving project-based assistance greater than $5,000 per unit per year and for public housing. The strategy for selecting portions of residential properties to reevaluate considers two factors: How many dwelling units and common areas are present, and at how many worksites hazard reduction activities were performed previously. The selection and reevaluation procedures for dwelling units and common areas are the same as for risk assessment, as provided in subpart R, and as detailed in the HUD Guidelines, chapter 5. Similar dwelling units are grouped, and the number to be reevaluated in each such group is determined from tables in the Guidelines.

For a targeted sample of units with the highest likelihood for finding lead-based paint hazards, there is a table in chapter 5; for a random sample of units, chapter 5 refers users to a table in chapter 7. Separately, the number of worksites of previous hazard reduction activities to be reevaluated is determined using the same procedure as for selecting the number of units. Specifically, worksites are grouped on the basis of similarities of their original lead-based paint hazards (e.g., similarities in the type of location, original condition and, as applicable, building component type, of the lead-based paint hazards), and types of hazard reduction activities performed on them. The number of such similar worksites to be reevaluated is determined using the tables in chapters 5 or 7, and worksites are selected. Reevaluations are not to be duplicated in locations selected by both processes (that is, selecting units and common areas, and selecting worksites).

When a risk assessor performing a reevaluation finds deteriorated paint or deteriorated or failed interim controls, encapsulations or enclosures, the designated party shall respond, selecting from among the acceptable options for controlling the hazard identified in the risk assessor's report of the reevaluation. When the risk assessor reports newly-identified lead-based

paint hazards, the designated party shall treat each dust-lead hazard by cleaning or hazard reduction measures, and each soil-lead hazard by hazard reduction measures.

IV. Deletions of Current Regulations

Most of the regulatory changes in parts of title 24 other than part 35 consist, as noted in Section III.A.7 of this preamble, above, of replacing explicit descriptions of lead-based paint requirements with references to part 35. Retaining mention of lead-based paint in each HUD program's part of title 24 maintains the visibility of the lead-based paint requirements, and promotes compliance with requirements under Title X and the Lead-Based Paint Poisoning Prevention Act. Consolidating references in affected program parts will help program managers, property owners and other users recognize that they can apply the same procedures to the same situations, even if they arise under different HUD programs. The consolidation also shortens these other parts of title 24.

To aid users, the relevant program-oriented subpart of part 35 is identified in the other parts of title 24, as is subpart A, the Disclosure Rule. Each program-oriented subpart in part 35 describes and cites applicable requirements elsewhere in that part.

References to Title X are added to the existing references to the Lead-Based Poisoning Prevention Act, as bases for the regulations in part 35. The terminology of Title X regarding evaluation and hazard reduction replaces previous wording regarding inspection and abatement, respectively, which were used in accordance with the earlier LPPPA.

For public housing, the regulations on liability insurance coverage found at § 965.215 fit better in their original location than they would in part 35, and their substantive text remains in place. The section has been modified, as described above for other sections, to reflect Title X terminology and requirements.

V. Additional Public Comment

As noted earlier in this preamble, the rule will not take effect for a period of one year. If in the review of this rule, there are questions, concerns or other comments, HUD welcomes these questions, concerns and comments. It is HUD's intention that the rule achieve the objectives of the statute in the least burdensome manner. If there are any serious inconsistencies or deficiencies in the rule, HUD will make every effort to correct these before the rule takes effect. Comments should be submitted to the Office of Lead Hazard Control, Department of Housing and Urban Development, 451 Seventh Street, SW, Room P–3206, Washington, DC 20410–0500.

VI. Regulatory Assessment

A. Economic Analysis

An Economic Analysis (EA) has been prepared that examines the costs and benefits of this final rule. This document fulfills the requirements of Executive Order 12866, which requires HUD to prepare an EA for all significant rulemakings. A discussion of public comments on the EA of the proposed rule is provided below in Section VI.A.6 of this preamble.

1. *Summary and Methodology of Cost-Benefit Analysis.* HUD estimates the costs associated with this rule to be $253.2 million for the first year, and the benefits to be $1,143.3 million using a three percent discount rate for increased lifetime earnings and $324.2 million using a seven percent discount rate (see discussion of discount rates below). The analysis in the EA reflects costs and benefits associated with the first year of hazard evaluation and reduction activities in housing units affected under the final rule. The estimated annual number of HUD-assisted and HUD-owned units affected reflect an annual flow of units under HUD programs (e.g., insurance and rehabilitation programs), except in the case of project-based assistance and public housing, for which the affected units are divided by the number of years allowed under the final rule for completion of required activities. The costs and benefits for each year's activities include the present value of future costs and benefits associated with first year hazard reduction activities. For example, the costs associated with first year activities include the present value of future reevaluation costs. Similarly, the benefits of first year activities include the present value of lifetime earnings benefits for children living in or visiting the affected unit during the first year, and for children living in or visiting that unit during the second and subsequent years after hazard reduction activities.

After the first year, the number of units for which initial hazard evaluation and reduction must be done will decline significantly because some large housing assistance programs, such as public housing and project-based assistance, have a relatively stable stock and do not experience a large annual inflow of new units. In these programs, owners will need only to engage in ongoing maintenance and reevaluation after initial hazard evaluation and reduction is completed. There is a two-year phase-in of requirements in the public housing program and a four-year phase-in for housing with project-based assistance of more than $5,000 per unit per year. HUD estimates that the total number of dwelling units newly covered by the rule will be approximately 1,289,000 in the first year, 513,000 in the second year, 341,000 in years three and four, and 314,000 per year after the fourth year. The estimated present value of costs associated with the first five years of the rule is $564.2 million. Using a seven percent discount rate for increased lifetime earnings, HUD estimates the present value of total benefits associated with the first five years to be $715.6 million, with net benefits for the same period at $151.4 million. Using a three percent discount rate, total benefits over five years are $2.65 billion, and net benefits are $2.08 billion.

The primary monetized benefit of childhood lead poisoning prevention is increased lifetime earnings associated with the higher cognitive abilities of persons not lead poisoned as children. The present value of lifetime earnings benefits is particularly sensitive to discount rate assumptions in the analysis, because these benefits reflect lifetime earnings many decades into the future. The EA presents estimated benefits using two different discount rates for lifetime earnings—three percent and seven percent. For all other benefit and cost estimates, the EA uses only a seven percent rate. The analysis assumes that preventing a one μg/dL increase in a one-year old child's blood lead level saves $2,367 in lifetime earnings discounted at three percent, and $544 at seven percent.

While the Office of Management and Budget (OMB) specifies seven percent as the appropriate discount rate for most regulatory analyses, a special social rate of time preference is appropriate when conducting intergenerational analysis. HUD believes that an intergenerational discount rate is applicable to the final rule because the costs will be borne by adult taxpayers, and lifetime earnings benefits will be realized by the children and grandchildren of these adult taxpayers. The analysis of this issue by the Environmental Protection Agency, in the 1996 EA for the regulations implementing sections 402(a) and 404 of the Toxic Substances Control Act, concluded that a three percent discount rate best reflects the social rate of time preference for annualized, non-capital costs and benefits.

An intermediate approach, not quantified in the EA, could have used

a real discount rate based on the long-term borrowing costs of the Federal government. The seven percent rate used in most regulatory analyses is intended to reflect OMB's estimate of the opportunity cost of capital, based on the average real rates of return on private investments. This rate is appropriate for most regulatory analyses because most regulations impose costs on the private sector. The final rule, however, imposes costs on federally assisted housing. Most of these costs will be funded directly or indirectly by Federal expenditures. If these expenditures increase the national debt, then the real cost of that debt to future generations will compound at the real long-term Federal rate. The Internal Revenue Service's Applicable Federal Rate (AFR) measures the nominal cost of government borrowing over obligations with different maturities. The long-term AFR adjusted for the implicit price deflator results in real AFRs of approximately four to five percent over recent years. Therefore, benefits could be discounted at this real AFR rate (i.e., 4 to 5 percent).

By presenting results using both three and seven percent, HUD is providing the broadest view of costs and benefits. Additional information on the methodology and results of the cost-benefit analysis is provided below.

The methodology used in this analysis to estimate annual costs and benefits for the final rule is based on the following simple formulas:

Regulatory Costs = (dwelling unit cost) × (unit cost frequency) × (number of affected units); and

Regulatory Benefits = (dwelling unit benefit) × (unit benefit frequency) × (number of affected units).

The unit cost estimates reflect the average costs associated with specific hazard evaluation and reduction activities in a single housing unit.

The unit benefit estimates are the benefits achieved by conducting hazard reduction activities in a single housing unit. Unit cost frequencies reflect the extent of required hazard evaluation activities under the final rule, and the occurrence frequencies of different lead-based paint hazards that trigger hazard reduction requirements. Unit benefit frequencies are also determined by the occurrence frequencies of lead-based paint hazards, because benefits are realized by hazard reduction activities. Frequencies are estimated by three periods of construction: Pre-1940, 1940–1959, and 1960–1977. The affected units, for regulatory costs and benefits, are federally assisted and federally owned units affected by the final rule.

2. *Regulatory Costs.* The cost estimates used in the EA reflect the estimated average cost per unit for LBP hazard evaluation and reduction activities in single and multifamily units affected by the final rule. In the case of rehabilitation programs, the regulatory cost estimates for paint stabilization and LBP hazard abatement activities reflect only the incremental costs of the final rule. For example, the unit cost of stabilizing paint that would not otherwise have been repaired is significantly greater than the incremental cost of safe work practices and cleanup to reduce lead-based paint hazards in the course of scheduled repainting. The full cost of lead-based paint hazard abatement includes a variety of activities that are also associated with housing rehabilitation activities. Therefore, housing rehabilitation programs affected by the final rule incur only incremental costs for paint stabilization and abatement.

Under non-rehabilitation programs, the full costs of paint stabilization are recognized as regulatory costs, but these costs are substantially offset by the market value of housing-related benefits for paint stabilization. The EA assumes that the full market value of paint stabilization is realized whenever paint stabilization is required under the final rule. Therefore, the incremental costs of paint stabilization (e.g., safe work practices) are the only costs of these activities that are not offset by market value benefits.

Although the final rule only requires hazard abatement in rehabilitation units receiving more than $25,000 of Federal assistance, the EA anticipates that some units subject to interim control requirements will find it economical to treat friction impact surfaces in part by replacing old windows with new energy efficient (low-e) windows. In such cases, the EA recognizes the market value of new windows based on the present value of estimated fuel savings (discounted at seven percent). It is possible, however, that the market value estimates for painting and window replacement may overstate the market benefits of the final rule. For example, the market value of paint stabilization required for HUD-owned housing may not be fully recovered when these repainted units are sold by HUD. Therefore, the cost-benefit analysis for non-rehabilitation programs explicitly separates the estimated market value benefits of the final rule from the monetized health benefits of LBP hazard reduction to facilitate recalculations of net benefits under alternative market value assumptions. The EA details the basis for unit cost estimates and associated market values and explains the available data on occurrence frequencies and the number of housing units affected by the final rule.

3. *Monetized Benefits.* Although many benefits of lead-based paint hazard reduction cannot be quantified or monetized, the EA does provide monetized estimates of the benefits of preventing children from developing elevated blood lead levels (EBLs). Such benefits include avoiding the costs of special education and medical treatment for EBL children, as well as increasing lifetime earnings associated with higher IQs for children with lower blood lead levels. The monetized benefit of increased lifetime earnings due to lower blood lead levels accounts for 99 percent of all monetized health benefits of the rule.

The benefits quantified in this analysis reflect the benefits of preventing EBLs in children rather than the benefits of lowering the blood lead levels of children already affected by lead poisoning. As shown in the analysis, the benefits associated with avoiding childhood lead poisoning substantially exceed the benefits of reducing hazards for children already affected by lead poisoning. The EA details the basis for the health benefit estimates.

4. *Monetized Net Benefits.* The analysis of net benefits in the EA reflects costs and benefits associated with the first year of hazard evaluation and reduction activities under the final rule. These costs and benefits, however, include the present value of future costs and benefits associated with first year hazard reduction activities.

Tables 3a and 3b present net benefits or costs by housing program at three percent and seven percent discount rates respectively for increased lifetime earnings. All programs have a net benefit at three percent. The following programs have a net cost at seven percent: HUD-owned single family and multifamily housing, housing with project-based assistance, single family housing receiving rehabilitation assistance of more than $5,000 per unit, and housing receiving assistance for acquisition, leasing, support services or operation. The specificity of statutory requirements limits the Department's ability to devise policies with net benefits for these programs at a seven percent discount rate.

Table 3c presents a summary of the costs, benefits, and net benefits of the first year activities under the final rule, using a three percent and seven percent discount rate for lifetime earnings. The total cost of first year hazard evaluation and reduction activities is $253.2

million. The total benefit of first year activities is $1.14 billion using a three percent discount rate, and $324 million using a seven percent discount rate. Net benefits of first year activities are therefore either $890 million or $71 million, depending on the discount rate used. The EA details the costs and benefits of the final rule by subpart of the rule and by period of construction.

The individual rows of Table 3c detail the components of hazard evaluation and reduction costs and monetized hazard reduction benefits. Although the components of hazard reduction costs and monetized benefits are often identified by the same brief descriptors (e.g., paint stabilization, soil cover, dust cleanup) the cost components are not directly comparable to the benefit components. For example, dust-cleanup costs reflect only the costs of cleanup. Cleanup benefits, however, reflect the assumption that low dust-lead levels have a benefit duration of five years with paint stabilization and ten years with lead-based paint hazard abatement.

The duration of dust removal benefits reflects the anticipated benefits over five or ten years to a new population of young children, associated with births and unit turnover. This estimated duration of benefits could not be realized without the hazard reduction activities of paint stabilization or abatement, friction/impact work, and soil cover, to the extent required by the rule. The monetized benefits in the table for paint stabilization and abatement reflect only the health benefits of avoided paint chip ingestion. The cost of paint stabilization includes the incremental cost for rehabilitation programs, and the full cost for non-rehab programs. Paint stabilization market value benefits reflect the estimated market value for non-rehabilitation programs. Subtracting paint stabilization market value benefits from paint stabilization costs yields the incremental cost of all paint stabilization required under the rule.

TABLE 3a.—NET BENEFIT (COST) BY PROGRAM FOR FIRST YEAR ACTIVITIES

[Three percent discount rate for lifetime earnings]

Subparts	Pre-1940	1940–1959	1960–1977	Total for subpart
Single Family Insured Housing (E)	$0	$0	$0	$0
HUD-Owned Single Family Housing (F)	804,349	(104,790)	(267,451)	432,108
Multifamily Insured Housing (G)	3,712,523	2,981,836	0	6,694,360
Multifamily Housing With Project-Based Assistance > 5K (Hm1)	7,858,982	6,284,595	4,395,518	18,539,094
Multifamily Housing With Project-Based Assistance > 5K (Hm2)	22,150,600	7,055,126	4,798,460	34,004,186
Single Family Housing With Project-Based Assistance (Hs)	5,359,054	1,570,456	848,160	7,777,670
HUD-Owned and Mortgagee-in-Possession Multifamily Housing (I)	221,666	551,460	316,903	1,090,029
Single Family Rehab <5K (J1s)	26,705,720	19,813,315	3,103,588	49,622,624
Single Family Rehab 5K–25K (J2s)	40,365,551	29,115,276	4,186,525	73,667,352
Single Family Rehab 25K (J3s)	3,192,504	8,466,423	421,773	12,080,700
Multifamily Rehab <5K (J1m)	3,103,001	2,488,518	491,894	6,083,413
Multifamily Rehab 5K–25K (J2m)	12,303,357	9,541,269	3,316,929	25,161,554
Multifamily Rehab >25K (J3m)	8,536,151	6,932,896	1,504,944	16,973,991
Single Family Acquisition, Leasing, Operating, and Support (Ks)	318,545	124,334	20,862	463,741
Multifamily Acquisition, Leasing, Operating, and Support (Km)	608,761	146,925	47,221	802,907
Multifamily Public Housing (Lm)	58,623,013	188,764,843	34,665,629	282,053,485
Single Family Public Housing (Ls)	13,930,634	44,625,006	7,001,718	65,557,359
Single Family Tenant-Based Rental Assistance (Ms)	68,354,171	31,214,436	15,578,130	115,146,737
Multifamily Tenant-Based Rental Assistance (Mm)	102,509,490	46,573,257	24,862,934	173,945,681
Total Net Benefit	378,658,072	406,145,182	105,293,738	890,096,991

TABLE 3b.NET BENEFIT (COST) BY PROGRAM FOR FIRST YEAR ACTIVITIES

[Seven percent discount rate for lifetime earnings]

Subparts	Pre-1940	1940–1959	1960–1977	Total for Subpart
Single Family Insured Housing (E)	$0	$0	$0	$0
HUD-Owned Single Family Housing (F)	(1,927,841)	(689,268)	(539,603)	(3,156,712)
Multifamily Insured Housing (G)	246,690	176,627	0	423,317
Multifamily Housing With Project-Based Assistance > 5K (Hm1)	391,267	240,304	(3,053,108)	(2,421,537)
Multifamily Housing With Project-Based Assistance < 5K (Hm2)	(2,093,138)	(2,104,432)	(5,644,938)	(9,842,508)
Single Family Housing With Project-Based Assistance (Hs)	(1,667,495)	(1,102,037)	(3,184,370)	(5,953,901)
HUD-Owned and Mortgagee-in-Possession Multifamily Housing (I)	(15,690)	(40,308)	(368,895)	(424,892)
Single Family Rehab <5K (J1s)	3,659,065	2,291,784	(2,361,222)	3,589,628
Single Family Rehab 5K–25K (J2s)	332,951	(564,095)	(4,419,314)	(4,650,458)
Single Family Rehab >25K (J3s)	(202,701)	(259,968)	(467,775)	(930,445)
Multifamily Rehab <5K (J1m)	506,967	370,441	(153,853)	723,554
Multifamily Rehab 5K–25K (J2m)	1,820,172	1,315,448	(76,463)	3,059,158
Multifamily Rehab >25K (J3m)	1,191,958	963,529	(42,968)	2,112,520
Single Family Acquisition, Leasing, Operating, and Support (Ks)	(99,117)	(87,249)	(78,325)	(264,691)
Multifamily Acquisition, Leasing, Operating, and Support (Km)	(57,525)	(43,825)	(55,551)	(156,902)
Multifamily Public Housing (Lm)	8,942,287	27,902,848	(1,523,858)	35,321,277
Single Family Public Housing (Ls)	1,380,411	4,213,020	(2,151,524)	3,441,908
Single Family Tenant-Based Rental Assistance (Ms)	11,717,061	4,619,772	1,484,946	17,821,779
Multifamily Tenant-Based Rental Assistance (Mm)	19,667,574	7,933,157	4,751,523	32,352,254

TABLE 3b.NET BENEFIT (COST) BY PROGRAM FOR FIRST YEAR ACTIVITIES—Continued

[Seven percent discount rate for lifetime earnings]

Subparts	Pre-1940	1940–1959	1960–1977	Total for Subpart
Total Net Benefit	43,792,895	45,135,748	(17,885,295)	71,043,348

TABLE 3C.—COST-BENEFIT SUMMARY FOR FIRST YEAR ACTIVITIES USING A THREE PERCENT AND A SEVEN PERCENT DISCOUNT RATE FOR LIFETIME EARNINGS

[$ millions]

	Three percent	Seven percent
Hazard Evaluation Costs	$ 99.5	$ 99.5
Hazard Reduction Costs:		
Paint Stabilization	75.7	75.7
Window Replacement	4.6	4.6
Friction/Impact Work	8.5	8.5
Soil Cover	2.3	2.3
Paint Hazard Abatement	2.0	2.0
Dust Cleanup	60.5	60.5
Total First Year Costs	253.2	253.2
Monetized Benefits:		
Paint Stabilization	71.2	20.3
Paint Hazard Abatement	1.1	0.3
Soil Cover	88.0	20.2
Dust Cleanup	908.6	209.0
Paint Stabilization Market Value	70.2	70.2
Window Replacement	4.2	4.2
Total First Year Benefits	1,143.3	324.2
Total First Year Net Benefits	890.1	71.0

5. *Data Sources.* The following data sources are referenced extensively in the EA:

- The HUD national survey of lead-based paint in housing, conducted in 1989 and 1990.
- ''Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing: a Report to Congress,'' prepared by HUD, December 7, 1990.
- ''TSCA Title IV, Sections 402(a) and 404: Target Housing and Child-Occupied Facilities Final Rule Regulatory Impact Analysis,'' prepared by Abt Associates for EPA, August 1996.
- The Evaluation of the HUD Lead-Based Paint Hazard Control Grant program—interim data collected through March 1998.
- National Academy of Sciences, National Research Council Committee on Measuring Lead in Critical Populations, ''Measuring Lead Exposure in Infants, Children, and Other Sensitive Populations,'' October 1993.
- Third National Health and Nutrition Examination Survey, as reported in ''Blood Lead Levels in the U.S. Population'' and ''The Decline in Blood Lead Levels in the United States,'' Journal of the American Medical Association, July 27, 1994; and ''Update Blood Lead Levels—United States, 1991–1994,'' MMWR, February 21, 1997; and additional detail obtained from NHANES III data on CD–ROM.

6. *Public Comments.* An industry group criticized the EA for the proposed rule on several grounds. The group stated that population blood lead levels may have declined further since the NHANES III Phase 1 data were released. For the final rule, HUD has used the most current data available, which is the NHANES III, Phase 2 data covering the years 1992–1994.

The group also suggested that HUD's conclusion that declining dust lead levels will reduce blood lead levels in children is not supportable because it is based on a single study. In fact, there are at least 18 epidemiological studies which have estimated the blood lead/dust lead relationship; HUD has not relied on a single study in developing the final EA, but has conducted an extensive pooled analysis of virtually all available epidemiological data (Lanphear 1998).

The group stated that HUD's EA relied on a 1991 CDC finding that 10 μg/dL represents a threshold level, below which there are no adverse effects, and that therefore the EA should not have calculated benefits below 10 μg/dL. This is an incorrect interpretation of CDC's position. In fact, the 1991 CDC guidance document indicated that there was evidence of adverse health effects below 10 μg/dL. Neither HUD nor CDC have stated that 10 μg/dL is a ''threshold.'' The conclusion that it is reasonable to assume cognitive benefits to reducing childhood blood lead levels, including below 10 μg/dL, has been approved by EPA, the EPA external peer review process, CDC, the HHS internal peer review process and the National Academy of Sciences. It is clear that HUD's analysis is consistent with the consensus of the scientific community.

The group also stated that the EA cited the correlation between blood lead and low IQ, but erred in suggesting that correlation could be used to establish causality and that the available scientific studies failed to control for a variety of confounding variables. HUD agrees that correlation alone cannot establish causality. The idea that lead exposure causes a reduction in IQ is supported by not only correlation, but also by time precedence, biological plausibility, dose-effect relationship, and animal studies. When taken together, HUD believes that all these factors establish conclusively that lead exposure does in fact cause reductions in IQ. Time precedence has been established by those studies that measure blood lead level at birth, showing that the cause exists before the consequence. Biological plausibility has been established by the studies showing anatomical, physiological, and biochemical changes in the brain due to lead exposure. Dose-response has also been clearly established in the literature. Finally, all modern lead studies have in fact controlled for confounding variables, such as socio-economic status, parent's education and race.

The group also suggested that the lead studies upon which the EA relied used imprecise or incomplete methods of measuring IQ. However, if IQ was in fact measured inappropriately, one would expect to see the studies equally distributed between those showing no effect and those that did. In fact, virtually all of the studies on lead show the same IQ effect. While the size of the effect and degree of statistical significance may vary from one study to another, the basic conclusion remains the same: increased lead exposure is related to reduced IQ.

Another industry group suggested that HUD's EA for the proposed rule had overestimated the benefits, because children living in HUD-assisted housing will grow up to earn less than the average income, and thus the calculated loss in lifetime earnings was too great.

First, HUD does not believe it is appropriate to declare that the value of damage to children in one socioeconomic group is less than the value of damage to children in another socioeconomic group. Furthermore, there is evidence that earnings may have in fact been underestimated, because per capita productivity has increased in recent years, which often results in increased wages. HUD used data covering the past 20 years to estimate growth in real wages, which has been low. If in fact the country returns to the growth rate over the past century, HUD's EA would underestimate the size of the lost lifetime earnings. HUD has used an updated estimate of the size of the lost lifetime earnings benefit (Salkever 1995) in the EA for this final rule to respond to this criticism. Salkever updated the analysis of labor force participation and other pathways by which lead can reduce expected future earnings. Finally, HUD's EA assumed that there would be no benefit to reducing lead exposure in adults, even though a number of studies have demonstrated that lead can increase blood pressure and cause a decline in both kidney function and cognition in adults. In short, HUD's EA is likely to underestimate the total benefit involved, not overestimate it.

An industry group suggested that HUD should use the lower confidence bound of the scientific studies, which would reduce the benefits of the proposed rule. HUD agrees that this would reduce the benefits, but notes that if it chose to use the upper bound as a health protective measure, the benefit would increase. On balance, HUD believes that measures of central tendency appear to be best when faced with the need to make public policy in the face of scientific uncertainty, which is always present to some extent. HUD encourages public comment on the EA and the final rule and will make revisions to both documents as new evidence comes to light.

B. Paperwork Reduction Act Statement

The information collection requirements contained in this final rule 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. 2501–3520), 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.

C. Regulatory Flexibility Act—Final Regulatory Flexibility Analysis

When the proposed rule was published on June 7 1996, HUD certified that the proposed regulatory requirements would not have a significant economic impact on a substantial number of small entities. On October 9, 1998 (63 FR 54422), HUD published a Notice in the **Federal Register** containing additional information about its determination that the proposed rule would not have a significant impact on a substantial number of small entities. HUD has concluded, upon further consideration, that its certification that the rule will not have a significant economic impact on a substantial number of small entities could reasonably be questioned. Although the Department continues to believe that the certification was reasonable and justified, the degree of uncertainty as to what constitutes a ''significant'' impact and a ''substantial'' number of small entities in the housing industry has led to the decision not to make such a certification at this time. HUD is seeking to comply fully with the intent of the Regulatory Flexibility Act and is publishing this Final Regulatory Flexibility Analysis to describe the likely impact. This analysis expands on the analysis published on October 9, 1998 and summarizes and responds to public comments. HUD requests written public comment on this analysis of the impact of the rule on small entities. The final rule does not take effect until one year after publication, so there is time for the Department to arrange for responses to economic impacts that it believes would significantly diminish the effectiveness of its housing assistance programs in providing affordable housing to families of low and moderate income.

Comments on this notice must be received on or before November 1, 1999. Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments are *not* acceptable. For further information, contact: Steve Weitz, Office of Lead Hazard Control, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–0500. Telephone: (202) 755–1785, ext. 106 (this is not a toll-free number). E-Mail: stevenson__p.__weitz@hud.gov. Hearing or speech-impaired persons may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

1. *Need For and Objectives of the Final Rule.* The Lead-Based Paint Poisoning Prevention Act of 1971, as amended, directs the U.S. Department of Housing and Urban Development (HUD) to establish procedures to eliminate to the extent practicable lead-based paint hazards in federally associated housing. HUD issued implementing regulations in 1976 and made Department-wide revisions in 1986, 1987, and 1988. In 1992, Congress passed the Residential Lead-Based Paint Hazard Reduction Act, which was Title X of the Housing and Community Development Act of 1992 (Title X). Sections 1012 and 1013 of Title X amend the Lead-Based Paint Poisoning Prevention Act to require specific new procedures for lead-based paint notification, evaluation, and hazard reduction activities in housing receiving Federal assistance (section 1012) and federally owned housing at the time of sale (section 1013).

In enacting Title X, the Congress found that low-level lead poisoning is widespread among American children, with minority and low-income communities disproportionately affected. The Congress also found that, at low levels, lead poisoning in children causes IQ deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems. In addition the Congress found that the health and development of children living in as many as 3.8 million homes is endangered by chipping or peeling lead paint or excessive amounts of lead-contaminated dust in their homes.

Among the stated purposes of Title X are to implement, on a priority basis, a broad program to evaluate and reduce lead-based paint hazards in the Nation's housing stock; to ensure that the existence of lead-based paint hazards is taken into account in the development of Government housing policies and in the sale, rental, and renovation of homes and apartments; and to reduce the threat of childhood lead poisoning in housing owned, assisted, or transferred by the Federal Government.

The final rule sets forth new requirements for lead-based paint hazard notification, evaluation, and reduction for federally owned residential property and housing receiving Federal assistance. The rule takes into consideration the substantial advancement of lead-based paint remediation technologies and the

improved understanding of the causes of childhood lead poisoning by the scientific and medical communities. Perhaps the most important results of research on this subject during the last 10–12 years have been: (1) The finding that lead in house dust is the most common pathway of childhood lead exposure; and (2) the measurement of the statistical relationship between levels of lead in house dust and lead in the blood of young children. The final rule updates the existing HUD regulations to reflect this knowledge, giving importance to procedures that identify and remove dust-lead hazards as well as chipping, peeling or flaking lead-based paint.

The rule also offers a consolidated, uniform approach to addressing lead-based paint hazards. Currently, each individual HUD program has a separate set of lead-based paint requirements incorporated into its program regulations. The final regulation consolidates the HUD lead-based paint regulations and groups requirements by type of housing assistance, rather than by individual program. For example, the rule contains subparts that address multifamily mortgage insurance; project-based assistance; rehabilitation assistance; assistance for acquisition, leasing, support services and operation; public housing; and tenant-based assistance. Moreover, the final rule uses a clear and consistent set of terms to specify notification, evaluation, and hazard reduction requirements. Organizing the requirements by the type of housing assistance and using new terminology will avoid subjecting properties receiving assistance from more than one program to inconsistent or redundant HUD lead-based paint requirements. These changes will also ease the burden on HUD clients in locating and understanding the applicable requirements and help ensure that lead hazards are identified and safely reduced.

2. *Public Comments.* The Notice published in the **Federal Register** on October 9, 1998 outlined the impact of the proposed rule on small entities. Eight comments were received. Following is a summary of the significant issues raised by the comments and a description of the Department's assessment of and response to such issues.

a. *Information Not Adequate.* Two commenters requested additional information. One commenter said they were unable to assess the impact of the proposed regulations with the information provided in the published Notice and requested that the Department extend the comment period on the Notice until supporting materials are available for public review. Another requested that HUD prepare a more detailed analysis and submit it for comment before publishing a final rule.

In response, HUD is providing more detailed information in this analysis and welcomes further comment. However, HUD is not delaying further the publication of this important regulation, which is expected to significantly reduce lead poisoning among children living in Federally owned housing that is sold and in housing that receives Federal assistance.

b. *Capital vs. Operating Costs.* One commenter stated that the analysis was ''confusing,'' because it compared the cost of lead-based paint hazard reduction to current rent revenue. According to this commenter, lead-based paint activities are major capital improvement costs that would be financed from reserves or through a loan.

HUD agrees that some property managers may budget the required work out of reserves, some may have to finance it through a loan, while others will be able to handle it as an operating expense. Regardless of how the work is budgeted and financed, HUD believes that comparison to annual rent revenues is a reasonable method of gaining a general understanding of the significance of the costs. However, Section 3 of this Notice includes additional financial statistics for HUD-insured multifamily housing with project-based rental assistance; these statistics are net annual cash flow per unit before income taxes, total reserves per unit, and backlog of physical needs per unit.

c. *Costs Will Be Higher Than HUD Assumes.* Three commenters thought HUD underestimated the cost of complying with the requirements. All of these commenters were concerned primarily with rehabilitation programs. One commenter stated that the cost would be between $2,000 and $4,000 per unit, while the others claimed that rehabilitation costs are 35–50 percent more when lead-based paint is involved.

While it is possible that the costs in some jurisdictions may exceed those estimated for this analysis, HUD believes it has estimated the national average costs of the requirements in the rule as accurately as possible, given available data. It is important to remember that *average* costs may be much lower than costs one may have heard reported for heavily contaminated housing. Even in older housing, some structures have a great deal of lead-based paint while others have only a small amount, and the condition of the paint varies as well. Also, the anecdotal costs reported in some jurisdictions may not be for the same activities as those required in this rule. Furthermore, the costs used in the analysis for rehabilitation are incremental costs. For example, if it is estimated that rehabilitation will replace windows for other reasons, that cost is not charged to lead-based paint hazard reduction. Finally, HUD believes that the cost of lead-based paint hazard evaluation and reduction will decline as program managers learn how to administer the requirements efficiently and as staff and contractors become experienced in the work.

HUD has estimated unit costs for lead-based paint hazard evaluation and reduction based on interviews with contractors and data from the ongoing Evaluation of HUD's Lead-Based Paint Hazard Control Grant Program (National Center 1998). It has estimated the frequencies of hazard occurrence based on both the Evaluation and the 1990 National Survey of Lead-Based Paint in Housing (EPA 1995). Also, it used American Housing Survey data to estimate the frequency with which rehabilitation involves activities like repainting or window replacement that overlap the requirements of lead-based paint hazard reduction. These estimates are explained in the HUD EA for the final rule (HUD 1999).

d. *There Will Be a Significant Impact.* Many commenters stated or implied that HUD was incorrect in its determination that the rule will not have a significant economic impact on a substantial number of small entities. While the Department has chosen not to make such a determination for this final rule, it continues to think that the cost of compliance, and therefore the impact, will not be as significant as many commenters believe.

As explained below, in section 4 of this Analysis, HUD has written provisions into the rule, consistent with Title X, designed to alleviate the impact of the lead-based paint evaluation and reduction requirements on entities receiving limited Federal assistance. For example, for most housing affected by this regulation, all that is required is stabilization of deteriorated paint, if any is present, followed by cleanup and clearance.

In multifamily housing, HUD estimates that compliance with this requirement costs only about $100 per unit more than routine repainting, and less if only a small amount of deteriorated paint is present. This requirement pertains to housing that receives tenant-based rental assistance and is occupied by children of less than

six years of age, and it applies to housing receiving project-based rental assistance averaging less than $5,000 per unit per year (which includes most housing that is affected by this rule and is receiving project-based assistance). The requirements are greater for multifamily housing receiving project-based assistance of more than $5,000 per unit per year; but that is a relatively small percentage of the assisted stock that was built before 1978, and most of it is professionally managed, in relatively good physical and financial condition, and not expected to have a high prevalence of lead-based paint hazards. For housing receiving Federal rehabilitation assistance of $5,000 per unit or less (which is almost one-half of the housing receiving such assistance), the rule requires only that the rehabilitation be done in a lead-safe manner so that it causes no contamination.

For these reasons and because there currently exist lead-based paint regulations for virtually all HUD programs prescribing notice, evaluation and treatment procedures, HUD continues to believe that the economic impact of the rule will be much less than many of the commenters believe.

e. *Owners Whose Entire Portfolio Is Affected May Be Impacted Especially Hard.* One organization stated that ''small property owners whose portfolio may only contain target properties and will have to bear this additional expense throughout their portfolio, may well be forced out of business by such extreme financial requirements.''

HUD agrees that the impact on an owner may depend to some extent on the percentage of his or her portfolio that is affected by the rule. However, many if not most housing owned by small entities will be only partially affected by the rule. A dwelling unit is not covered if it was built after 1977, or designated exclusively for the elderly or persons with disabilities (unless a child of less than 6 years of age resides or is expected to reside), or is a zero bedroom dwelling (e.g., efficiency, studio, or single-room occupancy unit), or is found to be free of lead-based paint, or all lead-based paint has been removed. Many residential properties, especially those built after 1960, have little or no lead-based paint hazards. If a unit has no deteriorated paint or no lead-based paint hazards (depending on the housing program), no hazard reduction is required. Thus, owners can minimize the cost effect of the rule through good maintenance of paint surfaces and careful cleanup at turnover. In the case of units with tenant-based assistance, the rule applies only to units occupied by families with children of less than six years of age. Many properties with project-based assistance have only part of their units under housing assistance payments contracts. For all of these reasons, the total annual rental revenue for affected small entities may substantially exceed the total annual rental revenue associated with just those units subject to the rule.

3. *Impact on Small Entities.* a. *Number of Small Entities Affected by the Rule.* For this analysis, HUD defines a small entity as one with less than $5 million in total revenues per year. This standard is based on the report, ''Small Business Administration Standard Industrial Code (SIC) Size Standards,'' dated January 1998.

Table 4 provides, for each program group, an estimate of the number of small entities that will be affected by the first effective year of the rule. Although some additional housing units and ownership entities will become subject to the rule after the first effective year, focusing on the first year facilitates analysis of impact on an annual basis. Estimates are given for the same program groups used in the EA for the rule, and the number of housing units for each program is taken from the EA. For all program groups, it is estimated that approximately 203,000 small entities will be affected in the first year of the rule. Of these, about 122,000, or 60 percent, are owners of single-family housing being rehabilitated with HUD rehabilitation assistance.

The vast majority of these owners are expected to be individuals who are rehabilitating their own residences. They are not businesses, organizations or units of local government, which are the entities of concern under the Regulatory Flexibility Act. Nevertheless data are provided for these owners for completeness of analysis. Of the remaining 81,000 small entities, the great majority will be owners of rental housing; and, of those, about 56,000 will be owners of housing with tenant-based rental assistance, 17,000 will be owners of housing with project-based rental assistance, 1,500 will own multifamily housing receiving rehabilitation assistance, and about 1,400 will be local public housing authorities. HUD believes that the great majority of local public housing authorities are not covered by the Regulatory Flexibility Act, because they are not agencies of local governments with populations of less than 50,000. Nevertheless, public housing data are included in this analysis for completeness.

(1) *Housing With Multifamily Mortgage Insurance and/or Project-Based Rental Assistance.* The first and second rows of Table 4 pertain to multifamily housing that has HUD mortgage insurance but not HUD subsidies. For this program group, the rule will apply only to properties built before 1978 that are covered by a new application for mortgage insurance. These properties tend to be relatively large, with an average of 160 units per property. Twenty-one percent of the properties have more than 200 units (Abt Associates 1999). Average annual total revenues for unassisted HUD-insured multifamily properties are assumed for purposes of this analysis to be $8,000 per unit. (This assumption is based on Abt Associates 1999, Exhibit 3–1, which reports a mean average annual total revenue for all unassisted insured properties of $7,978.) To earn $5 million per year in total revenues, a property with per unit annual revenue of $8,000 would have to have 625 housing units. Few projects are of this size. However, it is well known that many of these projects are part of multiproperty portfolios. Of all rental housing in properties with 50 or more units, 25 percent of the properties and 50 percent of the units are owned by limited partnerships, general partnerships, real estate corporations or other corporations, or joint ventures (HUD 1996). Therefore it is assumed for this analysis that 25 percent of the unassisted multifamily properties with HUD mortgage insurance are owned by large entities and 75 percent are owned by small entities. It is also assumed that none of the properties owned by small entities are part of a multiproperty portfolio. This assumption may overstate the number of small entities somewhat. Based on this analysis, it is estimated that each year 70 applicants for unassisted multifamily mortgage insurance will be small entities.

TABLE 4.—NUMBER OF SMALL ENTITIES AFFECTED BY THE FIRST YEAR OF THE HUD LEAD-BASED PAINT REGULATIONS, FINAL RULE

Program group	Number of units	Units per property	Number of properties	Small owner entities as percent of number of properties	Number of small ownership entities
Pre-1960 Housing w/Multifamily (MF) Mortgage Insurance	3,750	160	23	75	17
Post-1959 Housing w/ MF Mortgage Insurance	11,250	160	70	75	53
MF Housing w/ Project-Based Assistance, >$5K/Unit	35,750	115	311	75	233
MF Housing w/ Project-Based Assistance, <$5K/Unit	408,690	115	3,554	85	3,021
Single Family (SF) Housing w/ Project-Based Assistance	134,280	2	67,140	20	13,428
MF Housing w/ Tenant-Based Assistance	207,050	7	29,579	99	29,283
SF Housing w/ Tenant-Based Assistance	134,500	1	134,500	20	26,900
Public Housing	164,000	N/A	1,500	96	1,440
SF Housing w/ Rehab Assistance, <$5K/Unit	66,836	1	66,836	100	66,836
MF Housing w/ Rehab Assistance, <$5K/Unit	7,834	20	392	99	388
SF Housing w/ Rehab Assistance, $5K–$25K	48,998	1	48,998	100	48,998
MF Housing w/ Rehab Assistance, $5K–$25K	15,877	20	794	98	778
SF Housing w/ Rehab Assistance, >$25K	5,817	1	5,817	100	5,817
MF Housing w/ Rehab Assistance, >$25K	7,306	20	365	98	358
SF Housing w/ Acquisition, Leasing, etc. Assistance	5,093	1	5,093	100	5,093
MF Housing w/ Acquisition, Leasing, etc. Assistance	6,103	20	305	99	302
Total	1,263,134	.....	365,277	.....	202,945

The third and fourth rows of Table 4 present estimates for multifamily housing with project-based rental assistance. These are somewhat smaller properties, with an average of 115 units per project; only 13 percent have more than 200 units (Abt Associates 1999). For this analysis it is assumed that average annual total revenues are $10,000 per unit for properties receiving an average of more than $5,000 in rental assistance per unit per year and $6,000 for those with less than $5,000. (The Abt Associates 1999 report estimates that mean annual total revenues were $5,868 in 1995 for all ''older assisted'' multifamily properties and $10,057 for ''newer assisted'' properties. Older assisted properties receive either mortgage interest subsidies (under section 236 or 221(d)(3) Below Market Interest Rate insurance programs) or rental assistance under the Section 8 Loan Management Set Aside, Rent Supplement, Rental Assistance Payment, Section 8 Property Disposition, or Preservation programs. Newer assisted properties receive rental assistance under one of the following Section 8 programs: New Construction, Substantial Rehabilitation, or Moderate Rehabilitation. Older assisted properties had mean assistance payments of $2,576 per unit per year, with a median of $2,310. Newer assisted properties had mean assistance payments of $7,448, with a median of $7,106. Thus HUD assumes for purposes of this Regulatory Flexibility Analysis that virtually all of the housing receiving more than $5,000 per unit per year in project-based assistance are in the newer assisted properties and that virtually all of the housing receiving less than $5,000 are in the older assisted category.) A project with $10,000 in annual revenue per unit would have to have 500 units to earn $5 million in total revenue. A project with $6,000 in annual revenue per unit would need 834 units. It is assumed that 75 per cent of the owners of properties receiving more than $5,000 per unit in assistance will be small entities—the same as for unassisted insured properties. However, recognizing the sharp difference in average revenues between properties receiving more than and less than $5,000 per unit per year, it is assumed that 85 percent of the less-than-$5,000 group will be small entities. Based on this analysis, it is estimated that 3,254 small entities will own multifamily properties with project-based assistance that will be affected by the rule in its first year. All of these should complete initial work in the first year, with only ongoing maintenance and some reevaluation required after that. In each of the second, third and fourth years, it is expected that 233 additional small entities will be affected.

The fifth row in Table 4 presents estimates for all *single family* housing receiving project-based assistance. HUD assumes for the purposes of this analysis of ownership that there is an average of two units per property in this inventory. This assumption derives from American Housing Survey data which indicates that there are a large number of three-and four-unit properties with project-based assistance as well as single unit properties. (The HUD-FHA definition of ''single family property'' is one-to-four units.) It is further assumed that owners of single-family housing with project-based assistance own an average of five properties. This assumption recognizes that it requires a certain additional amount of managerial knowledge to participate in project-based assistance programs compared to owning an unassisted rental unit, and that such owners tend to try to maximize the benefits of such knowledge by owning several homes. HUD also assumes, however, that 100 percent of the owners of such housing are small entities. It is estimated that 13,428 small entities will own single family housing with project-based assistance that is affected by the first year of the rule. After that, only ongoing maintenance is required. No additional entities are expected to be affected in later years.

(2) *Tenant-Based Rental Assistance.* Families assisted by tenant-based rental assistance programs are living in housing that is similar in size and age to the nation's entire non-luxury rental housing stock. Therefore HUD assumes that the average number of units per multifamily property is 20, which is much smaller than the projects with mortgage insurance and project-based assistance. However, in the tenant-based assistance programs, HUD lead-based paint regulations apply only to housing occupied by children of less than 6 years of age. Therefore, based on occupancy data from a subsample of the American Housing Survey, it is assumed that 35 percent of the 20 units (or seven) are occupied by such children. Because

of the small average property size, HUD assumes that only one percent of the owners of multifamily housing assisted under tenant-based programs are large entities.

For single-family housing with tenant-based assistance, it is assumed that an average of one unit per property will house families with children of less than six years of age, that owners will own an average of five properties, and that 100 percent of the properties are owned by small entities.

Counting owners of both multifamily and single family housing, it is estimated that 56,183 small entities will own housing with tenant-based assistance affected by the first year of the rule. In future years, because of housing turnover in these programs, it is expected that about 20,000 small entities will become newly affected each year.

(3) *Public Housing.* HUD estimates that approximately 1,500 public housing agencies will be affected by the rule. Although HUD believes that the Regulatory Flexibility Act does not apply to the vast majority of public housing authorities, data are presented here for completeness. Many public housing agencies own both multifamily and single family units, so no attempt is made in Table 1 to distinguish between agencies owning one or the other. Although rents paid by tenants of public housing are relatively low, HUD estimates that subsidies boosted public housing agency revenues to an average of approximately $7,400 per unit per year in 1995. A public housing agency with average revenues per unit would have to have 676 units to have revenues of $5 million. Only about 2 percent of public housing agencies have that many units. However, many housing agencies have revenues from sources other than the public housing program, including the project-based and tenant-based rental assistance programs. Therefore HUD assumes for this analysis that 4 percent of the public housing agencies are large entities and that 96 percent, or 1,440, are small entities.

(4) *Rehabilitation Assistance.* There are at least three types of entities that will be affected by the lead-based paint requirements for housing receiving rehabilitation assistance. They are: (1) The State and local governmental agencies and tribal agencies that are the grantees and participating jurisdictions that receive funding from HUD; (2) nonprofit organizations that are subrecipients or funded directly by HUD and that operate housing development and rehabilitation programs; and (3) private owners of housing being rehabilitated. Of these three, the greatest concern of those commenting on the proposed rule was with the potential economic impact on private owners. Therefore this analysis focuses on that group.

The number of small-owner entities participating in the rehabilitation programs is estimated to be large, because many local programs concentrate on the rehabilitation of single family, owner-occupied homes. HUD assumes for purposes of this analysis that in any given year all single family units assisted by rehabilitation programs are individually owned, i.e., that the number of owners equals the number of units. While this may produce an overestimate of the actual number of owners, the error is expected to be small. For multifamily units, the same average number of 20 units per property is used as was used in the tenant-based assistance programs; and 98 to 99 percent of the owners are assumed to be small entities. In total, it is estimated that 125,028 small-owner entities will be affected by the rehabilitation assistance programs each year.

(5) *Acquisition, Leasing, Support Services, or Operation.* Assumptions for the Acquisition, Leasing, Support Services or Operation group are the same as for Rehabilitation. The number of small entities affected is estimated to be 5,395.

b. *Economic Impact.* This section examines, for each program group, the financial impact of the rule on small entities.

(1) *Housing With Multifamily Mortgage Insurance, Project-Based Rental Assistance, Tenant-Based Rental Assistance, or Public Housing.* Table 5 provides a comparison of the incremental cost of compliance with total revenues for most of the rental housing programs affected by the rule. Table 6 provides the following additional financial statistics that are available from a study of the insured multifamily inventory: annual net cash flow, total reserves, and backlog of physical needs—all per unit (Abt Associates 1999, exhibits 2–2, 3–3, and 3–7). Annual net cash flow equals revenues less expenses before income taxes. Expenses include deposits to reserve accounts and debt service as well as operating expenses. Total reserves include replacement reserves and, for some properties, residual receipts accounts. The physical needs backlog is the estimated cost of repairs and replacements beyond ordinary maintenance required to restore a property to its original condition. The financial statistics in Table 6 are available only for the multifamily HUD-insured stock that is unassisted or assisted with project-based subsidies; they are not available for housing receiving tenant-based assistance or for public housing.

Two sets of compliance cost estimates are provided for each program group in Table 5. The first column is the mean incremental cost per unit for all properties. Incremental costs are new costs incurred in compliance with this rule over and above the costs of compliance with existing regulations. There is a great deal of variation around this mean that is associated with the age, size and condition of the housing. Many properties will have no cost at all. Therefore, the second column of Table 5 provides the estimated incremental cost per unit for ''high-cost properties.'' This is an approximation of the average cost that may be incurred by properties that have all the hazards for which the rule requires remediation for a given program. The frequency of such high-cost cases is not known but is expected to be between one and eight percent of all properties, depending on the program group. All compliance cost estimates are incremental, i.e., over and above the costs of current HUD lead-based paint regulations. The cost estimates are derived from the EA, which in turn is based on data collected from discussions with lead-based paint inspectors and hazard reduction contractors in 1995 and the evaluation of the HUD Lead-Based Paint Hazard Control Grant Program (data collected 1994–1997). No cost estimates are shown for post-1959 unassisted housing with HUD multifamily mortgage insurance because the rule requires only that sponsors agree to conduct ongoing lead-based paint maintenance.

Estimates of mean annual total revenues per unit are based on a 1995 survey of HUD-insured multifamily rental housing (Abt Associates 1999, exhibit 3–1) and estimates by HUD staff. As with Table 4, all estimates pertain to housing affected by the first year of the rule.

In comparing compliance costs with revenue or with other financial data, it is important to remember that the compliance costs are not continuing annual costs. Rather they are one-time costs of hazard evaluation and control, after which the owner must simply maintain the paint surfaces and conduct maintenance and repair activities in a lead-safe manner. For some program groups, owners will have to conduct at least two reevaluations in two-year intervals after the initial hazard reduction activity to assure that lead-based paint hazards have not reoccurred. Also, many owners have

properties that are not covered by the rule as well as those that are affected. The financial impact on such owners will be less than on those whose portfolios consist solely of pre-1978 HUD-associated housing.

Table 5 indicates that, in the first effective year of the rule, the mean incremental cost of compliance is expected to vary from 1.0 to 6.9 percent of total annual revenues for the insured multifamily stock and housing receiving project-based rental assistance. Public housing and unassisted insured multifamily housing built before 1960 have the highest average costs and the highest percentage of revenue, because of the stringency of the requirements and the age of the stock. High-cost properties have ratios of cost to revenue of 9.0 to 28 percent; but these percentages should be used only as rough indicators, because the universe of the revenue estimate (all properties) does not correspond to that of the high-cost properties.

Table 6 provides additional financial statistics from the Abt Associates report on the multifamily insured stock. Data from the Abt study for unassisted properties are not included in this table, because they are not necessarily representative of properties that will apply for mortgage insurance when the rule becomes effective. For newer assisted properties (defined as properties receiving Section 8 New Construction, Substantial Rehabilitation, or Moderate Rehabilitation), the average (mean) cash flow was a substantial $1,105 per unit. This compares to lead-based paint regulatory compliance costs of $255 (average for all properties) and $1,120 (high-cost properties) for housing with project-based assistance of more than $5,000 per unit. While reserves also appeared respectable for most of these newer assisted properties, the mean backlog of physical needs was $3,214 compared to a median of $1,324, indicating that a few properties had very high backlog needs. Also, 13 percent of the newer assisted properties had negative cash flow, again indicating that some properties are in financial distress.

For the older assisted properties, which correspond to housing with project-based assistance of less than $5,000 per unit, mean annual net cash flow per unit was $283, compared with compliance costs of $60–$82 per unit (average for all properties) and $570-$870 (high-cost properties). The Abt study found that 33 percent of the older assisted properties had a negative cash flow and that another 42 percent had a cash flow of $0-$500 per unit. Further, the study found $3,929 in average (mean) backlog of physical needs per unit, with a median of $2,096, indicating that some properties have very high deferred needs. Thus it appears that a certain percentage of this older stock is in financial distress, even more than with the newer assisted properties.

TABLE 5.—INCREMENTAL COST OF COMPLIANCE AS A PERCENTAGE OF ANNUAL REVENUE, BY PROGRAM GROUP: NONFEDERAL RENTAL HOUSING AFFECTED BY THE FIRST YEAR OF THE RULE

[Not including housing receiving assistance for rehabilitation or acquisition, leasing, support services or operation. Cost and revenue data as of 1995–1996]

Program group	Average incremental compliance cost per unit, all properties	Average incremental compliance cost per unit, high-cost properties	Average annual total revenue per unit, all properties	Average incremental compliance cost as a percent of revenue, all properties	Average incremental compliance cost as a percent of revenue, high-cost properties
Pre-1960 Housing w/Multifamily (MF) Mortgage Insurance	$414	$1,120	$8,000	5.2	14
Post-1959 Housing w/MF Mortgage Ins.	0	0	8,000	0	0
MF Housing w/Project-Based Assistance, >$5K/Unit	255	1,120	10,000	2.6	11
MF Housing w/Project-Based Assistance, <$5K/Unit	60	570	6,000	1.0	9.5
SF Housing w/Project-Based Assistance	82	870	6,500	1.3	13
MF Housing w/Tenant-Based Rental Assistance	59	560	6,200	1.0	9.0
SF Housing w/Tenant-Based Rental Assistance	103	870	6,200	1.7	14
MF Public Housing	311	1,120	7,400	4.2	15
SF Public Housing	511	2,095	7,400	6.9	28

TABLE 6.—FINANCIAL STATISTICS FOR MULTIFAMILY PROPERTIES WITH HUD-INSURED MORTGAGES 1995

[In 1995 dollars per 2-bedroom equivalent unit]

	Newer assisted properties	Older assisted properties
Annual Net Cash Flow Per Unit:		
Mean	$1,105	$283
Median	$742	$162
Percentage of Properties With Negative Cash Flow	13%	33%
Percentage of Properties With Cash Flow of $0–$500	22%	42%
Total Reserves Per Unit:		
Mean	$1,924	$1,766
Median	$1,163	$1,240
Backlog of Physical Needs Per Unit:		
Mean	$3,214	$3,929
Median	$1,324	$2,096

It is apparent from these statistics that some properties will not be able to fund lead-based paint compliance out of current income. HUD estimates that no more than half of the housing with project-based assistance will be able to obtain an adjustment in assistance levels to finance the cost of the lead-based paint requirements. For projects that do not qualify for a rent adjustment and do not have sufficient income to cover the cost of compliance with the rule, HUD will work with owners to find funds from other sources. Depending on the property, this process may include the financial restructuring known as Mark to Market. Mark-to-Market processing will address lead-based paint requirements in the restructuring commitment. Other possible sources of funds include replacement reserves, grants, and Community Development Block Grant funds.

(2) *Housing Receiving Rehabilitation Assistance.* For housing receiving rehabilitation assistance, Table 7 compares the cost of compliance to an assumed average total cost of rehabilitation. Assumed average total rehabilitation costs are $4,000 for projects receiving $5,000 or less in rehabilitation assistance, $15,000 for those receiving between $5,000 and $25,000 in assistance, and $30,000 for those receiving more than $25,000 in assistance. Average compliance costs vary from 1.1 to 4.2 percent of these total project costs. Costs for high-compliance-cost projects vary from 3.3 to 9.3 percent of total rehabilitation cost. Single family properties tend to have a higher cost impact than multifamily, because they are larger units on average and usually require more exterior work.

Virtually all HUD rehabilitation assistance is administered by State, local and tribal agencies, and many, if not most, of these programs are operated as low-interest loans. If property owners are unable to finance loans for the incremental cost of lead hazard control, the administering agencies have the option to finance such costs with a grant out of program funds.

TABLE 7.—INCREMENTAL COST OF COMPLIANCE AS A PERCENTAGE OF AVERAGE REHABILITATION COST, BY PROGRAM GROUP HOUSING RECEIVING FEDERAL REHABILITATION ASSISTANCE

[Cost data as of 1995–1996]

Program group	Average incremental compliance cost per unit, all properties	Average incremental compliance cost per unit, high-cost properties	Average cost of rehabilitation, all properties	Average incremental compliance cost as a percentage of average rehab cost, all properties	Average incremental compliance cost as a percentage of average rehab cost, high-cost properties
Single Family (SF) Housing w/ Rehab Assistance, <$5K/Unit	$153	$170	$4,000	3.8	4.3
Multifamily (MF) Housing w/ Rehab Assistance, <$5K/Unit	113	130	4,000	2.8	3.3
SF Housing w/ Rehab Assistance, $5K–$25K	627	1,275	15,000	4.2	8.5
MF Housing w/ Rehab Assistance, $5K–$25K	265	720	15,000	1.8	4.8
SF Housing w/ Rehab Assistance, >$25K/Unit	891	2,775	30,000	3.0	9.3
MF Housing w/ Rehab Assistance, >$25K/Unit	342	1,140	30,000	1.1	3.8

(3) *Acquisition, Leasing, Support Services, and Operation.* This program group does not appear on Table 5, because HUD has no aggregate financial information for the housing affected by this subpart of the rule. For single family properties, the average cost of compliance is estimated at $251 per unit for all properties; the high cost is $870. For multifamily properties, the average cost per unit is $122 for all properties and $460 for high-cost properties. These costs are similar to those of housing with tenant-based assistance, and the financial impact is likely to be similar also.

4. *Final Rule Requirements.* The final rule establishes the following types of lead-based paint requirements: (1) Distribution of a lead hazard information pamphlet; (2) notice to occupants of evaluation and hazard reduction activities; (3) evaluation of lead-based paint hazards; (4) reduction of lead-based paint hazards; (5) ongoing monitoring and reevaluation; (6) response to a child with an elevated blood lead level; and (7) record keeping.

a. *Lead Hazard Information Pamphlet.* The rule, in accordance with the statute, requires the distribution of the EPA pamphlet entitled, ''Protect Your Family From Lead in Your Home'' to all existing tenants or owner-occupants who have not already received it in compliance with the lead-based paint disclosure rule (24 CFR part 35, subpart H) or the EPA rule implementing TSCA section 406(b) (40 CFR part 745, subpart E). Since the disclosure rule was effective in the Fall of 1996, HUD expects that most tenants will have already received the pamphlet when the rule becomes effective in year 2000 (see discussion of effective date below). Current HUD regulations require provision of information similar to that in the EPA pamphlet, so this is not a totally new requirement.

b. *Resident Notice.* The rule, in accordance with Title X, requires that occupants of rental housing receiving Federal assistance be provided written notice of risk assessments, paint inspections, or hazard reduction activities required by this regulation and undertaken at the property. This is a new requirement in HUD regulations. The required notice following risk assessment or inspection provides information to occupants about the nature, scope, and results of the evaluation and a name and phone number to contact for more information or for access to the actual evaluation reports. Notices to tenants regarding hazard reduction activities must contain information about the treatments performed and the location of any remaining lead-based paint. HUD is providing a sample format for resident notices in the final rule.

c. *Evaluation.* The rule establishes four types of evaluation procedures: (1) A lead-based paint inspection, which is a surface-by-surface investigation to determine the presence of lead-based paint on painted surfaces of a dwelling, typically through the use of a portable X-ray fluorescence (XRF) analyzer; (2) paint testing, which is a limited form of lead-based paint inspection aimed at determining the lead content of deteriorated paint or paint to be

disturbed by rehabilitation; (3) a risk assessment, which is an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards, which, in accordance with Title X, include dust-lead and soil-lead hazards as well as deteriorated lead-based paint, as well as lead-based paint on friction, impact and chewable surfaces; and (4) clearance, which is an examination conducted after hazard reduction, rehabilitation, or maintenance activities (a) to visually determine that deteriorated surfaces that are known or presumed to be lead-based paint have been controlled or abated and that visible dust, debris, paint chips, or other residue have been cleaned up; and (b) to collect samples of settled dust and test them for lead content to determine that no dust-lead hazards remain. A risk assessment includes limited dust wipe sampling or other environmental sampling techniques, identification of hazard reduction options, and a report explaining the results of the investigation. In some housing programs, the rule calls for a visual assessment instead of a lead-based paint inspection or risk assessment. A visual assessment does not require environmental sampling but requires the visual examination of interior and exterior painted surfaces for signs of deterioration. The rule requires different types of evaluation for different types of housing assistance programs and different ages of housing. The differences in the requirements largely reflect the extent of Federal involvement in the property or the availability of funding.

Existing HUD lead-based paint regulations require a visual inspection for defective paint surfaces and, in some cases, testing of and abatement of any lead-based paint on chewable paint surfaces. These methods are similar in kind to the visual assessment and paint testing requirements under the proposed rule.

d. *Hazard Reduction Activities.* Three types of hazard reduction activities are required in the rule: (1) Abatement, which is a set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards through removal, permanent enclosure or encapsulation, replacement of components, or removal or covering of lead-contaminated soil; (2) interim controls, which are designed to reduce temporarily human exposure to lead-based paint hazards through repairs, maintenance, painting, temporary containment, specialized cleaning, and ongoing monitoring; and (3) paint stabilization, which is the removal of deteriorated paint, repair of any physical defect in the substrate that may be causing paint deterioration, and repainting. Specialized cleanup and clearance are required after all these activities.

As with the requirements for evaluation, the final rule requires different types of hazard reduction activities for different types of housing assistance programs and different periods of construction. In the case of public housing, abatement of lead-based paint and lead-based paint hazards is required during the course of modernization under the current regulation. Under the final rule, the public housing requirements would remain essentially the same, with the additional requirement of interim controls to reduce identified lead-based hazards before scheduled abatement can occur.

e. *Ongoing Lead-Based Paint Maintenance and Reevaluation.* If temporary hazard reduction measures are used and there is a continuing financial relationship between HUD and the residential property, the final rule requires that owners conduct an annual check to identify any new deteriorated paint and to ensure that prior hazard reduction treatments are still intact. If there is new deteriorated paint, it is to be repaired; if old treatments are failing, they are to be fixed. For some housing programs, the rule requires that a certified risk assessor conduct a reevaluation of the property at specified intervals to identify any reaccumulation of lead-contaminated dust and any failure of prior hazard reductions.

f. *Response To a Child With an Elevated Blood Lead Level.* In some HUD programs, existing regulations use the presence of a child under age seven with an elevated blood lead level (EBL) as a trigger to initiate testing for and abatement of lead-based paint on chewable surfaces. The final rule changes the cutoff age from seven to six, to conform to guidance from the Centers for Disease Control and Prevention (CDC). The rule also changes the response requirement to a risk assessment and interim controls of any identified lead-based paint hazards, and changes the definition of an elevated blood lead level for the purposes of this rule from equal to or exceeding 25 micrograms per deciliter (μg/dL) to 20 μg/dL for a single venous test or of 15–19 μg/dL in two tests taken at least 3 months apart. This definitional change was made in consultation with CDC to conform to their existing medical guidelines.

g. *Record Keeping.* Grantees, owners, public housing authorities, and other designated parties are responsible for keeping a copy of each notice, evaluation, clearance or hazard reduction report for at least three years. If ongoing lead-based paint maintenance and/or reevaluation is required, such records must be kept and made available for HUD review until at least three years after such ongoing activities are no longer required.

5. *Description of Alternatives and Minimization of Economic Impact.* The specificity of the statute left HUD with no alternative to issuing an implementing regulation. However, in developing the final rule, HUD considered several alternative policies related to minimizing the burden of the rule on grantees, property owners and other parties responsible for complying with its requirements. Other alternatives were suggested by commenters on the proposed rule. In many cases, the public comments on the proposed rule articulated the issues discussed within the Department and at meetings with interested parties.

a. *Effective Date.* One consideration pertained to the effective date of the rule. On the one hand, an early effective date (such as 30 or 60 days after publication) seemed appropriate because the health of young children was at stake and the rule was delayed relative to the statutory schedule. On the other hand, HUD was aware that property owners, State and local agencies and other responsible parties needed time to prepare for compliance. The Department has concluded that such preparation is essential for safe, effective compliance and therefore is setting the effective date as one year after publication.

Commenters also urged HUD to make it clear that projects for which financing had been committed prior to the effective date should not have to be redesigned or refinanced in midstream. In response, HUD is including in the rule provisions that clarify exactly when projects in the pipeline are affected by the new requirements.

In addition to the phase-in period of one year, the final rule, in accordance with the statute, provides a more extended phase-in period for multifamily housing receiving project-based assistance of more than $5,000 per unit per year and was constructed after 1959. For some housing, this phase-in could last for 4 years after publication of the final rule.

b. *Stringency of Requirements in Relation to Amount of Federal Assistance and Nature of Program.* The Department recognizes that the statute and the legislative history indicates a desire on the part of Congress to make

the stringency of requirements reasonable in relation to the amount of Federal assistance, the type and size of property, and the nature of the program. HUD considered various ways to achieve this goal and concluded with three important policies: (1) Multifamily properties receiving no more than $5,000 per unit per year in project-based assistance and all single family properties receiving project-based assistance have less stringent requirements than multifamily properties receiving more than $5,000 in project-based assistance; (2) housing receiving no more than $5,000 per unit in Federal rehabilitation assistance have much less stringent requirements than those receiving more than $5,000; and (3) the requirements for housing occupied by families with tenant-based rental assistance apply only to units occupied by families with children of less than 6 years of age. By applying the rule narrowly to tenant-based rental assistance programs, HUD has mitigated some of the cost and burden on small businesses, while still realizing significant benefits by targeting units that house families with young children.

c. *De Minimis Area of Deteriorated Paint.* In the proposed rule, in an attempt to make the requirements of the rule as cost-effective as possible, the Department proposed a certain area of deteriorated paint that had to be present before treatment was required under the rule. This ''de minimis'' was drawn from the HUD Guidelines, where it was established as a way to focus resources on the highest priority hazards while maintaining effectiveness in hazard reduction. The de minimis areas were as follows: More than 10 square feet on an exterior wall; more than two square feet on a component with a large surface area other than an exterior wall (such as interior walls, ceilings, floors and doors); or more than 10 percent of the total surface area on an interior or exterior component with a small surface area including, but not limited to window sills, baseboards, and trim. Comments on this proposal were mixed. Some commenters found it difficult to understand and put in practice, indicating that people would spend too much time measuring the exact areas of deteriorated paint instead of focusing on making housing lead safe. Others welcomed the proposal as a reasonable way to target hazard reduction resources. In preparing the final rule, HUD has removed the de minimis provision with regard to deteriorated paint, after concluding that experience in the tenant-based assistance programs (where the de minimis provision was made effective in 1995) indicates that it is a cause of confusion.

d. *Qualifications.* Another subject of concern to HUD and to commenters on the proposed rule was the qualifications of individuals performing the hazard evaluation and reduction activities required by the rule. The proposed rule allowed dust and soil testing by persons employed by local housing agencies that are trained but not certified. Two commenters felt that it would be a mistake to allow uncertified individuals to take dust and soil tests, indicating that this appeared to be an avoidance of the certification law established by EPA regulations. EPA agreed with this point of view. HUD concluded that, because of the importance of dust and soil testing to the effectiveness of the regulation, there must be an established set of qualifications for those doing such testing. At this time, the only such program is that administered by EPA under authority of sections 402 and 404 of the Toxic Substances Control Act. Therefore HUD requires in the final rule that all dust and soil testing, as well as lead-based paint inspections, risk assessments, clearances and abatements, be performed or approved by people certified in accordance with EPA regulations or a State or tribal program authorized by EPA. To increase the availability of persons qualified to perform clearance examinations, HUD allows certified clearance technicians to perform clearances; and HUD also allows uncertified but trained technicians to perform clearances, provided the clearance report is signed by a certified lead-based paint inspector or risk assessor.

The proposed rule also required workers performing interim controls to be supervised by a person who is certified under EPA procedures as an abatement supervisor. Some commenters felt that it was unnecessary to require that interim controls workers be supervised by a certified abatement supervisor, suggesting that such workers could simply be trained in safe work practices. HUD agrees and requires in the final rule that workers performing lead-based paint maintenance and interim controls, including paint stabilization, only be trained in safe work practices. A series of optional acceptable training programs is listed.

e. *Options to Provide Greater Flexibility.* Several commenters on the proposed rule urged that HUD allow greater flexibility in ways to meet the goals of the rule. In particular, it was suggested that options be provided, such as the standard treatments recommended by the Task Force on Lead-Based Hazard Reduction and Financing as an option to conducting a risk assessment and interim controls. Such options would allow owners to select the procedure that is most cost-effective for them to achieve the goal of lead-based paint hazard control. The standard treatments option has been incorporated into today's final rule.

In the proposed rule, HUD included a provision requiring owners of multifamily housing with project-based rental assistance to prepare a lead hazard reduction plan. The hazard reduction plan was a suggestion of the Task Force on Lead-Based Paint Hazard Reduction and Financing. Its purpose was to give owners flexibility in prioritizing hazard reduction work. Several commenters, however, noted that it would be a paperwork ''nightmare,'' not only for the owners but for HUD as well. Therefore the final rule requires simply that the hazard reduction work be completed within 90 days after completion of the risk assessment report in units occupied by children of less than six years of age and within 12 months in all other units. HUD believes this change provides flexibility without unnecessary paperwork.

HUD recognizes that some States, tribes, or local governments may have established procedures for lead-based paint evaluation and hazard reduction that may be somewhat different than but as protective as those in this rule. Therefore the rule provides that HUD may waive or modify certain requirements if the Department determines that such local provisions are as protective as those of the HUD rule.

f. *Avoidance of Duplication.* The final rule was written with careful consideration of existing regulations developed by other Federal agencies, States, Indian tribes and localities. To minimize duplication and avoid confusion, HUD has explicitly stated that this rulemaking does not preclude States, Indian tribes or localities from conducting a more protective procedure than the minimum requirements set out in the proposed rule. Similarly, if more than one requirement covers a condition or activity, the most protective method shall apply. HUD has worked and continues to work closely with the EPA and CDC to ensure that regulations from two or more Federal agencies are consistent and not duplicative. Wherever possible, HUD has referenced relevant requirements established by EPA.

VII. Findings and Certifications

A. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

B. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

C. Executive Order 12866, Regulatory Planning and Review

This rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993. OMB determined that this rule is an economically significant regulatory action, as defined in section 3(f)(1) of the Order. As described in section VI of this preamble, an Economic Analysis (EA) has been prepared that examines the economic costs and benefits of the final rule. The EA is available for inspection and copying in the office of the Departments' Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410. Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is also available for public inspection in the office of the Rules Docket Clerk.

D. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have federalism implications concerning the division of local, State, and Federal responsibilities. The purpose of this rule is to ensure that housing receiving Federal assistance and federally owned housing that is to be sold does not pose lead-based paint hazards to young children. It implements Title X of the Housing and Community Development Act of 1992. No programmatic or policy change will result from this rule that will affect the relationship between the Federal government and State and local governments.

E. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This rule will not pose an environmental health risk or safety risk for children.

F. Congressional Review of Major Final Rules

This final rule is a ''major rule'' as defined in the Congressional Review Act (5 U.S.C. Chapter 8).

VIII. References

1. Abt Associates 1999. Abt Associates, Inc., *Status of HUD-Insured (or Held) Multifamily Rental Housing in 1995, Final Report.* Prepared for U.S. Department of Housing and Urban Development, Office of Policy Development and Research, May 1999.
2. Ashengrau 1997. Aschengrau A, Beiser A, Bellinger D, Copenhafer D, Weitzman M. *Residential lead-based paint hazard remediation and soil-lead abatement among children with mildly elevated blood lead levels,* American Journal of Public Health 87:1698–1702, 1997.
3. ATSDR 1988. Agency for Toxic Substances and Disease Registry, Public Health Service, U.S. Department of Health and Human Services. *The Nature and Extent of Lead Poisoning in Children in the United States: A Report to Congress.* Atlanta, GA, 1988.
4. Battelle 1997. *Summary and Assessment of Published Information on Determining Lead Exposures and Mitigating Lead Hazards Associated With Dust and Soil in Residential Carpets, Furniture and Forced Air Ducts.* Prepared for U.S. Environmental Protection Agency, December 1997 (EPA 747–S–97–001).
5. CDC 1990. Centers for Disease Control, Public Health Service, U.S. Department of Health and Human Services. *Strategic Plan for the Elimination of Childhood Lead Poisoning.* November 1990.
6. CDC 1997a. Centers for Disease Control and Prevention. *Update: Blood Lead Levels—United States, 1991–1994,* Morbidity and Mortality Weekly Report 46: 141–146. 1997.
7. CDC 1997b. Centers for Disease Control and Prevention. *Screening Young Children for Lead Poisoning: Guidance for State and Local Public Health Officials.* Atlanta, 1997.
8. Clark 1996. Clark S, Bornschein RL, Pan W, Menrath W, Roda S, Grote J. *The relationship between surface dust-lead loadings on carpets and the blood lead of young children,* Environmental Geochemistry and Health (18) 143–146, 1996.
9. EPA 1995. U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics, *Report on the National Survey of Lead-Based Paint in Housing,* April 1995 (EPA 747–R95–005).
10. Farfel 1990. Farfel MR, Chisolm JJ Jr. *Health and environmental outcomes of traditional and modified practices for abatement of residential lead-based paint,* American Journal of Public Health 80:1240–1245.
11. HUD 1996. U.S. Department of Housing and Urban Development and Bureau of the Census, Department of Commerce, *Property Owners and Managers Survey,* 1996.
12. HUD 1997. *Moving Toward a Lead-Safe America: A Report to the Congress of the United States.* U.S. Department of Housing and Urban Development, Office of Lead hazard Control. February 1997.
13. HUD 1998. U.S. Department of Housing and Urban Development, Office of Lead Hazard Control. *Field Evaluation of Lead-Based Paint Inspections.* Washington, 1998.
14. HUD 1999. *Regulatory Impact Analysis of the Final Rule on Lead-Based Paint: Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance.* Prepared by ICF, Inc. for U.S. Department of Housing and Urban Development, Office of Lead Hazard Control, 1999.
15. Lanphear 1996. Lanphear BP, Weitzman M, Winter NL, Tanner M, Yakir B, Eberly S, Emond M, Matte TD. *Lead-contaminated house dust and urban children's blood lead levels.* American Journal of Public Health, 86:1416–1421, 1996.
16. Lanphear 1998. Lanphear BP, Matte TD, Rogers J, Clickner R, Dietz B, Bornschein RL, Succop P, Mahaffey KR, Dixon S, Galke W, Rabinowitz M, Farfel M, Rohde C, Schwartz J, Ashley P, Jacobs DE. *The contribution of lead-contaminated house dust and residential soil to children's blood lead levels,* Environmental Research; 79(1):51–68. October 1998.
17. National Academy of Sciences 1993. *Measuring Lead Exposure in Infants, Children and Other Sensitive Populations.* Committee on Measuring Lead in Critical Populations, Board on Environmental Studies and Toxicology, Commission on Life Sciences, National Academy of Sciences, 1993.
18. National Center 1998. *Evaluation of the HUD Lead-Based Paint Hazard Control Grant Program: Fifth Interim Report.* Prepared for HUD by the National Center for Lead-Safe Housing and the University of Cincinnati Department of Environmental Health, March 1998.
19. Salkever 1995. Salkever DS. *Updated Estimates of Earnings Benefits From Reduced Exposure of Children to Environmental Lead.* Environmental Research, 70, 1995.
20. Swindell 1994. Swindell SL, Charney E, Brown MJ, Delaney J. *Home abatement and blood lead changes in Children with Class III lead poisoning,* Clinical Pediatrics, 536–541, September 1994.

List of Subjects

24 CFR Part 35

Grant programs—housing and community development, Lead poisoning, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 280

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

24 CFR Part 511

Administrative practice and procedure, Grant programs—housing and community development, Lead poisoning, Low and moderate income housing, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

24 CFR Part 572

Condominiums, Cooperatives, Fair housing, Government property, Grant programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 573

Condominiums, Fair housing, Government property, Grant programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 574

AIDS, Community facilities, Disabled, Emergency shelter, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 576

Community facilities, Emergency shelter grants, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 582

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

24 CFR Part 583

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

24 CFR Part 585

Grant programs—housing and community development, Homeless, Low and very low-income families, Reporting and recordkeeping requirements.

24 CFR Part 761

Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—low- and moderate-income housing, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 891

Aged, Capital advance programs, Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mental health programs, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 901

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 906

Grant programs—housing and community development, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 965

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 968

Grant programs—housing and community development, Indians, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 970

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 1000

Aged, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 1003

Alaska, Community development block grants, Grant programs—housing and community development, Indians, Reporting and recordkeeping requirements.

24 CFR Part 1005

Indians, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD is amending title 24 of the Code of Federal Regulations as follows:

PART 35—LEAD–BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

1. The authority citation for 24 CFR part 35 is revised to read as follows:

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

2. Remove Subpart A and redesignate subpart H, consisting of §§ 35.80 through 35.98, as subpart A, consisting of §§ 35.1 through 35.19. The table of contents to redesignated subpart A is revised to read as follows:

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

Sec.
35.1 Purpose.
35.3 Scope and applicability.
35.5 Effective dates.
35.7 Definitions.
35.9 Disclosure requirements for sellers and lessors.
35.11 Opportunity to conduct an evaluation.
35.13 Certification and acknowledgement of disclosure.
35.15 Agent responsibilities.
35.17 Enforcement.
35.19 Impact on State and local requirements.

3. Revise subparts B through G and add subparts H through R to read as follows:

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

35.100 Purpose and applicability.
35.105 Effective dates.
35.106 Information collection requirements.
35.110 Definitions.
35.115 Exemptions.
35.120 Options.
35.125 Notice of evaluation and hazard reduction activities.
35.130 Lead hazard information pamphlet.
35.135 Use of paint containing lead.
35.140 Prohibited methods of paint removal.
35.145 Compliance with Federal laws and authorities.
35.150 Compliance with other State, tribal, and local laws.
35.155 Minimum requirements.
35.160 Waivers.
35.165 Prior evaluation or hazard reduction.
35.170 Noncompliance with the requirements of subparts B through R.
35.175 Records

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

35.200 Purpose and applicability.
35.205 Definitions and other general requirements.
35.210 Disposition of residential property constructed before 1960.
35.215 Disposition of residential property constructed after 1959 and before 1978.

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

35.300 Purpose and applicability.
35.305 Definitions and other general requirements.
35.310 Notices and pamphlet.
35.315 Risk assessments.
35.320 Hazard reduction.
35.325 Child with an environmental intervention blood lead level.

Subpart E [Reserved]

Subpart F—HUD-Owned Single Family Property

35.500 Purpose and applicability.
35.505 Definitions and other general requirements.
35.510 Required procedures.

Subpart G—Multifamily Mortgage Insurance

35.600 Purpose and applicability.
35.605 Definitions and other general requirements.
35.610 Exemption.
35.615 Notices and pamphlet.
35.620 Multifamily insured property constructed before 1960.
35.625 Multifamily Insured Property constructed after 1959 and before 1978.
35.630 Conversions and Major Rehabilitations

Subpart H—Project-Based Rental Assistance

35.700 Purpose and applicability.
35.705 Definitions and other general requirements.
35.710 Notices and pamphlet.
35.715 Multifamily properties receiving more than $5,000 per unit.
35.720 Multifamily properties receiving up to $5,000 per unit, and single-family properties.
35.725 Section 8 rent adjustments.
35.730 Child with an environmental intervention blood lead level.

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

35.800 Purpose and applicability.
35.805 Definitions and other general requirements.
35.810 Notices and pamphlet.
35.815 Evaluation.
35.820 Interim controls.
35.825 Ongoing lead-based paint maintenance and reevaluation.
35.830 Child with an environmental intervention blood lead level.

Subpart J—Rehabilitation

35.900 Purpose and applicability.
35.905 Definitions and other general requirements.
35.910 Notices and pamphlet.
35.915 Calculating rehabilitation costs, except for the CILP program.
35.920 Calculating rehabilitation costs for the Flexible-Subsidy—CILP Program.
35.925 Examples of determining applicable requirements.
35.930 Evaluation and hazard reduction requirements.
35.935 Ongoing lead-based paint maintenance activities.
35.940 Special requirements for insular areas.

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

35.1000 Purpose and applicability.
35.1005 Definitions and other general requirements.
35.1010 Notices and pamphlet.
35.1015 Visual assessment, paint stabilization, and maintenance.

35.1020 Funding for evaluation and hazard reduction.

Subpart L—Public Housing Programs

35.1100 Purpose and applicability.
35.1105 Definitions and other general requirements.
35.1110 Notices and pamphlet.
35.1115 Evaluation.
35.1120 Hazard reduction.
35.1125 Evaluation and hazard reduction before acquisition and development.
35.1130 Child with an environmental intervention blood lead level.
35.1135 Eligible costs.
35.1140 Insurance coverage

Subpart M—Tenant-Based Rental Assistance

35.1200 Purpose and applicability.
35.1205 Definitions and other general requirements.
35.1210 Notices and pamphlet.
35.1215 Activities at initial and periodic inspections.
35.1220 Ongoing lead-based paint maintenance activities
35.1225 Child with an environmental intervention blood lead level.

Subparts N–Q [Reserved]

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

35.1300 Purpose and applicability
35.1305 Definitions and other general requirements.
35.1310 References.
35.1315 Collection and laboratory analysis of samples.
35.1320 Lead-based paint inspections and risk assessments.
35.1325 Abatement.
35.1330 Interim controls.
35.1335 Standard treatments.
35.1340 Clearance.
35.1345 Occupant protection and worksite preparation
35.1350 Safe work practices.
35.1355 Ongoing lead-based paint maintenance and reevaluation activities.

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 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 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.

Level of protection	Subpart, section, and type of assistance	Hazard reduction requirements
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. 2501–3520), 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 and collection and analysis of environmental samples. Dust-lead standards for clearance are found at § 35.1320.

CILP recipient means an owner of a multifamily property which is undergoing rehabilitation funded by the Flexible Subsidy-Capital Improvement Loan Program (CILP).

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 window sill, a baseboard in a living room, a kitchen floor, an interior window sill 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, CILP recipient, 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) at or exceeding the levels promulgated by the EPA pursuant to section 403 of the Toxic Substances Control Act or, if such levels are not in effect, the standards 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 encapsulant 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 Farmer's 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 or the Flexible Subsidy-Capital Improvement Loan Program (CILP).

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 U.S. Environmental Protection Agency pursuant to section 403 of the Toxic Substances Control Act or, if such levels are not in effect, the following levels: 400 μg/g in play areas; and 2000 μg/g in other areas with bare soil that total more than 9 square feet (0.8 square meters) per residential property.

Sponsor means mortgagor (borrower).

Subrecipient 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 subrecipient 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 subrecipient 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.

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.

(1) The notice of the evaluation shall include:

(i) A summary of the nature, 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 no more than 15 calendar days after the hazard reduction activities have been completed. Notice of hazard reduction shall include, but not be limited to:

(i) A summary of the nature, scope and results (including clearance), of the hazard reduction activities.

(ii) A contact name, address and telephone number for more information; and

(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;

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

(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 August 30, 1999, meets the requirements of this rule 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 after August 29, 1999 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 August 30, 1999 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 after August 29, 1999 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 August 30, 1999 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 after August 29, 1999 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.

(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 Rental 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. 11381–11389) and the Shelter Plus Care Program project-based rental assistance and sponsor-based rental assistance components (42 U.S.C. 11402–11407), 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.

(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 mortgagee-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.

(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)–(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. 11371–11378) 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. 11481–11389), 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 subrecipient 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, participating jurisdiction, or CILP recipient, shall provide a notice to occupants in accordance with § 35.125.

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

§ 35.915 Calculating rehabilitation costs, except for the CILP Program.

(a) *Applicability.* This section applies to recipients of Federal rehabilitation assistance, except for CILP recipients, for which § 35.920 applies.

(b) *Rehabilitation assistance.* (1) Lead-based paint requirements for rehabilitation fall into three categories which depend on the amount of 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 §§ 35.930–35.935, 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.

(c) *Calculating rehabilitation assistance.* For a residential property that includes both federally assisted and non-assisted units, the rehabilitation costs of non-assisted units are not included in the calculation.

(1) The average cost of rehabilitation for the assisted units is calculated as follows:

Per Unit Rehabilitation $ = (a/c) + (b/d)
Where:
a= Federal Rehabilitation Assistance for all assisted units
b= Federal Rehabilitation Assistance for common areas and exterior painted surfaces
c= Number of federally assisted units
d= Total number of units

(2) Eight out of 10 dwelling units in a residential property receive Federal rehabilitation assistance. The total amount of Federal rehabilitation assistance for the dwelling units is $90,000, and the total amount of Federal rehabilitation assistance for the common areas and exterior surfaces is $10,000. Based on the formula above, the average per unit amount of Federal rehabilitation assistance is $12,250. This is illustrated as follows: $12,250 = ($90,000/8) + ($10,000/10).

§ 35.920 Calculating rehabilitation costs for the Flexible Subsidy-CILP program.

All dwelling units and common areas in a residential property are considered to be assisted under the CILP program. The cost of rehabilitation is calculated as follows:

Per Unit Rehab $ = Federal Rehab Assistance / Total Number of Units.

§ 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.

§ 35.930 Evaluation and hazard reduction requirements.

(a) *Paint testing.* The grantee, participating jurisdiction, or CILP recipient 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, participating jurisdiction, or CILP recipient 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(b).

(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, participating jurisdiction, or CILP recipient 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 and any lead-based paint hazards created as a result of the rehabilitation work.

(d) *Residential property receiving an average of more than $25,000 per unit in Federal rehabilitation assistance.* Each grantee, participating jurisdiction, or CILP recipient 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, and any lead-based paint hazards created as a result of the rehabilitation work, in accordance with § 35.1325, except that interim controls are acceptable on exterior surfaces that are not disturbed by rehabilitation.

§ 35.935 Ongoing lead-based paint maintenance activities.

In the case of a rental property receiving Federal rehabilitation assistance under the HOME program or the Flexible Subsidy-CILP program, the grantee, participating jurisdiction or CILP recipient shall require the property owner to incorporate ongoing lead-based paint maintenance activities into 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 subrecipient 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 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. 11371–11378) 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. 11481–11389), 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 incorporate ongoing lead-based paint maintenance activities into regular building operations, in accordance with § 35.1355(a).

(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.

(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, 200; 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. 11402–11407) 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 October 1, 1999; 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 subrecipient 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 is not an evaluation.

(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.

(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.

§ 35.1220 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).

§ 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 and risk assessments.

(a) *Lead-based paint inspections.* Lead-based paint inspections 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(b), except that the definition of lead-based paint shall not include a loading (area concentration) or mass concentration greater than that in the definition at § 35.110 of this part.

(b) *Risk assessments.* (1) Risk assessments 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(d), and paragraph (b)(2) of this section.

(2) Risk assessors shall use levels defining dust-lead hazards and soil-lead hazards that are no greater than those promulgated by EPA pursuant to section 403 of the Toxic Substances Control Act (15 U.S.C. 2683), or, if such levels are not in effect, the following for dust or soil:

(i) *Dust.* A dust-lead hazard shall be a dust-lead level equal to or greater than the applicable loading (area concentration), based on wipe samples, in the following table:

INTERIM DUST LEAD STANDARDS

Evaluation method	Surface	Interior window sills, µg/ft² (mg/m²)	Window troughs, µg/ft² (mg/m²)
	Floors, µg/ft² (mg/m²)		
Lead Hazard Screen	25 (0.27)	125 (1.4)	Not Applicable.
Risk Assessment	40 (0.43)	250 (2.7)	Not Applicable.
Reevaluation	40 (0.43)	250 (2.7)	Not Applicable.
Clearance	40 (0.43)	250 (2.7)	800 (8.6).

Note: ''Floors'' includes carpeted and uncarpeted interior floors.

(ii) *Soil.* (A) A soil-lead hazard for play areas frequented by children under 6 years of age shall be bare soil with lead equal to or exceeding 400 micrograms per gram.

(B) For other areas, soil-lead hazards shall be bare soil that totals more than 9 square feet (0.8 square meters) per property with lead equal to or exceeding 2,000 micrograms per gram.

(3) Lead hazard screens shall be performed in accordance with the 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(c), and paragraph (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 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 and risk assessors provide a 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 29 CFR 1926.59 and either be supervised by an individual certified as a lead-based paint abatement supervisor or have successfully completed one of the following courses:

(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;

(iii) The Lead-Based Paint Maintenance Training Program, ''Work Smart, Work Wet, and Work Clean to Work Lead Safe,'' prepared by the National Environmental Training Association for EPA and HUD;

(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 rehanging 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 that a child of less than 6 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 200 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)–(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)–(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)–(g) of this section.

(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 clearance 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 clearance 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 a such a licensed or certified clearance 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 clearance 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, interpretation of sampling results, and preparation of a report. 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 for more than 10 dwelling units of similar construction and maintenance, as in a multifamily property, random sampling for the purposes 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 window sills 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 µg/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 encapsulants 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 recleaned 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.* When clearance is of an interior worksite, not an entire dwelling unit or residential property, dust samples taken for paragraph (b) of this section shall be taken from the floor and window (if available) to represent the area within the dust containment area. Clearance is not required if maintenance or hazard reduction activities in the worksite do not disturb painted surfaces of a total area more than that set forth in § 35.1350(d)

§ 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 on-site 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.

(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 window sills, 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)–(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 both of the following conditions are met, as applicable:

(i) Either 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; and

(ii) If a risk assessment is required by the applicable subpart of this part, a current risk assessment indicates that no soil-lead hazards and no dust-lead hazards are present.

(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 sec. 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 inclosures 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 window sill. (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 encapsulant 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)–(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 window sills, 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.

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

4. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, 12901–12912.

5. Revise § 91.2(b)(15) to read as follows:

§ 91.2 Applicability.

* * * * *

(b) * * *

(15) The ''Lead-Based Paint Hazard Reduction Program (see 42 U.S.C. 4852(o));''

* * * * *

6. In § 91.5, revise the definition of ''Lead-based paint hazards'' to read as follows:

§ 91.5 Definitions.

* * * * *

Lead-based paint hazards means lead-based paint hazards as defined in part 35, subpart B of this title.

* * * * *

7. Revise § 91.225(b)(7) to read as follows:

§ 91.225 Certifications.

* * * * *

(b) * * *

(7) *Compliance with lead-based paint procedures.* The jurisdiction must submit a certification that its activities concerning lead-based paint will comply with the requirements of part 35, subparts A, B, J, K, and R of this title.

* * * * *

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

8. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

9. Revise § 92.206(a)(2)(ii) to read as follows:

§ 92.206 Eligible project costs.

* * * * *

(a) * * *

(2) * * *

(ii) To make essential improvements, including energy-related repairs or improvements, improvements necessary to permit use by persons with disabilities, and lead-based paint activities, as required by part 35 of this title.

* * * * *

10. Revise § 92.355 to read as follows:

§ 92.355 Lead-based paint.

Housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, M and R of this title.

11. Revise § 92.504(c)(3)(iv) to read as follows:

§ 92.504 Participating jurisdiction responsibilities; written agreements; on-site inspection.

* * * * *

(c) * * *

(3) * * *

(iv) *Property standards.* The agreement must require the housing to meet the property standards in § 92.251 and the lead-based paint requirements in part 35, subparts A, B, J, K, M and R of this title, upon project completion. The agreement must also require owners of rental housing assisted with HOME funds to maintain the housing compliance with § 92.251 for the duration of the affordability period.

* * * * *

12. Revise § 92.508(a)(7)(vi) to read as follows:

§ 92.508 Recordkeeping.

* * * * *

(a) * * *

(7) * * *

(vi) Records demonstrating compliance with the lead-based paint requirements of part 35, subparts A, B, J, K, M and R of this title.

* * * * *

PART 200—INTRODUCTION TO FHA PROGRAMS

13. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

14. Revise subpart O to read as follows:

Subpart O—Lead-Based Paint Poisoning Prevention

Sec.
200.800 Lead-based paint.
200.805 Definitions.
200.810 Single family insurance and coinsurance.

Subpart O—Lead-Based Paint Prevention

§ 200.800 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, F, G, I, and R of this title, apply to activities under these programs, except for single family mortgage insurance and guarantee programs. Sections 200.805 and 200.810 apply to single family mortgage insurance and guarantee programs administered by HUD.

§ 200.805 Definitions.

Applicable surface. All intact and nonintact interior and exterior painted surfaces of a residential structure.

Defective paint surface. Paint on applicable surfaces that is cracking, scaling, chipping, peeling or loose.

Lead-based paint surface. A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm^2.

§ 200.810 Single family insurance and coinsurance.

(a) *General.* (1) The requirements of this section apply to any one-to four-family dwelling which was constructed before 1978 and is the subject of an application for mortgage insurance under section 203(b) or other sections of the National Housing Act relating to the insurance or coinsurance of mortgages on one-to-four-family dwellings. Such other sections include:

(i) Section 244 (coinsurance);

(ii) Section 213 (cooperative housing insurance);

(iii) Section 220 (rehabilitation and neighborhood conservation housing insurance);

(iv) Section 221 (housing for moderate income and displaced families);

(v) Section 222 (mortgagor insurance for servicemen);

(vi) Section 809 (armed services housing for civilian employees);

(vii) Section 810 (armed services housing in impacted areas);

(viii) Section 234 (mortgage insurance for condominiums);

(ix) Section 235 (mortgage assistance payments for home ownership and project rehabilitation);

(x) Section 237 (special mortgage insurance for low and moderate income families); and

(xi) Section 240 (mortgage insurance on loans for purchase of fee simple title from lessors).

(2) This section is also applicable to single family mortgage insurance on Indian reservations (12 U.S.C. 1715z–13) and loan guarantees for Indian housing (25 U.S.C. 4191).

(3) Applications for insurance in connection with a refinancing transaction where an appraisal is not required under the applicable procedures established by the Commissioner are excluded from the coverage of this section. Any housing assisted under the programs set out in this section for which no new activity is applied for or required is not covered by this section.

(b) *Appraisal.* The appraiser shall, when appraising a dwelling constructed prior to 1978, inspect the dwelling for defective paint surfaces.

(c) *Treatment of defective paint surfaces.* For defective paint surfaces, treatment shall be provided to defective areas. Treatment of hazards shall consist of covering or removing defective paint surfaces. Covering may be accomplished by such means as adding a layer of wallboard to the wall surface. Depending on the wall condition, wallcoverings 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. In the case of defective paint spots, scraping and repainting the defective area is considered adequate treatment. Treatment of a defective paint surface is not required if such a surface is found to not be a lead-based paint surface by a lead-based paint inspector certified pursuant to procedures of the U.S. Environmental Protection Agency at 40 CFR part 745.

(d) *Home equity conversion mortgage insurance.* The requirements of this section, as modified by the following sentence, apply to a dwelling which is the subject of an application for mortgage insurance under section 255 of the National Housing Act (home equity conversion insurance) unless the mortgagor provides the certification described in § 206.45(d) of this title. The defective paint surface may be treated after the mortgage is endorsed for insurance, provided that the defective paint surface is treated as expeditiously as possible in accordance with the repair work provisions contained in § 206.47 of this title

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

15. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

16. In § 203.673, revise paragraphs (a) and (c) to read as follows:

§ 203.673 Habitability.

(a) For purposes of § 203.670, a property is habitable if it meets the requirements of this section in its present condition, or will meet these requirements with the expenditure of not more than five percent of the fair market value of the property. The cost of hazard reduction or abatement of lead-based paint hazards in the property, as required by the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations in part 35 of this title, is excluded from these repair cost limitations.

* * * * *

(c) If repairs, including lead-based paint hazard reduction or abatement, are to be made while the property is occupied, the occupant must hold the Secretary and the Department harmless against any personal injury or property damage that may occur during the process of making repairs. If temporary relocation of the occupant is necessary during repairs, no reimbursement for relocation expenses will be provided to the occupant.

PART 280—NEHEMIAH HOUSING OPPORTUNITY GRANTS PROGRAM

17. The authority citation for part 280 continues to read as follows:

Authority: 12 U.S.C. 1715l note; 42 U.S.C. 3535(d).

18. Revise § 280.25(e) to read as follows:

§ 280.25 Other Federal requirements.

* * * * *

(e) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, K, and R, of this title apply to the program.

* * * * *

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

19. The authority citation for part 291 continues to read as follows:

Authority: 12 U.S.C. 1701 *et seq.*; 42 U.S.C. 1441, 1441a, and 3535(d).

20. Revise § 291.100(g) to read as follows:

§ 291.100 General policy.

* * * * *

(g) *Lead-based paint poisoning prevention.* Properties constructed before 1978 are subject to the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, F, and R, of this title.

* * * * *

21. Revise § 291.430 to read as follows:

§ 291.430 Elimination of lead-based paint hazards.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, F, and R of this title, apply activities covered by this subpart.

PART 511—RENTAL REHABILITATION GRANT PROGRAM

22. The authority citation for 24 CFR part 511 continues to read as follows:

Authority: 42 U.S.C. 1437o and 3535(d).

23. Revise § 511.10(f)(1)(ii) to read as follows:

§ 511.10 General requirements.

* * * * *

(f) * * *

(1) * * *

(ii) Make essential improvements, as reasonably defined by the grantee or State recipient in its rehabilitation standards adopted under § 511.10(e), including energy-related repairs, improvements necessary to permit the use of rehabilitated projects by handicapped persons, and activities of lead based paint hazards, as required by part 35 of this title;

* * * * *

24. Revise § 511.15 to read as follows:

§ 511.15 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title apply to activities under these programs.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

25. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

26. Revise § 570.202(f) to read as follows:

§ 570.202 Eligible rehabilitation and preservation activities.

* * * * *

(f) *Lead-based paint activities.* Lead-based paint activities as set forth in part 35 of this title.

27. Revise § 570.461 to read as follows:

§ 570.461 Post-preliminary approval requirements; lead-based paint.

The recipient may receive preliminary approval prior to the accomplishment of lead-based paint activities conducted pursuant to part 35, subparts A, B, J, K, and R of this title, but no funds will be released until such actions are complete and evidence of compliance is submitted to HUD.

28. Revise § 570.487(c) to read as follows:

§ 570.487 Other applicable laws and related program requirements.

* * * * *

(c) *Lead-Based Paint Poisoning Prevention Act.* States shall devise, adopt and carry out procedures with

respect to CDBG assistance that fulfill the objectives and requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title.

* * * * *

29. Revise § 570.608 to read as follows:

§ 570.608 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this part apply to activities under this program.

PART 572—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES PROGRAM (HOPE 3)

30. The authority citation for part 572 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12891.

31. Revise § 572.100(d)(1) to read as follows:

§ 572.100 Acquisition and rehabilitation of eligible properties; rehabilitation standards.

* * * * *

(d) * * *

(1) The recipient is responsible to assure that rehabilitation of eligible property meets local codes applicable to rehabilitation of work in the jurisdiction (but not less than the housing quality standards established under the Section 8 rental voucher program, described in § 982.401 of this title). Rehabilitation must also include work necessary to meet applicable federal requirements, including lead-based paint requirements set forth at part 35, subparts A, B, J, K, and R of this title.

* * * * *

32. Revise § 572.215(e) to read as follows:

§ 572.215 Implementation grants-eligible activities.

* * * * *

(e) *Architectural and engineering work.* Architectural and engineering work, and related professional services required to prepare architectural plans or drawings, write-ups, specifications or inspections, including lead-based paint evaluation.

* * * * *

33. Revise § 572.420(h) to read as follows:

§ 572.420 Miscellaneous requirements.

* * * * *

(h) *Lead-based paint activities.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K and R of this title apply to activities under these programs.

PART 573—LOAN GUARANTEE RECOVERY FUND

34. The authority citation for part 573 continues to read as follows:

Authority: Pub. L. 104–155, 110 Stat. 1392, 18 U.S.C. 241 note; 42 U.S.C. 3535(d).

35. Revise § 573.9(c) to read as follows:

§ 573.9 Other requirements.

* * * * *

(c) *Lead-based paint.* Housing assisted under this part is subject to the lead-based paint requirements described in part 35, subparts A, B, E, G, and R of this title.

* * * * *

PART 574—HOUSING OPPORTUNITIES FOR PEOPLE WITH AIDS

36. The authority citation for part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

37. Revise § 574.635 to read as follows:

§ 574.635 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, J, K, M, and R of this part apply to activities under this program.

PART 576—EMERGENCY SHELTER GRANTS PROGRAM: STEWART B. McKINNEY HOMELESS ASSISTANCE ACT

38. The authority citation for part 576 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11376.

39. Revise § 576.57(c) to read as follows:

§ 576.57 Other Federal Requirements.

* * * * *

(c) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title apply to activities under this program.

* * * * *

PART 582—SHELTER PLUS CARE

40. The authority citation for part 582 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11403–11407b.

41. Revise the first sentence of § 582.305(a) to read as follows:

§ 582.305 Housing quality standards; rent reasonableness.

(a) *Housing quality standards.* Housing assisted under this part must meet the applicable housing quality standards (HQS) under § 982.401 of this title—except that § 982.401(j) of this title does not apply and instead part 35, subparts A, B, K and R of this title apply—and, for SRO under § 882.803(b) of this title. * * *

* * * * *

PART 583—SUPPORTIVE HOUSING PROGRAM

42. The authority citation for part 583 continues to read as follows:

Authority: 42 U.S.C. 11389 and 3535(d).

43. Revise § 583.330(d) to read as follows:

§ 583.330 Applicability of other Federal requirements.

* * * * *

(d) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title apply to activities under this program.

* * * * *

PART 585—YOUTHBUILD PROGRAM

44. The authority citation for part 585 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 8011.

45. Revise § 585.305(d) to read as follows:

§ 585.305 Eligible activities.

* * * * *

(d) Rehabilitation of housing and related facilities to be used for the purposes of providing homeownership, residential rental housing, or transitional housing for the homeless and low- and very low-income persons and families, including lead-based paint

activities; in accordance with part 35 of this title;

* * * * *

46. Revise § 585.502(h) to read as follows:

§ 585.502 Certifications.

* * * * *

(h) *Lead-based paint.* A certification that the applicant will comply with the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title.

* * * * *

PART 761—DRUG ELIMINATION PROGRAMS

47. The authority citation for part 761 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11901 *et seq.*

48. Revise § 761.40(c) to read as follows:

§ 761.40 Other Federal requirements.

* * * * *

(c) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title.

* * * * *

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

49. The authority citation for part 881 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

50. Revise § 881.207(e) to read as follows:

§ 881.207 Property standards.

* * * * *

(e) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title; and

* * * * *

PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS

51. The authority citation for part 882 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

52. Revise § 882.404(d) to read as follows:

§ 882.404 Physical condition standards; physical inspection requirements.

* * * * *

(d) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to the Section 8 moderate rehabilitation program.

53. Revise § 882.507(b)(2)(iv) to read as follows:

§ 882.507 Completion of rehabilitation.

* * * * *

(b) * * *

(2) * * *

(iv) The unit(s) are in compliance with part 35, subparts A, B, H, and R of this title.

* * * * *

54. Revise § 882.514(d)(1)(vi) to read as follows:

§ 882.514 Family participation.

* * * * *

(d) * * *

(1) * * *

(vi) The advisability and availability of blood lead level screening for children under 6 years of age and HUD's lead-based paint requirements in part 35, subparts A, B, H, and R of this title.

* * * * *

55. Revise § 882.803(b)(1) to read as follows:

§ 882.803 Project eligibility and other requirements.

* * * * *

(b)(1) *Physical condition standards.* Section 882.404 applies to this program.

* * * * *

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

56. The authority citation for part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

57. Revise § 883.310(b)(5) to read as follows:

§ 883.310 Property standards.

* * * * *

(b) * * *

(5) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title.

* * * * *

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

58. The authority citation for part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f and 3535(d) and 13611–13619.

59. Revise § 886.113(i) to read as follows:

§ 886.113 Physical condition standard; physical inspection requirements.

* * * * *

(i) Lead based paint. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to activities under this program.

* * * * *

60. Revise § 886.307(i) to read as follows:

§ 886.307 Physical condition standards; physical inspection requirement.

* * * * *

(i) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to activities under this program.

* * * * *

61. Revise § 886.333(b)(2)(iv) to read as follows:

§ 886.333 Completion of rehabilitation.

* * * * *

(b) * * *

(2) * * *

(iv) The project was in compliance with applicable HUD lead-based paint regulations at part 35, subparts A, B, H, and R of this title.

* * * * *

PART 891—SECTION 8—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

62. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d) and 8013.

63. Revise § 891.155(g) to read as follows:

§ 891.155 Other Federal requirements.

* * * * *

(g) *Lead-based paint.* The requirements of the Lead-Based Paint

Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to these programs.

64. Revise § 891.325 to read as follows:

§ 891.325 Lead-based paint requirements.

The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to the Section 811 program and to projects funded under §§ 891.655 through 891.790.

PART 901—PUBLIC HOUSING MANAGEMENT ASSESSMENT PROGRAM

65. The authority citation for part 901 continues to read as follows:

Authority: 42 U.S.C. 1437d(j); 42 U.S.C. 3535(d).

66. In § 901.5, revise the definition of ''*HQS*'' to read as follows:

§ 901.5 Definitions.

* * * * *

HQS means Housing Quality Standards as set forth at § 982.401 of this title, except that § 982.401(j) of this title does not apply and instead part 35, subparts A, B, L, and R of this title apply.

* * * * *

PART 906—SECTION 5(h) HOMEOWNERSHIP PROGRAM

67. The authority citation for part 906 continues to read as follows:

Authority: 42 U.S.C. 1437c, 1437d and 3535(d).

68. Revise the first sentence of § 906.6(b) to read as follows:

§ 906.6 Property that may be sold.

* * * * *

(b) *Physical condition of property.* The property must meet local code requirements (or, if no local code exists, the housing quality standards established by HUD for the Section 8 Housing Assistance Payments Program for Existing Housing, under part 882 of this title) and the relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations part 35, subparts A, B, L, and R of this title. * * *

PART 941—PUBLIC HOUSING DEVELOPMENT

69. The authority citation for part 941 continues to read as follows:

Authority: 42 U.S.C. 1437b, 1437c, 1437g and 3535(d).

70. Revise § 941.208(b) to read as follows:

§ 941.208 Other Federal requirements.

* * * * *

(b) *Lead-based paint.* The relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, L, and R of this title apply to the program.

71. Revise the second sentence of § 941.606(m) to read as follows:

§ 941.606 Proposal.

* * * * *

(m) *New construction.* * * * This may be accomplished by the PHA's submission of a comparison of the cost of new construction in the neighborhood where the housing is proposed to be constructed and the cost of acquisition of existing housing (with or without rehabilitation) in the same neighborhood (including estimated costs of lead-based paint activities). * * *

* * * * *

PART 965—PHA-OWNED OR LEASED PROJECTS—GENERAL PROVISIONS

72. The authority citation for part 965 continues to read as follows:

Authority: 42 U.S.C. 1437, 1437a, 1437d, 1437g, and 3535(d). Subpart H is also issued under 42 U.S.C. 4821–4846.

73. Amend § 965.215 as follows:

a. Revise paragraph (a);

b. Revise the introductory text of paragraph (b); and

c. Revise paragraphs (b)(1), (c), and (d).

§ 965.215 Lead-based paint liability insurance coverage.

(a) *General.* The purpose of this section is to specify what HUD deems reasonable insurance coverage with respect to the hazards associated with lead-based paint activities that the PHA undertakes, in accordance with the PHA's ACC with HUD. The insurance coverage does not relieve the PHA of its responsibility for assuring that lead-based paint activities are conducted in a responsible manner.

(b) *Insurance coverage requirements.* When the PHA undertakes lead-based paint activities, it must assure that it has reasonable insurance coverage for itself for potential personal injury liability associated with those activities. If the work is being done by PHA employees, the PHA must obtain a liability insurance policy directly to protect the PHA. If the work is being done by a contractor, the PHA must obtain, from the insurer of the contractor performing this type of work in accordance with a contract, a certificate of insurance providing evidence of such insurance and naming the PHA as an additional insured; or obtain such insurance directly. Insurance must remain in effect during the entire period of lead-based paint activity and must comply with the following requirements:

(1) *Named insured.* If purchased by the PHA, the policy shall name the PHA as insured. If purchased by an independent contractor, the policy shall name the contractor as insured and the PHA as an additional insured, in connection with performing work under the PHA's contract pertaining to lead-based paint activities. If the PHA has executed a contract with a Resident Management Corporation (RMC) to manage a building/project on behalf of the PHA, the RMC shall be an additional insured under the policy in connection with the PHA's contract related to lead-based paint activities. (The duties of the RMC are similar to those of a real estate management firm.)

* * * * *

(c) *Exception to requirements.* Insurance already purchased by the PHA or contractor and enforced on the day this section is effective which provides coverage for lead-based paint activities shall be considered as meeting the requirements of this section until the expiration of the policy. This section is not applicable to architects, engineers or consultants who do not physically perform lead-based paint activities.

(d) *Insurance for the existence of lead-based paint hazards.* A PHA may also purchase special liability insurance against the existence of lead-based paint hazards, although it is not a required coverage. A PHA may purchase this coverage if, in the opinion of the PHA, the policy meets the PHA's requirements, the premium is reasonable and the policy is obtained in accordance with applicable procurement standards. (See part 85 of this title and § 965.205 of this title.) If this coverage is purchased, the premium must be paid from funds available under the Performance Funding System or from reserves.

74. Revise subpart H, consisting of § 965.701, to read as follows:

Subpart H—Lead-based Paint Poisoning Prevention

§ 965.701 Lead-based paint poisoning prevention.

The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, L, and R of this title apply to this program.

PART 968—PUBLIC HOUSING MODERNIZATION

75. The authority citation for part 968 continues to read as follows:

Authority: 42 U.S.C. 1437d, 1437*l*, and 3535(d).

76. Revise the first sentence of § 968.102(c) to read as follows:

§ 968.102 Special requirements for Turnkey III developments.

* * * * *

(c) *Other.* The homebuyer family must be in compliance with its financial obligations under its homebuyer agreement in order to be eligible for non-emergency physical improvements, with the exception of work necessary to meet statutory and regulatory requirements, (e.g., accessibility for persons with disabilities and lead-based paint activities) and the correction of development deficiencies. * * *

77. Revise § 968.110(k) to read as follows:

§ 968.110 Other program requirements.

* * * * *

(k) *Lead-based paint poisoning prevention.* The PHA shall comply with the relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, L, and R of this title.

* * * * *

78. Revise § 968.112(i) to read as follows:

§ 968.112 Eligible costs.

* * * * *

(i) *Lead-based paint costs.* Eligible costs include lead-based paint activities, such as insurance coverage and cleanup and disposal, in accordance with part 35 of this title.

* * * * *

79. In § 968.205, revise the definition of the term ''*Other modernization*'' to read as follows:

§ 968.205 Definitions.

* * * * *

Other Modernization (modernization other than emergency). A type of modernization program for a development that includes one or more physical work items, where HUD determines that the physical improvements are necessary and sufficient to extend substantially the useful life of the development, and/or one or more development specific or PHA-wide management work items (including planning costs), and/or lead-based paint activities.

* * * * *

80. Revise § 968.210(e)(2)(ii) to read as follows:

§ 968.210 Procedures for obtaining approval of a modernization program.

* * * * *

(e) * * *

(2) * * *

(ii) *Lead-based paint inspection compliance.* Where a PHA has not complied with the statutory requirement to complete lead-based paint inspection of all pre-1978 family units, the PHA is eligible for processing only for Emergency Modernization or work needed to complete the lead-based paint inspection.

* * * * *

81. Revise the first sentence of § 968.315(e)(2)(i) to read as follows:

§ 968.315 Comprehensive Plan (including five-year action plan).

* * * * *

(e) * * *

(2) * * *

(i) *Requirements.* The physical needs assessment identifies all of the work that a PHA would need to undertake to bring each of its developments up to the modernization and energy conservation standards, as required by the Act, to comply with the lead-based paint requirements in part 35, subparts A, B, L, and R of this title, and to comply with other program requirements under § 968.110. * * *

* * * * *

82. Revise § 968.435(b) to read as follows:

§ 968.435 Other program requirements.

* * * * *

(b) Certify that activities undertaken within vacant units will bring the affected units into compliance with the Housing Quality Standards, as set forth in § 982.401 of this title, except that § 982.401(j) of this title shall not apply; the applicable lead-based paint requirements in part 35 subparts A, B, L and R, of this title shall apply.

* * * * *

PART 970—PUBLIC HOUSING PROGRAM—DEMOLITION OR DISPOSITION OF PUBLIC HOUSING PROJECTS

83. The authority citation for part 970 continues to read as follows:

Authority: 42 U.S.C. 1437p and 3535(d).

84. Revise § 970.13(d)(1)(i) to read as follows:

§ 970.13 Resident organization opportunity to purchase.

* * * * *

(d) * * *

(1) * * *

(i) An identification of the development, or portion of the development, in the proposed demolition or disposition, including the development number and location, the number of units and bedroom configuration, the amount of space and use for non-dwelling space, the current physical condition (e.g., fire damaged, friable asbestos, lead-based paint evaluation results), and occupancy status (e.g., percent occupancy).

* * * * *

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

85. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

86. Revise § 982.158(f)(5) to read as follows:

§ 982.158 Program accounts and records.

* * * * *

(f) * * *

(5) Lead-based paint records as required by part 35, subpart B of this title.

* * * * *

§ 982.301 [Amended]

87. In § 982.301, remove paragraph (b)(10) and redesignate paragraphs (b)(11) through (b)(16) as paragraphs (b)(10) through (b)(15), respectively.

88. Revise § 982.305(b)(3) to read as follows:

§ 982.305 PHA approval of assisted tenancy.

* * * * *

(b) * * *

(3) The lease is approvable and includes the lease addendum and the lead-based paint disclosure information as required in § 35.92(b) of this title.

* * * * *

89. Revise § 982.401(j) to read as follows:

§ 982.401 Housing quality standards (HQS).

* * * * *

(j) *Lead-based paint performance requirement.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, M, and R of this title apply to units assisted under this part.

* * * * *

PART 983—SECTION 8 PROJECT-BASED CERTIFICATE PROGRAM

90. The authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

91. Revise § 983.1(b)(2)(vii) to read as follows:

§ 983.1 Purpose and applicability.

* * * * *

(b) * * *

(2) * * *

(vii) In subpart I of this part, § 982.401(j), § 982.402(a)(3), § 982.402(c) and (d) (effect of family unit size—subsidy and size of unit); and § 982.403 (termination of HAP contract when unit is too big or too small);

* * * * *

92. Revise § 983.5(c) to read as follows:

§ 983.5 Physical condition standards; physical inspection requirements.

* * * * *

(c) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to units assisted under this part.

93. Revise § 983.104(b)(2)(iv) to read as follows:

§ 983.104 New construction or rehabilitation completion.

* * * * *

(b) * * *

(2) * * *

(iv) Units are in compliance with the lead-based paint requirements in part 35, subparts A, B, H, and R of this title; and

* * * * *

94. In § 983.203(d), revise the first sentence of the introductory paragraph to read as follows:

§ 983.203 Family participation.

* * * * *

(d) *Briefing of families.* When a family is selected to occupy a project-based unit, the PHA must provide the family with information concerning the tenant rent and any applicable utility allowance and a copy of the lead hazard information pamphlet, as required by part 35, subpart A of this title. * * *

* * * * *

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

95. The authority citation for part 1000 continues to read as follows:

Authority: 12 U.S.C. 1715z–13a and 3535(d).

96. Revise § 1000.40 to read as follows:

§ 1000.40 Do lead-based paint poisoning prevention requirements apply to affordable housing activities under NAHASDA?

Yes, lead-based paint requirements apply to housing activities assisted under NAHASDA. The applicable requirements for NAHASDA are HUD's regulations at part 35, subparts A, B, E, G, H, K, M and R of this title, which implement the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822–4846) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856).

PART 1003—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES

97. The authority citation for part 1003 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301 *et seq.*

98. Revise § 1003.202(b)(7)(iv) to read as follows:

§ 1003.202 Eligible rehabilitation and preservation activities.

* * * * *

(b) * * *

(7) * * *

(iv) Lead-based paint activities in part 35 of this title.

* * * * *

99. Revise § 1003.607 to read as follows:

§ 1003.607 Lead-based paint.

The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations part 35, subparts A, B, J, K, and R of this title apply to activities conducted under this program.

PART 1005—LOAN GUARANTEES FOR INDIAN HOUSING

100. The authority citation for part 1005 continues to read as follows:

Authority: 12 U.S.C. 1715z–13a and 3535(d).

101. In § 1005.111, redesignate the existing text as paragraph (a) and add paragraph (b) to read as follows:

§ 1005.111 What safety and quality standards apply?

* * * * *

(b) The relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, J, K, M, and R of this title apply to this part.

Dated: August 26, 1999.

Andrew Cuomo,

Secretary.

Appendix A—Sample Summary Inspection Notice Format

Note: The following appendix will not appear in the Code of Federal Regulations

Summary Notice of Lead-Based Paint Inspection

Address/location of property or structure(s) this summary notice applies to:

_____

_____

_____

Lead-based paint inspection description:

Date(s) of inspection: _____

Summary of inspection results (check all that apply):

(a) ____ No lead-based paint was found.

(b) ____ Lead-based paint was found.

(c) ____ A brief summary of the findings of the inspection is provided below (required if lead-based paint found).

Summary of where lead-based paint was found. List at least the housing unit numbers and common areas (for multifamily housing), and building components (including type of room or space, and the material underneath the paint):

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Contact person for more information about the inspection:

Printed name: _____

Organization: _____

Street and city: _____

State:____ ZIP: _____
Phone number: (____) _____

Person who prepared this summary notice:
Printed name: _____
Signature: _____
Date: _____
Organization: _____
Street and city: _____
State:____ ZIP:____ _____
Phone number: (____) _____

Appendix B—Sample Summary Risk Assessment Notice Format

Note: This following appendix will not appear in the Code of Federal Regulations

Summary Notice of Lead-Based Paint Risk Assessment

Address/location of property or structure(s) this summary notice applies to:

_____
_____
_____

Lead-based paint risk assessment description:
Date(s) of risk assessment: _____

Summary of risk assessment results (check all that apply):
(a) ____ No lead-based paint hazards were found.
(b) ____ Lead-based paint hazards were found.
(c) ____ A brief summary of the findings of the risk assessment is provided below (required if any lead-based paint hazards were found).

Summary of types and locations of lead-based paint hazards. List at least the housing unit numbers and common areas (for multifamily housing), bare soil locations, dust-lead locations, and/or building components (including type of room or space, and the material underneath the paint), and types of lead-based paint hazards found:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Contact person for more information about the risk assessment:
Printed name: _____
_____
Organization: _____
_____
Street and city: _____
_____
State: ____ ZIP: ____ Phone number: (____)
_____

Person who prepared this summary notice:
Printed name: _____
_____
Signature: _____
Date: _____
_____
Organization: _____
_____
Street and city: _____
_____
State: ____ ZIP: ____ Phone number: (____)
_____

Appendix C—Sample Summary Presumption Notice Format

Note: The following appendix will not appear in the Code of Federal Regulations

Notice That Lead-Based Paint or Lead-Based Paint Hazards Are Presumed to be Present

Address/location of property or structure(s) this notice of presumption applies to:

_____
_____
_____

Type of presumption (check all that apply):
(a) ____ Lead-based paint is presumed to be present.
(b) ____ Lead-based paint hazard(s) is(are) presumed to be present.

Summary of presumption. List at least the housing unit numbers and common areas (for multifamily housing), bare soil locations, dust-lead locations, and/or building components (including type of room or space, and the material underneath the paint), and types of lead-based paint hazards presumed to be present:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Contact person for more information about the presumption:
Printed name: _____
_____
Organization: _____
_____
Street and city: _____
_____
State: ____ ZIP: ____ Phone number: (____)
_____

Person who prepared this notice of presumption:
Printed name: _____
_____
Signature: _____
Date: _____
_____
Organization: _____
_____
Street and city: _____
_____
State: ____ ZIP: ____ Phone number: (____)
_____

Appendix D—Sample Hazard Reduction Completion Notice Format

Note: The following appendix will not appear in the Code of Federal Regulations.

Summary Notice of Completion of Lead-Based Paint Hazard Reduction Activity

Address/location of property or structure(s) this summary notice applies to:

_____
_____
_____

Summary of the hazard reduction activity:
Start and completion date(s): _____

Activity locations and types. List at least the housing unit numbers and common areas (for multifamily housing), bare soil locations, dust-lead locations, and/or building components (including type of room or space, and the material underneath the paint), and types of hazard reduction activities performed at the locations listed:

_____
_____
_____
_____
_____
_____

Date(s) of clearance testing and/or soil analyses: ____

Locations of building components with lead-based paint remaining in the rooms, spaces or areas where activities were conducted:

_____
_____
_____
_____

Summary of results of clearance testing and soil analyses:
(a) ____ No clearance testing was performed.
(b) ____ Clearance testing showed clearance was achieved.
(c) ____ Clearance testing showed clearance was not achieved.

Contact person for more information about the hazard reduction:
Printed name: _____
Organization: _____
Street and city: _____
State: ____ ZIP: _____
Phone number: (____) _____

Person who prepared this summary notice:
Printed name: _____
Signature: _____
Date: _____
Organization: _____
Street and city: _____
State: ____ ZIP: _____
Phone number: (____) _____

[FR Doc. 99–23016 Filed 9–14–99; 8:45 am]

BILLING CODE 4210–32–P

* * * * *

Dated: January 11, 2000.

Margaret M. Dotzel,

Acting Associate for Commissioner for Policy.

[FR Doc. 00–1408 Filed 1–20–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 35, 968, and 1000

[Docket No. FR–3482–C–07]

RIN 2501–AB57

Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Housing Receiving Federal Assistance and Federally Owned Residential Property Being Sold; Correction

AGENCY: Office of the Secretary—Office of Lead Hazard Control, HUD.

ACTION: Correction.

SUMMARY: This document makes several corrections to HUD's September 15, 1999 final rule implementing sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992. Among other corrections, this document corrects the numbering of the sections containing the regulatory requirements governing lead-based paint disclosure; corrects the September 15, 1999 final rule to reflect the effective date of a related rule issued by the Environmental Protection Agency; and corrects several typographical errors contained in the final rule.

DATES: *Effective date:* September 15, 2000.

FOR FURTHER INFORMATION CONTACT: Steve Weitz, Special Assistant, Office of Lead Hazard Control, Department of Housing and Urban Development, 451 Seventh Street, SW, Room P–3206, Washington, DC 20410; telephone: (202) 755–1785, ext. 104 (this is not a toll-free number); E-mail: lead—regulations hud.gov. For legal questions, contact John B. Shumway, Office of General Counsel, Department of Housing and Urban Development, Room 9262. Persons with hearing or speech impediments may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On September 15, 1999, HUD published a final rule (64 FR 50140) that implements sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 *et seq.*). The purpose of the rule is to ensure that Federally-owned or assisted housing does not pose lead-based paint hazards to young children. The majority of the provisions contained in the final rule will become effective on September 15, 2000 (one year following the date of publication). This document makes several corrections to the September 15, 1999 final rule. The corrections made by this document are as follows:

A. Correction of Section Numbers for Lead-Based Paint Disclosure Requirements (24 CFR part 25, subpart A)

The September 15, 1999 final rule redesignated subpart H of 24 CFR part 35 as subpart A. The purpose of this action was simply to relocate the regulatory requirements governing lead-based paint disclosure (which had been promulgated by final rule published on March 6, 1996 (61 FR 9082)) from subpart H to subpart A without any change in text. This was done to allow the new regulatory requirements established by the September 15, 1999 final rule to be described uninterrupted through the remainder of part 35. However, the September 15, 1999 final rule also incorrectly revised the section numbers of the relocated disclosure provisions. These redesignations may cause confusion because existing section references in the lead-based paint literature may not reflect the revised section numbers. This document corrects the section numbers of the disclosure requirements contained in part 35, subpart A. The numbering of these sections is now identical to that originally published in the March 6, 1996 final rule.

B. Conformance With EPA Regulations

The September 15, 1999 final rule relies on a nationwide framework of personnel who are or will be trained and certified in accordance with regulations issued by the U.S. Environmental Protection Agency (EPA). The EPA program is designed to ensure the safe and effective performance of lead-based paint inspections, risk assessments, and abatements. When the September 15, 1999 rule was published, the effective date of the relevant EPA regulations at 40 CFR part 745 was August 30, 1999. Therefore, the September 15, 1999 final rule (at § 35.165) specifies that this is the date after which all lead-based paint inspections, risk assessments and abatements must be performed by persons certified in accordance with 24 CFR part 745.

On August 6, 1999 (64 FR 42851), the EPA published an amendment that extends the effective dates for certification of individuals and firms and use of work practices standards from August 30, 1999 to March 1, 2000. Therefore, HUD must correct the September 15, 1999 final rule to conform to the new EPA effective date. To avoid possible further confusion, this document provides a citation to the EPA regulation instead of a specific date. This reduces the likelihood that HUD will have to again correct the September 15, 1999 final rule if EPA should have to again change the effective date.

C. Applicability of Subpart K

This document corrects the § 35.1000, which describes the purpose and applicability section of subpart K. This section erroneously provides that the subpart K requirements apply to ''residential rehabilitation activities.'' These activities are covered under subpart J (entitled ''Rehabilitation''), not subpart K. Subpart K establishes the lead-based paint requirements acquisition, leasing, support services, or operation of residential property.

D. NAHASDA Assisted Activities

The September 15, 1999 final rule revised 24 CFR 1000.40, which describes the lead-based paint requirements for housing activities assisted under the Native American Housing Assistance and Self-Determination Act (NAHASDA). In referring to the subparts of 24 CFR part 35 that are applicable to NAHASDA assisted activities, the September 15, 1999 revision erroneously referred to subparts E and G, which do not apply to NAHASDA activities. The September 15, 1999 revision did not refer to subpart J, which pertains to rehabilitation activities, including NAHASDA rehabilitation assistance. This document corrects § 1000.40 by removing the references to subparts E and G of part 35, and adding a reference to 24 CFR part 35, subpart J.

E. Corrections of Typographical Errors

This document also corrects the following typographical errors contained in the September 15, 1999 final rule.

1. *Correction to § 35.930(b)(3).* This document corrects a typographical error contained in § 35.930(b)(3) of the September 15, 1999 final rule. At the end of the second sentence of this section, an incorrect reference is made to § 35.1350(b). This document corrects the reference to read ''§ 35.1350(d).''

2. *Correction to § 35.1200(b)(2)(i).* This document corrects a typographical error contained in § 35.1200(b)(2)(i) of the September 15, 1999 final rule. Specifically, an incorrect reference to

''September 15, 200'' is corrected to read ''September 15, 2000.''

3. *Correction to § 35.1200(b)(4)(i).* This document corrects a typographical error contained in § 35.1200(b)(4)(i) of the September 15, 1999 final rule. This section provides an incorrect effective date for tenant-based rental assistance competitively awarded under the Housing Opportunities for Persons With AIDS (HOPWA) program. This document corrects the effective date from ''October 1, 1999'' to ''September 15, 2000.'' This correction conforms the effective date provided in § 35.1200(b)(4) to the effective dates provided elsewhere in the September 15, 1999 final rule, including those for competitively awarded HOPWA grants in 24 CFR part 35, subparts J and K.

F. Revision Superseded by Other HUD Rulemaking

The September 15, 1999 final rule revises HUD's public housing modernization regulations at § 968.210(e)(2)(ii) (see 64 FR 50229, amendatory instruction number 80). However, by final rule published on June 23, 1999 (64 FR 33636), HUD removed § 968.210(e). This document corrects the September 15, 1999 final rule by removing the reference to § 968.210(e).

Accordingly, in the final rule captioned ''Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance,'' FR Document 99–23016, beginning at 64 FR 50140, in the issue of Wednesday, September 15, 1999, the following corrections are made:

PART 35—[CORRECTED]

1. On page 50201, in the first column, regulatory amendment 2 is corrected to read as follows:

2. Remove Subpart A and redesignate subpart H, consisting of § 35.80 through 35.98, as subpart A. The table of contents to redesignated subpart A is revised to read as follows:

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

Sec.
35.80 Purpose.
35.82 Scope and applicability.
35.84 Effective dates.
35.86 Definitions.
35.88 Disclosure requirements for sellers and lessors.
35.90 Opportunity to conduct an evaluation.
35.92 Certification and acknowledgment of disclosure.
35.94 Agent responsibilities.
35.96 Enforcement.
35.98 Impact on State and local requirements.

2. On page 50208, in the first and second columns, correct § 35.165 by revising paragraphs (a)(1) introductory text, (a)(2), (b)(2), (b)(3), (d)(1) introductory text, and (d)(2) to read as follows:

§ 35.165 Prior evaluation or hazard reduction.

* * * * *

(a) *Lead-based paint inspection.* (1) A lead-based paint inspection conducted before the date specified in 40 CFR 745.239(b) meets the requirements of this part if:

* * * * *

(2) A lead-based paint inspection conducted on or after the effective date specified in 40 CFR 745.239(b) must have been conducted by a certified lead-based paint inspector.

(b) * * *

(2) A risk assessment conducted before the effective date of 40 CFR 745.239(b) 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 the date specified in 40 CFR 745.239(b) must have been conducted by a certified risk assessor.

* * * * *

(d) *Abatement.* (1) An abatement conducted before the date specified in 40 CFR 745.239(b) meets the requirements of this part if:

* * * * *

(2) An abatement conducted on or after the date specified in 40 CFR 745.239(b) must have been conducted under the supervision of a certified lead-based paint abatement supervisor.

3. On page 50214, in the first column, correct § 35.930(b)(3) to read as follows:

§ 35.930 Evaluation and hazard reduction requirements.

* * * * *

(b) * * *

(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).

4. On page 50214, in the third column, correct the first sentence of § 35.1000(c)(2) to read as follows:

§ 35.1000 Purpose and applicability.

* * * * *

(c) * * *

(2) For 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. * * *

* * * * *

5. On page 50217, in the first column, correct § 35.1200(b)(2)(i) and § 35.1200(b)(4)(i) to read as follows:

§ 35.1200 Purpose and applicability.

* * * * *

(b) * * *

(2) * * *

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

* * * * *

(4) * * *

(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

* * * * *

PART 968—[CORRECTED]

§ 968.210 [Corrected]

6. On page 50229, in the second column, remove regulatory amendment 80.

PART 1000—[CORRECTED]

7. On page 50230, in the second column, correct the second sentence of § 1000.40 to read as follows:

§ 1000.40 Do lead-based paint poisoning prevention requirements apply to affordable housing activities under NAHASDA?

* * * The applicable requirements for NAHASDA are HUD's regulations at part 35, subparts A, B, H, J, K, M and R of this title, which implement the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822–4846) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856).

Dated: January 6, 2000.

David E. Jacobs,

Director, Office of Lead Hazard Control.

[FR Doc. 00–1319 Filed 1–20–00; 8:45 am]

BILLING CODE 4210–32–P

DATES: *Effective Date:* November 22, 1999.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0477, extension 4069 (this is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On October 21, 1999 (64 FR 56882), HUD published a final rule that specified the method HUD will use in allocating housing assistance available to renew expiring contracts with public housing agencies (PHAs) for Section 8 tenant-based housing assistance. As required by statute, the October 21, 1999 final rule was the product of a negotiated rulemaking, following implementation, as further required by statute, of a HUD notice on this subject. The purpose of this document is to correct two typographical errors contained in the October 21, 1999 final rule. Specifically, this document corrects all references to a ''CACC'' to read ''consolidated ACC.'' This document also inserts a missing hyphen in one of the references in § 982.102 to ''project-based assistance.''

Accordingly, in the final rule entitled ''Renewal of Expiring Annual Contributions Contracts in the Tenant-Based Section 8 Program; Formula for Allocation of Housing Assistance,'' FR Document 99–27445, beginning at 64 FR 56882, in the issue of Thursday, October 21, 1999, the following corrections are made:

§ 982.102 [Corrected]

1. On page 56887, beginning in the second column, § 982.102 is corrected as follows:

a. Correct all references to ''CACC'' to read ''consolidated ACC''; and

b. In paragraph (a), correct the reference to ''project based assistance'' to read ''project-based assistance.''

Dated: March 22, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–7643 Filed 3–29–00; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 982 and 983

[Docket No. FR–3482–C–08]

RIN 2501–AB57

Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Housing Receiving Federal Assistance and Federally Owned Residential Property Being Sold; Correction

AGENCY: Office of the Secretary—Office of Lead-Hazard Control, HUD.

ACTION: Correction.

SUMMARY: This document makes several corrections to HUD's September 15, 1999 final rule implementing sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992. Specifically, this document corrects two typographical errors contained in the September 1, 1999 final rule that regard the Section 8 Housing Choice Voucher program and the Section 8 Project-Based Certificate program.

DATES: *Effective date:* September 15, 2000.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0477, extension 4069 (this is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On September 15, 1999, HUD published a final rule (64 FR 50140) that implements sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 *et seq.*). The purpose of the rule is to ensure that Federally-owned or assisted housing does not pose lead-based paint hazards to young children. The majority of the provisions contained in the final rule will become effective on September 15, 2000 (one year following the date of publication). This document corrects two typographical errors contained in the September 15, 1999 final rule that regard the Section 8 Housing Choice Voucher program (codified at 24 CFR part 982) and the Section 8 Project-Based Certificate program (codified at 24 CFR part 983). The corrections made by this document are as follows:

1. *Correction to § 982.305 (PHA approval of assisted tenancy).* This document corrects a typographical error contained in § 982.305(b) of the September 15, 1999 final rule. The September 15, 1999 final rule amended paragraph (b)(3) of § 982.305 to reference the lead-based disclosure information required under 24 CFR 35.92(b). This reference is more appropriately set forth in paragraph (b)(1)(ii) of § 982.305. This document makes the necessary correction. As corrected by this document, 982.305(b)(1)(ii) provides that, before the beginning of the initial term of the lease for the unit, the landlord and the tenant must have executed the lease (including the HUD-prescribed tenancy addendum, and the lead-based paint disclosure information as required in 24 CFR 35.13(b)).

2. *Correction to § 983.1 (Purpose and applicability).* This document corrects a typographical error contained in § 983.1 of the September 15, 1999 final rule. Paragraph (b) of § 983.1 describes the provisions of 24 CFR part 982 that apply to the Section 8 Project-Based Certificate program. The September 15, 1999 final rule amended § 983.1(b) by adding a citation to § 982.401(j). However, the citation did not explain to readers that § 982.401(j) contains applicable lead-based paint requirements. This document adds a parenthetical after the citation to clarify this point.

Accordingly, in the final rule captioned ''Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance,'' FR Document 99–23016, beginning at 64 FR 50140, in the issue of Wednesday, September 15, 1999, the following corrections are made:

1. On page 50229, in the third column, regulatory amendment 88 is corrected to read as follows:

88. Revise § 982.305(b)(1)(ii) to read as follows:

§ 982.305 PHA approval of assisted tenancy.

* * * * *

(b) * * *

(1) * * *

(ii) The landlord and the tenant have executed the lease (including the HUD-prescribed tenancy addendum, and the lead-based paint disclosure information as required in § 35.13(b) of this title); and

* * * * *

2. On page 50230, in the first column, § 983.1(b)(2)(vii) is corrected to read as follows:

§ 983.1 Purpose and applicability.

* * * * *

(b) * * *

(2) * * *

(vii) In subpart I of this part, § 982.401(j) (lead-based paint requirements); § 982.402(a)(3), § 982.402(c) and (d) (Subsidy standards); and § 982.403 (Terminating HAP contract when unit is too small);

* * * * *

Dated: March 22, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–7641 Filed 3–29–00; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 982 and 983

[Docket No. FR–4428–C–06]

RIN 2577–AB91

Section 8 Tenant-Based Assistance; Statutory Merger of Section 8 Certificate and Voucher Programs; Housing Choice Voucher Program; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Correction.

SUMMARY: This document makes various corrections to HUD's October 21, 1999 final rule implementing the statutory merger of the Section 8 tenant-based certificate and voucher programs into the new Housing Choice Voucher program. Additionally, this document corrects several regulatory provisions of the new Section 8 merger program that were not part of the October 21, 1999 final rule. These technical, non-substantive amendments will help to ensure that, once codified, the regulations for the Housing Choice Voucher program are free of error and consistent with other HUD program requirements.

DATES: *Effective date:* November 22, 1999.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0477, extension 4069 (this is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION

I. Background

On October 21, 1999 (64 FR 56894), HUD published a final rule implementing the Section 8 tenant-based program provisions of the Quality Housing and Work Responsibility Act of 1998 (Title V of the FY 1999 HUD Appropriations Act; Pub.L. 105–276, approved October 21, 1998) (referred to as the ''Public Housing Reform Act''). Of particular significance, the October 21, 1999 final rule implemented section 545 of the Public Housing Reform Act. Section 545 provides for the complete merger of the Section 8 tenant-based certificate and voucher programs. HUD's regulations for the new Section 8 merger program (known as the ''Housing Choice Voucher program'') are located at 24 CFR part 982.

The October 21, 1999 final rule became effective on November 22, 1999. The final rule was preceded by HUD's publication of an interim rule on May 14, 1999 (64 FR 56894). The October 21, 1999 final rule adopted without change the provisions of the interim rule. The final rule also took into consideration of the public comments received on the interim rule, and most of the changes made at the final rule stage were in response to public comment.

II. This Document

This document makes several corrections to the October 21, 1999 final rule. Additionally, this document corrects several regulatory provisions of the Housing Choice Voucher program that were not part of the October 21, 1999 final rule. These technical revisions correct typographical errors and inconsistencies with other HUD program requirements. These corrections are non-substantive, and do not modify or create any new program requirements. The corrections will help to ensure that, once codified in title 24 of the Code of Federal Regulations, the regulations for the new Section 8 merger program are free of error and consistent with other HUD program requirements.

For the convenience of readers, the following discussion of the corrections made by this document is organized in the order of the regulatory section being corrected.

1. *Definitions (§ 982.4).* This document corrects § 982.4, which sets forth the definitions applicable to the Housing Choice Voucher program. Currently, part 982 refers readers to section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)) for the definitions of several terms applicable to the merger program. This document replaces the cross-reference to section 3(b) with a cross-reference to HUD's regulations at 24 CFR part 5, subpart D. HUD established 24 CFR part 5 to set forth the definitions and other program requirements that are generally applicable to HUD's programs. The definitions provided in part 5 are substantively identical to those located in section 3(b).

2. *How applicants are selected: General requirements (§ 982.202).* This document corrects § 982.202 to conform with § 982.207 of the October 21, 1999 final rule, since HUD approval is no longer required for the public housing agency (PHA) to adopt a residency preference. This document also corrects an erroneous regulatory citation contained in § 982.202.

3. *Waiting list: Administration of waiting list (§ 982.204).* This document corrects § 982.204 by removing paragraph (b)(5), which merely repeats the language of paragraph (b)(4).

4. *Waiting list: Different programs (§ 982.205).* This document corrects § 982.205(b)(1) to clarify the definition of ''other housing assistance.'' This document also removes § 982.205(b)(3), which incorrectly refers to a PHA offer of assistance under ''both the certificate program and the voucher program.'' As noted above, the new Housing Choice Voucher program merges the Section 8 tenant-based certificate and voucher programs into a single voucher program. Accordingly, PHAs no longer have two forms of Section 8 tenant-based assistance to offer families.

5. *Waiting list: Local preferences in admission to program (§ 982.207).* This document corrects § 982.207 to eliminate unnecessary redundancy. Specifically, paragraph (a)(1) of this section provides that the ''system of local preferences must be consistent with the PHA plan . . . and with the consolidated plans for local governments in the jurisdiction.'' Preferences are already covered under HUD's PHA Plan regulations, which require consistency with the Consolidated Plan (see 24 CFR part 903). Accordingly, it is unnecessary to include the quoted provision in part 982.

This document also corrects a typographical error contained in § 982.207(b)(5) of the October 21, 1999 final rule. Specifically, this document adds a phrase to the end of paragraph (b)(5) that clarifies that single persons who are elderly, displaced, homeless, or persons with disabilities may be granted an admissions preference *over other single persons*. The phrase ''over other single persons'' was inadvertently omitted from the October 21, 1999 final rule. This correction will also clarify

INTERPRETIVE GUIDANCE

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

September 21, 2000

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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." 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 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.

The regulation takes effect on September 15, 2000.

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 is issuing 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 will 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 does have existing lead paint regulations. This new regulation consolidates 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 implements 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 retains the existing fundamental requirement of repairing deteriorated paint, but it also requires 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 reoccupancy. 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 will result in a much more effective national program to prevent 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 takes effect on September 15, 2000, one year after publication. The purpose of the one-year phase-in period is 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 is providing 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 has no effect whatsoever on the disclosure requirements. However, it changes 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 stay 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
- 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
- ongoing 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 REQUIREMENTS

Subpart of Rule/Type Program		Construction Period	Requirements
C	Disposition by Federal Agency Other Than HUD	Pre-1960	· LBP inspection and risk assessment. · Abatement of LBP hazards. · Notice to occupants of inspection/abatement results.
		1960-1977	· LBP inspection and risk assessment. · Notice to occupants of results.
D	Project-Based Assistance by Federal Agency Other Than HUD	Pre-1978	· Provision of pamphlet. · Risk assessment. · Interim controls. · Notice to occupants of results. · Response to EIBLL child.
F	HUD-Owned Single Family Sold With a HUD-Insured Mortgage	Pre-1978	· Visual assessment. · Paint stabilization. · Notice to occupants of clearance.
G	Multifamily Mortgage Insurance:		
	1. For properties that are currently residential	Pre-1960	· Provision of pamphlet. · Risk assessment. · Interim controls. · Notice to occupants. · Ongoing LBP maintenance.
		1960-1977	· Provision of pamphlet. · Ongoing LBP maintenance.
	2. For conversions and major renovations.	Pre-1978	· Provision of pamphlet. · LBP inspection. · Abatement of LBP. · Notice to occupants.
H	Project-Based Assistance (HUD Program):		
	1. Multifamily property Receiving more than $5,000 per unit per year	Pre-1978	· Provision of pamphlet. · Risk assessment. · Interim controls. · Notice to occupants. · Ongoing LBP maintenance and reevaluation. · Response to EIBLL child.

Note: Clearance, safe work practices and occupant protection are always 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.

Subpart of Rule/Type Program		Construction Period	Requirements
	2. Multifamily property - receiving less than or equal to $5,000 per unit per year, and single family properties	Pre-1978	· Provision of pamphlet. · Visual assessment. · Paint stabilization. · Notice to occupants. · Ongoing LBP maintenance. · Response to EIBLL child.
I	HUD-Owned Multifamily Property	Pre-1978	· Provision of pamphlet. · LBP inspection and risk assessment. · Interim controls. · Notice to occupants. · Ongoing LBP maintenance and reevaluation. · Response to EIBLL child.
J	Rehabilitation Assistance:		
	1. Property receiving less than or equal to $5,000 per unit	Pre-1978	· Provision of pamphlet. · Paint testing of surfaces to be disturbed, or presume LBP · Safe work practices in rehab. · Repair disturbed paint. · Clearance of the worksite. · Notice to occupants. · Ongoing LBP maintenance if HOME or CILP.
	2. Property receiving more than $5,000 and up to $25,000	Pre-1978	· Provision of pamphlet. · Paint testing of surfaces to be disturbed, or presume LBP. · Risk assessment. · Interim controls. · Notice to occupants. · Ongoing LBP maintenance if HOME or CILP.
	3. Property receiving more than $25,000 per unit	Pre-1978	· Provision of pamphlet. · Paint testing of surfaces to be disturbed, or presume LBP. · Risk assessment. · Abatement of LBP hazards. · Notice to occupants. · Ongoing LBP maintenance if HOME or CILP.
K	Acquisition, Leasing, Support Services, or Operation	Pre-1978	· Provision of pamphlet. · Visual assessment. · Paint stabilization. · Notice to occupants. · Ongoing LBP maintenance.
L	Public Housing	Pre-1978	· Provision of pamphlet. · LBP inspection. · Abatement of LBP. · Risk assessment if LBP not yet abated. · Interim controls if LBP not yet abated. · Notice to occupants. · Ongoing LBP maintenance and reevaluation. · Response to EIBLL child.

M	Tenant-Based Rental Assistance for units to be occupied by children under 6-years of age	Pre-1978	· Provision of pamphlet. · Visual assessment. · Paint stabilization. · Notice to occupants. · Ongoing LBP maintenance. · Response to EIBLL child.

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: Do funds obtained through the sale of Low-Income Housing Tax Credits count as housing assistance that is covered by this regulation?

No. The Low-Income Housing Tax Credit program is not covered by the regulation.

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 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 contact the Federal agency you are interested in directly 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. MORE THAN ONE TYPE OF HOUSING UNIT 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?

In the first year after the effective date, HUD estimates that over 1.2 million HUD-associated dwelling units will be covered by the regulation. After five years, about 2.8 million HUD-associated units will have been affected. 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?

See the Economic Analysis accompanying the rule, as published in the Federal Register, for 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 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/lea, 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 two corrections to the regulation: one on January 21, 2000, starting on page 3386 and the other on March 30, 2000, starting on page 16818. You can obtain copies of these issues by downloading from the HUD web site, shown above, the Federal Register web site, www.access.gpo.gov/nara, or by mail, for a fee, from the Government Printing Office at 1-202-512-1800 (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.

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 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 at 1-202-693-2190 (this is a toll call); or, for a fee, from the Government Printing Office at 1-202-512-1800 (this is a toll call).) Paint strippers should not be used in spaces that have no fresh air supply.

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 can also be downloaded from the web site of the HUD Office of Lead Hazard Control at www.hud.gov/lea. 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 1-202-512-1800 (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. The Center also has a black and white version that can be photocopied.

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 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 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, no clearance, safe work practices 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. 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, 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, if 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.)

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 will be covered by subpart F of the new regulation, effective September 15, 2000. 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. 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. 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 the 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 35.1330(c)(1) and (2) and 35.1330(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)).

This means that funds that were committed through CHDO reservations or commitments to State or subrecipients BEFORE 9/15/2000, may still be subject to the new requirements to the extent that commitments to specific local projects are made under those agreements AFTER 9/15/2000.

CDBG Entitlement

As with the HOME Program, the effective date of the lead-based paint rule is September 15, 2000.

When trying to determine if your CDBG-assisted project is subject to the new lead-based paint requirements, recall that the CDBG Entitlement program defines the effective date as the date when CDBG funds are contracted for a specific project. So, when the grantee signs a rehabilitation contract with a homeowner for a specific house, that's the "trigger date". If the trigger date is after September 15, 2000, the project is subject to the new lead-based paint hazard reduction requirements.

Logging funds into IDIS is not the triggering action. If the grantee chooses a subrecipient to administer its home rehabilitation programs, the triggering action is the date the subrecipient signs a contract with a homeowner/property owner. If the grantee administers its own rehabilitation program, the funds are obligated on the date the rehab work contract is signed.

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 9/15/00. In the State CDBG program, "award" means an official announcement (e.g. Press Release, Governor's "big check" ceremony, issuing a 'congratulations you won' letter to the town), or issuing a grant agreement--whatever action comes first that represents an official announcement or obligation of funding by the state. If, for example, a State awards a CDBG housing rehab grant to City A on 9/14/00, and awards a CDBG housing rehab grant to County Q on 9/16/00, Q's grant is subject to the new rule but A's grant is not. The date on which a local government signs an agreement with some subrecipient (like a CAP agency) to administer its State CDBG grant for them is irrelevant.

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 9/15/00. [New York will administer the State CDBG program starting in FY2000.] 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 LBP rule apply?

It depends. For State CDBG grantees who operate CDBG rehabilitation programs:

1. Program income generated from and used to continue rehabilitation activities for which funds were awarded by the state prior to 9/15/2000 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 9/15/2000.

2. Program income generated from activities for which funds were awarded by the state prior to 9/15/2000, 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 9/15/2000 is covered by the new rule as of the date of award of the subsequent state funding.

3. Program income generated from activities which are not subject to the LBP requirements, but for which the state grants approval on or after 9/15/2000 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.

Source of Funding for Activity:	**Subject to LBP rule?**
a. State CDBG grant for rehab awarded before 9/15/2000:	No
b. State CDBG grant for rehab awarded after 9/15/2000:	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 15th award that is subsequently rolled into a post-Sept. 15th 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 15th award:	Yes
f. Program income generated from an activity which was not subject to the LBP rule, for which a state approves an amendment to use it for an LBP-subject activity.	Yes. (If state approval occurs on/after 9/15/2000).

J2. If I am conducting rehabilitation with Federal assistance covered by subpart J of the regulation, is it necessary that the abatement work be done by a certified lead paint abatement contractor?

Only if the rehabilitation is more than $25,000 per unit. If the level of Federal assistance per unit for a rehabilitation project is no more than $25,000 per unit, use of a certified abatement contractor (or certified abatement workers and a certified abatement supervisor) is not required by Federal regulation. (The amount of Federal assistance per unit is calculated in accordance with section 35.915, as described in question J3, below.) Rather, persons performing interim controls of lead-based paint hazards or standard treatments must be trained in the use of lead-safe work practices, using courses described in section 35.1330(a)(4), or they must be supervised by a certified abatement supervisor. Also, the property must pass clearance after completion of rehabilitation, interim controls or standard treatments. If the level of Federal assistance per unit is more than $25,000 per unit, however, use of a certified abatement contractor (or certified workers and supervisor) is usually required because the HUD regulation requires *abatement* of lead-based paint hazards (see also R25).

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 units + $150,000/20 units = $25,000 + $7,500 = $32,500 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.

Total Federal Assistance/Number of dwelling units = Avg. 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.

Total Rehab Hard costs for project/Total number of units = Avg rehab. 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, <u>not including the additional costs of complying with this rule</u>" (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*.

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 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 and clearance 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)).

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 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 level 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 <u>and</u> 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 <u>hazards</u> 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. The Department of Energy Weatherization program is not considered a housing assistance program.

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 a 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/lea, or obtained from HUD at 1-202-755-1785 ext. 104 (this is a toll call).

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 at 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 does not require that persons performing repainting or other rehabilitation activities that are covered by section 35.930(b), which is the no-more-than-$5,000 category, be supervised or formally trained in accordance with the requirements for interim controls workers at section 35.1330(a)(4). Nevertheless, safe work practices must be followed, clearance of the worksite must be achieved, and designated parties are responsible for assuring compliance with these requirements.

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 repainting. 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/lea. 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.

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 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.

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 expenses 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. 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 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 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?

Subpart J does not apply to funds from those programs committed before the effective date, but does apply to funds from those programs committed on or after the effective date, whether to a new project or a modification of an existing project. Determining whether a project is receiving over $5,000 or over $25,000, you should consider funds only committed after the effective date of the rule.

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 CFR 50226 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 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 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 downpayment 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.

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/lea or from lead_regulations@hud.gov, by calling 1-202-755-1785, ext. 104, or by writing the HUD Office of Lead Hazard Control, 451 Seventh Street, SW, Room P-3206, Washington, DC 20410.

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 1995 *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*, it is unlikely that further testing will be needed.

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 that 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.

Subpart M. TENANT-BASED RENTAL ASSISTANCE (continued)

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 regulator 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 <u>if another family with tenant-based rental assistance</u> 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 also 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).

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 for different purposes and therefore 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/cm^2 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/lea) and from the National Lead Information Clearinghouse 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 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 24 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 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 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 one of the following courses: (1) The Lead-Based Paint Maintenance Training Program, "Work Smart, Work Wet, and Work Clean to Work Lead Safe," prepared by the National Environmental Training Association (NETA) for EPA and HUD; or (2) "The Remodeler's and Renovator's Lead-Based Paint Training Program," prepared by HUD and the National Association of the Remodeling Industry (NARI). The NETA course materials can be obtained from NETA, 3020 East Camelback, Phoenix, AZ 85016, telephone 602-956-6099, fax 602-956-6399. The price is $129. The NARI course materials are on the HUD website at www.hud.gov/lea.

Other courses may be approved by HUD to fulfill the interim controls training requirement.

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 (September 2000), 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. The regulation specifically permits worksite-only clearance for a residential property receiving an average of up to and including $5,000 per unit in Federal rehabilitation assistance (section 35.930(b)) and for ongoing lead-based paint maintenance activities (section 35.1355(a)(6)). Worksite-only clearance is also permitted when containment is used.

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.

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). If the work is done in compliance with the requirements for rehabilitation of no more than $5,000 or ongoing lead-based paint maintenance, the clearance need be done for the worksite only, so it is not necessary to examine the interior. 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.)

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 can not 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. 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? If so, what is the difference between interim controls and abatement?

No. Removal of deteriorated paint to prepare the surface for repainting is part of paint stabilization, which is an interim control.

Abatement involves permanent methods (at least 20 years) of intentionally eliminating lead hazards. Interim controls are typically performed in the context of maintaining a property to ensure that hazards that have been identified are controlled. Activities whose purpose is not to eliminate lead hazards, like many rehabilitation projects, are not considered to be abatement. For example, window replacement done for reasons other than to address lead hazards is not considered an abatement, even though it results in eliminating lead hazards from the window. Similarly, covering window troughs or other small surfaces with vinyl, aluminum or other material is not “permanent” and not abatement. On the other hand, covering a wall with new drywall is considered an enclosure type of abatement when the new drywall is installed with the intent of abating a lead-based paint hazard. Similarly, window replacement done to eliminate lead hazards is an abatement. State and local governments may also regulate this activity.

R25. When is the use of certified abatement personnel required?

Certified abatement workers are required by HUD's rule in three situations. The first is for federally-assisted rehabilitation projects when the average federal assistance exceeds $25,000 per unit because regulations explicitly require abatement at this level of assistance. The second situation where certified abatement workers are required is when abatement is done in the context of modernization in the conventional public housing program because regulations explicitly require abatement during public housing modernization. The third situation is for properties receiving multifamily mortgage insurance where properties are being converted from non-residential to residential use or undergoing major rehabilitation (see also J2).

Although certain activities conducted with federal assistance may result in the abatement of lead hazards (e.g. window replacement), if these activities are done in the context of rehabilitation and the intention of the work is for rehabilitation purposes, then certified workers are not required by HUD's regulation. However, if Federal funds are used by a grantee or other designated party for the purposes of abating lead hazards, then the EPA regulations (40 CFR 745) pertaining to abatement would govern.

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 and 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 (an 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 can be obtained from the Lead Paint Compliance Assistance Center, toll free, at 1-866-HUD-1012 (1-866-483-1012). Additional information is also available from the National Lead Information Center at 1-800-424-LEAD, HUD's web site at www.hud.gov/lea, or HUD at 1-202-755-1785 ext. 104 (this is a toll call).

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. QUESTIONS PERTAINING TO TRANSITION ASSISTANCE

T1. TRANSITION ASSISTANCE REQUESTS: Who is eligible to request transition assistance related to inadequate capacity and how do you request such transition assistance?

HUD published a Notice in the *Federal Register* Docket No. FR-3482-N-09, "Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance: Transition Assistance" which describes the process for submitting a statement of inadequate capacity, the transition time, and the associated training and funding.

For program participants in a particular jurisdiction to qualify for transition assistance based on inadequate capacity to carry out specific requirements of the Lead Safe Housing Regulation, the chief elected official of the jurisdiction, or a senior official designated to act on his or her behalf (such as the official who signs the Annual Consolidated Action Plan submitted to HUD for the jurisdiction), must submit a Statement of Inadequate Capacity to HUD by November 15, 2000, and a Transition Implementation Plan by December 15, 2000. In response to such documentation, HUD will provide special training and technical assistance, and the new requirements will be delayed until March 15, 2001.

A jurisdiction is defined in the Notice as a Community Development Block Grant (CDBG) Entitlement Grantee or for non-entitlement areas, the State CDBG Grantee or Indian Tribe. If the jurisdiction is the State, the statement must be signed and submitted by the agency head who signs the State Annual Consolidated Action Plan submitted to HUD and by the agency head responsible for the EPA-authorized lead-based paint certification program (if the State has an EPA-authorized lead-based paint certification program). If the jurisdiction is an Indian Tribe, the statement must be signed and submitted by the chief official of the Indian Tribe and by the individual responsible for the EPA-authorized lead-based paint certification program (if the Indian Tribe has an EPA-authorized lead-based paint certification program). The statement submitted by a State may cover all or part of the CDBG non-entitlement area of the State. The Statement of Inadequate Capacity should be circulated to and reviewed by local officials with responsibility for housing and public or environmental health in the State or locality.

The Federal Register Notice, a sample Statement of Inadequate Capacity to Comply with the new Lead Safe Housing Regulation, and guidance on preparation of a Transition Implementation Plan (Transition Implementation Plan Guidance) can all be found on HUD's website at www.hud.gov/lea. For further information, call the Lead Paint Compliance Assistance Center, toll free, at 1-866-HUD-1012 (1-866-483-1012).

T2. TRANSITION ASSISTANCE TRAINING AND TECHNICAL ASSISTANCE: How do I access the training and technical assistance that HUD is offering to respond to Statement's of Inadequate Capacity?

For a jurisdiction to qualify for training and technical assistance based on inadequate capacity, a Statement of Inadequate Capacity must be submitted to HUD following the procedures described above in question T1. In response to such documentation, special training and technical assistance will be provided by HUD, as part of its strategy for successful implementation of the new Lead Safe Housing Regulation. HUD will also consider providing training or technical assistance in areas not submitting a statement of inadequate capacity, but to the extent resources are available, HUD will deploy them to areas with the greatest need.

This strategy is referred to in the *Federal Register* notice and discussed more thoroughly in the "Transition Strategy to Implement HUD's Lead Safe Housing Regulation" which can be found on HUD's website www.hud.gov/lea. More specific guidance on how to access this funding will be outlined in program-specific notices that will be available shortly. For further information, call the Lead Paint Compliance Assistance Center, toll free, at 1-866-HUD-1012 (1-866-483-1012).

T3. EXTENSION OF TRANSITION ASSISTANCE: Who is eligible for an extension of transition assistance and how do you request an extension?

If there remains a lack of capacity of trained or licensed professionals to meet the requirements of the regulation after the initial six month transition assistance, HUD may approve an extension of transition assistance. Such an extension may be requested from HUD at any time before March 15, 2001. An updated Transition Implementation Plan must either accompany the request for an extension or be submitted to the Department by no later than March 15, 2001. HUD intends to review requests for extensions carefully and consider all available information before granting an extension. The updated Transition Implementation Plan must report:

1. The results of activities to fulfill the initial Transition Implementation Plan including a detailed report on how training was obtained or not obtained for each trained or trained and certified discipline (e.g. sessions funded by the jurisdiction, directives and outreach in response to offers by training providers and the Lead Paint Compliance Assistance Center, monitoring to assess progress by all relevant parties including housing authorities and housing agencies, CBDG-HOME program offices, key CHDO's and contractor community, in reaching capacity, communications with the closest HUD lead hazard control grantee and the state certification and training program, systems for sharing personnel to cover scope of work).

2. The net gap in personnel; and

3. The new plan and schedule for acquiring the missing capacity.

The updated plan must be signed, submitted, and circulated in the same manner as the initial Transition Implementation Plan (as described in T1 above).

T4. DURATION OF TRANSITION ASSISTANCE EXTENSION: What is the duration of the extension of the transition assistance?

The period of the extension will begin on March 15, 2001 and end on the earlier of the expiration date of the jurisdiction's new Annual Consolidated Action Plan, or the time at which a jurisdiction has capacity. For the purposes of this guidance, the "new Annual Consolidated Plan" is the for FY 2001 funds. For example, if a jurisdiction's new Annual Consolidated Action Plan begins on May 1, 2001, that jurisdiction would have a transition assistance extension beginning March 1, 2001 and ending not later than May 15, 2002. However, if adequate capacity is available by August 15, 2001, then the transition extension would end on August 15, 2001.

APPENDIX B

LIST OF KEY TERMS USED IN THE REGULATION

APPENDIX B

LIST OF KEY TERMS USED IN THE REGULATION

Abatement

- Abatement is a measure or a set of measures designed to eliminate lead-based paint hazards or lead-based paint permanently. (Permanent is defined as at least 20 years effective life.)
- Abatement strategies include the removal of lead-based paint, enclosure, encapsulation, replacement of building components coated with lead-based paint, removal of lead-contaminated dust, and removal of lead-contaminated soil or overlaying of soil with a durable covering such as asphalt.
- There are *four* basic methods of abatement for building components with lead-based paint.
  - **Component Replacement** — is the removal of building components that contain lead-based paint. It is most appropriate for removable items such as doors, windows, trim, and cabinets.
  - **Paint Removal** — is the separation of paint from the substrate using safe heat, chemical, or abrasive methods. It may be done on- or off-site. Because it can create a great deal of dust, it is the most hazardous, and thus least preferable, of the approved methods and requires the greatest care and most careful cleanup. It is most appropriate for small surfaces.
  - **Enclosure** — is the installation of a barrier (such as paneling) that is mechanically attached to the building component, with all edges and seams sealed to prevent escape of lead-based paint dust. It is most appropriate for large surfaces such as walls, ceilings, floors, and exteriors.
  - **Encapsulation** — involves a liquid or adhesive material that covers the component and forms a barrier that makes the lead-based paint surface inaccessible by relying upon adhesion. It is most appropriate for most kinds of smooth surfaces but it cannot be used effectively on friction surfaces, surfaces in poor condition, or surfaces that may become wet. It also must be compatible with existing paint.
- There are *three* basic methods for abating lead-contaminated soil.
  - **Soil Removal** — is the removal of at least the top six inches of topsoil and is adequate for most projects. In areas with heavy contamination, up to two feet may have to be removed, and must be disposed of using proper waste management techniques that comply with local requirements. The maximum lead concentration in replacement soil shall not exceed 200 µg/g. Sodding or seeding of the new soil should occur. Waste disposal, site control, and weather delays can affect costs.

- **Soil Cultivation** — is the mixing of low lead soil with high lead soil, and is an appropriate method if the average lead concentration of the soil to be abated is below 1,500 µg/g. Thorough mixing is required, and pilot testing of various techniques may be needed to ensure that thorough mixing does occur. (Rototilling is often not an acceptable method of soil cultivation.) Site control and weather delays can affect cost.

- **Paving** — is covering contaminated soil with high quality concrete or asphalt. Paving is common in high traffic areas, but it not appropriate in play areas. The need for uncontaminated replacement soil is eliminated as are waste disposal costs. Paving often turns out to be the most economical recourse, despite its aesthetic disadvantages.

- All abatement strategies require worksite preparation, cleanup, waste disposal, post-abatement clearance testing, recordkeeping, and, if applicable, monitoring.

Clearance

- Clearance involves a visual assessment and dust testing to determine if:
  - The area is safe for unprotected workers to enter.
  - The area is a safe place for young children to live.
- The visual assessment serves to check that work was completed and properly done.
- The dust testing serves to identify lead-contaminated dust. If clearance results show lead-contaminated dust above the clearance standard is present, the unit has not been adequately cleaned and places children at risk.
- If a unit fails clearance, it must be recleaned. It must pass clearance before it can be reoccupied.

Disclosure

- Disclosure requires most property owners of pre-1978 housing (both subsidized and market rate) to disclose the presence of lead-based paint and provide prospective buyers/tenants with all documentation on known lead-based paint and lead-based paint hazards in the dwelling unit and provide copy of the HUD/EPA/CPSC pamphlet, "Protecting Your Family From Lead in Your Home" (or an equivalent).
- Grantees/subrecipients must provide purchasers and lessees with information regarding any existence of lead-based paint and lead-based paint hazards prior to selling or leasing a residence.
- Sellers must allow purchasers 10 days to inspect the dwelling for lead-based paint or lead-based paint hazards.
- Violations of these disclosure requirements should be reported to the Federal Lead Clearinghouse at 800-424-LEAD (800-424-5323).

Interim Controls

- Interim controls are a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards. Interim controls include repairs, maintenance, painting, temporary containment, specialized cleaning, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

- Unlike abatement (defined below), interim controls require periodic monitoring and reevaluation to ensure that they remain effective in preventing the creation of lead hazards.

- Even though interim controls are only a temporary solution to lead-based paint hazards, they will significantly reduce the risk of lead poisoning among housing residents.

- Interim controls can be performed as part of regular maintenance activities with limited additional effort or cost.

- Interim control methods include:

  - **Paint Stabilization** — Deteriorated paint can be controlled by removing the paint, repainting the surface, or repairing loose or deteriorated substrate materials.

  - **Friction and Impact Surface Treatments** — Friction and impact surfaces that create lead dust, such as windows, doors, stair treads and floors, can be treated by rehanging doors and placing rubber stoppers along impact surfaces, and cushioning window tracks with plastic liners to reduce friction.

  - **Dust Controls** — Lead-contaminated dust can be temporarily controlled by cleaning surfaces to reduce leaded dust levels.

  - **Soil Treatments** — Lead-contaminated soil can be controlled by limiting resident access to it. Two methods include:

    - Covering contaminated surfaces with grass, mulch or other appropriate material; and

    - Land use controls such as fencing or signs.

- **An Example of Interim Controls**. Suppose a window is painted with lead-based paint. While the entire window is often replaced during abatement, an effective interim control would be to install plastic sash track liners. This prevents the generation of leaded dust until the window can be removed and replaced. This method is both relatively easy and inexpensive to implement.

- Individuals performing interim controls must be trained or certified. The new regulation gives several options for meeting the training/certification requirement.

- All interim control strategies require worksite preparation, cleanup, waste disposal, clearance testing, recordkeeping, and monitoring.

Paint Inspection

- ❑ A paint inspection is a surface-by surface investigation to determine the presenc e of lead-based paint on all types of painted surfaces in a dwelling unit. It includes a report that explains the results of the investigation and lists surfaces that are covered with lead-based paint.
- ❑ Paint inspections are not required for any of the activities discussed in this course. They should not be confused with "paint testing" which is a more limited evaluation of specific painted surfaces.

Paint Stabilization

- ❑ Paint stabilization is a way to control the hazard presented by deteriorated paint.
- ❑ It involves removing deteriorated paint using wet methods to reduce dust, repairing loose or deteriorated substrate materials, and applying new paint. The cause of deteriorated paint must also be corrected.
- ❑ Paint stabilization helps to reduce the production of lead-contaminated dust and the accessibility of lead-contaminated paint chips. However, it is a temporary measure that requires ongoing monitoring to be successful.

Paint Testing

- ❑ Paint testing is conducted to identify the lead content of a painted surface.
- ❑ It is conducted using an X-ray fluorescence (XRF) analyzer, or through analysis of paint samples by a lead-accredited lab or a comparable testing technique.
- ❑ Testing must be performed by a trained and certified professional.
- ❑ The results of the paint testing must be documented in writing.
- ❑ The paint testing discussed in this course should not be confused with a "lead-based paint inspection." A lead-based paint inspection is a thorough evaluation of *all* painted surfaces in a dwelling.

Risk Assessment

- ❑ A risk assessment is a thorough examination of a dwelling unit or a property to identify lead-based paint hazards that are present.
- ❑ It involves testing of dust, soil, and deteriorated paint and includes a visual inspection for deteriorated paint and other hazardous conditions. A risk assessment also includes an investigation of the age and history of the housing and occupancy by children under age six.
- ❑ A report is written that explains the results and identifies acceptable abatement and interim control strategies based on specific conditions and the owner's capabilities for controlling identified lead-based paint hazards.
- ❑ It is performed by a certified risk assessor.

Standard Treatments

- Standard treatments are a set of treatments -- abatement or interim controls -- that are performed routinely in housing units to address conditions that are likely to create lead-based paint hazards. Standard treatments do not require any upfront evaluation to identify existing lead-based paint hazards.

- When performing standard treatments the following steps are taken:

  - **Safely Repair Deteriorated Paint**. This is described above under "paint stabilization".

  - **Provide Smooth and Cleanable Horizontal Surfaces**. For example, recoat hardwood floors with polyurethane, replace or recover worn-out linoleum floors, and cover interior window sills with metal or vinyl. Rough, pitted, and porous surfaces trap lead dust and make it difficult to clean these surfaces thoroughly. Smooth horizontal surfaces to make it possible for occupants' regular housekeeping to reduce exposure to lead dust.

  - **Correct Conditions in Which Painted Surfaces are Rubbing, Binding, or Otherwise Produce Dust**. For example, rehang binding doors, install door stops to prevent doors from damaging painted surfaces, and repair and replace loose windows. By correcting conditions that cause rubbing, binding, or other damage to painted surfaces, the integrity of the paint is protected and the generation of lead dust is reduced.

  - **Cover or Restrict Access to Bare Residential Soil**. For example, cover bare soil with gravel, mulch, or sod; or physically restrict access to bare soil.

  - **Specialized Cleaning**. Conduct specialized cleaning of work areas using HEPA vacuums and lead-specific detergents upon completion of treatments above.

  - **Clearance**. After work is completed, clearance examination must be performed in accordance with HUD clearance requirements.

Visual Assessment

- A visual assessment serves to identify deteriorated paint. Because it does not involve any testing to determine the presence of lead, it is not considered a "lead hazard evaluation" method under the regulation. However, it is used in many situations as a simple method to determine whether a unit is suitable for program funding and to identify necessary repairs.

- A visual assessment is a look at interior and exterior painted surfaces for signs of paint deterioration and potential hazards. Housing Quality Standards (HQS) inspectors, other inspectors trained to identify potential hazards, or certified risk assessors can perform this assessment.

- The assessment is similar to the visual paint inspection performed as part of the HQS inspection with a few additional elements.

- The assessment identifies:
  - **Deteriorated Paint**. Deteriorated paint creates chips and dust.
  - **Structural Problems**. Leaks, rotting walls, and other structural defects may cause painted surfaces to deteriorate and create chips and dust.
  - **Evidence of Chewing on Painted Surfaces**. Children may chew on otherwise intact surfaces and ingest lead-based paint.
- Individuals performing visual assessment must be trained to identify deteriorated paint. Training for visual assessment is available on HUD's website at www.hud.gov/offices/lead.
- The inspector should pay particular attention to surfaces that are known to have lead-based paint.
- If any potential lead-based paint hazards are identified, they should be noted on the unit inspection or visual assessment report forms.
- Without paint testing or dust testing, a visual assessment can only identify conditions that may pose lead-based paint hazards because the lead content of the paint is still unknown. Generally, if surfaces have not been tested for lead-based paint, grantees should assume areas contain lead-based paint and have them safely repaired.
- HUD and EPA regulations call for a visual assessment in three different situations:
  1. For some types of housing assistance, HUD requires a visual assessment for deteriorated paint, followed by stabilization of any deteriorated paint surfaces. In this situation, the visual assessment must be done by a person who is trained in visual assessment for deteriorated paint surfaces in accordance with procedures established by HUD (a one-hour course is available on the HUD website); the person does not have to be a certified risk assessor or lead-based paint inspector. Also, the visual assessment in this situation is not considered a form of evaluation in the regulation; therefore there is no requirement for a Notice of Lead Hazard Evaluation associated with this procedure.
  2. HUD also requires a visual assessment as a part of a clearance examination. In this situation, the visual assessment must be done by a person qualified to perform clearance examinations: a certified risk assessor, lead-based paint inspector, or clearance examiner.
  3. EPA requires a visual inspection as part of a risk assessment, so in that situation the visual inspection must be done by a risk assessor.

APPENDIX C

U.S. EPA/HUD/CPSC LEAD-BASED PAINT HAZARD INFORMATION PAMPHLET, “PROTECT YOUR FAMILY FROM LEAD IN YOUR HOME” (April 1999)

APPENDIX D

SAMPLE DISCLOSURE FORM ON INFORMATION OF LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS

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

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) _____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

_____

_____

(ii) _____ 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 (i) or (ii) below):

(i) _____ 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).

_____

_____

(ii) _____ 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. 4852(d) 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 they have provided is true and accurate.

Lessor	Date	Lessor	Date
Lessee	Date	Lessee	Date
Agent	Date	Agent	Date

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement

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.

Seller's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) _____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

_____

(ii) _____ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the seller (check (i) or (ii) below):

(i) _____ Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

_____

(ii) _____ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Purchaser's Acknowledgment (initial)

(c) _____ Purchaser has received copies of all information listed above.

(d) _____ Purchaser has received the pamphlet *Protect Your Family from Lead in Your Home.*

(e) Purchaser has (check (i) or (ii) below):

(i) _____ received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or

(ii) _____ waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Agent's Acknowledgment (initial)

(f) _____ Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852(d) 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 they have provided is true and accurate.

Seller	Date	Seller	Date
Purchaser	Date	Purchaser	Date
Agent	Date	Agent	Date

APPENDIX E

SAMPLE NOTICES OF EVALUATION (OR PRESUMPTION) AND REDUCTION

APPENDIX F

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U.S. Department of Housing and Urban Development
Washington, D.C. 20410

OFFICE OF LEAD-BASED PAINT ABATEMENT
AND POISONING PREVENTION

TO THE READER:

The U.S. Department of Housing and Urban Development (HUD) has issued these *Guidelines For the Evaluation and Control of Lead-Based Paint Hazards in Housing* pursuant to Title X of the Housing and Community Development Act of 1992. This document replaces the 1990 publication, *Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing*.

These new *Guidelines* are based on the most current scientific research. As ongoing studies are completed, HUD expects to issue revisions and updates that will incorporate advances in technology and more cost-effective methods validated by research and experience. For example, HUD and the U.S. Environmental Protection Agency are sponsoring a statistical study to determine whether reliable paint inspections of multi-family properties can be conducted with fewer units than are recommended in Chapter 7. It is planned that the results of that study and any modifications to Chapter 7 will be available in the fall of 1995. HUD is also preparing a more compact version of the Guidelines—a field guide—that is planned for publication in 1996.

Your comments and suggestions on ways to improve the *Guidelines* would be very helpful to the Department in preparing future revisions. Please send comments to: Director, Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD—Room B–133, 451 Seventh Street SW., Washington, DC 20410.

Additional copies of the *Guidelines* are available for a small handling fee from HUD USER at 1–800–245–2691. Revisions and updates will be available from the same source.

U.S. Department of Housing and Urban Development

Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing

June 1995

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Executive Summary

The *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*, hereafter referred to as the *Guidelines*, provide detailed, comprehensive, technical information on how to identify lead-based paint hazards in housing and how to control such hazards safely and efficiently. The goal of this document is to help property owners, private contractors, and Government agencies sharply reduce children's exposure to lead without unnecessarily increasing the cost of housing.

The *Guidelines* address lead hazards posed by paint, dust, and soil in the residential environment. Lead exposures from air emissions, Superfund sites, drinking water, ceramics, home (folk) remedies, cosmetics, food, or other sources are not the focus of this manual.

The *Guidelines* are issued pursuant to Section 1017 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is often referred to as Title X ("Title Ten") because it was enacted as Title X of the Housing and Community Development Act of 1992 (Public Law 102–550). The *Guidelines* are based on the concepts, definitions, and requirements set forth by Congress in Title X.

Section 1017 requires the Secretary of the U.S. Department of Housing and Urban Development (HUD) to issue "guidelines for the conduct of *federally supported work* involving risk assessments, inspections, interim controls, and abatement of lead-based paint hazards" (emphasis added). Therefore, the primary purpose of this document is to provide guidance to people involved in identifying and controlling lead-based paint hazards in housing that is associated with the Federal Government. The *Guidelines* may also be useful to individuals in housing that has no connection with the Federal government, as well as day-care centers and public buildings that exhibit conditions similar to those in residential structures.

This document replaces *Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing*, which was issued by HUD in 1990. The *Guidelines* do not replace the *Lead-Based Paint Risk Assessment Protocol*, which applies only to the public and Indian housing program and was published in June 1992. The risk assessment procedures in the *Guidelines* are similar to those of the 1992 document, but the management systems of public and Indian housing authorities require slightly different risk assessment tools.

The *Guidelines* complement regulations, other directives, and other guidelines to be issued by HUD, the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor, and the Centers for Disease Control and Prevention (CDC) of the U.S. Department of Health and Human Services. Other Federal agencies and State and local governments may also issue regulations and directives pertaining to housing under their jurisdictions. Regulations generally specify minimum requirements for *what* work must be done, *when* the work must be done, and what training and certification workers must have. Certain basic standards as to *how* the work must be done are also usually specified. The *Guidelines* provide more complete guidance than do regulations on *how* activities related to lead-based paint should be carried out and *why* certain measures are recommended. The *Guidelines* are not enforceable by law unless a Federal, State, or local statute or regulation requires adherence to certain parts of this document.

HUD prepared the *Guidelines* in close consultation with EPA, CDC, OSHA, and several other Federal agencies. Most of the writing was done by the National Center for Lead-Safe Housing, with the help of numerous experts and practitioners who served as writers and reviewers.

Readers should be aware that lead hazard control is a rapidly changing field in which new products, methods, procedures, and standards are introduced frequently. The *Guidelines* will therefore be updated periodically, as research and experience provide new information, as technology advances, and as Federal regulations are revised. HUD welcomes comments and suggestions on ways to improve these *Guidelines*. Please send written comments to:

Director, Office of Lead-Based Paint
Abatement and Poisoning Prevention
U.S. Department of Housing and
Urban Development
451 Seventh Street SW., Room B–133
Washington, DC 20410

I. Childhood Lead Poisoning

Childhood lead poisoning has been labeled by CDC as "the number one environmental health hazard facing American children." Current evidence shows that 8.9 percent of American children under age 6 have blood lead levels greater than 10 μg/dL, which is CDC's current threshold of concern (Brody, 1994; Perkle, 1994). Of greatest concern are changes in the brain that cause reductions in IQ and attention span, reading and learning disabilities, hyperactivity, and behavior problems. Adult workers who are exposed to lead also suffer a variety of health problems. Pregnant workers and their fetuses are at special risk.

Because lead has been successfully removed from gasoline and food, CDC believes the foremost source of lead in the environments of young children is house paint applied before the 1978 ban on lead-based paint for residential and consumer use. Closely associated sources of lead are lead-contaminated dust and soil.

II. The Title X Framework

The most difficult question in lead-based paint hazard control derives from resource limitations: How can the cost-effectiveness of lead hazard control be maximized so children's lead exposure in housing can be sharply reduced without unnecessarily adding to the cost of housing?

In confronting this problem, Congress provided in Title X a framework to allow governmental officials, property owners, participants in the real estate industry, and specialists in lead-based paint hazard control to tailor sensible and effective lead hazard control programs to fit the financial and environmental conditions of specific properties. In effect, the immediate goal is to make housing lead-safe rather than lead-free.

This framework, however, is not simple. With the flexibility needed for practicality and cost-effectiveness comes complexity. And with complexity comes the need to learn, share information, and continually improve methods.

III. Definition of "Lead-Based Paint Hazard"

Title X redefines the concept of "lead-based paint hazards." Under prior Federal legislation, a lead-based paint hazard was any paint containing 1 mg/cm^2 of lead or more, regardless of paint condition or location. Title X states that a lead-based paint hazard is "any condition that causes *exposure* to lead . . . that would result in adverse human health effects" and that comes from:

- Lead-contaminated dust.
- Bare, lead-contaminated soil.
- Lead-contaminated paint that is deteriorated or present on accessible, friction, or impact surfaces.

Thus, under this definition, intact lead-based paint on most walls and ceilings would not be considered a "hazard," although the paint should be maintained and its condition monitored to ensure that it does not deteriorate and become a hazard.

Title X acknowledges that some lead-based paint hazards are of more immediate concern than others. In these *Guidelines*, the hazards

considered to be of greatest immediate concern are those to which children are most frequently exposed: lead-contaminated dust; deteriorated lead-based paint; and lead-contaminated soil if it is bare, accessible to young children, and/or likely to be blown or tracked into the dwelling. Also of concern are friction, chewable, and impact surfaces with intact lead-based paint. Friction surfaces are subject to abrasion and may generate lead-contaminated dust in the dwelling; chewable surfaces are protruding surfaces that are easily chewed on by young children; and impact surfaces may become deteriorated through forceful contact. Intact lead-based paint on flat surfaces not subject to abrasion, impact, or other disturbances, although of less concern, is still a potential hazard because the paint could deteriorate over time, as a result of age, disturbance (through renovation and repair), or major casualty (such as fire, storms, and water leaks).

Although most efforts to reduce lead hazards in housing will now be aimed at controlling lead-based paint hazards as defined by Title X, there is one notable exception: in public and Indian housing, all lead-based paint must be abated when the housing is renovated or remodeled.

Lead-based paint is any paint, varnish, stain, or other applied coating that has 1 mg/cm^2 (or 5,000 µg/g by dry weight) or more of lead. For the purposes of these *Guidelines*, the terms "leaded paint" and "lead-containing paint" are synonymous with "lead-based paint."

IV. Lead Hazard Control Process

The process of controlling lead hazards begins with suggestions on how property owners can tailor lead poisoning prevention efforts to their own unique dwellings.

A. Planning

In buildings constructed after 1978, it is very unlikely that lead-based paint hazards are present. No further action is recommended, unless a child with an elevated blood lead level is identified. The older the dwelling, the more prevalent and concentrated the lead-based paint. The prevalence of lead-based paint in housing built before 1940 is especially high; after 1940 the use of lead in paint declined steadily. The condition of the building (i.e., its paint and substrates coated with that paint), its projected service life, and funding availability also bear directly on the owner's decision about a specific course of action.

B. Lead Hazard Evaluation

Most lead hazard control efforts begin with an evaluation of the nature and extent of the problem. Evaluations of lead hazards should be conducted through risk assessments, paint inspections, or a combination risk assessment/paint inspection. A risk assessment is an onsite investigation of a residential building to determine the location, severity, and nature of lead-based paint hazards and includes (but may not be limited to) a visual inspection to determine the condition of painted surfaces, the need for structural repairs, and locations for dust, soil, and paint sampling; limited environmental sampling of dust, soil, and deteriorated paint; and a report of the results that identifies acceptable abatement or interim control strategies for controlling any lead-based paint hazards. Risk assessments and inspections can be combined (see Chapters 3 and 5). A paint inspection "means a surface-by-surface investigation of all painted surfaces—interior and exterior, in common areas of multifamily buildings as well as in dwelling units—using portable x-ray fluorescence paint analyzers or laboratory analysis of paint samples to determine the presence of lead-based paint, and the provision of a report on the results."

Inspections to identify the presence of lead-based paint should not be confused with clearance examinations, risk assessments, or investigations of homes with lead-poisoned children. These *Guidelines* also describe a lead hazard screen risk assessment for dwellings in good condition that are unlikely to contain lead hazards (see Chapter 5). This flexibility reduces the cost of evaluating lead hazards.

Paint inspections are particularly useful in developing plans to conduct abatement during renovation or remodeling activities, while risk assessments are often used to confirm that no lead hazards exist or to guide interim control efforts if hazards are identified. Combining these approaches has the advantage of identifying both immediate and potential hazards so owners can understand what work must be done immediately and what work can be done at later, more convenient times (for example, vacancy and rehabilitation).

The *Guidelines* provide detailed procedures and forms for completing both risk assessments and inspections. Slightly different procedures are recommended for owner-occupants and owners of large and small rental properties.

If an owner decides to bypass the evaluation process and correct suspected lead hazards, a clearance process is needed to ensure that all lead-based paint hazards were actually corrected and that leaded dust and soil levels remaining at the conclusion of the project are acceptable. Some jurisdictions, HUD regulations, or EPA regulations may require risk assessments, inspections, and/or clearance examinations. Successful completion of the process may require a certificate documenting the status of the dwelling.

C. Lead Hazard Control

In the Title X framework, there are three types of lead hazard control: interim controls, abatement of lead-based paint hazards, and complete abatement of all lead-based paint. Interim controls are designed to address hazards quickly, inexpensively, and temporarily, while abatement is intended to produce a permanent solution. In the *Guidelines*, "permanent" means having an expected life of at least 20 years.

Interim controls, according to Title X, "means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning" (to reduce lead-contaminated dust), "repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs." Interim controls include dust removal, paint film stabilization, and treatment of friction and impact surfaces. Interim controls are appropriate for implementation on a broad scale and may prove cost effective in many cases. Whenever interim controls are employed, ongoing monitoring of lead hazards must be undertaken by the property owner because lead-based paint may still be present and may become hazardous in the future.

Abatement of lead-based paint hazards, according to Title X, "means any set of measures designed to permanently eliminate lead-based paint hazards . . ." Such measures may include "(A) the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil; and (B) all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures." Consistent with its focus on lead-based paint hazards, Title X has redefined the term "abatement" to mean the elimination of "lead-based paint hazards," not necessarily all lead-based paint.

Complete abatement of lead-based paint means the permanent elimination of all lead-based paint, interior or exterior, intact or not intact, using the same methods as those included in the definition of abatement of lead-based paint hazards. Title X requires this for public and Indian housing (leaving unchanged the statutory requirements that have been in place since 1987). Specifically, all pre-1978 public and Indian housing must be inspected, and all lead-based paint identified must be abated (not just lead-based paint hazards). While there is no explicit deadline, abatement in public and Indian housing usually occurs during rehabilitation.

The *Guidelines* take a performance-oriented approach to lead hazard control work. Any construction material or method that meets the performance criteria for interim control or

abatement work is acceptable as long as residents and workers are protected, clearance standards are met, the methods used are not expressly prohibited, waste is properly managed, and the effectiveness of the measure is evaluated over time. This permits innovation and should reduce costs.

All interim controls and some abatement methods require ongoing monitoring by owners and residents as well as periodic reevaluation by a certified professional.

As with risk assessment and inspection, a combination of approaches is often best to address lead-based paint in the most cost-effective way in a particular dwelling. For example, it may make sense to stabilize the paint on trim (an interim control), while replacing windows in the same dwelling (an abatement measure). The owner may decide to replace only parts of the windows, such as the sashes and/or interior window sills (sometimes known as stools). Since each case is different, owners are encouraged to seek professional guidance from certified risk assessors and certified abatement supervisors to determine which strategy is best. Risk assessments can target lead hazards and make controls more cost-effective.

Whenever building components such as doors and windows are replaced, the *Guidelines* recommend that they be replaced with products that are more energy efficient. This will help reduce energy consumption and also reduce the length of time it takes for new components to pay for themselves.

1. Encapsulation

Encapsulants include coatings and rigid coverings that are bonded to the existing paint film with an adhesive (they are not mechanically fastened). Because encapsulants rely on adhesion to the existing paint film, their durability depends on the properties of the existing substrate coating. The standards indicated in Title X (Section 1051) defining encapsulant performance have not yet been promulgated. Encapsulants should not be confused with permanent enclosure systems, which are mechanically fastened to the structural system (and not dependent on the substrate coating for their durability) and can be expected to last at least 20 years.

2. Prohibited Methods

Some paint removal methods are known to be extremely dangerous in the residential setting and are prohibited. Prohibited methods include open-flame burning or torching, machine sanding or grinding without a high-efficiency particulate air (HEPA) vacuum exhaust tool, uncontained hydroblasting or high-pressure washing, abrasive blasting or sandblasting without HEPA vacuum exhaust tools, and heat guns that operate above 1,100°F. In addition, HUD does not recommend the on-site use of methylene chloride chemical strippers or dry scraping (except for limited areas). Safer alternative measures that make all these techniques unnecessary are available.

D. Preparation

Before control measures can actually be implemented, a few other planning steps are necessary. The *Guidelines* specifically recommend how to prepare worksites to protect residents. Under certain circumstances, occupants can remain inside the dwelling during the work (although they are never to be permitted within the work area itself while work is under way). A written compliance plan needs to be developed by the lead hazard control contractor/supervisor to comply with the worker protection requirements of the OSHA Lead in Construction Standard.

All abatement workers need to be properly trained by an accredited training provider. Untrained workers can worsen conditions. EPA has developed a training curriculum designed to teach workers to conduct their trade in a lead-safe manner.

The waste that will be generated from the project may also need to be tested and evaluated to determine whether it is hazardous. Both worker protection and hazardous waste requirements are strictly enforced.

E. Cleaning and Clearance

After the work has been completed, thorough cleaning is needed. For dust removal alone, all horizontal surfaces should be vacuumed with a HEPA vacuum and then washed with a lead-specific cleaning agent, trisodium phosphate detergent, or other suitable cleaner. For more involved abatement work, cleaning should be done by HEPA vacuuming all horizontal and vertical surfaces, wet washing, and a final HEPA vacuuming. Work should proceed from clean to dirty areas to prevent recontamination. After cleaning, clearance examinations should always be conducted by certified risk assessors or certified inspector technicians. The clearance examination involves a confirmation that the work was completed, a visual assessment for visible dust, and dust (and perhaps soil) sampling. HUD and EPA have established specific leaded dust standards for clearance purposes. If an owner chooses to bypass the evaluation (going straight to hazard control), a certified risk assessor should perform the clearance examination to ensure that all hazards were addressed and that remaining levels of leaded dust are acceptable.

F. Reevaluation

Some dwellings and control measures will require periodic reevaluations by a certified risk assessor to ensure that hazards have not reappeared. The *Guidelines* provide specific recommended schedules defining the frequency of reevaluations.

V. Other Issues

The *Guidelines* also include information on the special procedures for investigating a lead-poisoned child. This type of investigation is very different from the risk assessment or inspection process described earlier, which are related to the condition of a dwelling rather than the health of an individual child. Investigations of lead-poisoned children should involve close collaboration with the local health department, which may have primary authority over housing conditions and may require sampling for many more sources of lead than would be carried out in a routine risk assessment or paint inspection. Further guidance on this issue will be provided by CDC.

Finally, the *Guidelines* interpret historic preservation requirements and suggest safe procedures for maintenance activities that may disturb surfaces containing lead-based paint.

VI. Innovation and Cost-Effectiveness

Considerable research and innovation is under way. Future editions of these *Guidelines* will incorporate the results of these efforts. The *Guidelines* are a report on state-of-the-art procedures for all aspects of lead-based paint hazard evaluation and control.

Within certain regulatory limits and program funding requirements, the *Guidelines* are a performance-oriented document. At the most basic level, owners can conduct lead hazard control work any way they choose, as long as they protect workers and occupants, comply with clearance standards, monitor over time the effectiveness of the control measures implemented, and do not use prohibited methods. In short, these *Guidelines* describe the best known ways to perform lead hazard control work. The *Guidelines* also permit the flexibility needed to address different kinds of housing and identify specific cost-saving measures to make primary prevention of lead poisoning a reality in millions of homes across the country.

APPENDIX G

LEAD-BASED PAINT HAZARD CONTROL GRANT PROGRAM

APPENDIX H

LIST OF OSHA REGIONAL OFFICES

APPENDIX I

OSHA "LEAD IN CONSTRUCTION" PAMPHLET AND FACT SHEETS

APPENDIX J

LIST OF LABORATORIES ACCREDITED BY THE NATIONAL LEAD LABORATORY ACCREDITATION PROGRAM (NLLAP)

APPENDIX K

INSPECTION CHECKLIST
(SECTION 8 TENANT-BASED ASSISTANCE)

APPENDIX L

ANSWERS TO SELF TEST EXERCISES

(a) Exercise 4-1:Determining the Level of Assistance

(b) Chapter 4: Rehabilitation Self Test Exercise

(c) Chapter 5: TBRA Self Test Exercise

(d) Chapter 6: Homebuyer Self Test Exercise

(e) Chapter 8: Exercises

Module A — Handout #A2: Case Study — Assessing Capacity in Homeville
Module B — Handout #B3: Exercise — Interpreting Evaluation Results
Module B — Handout #B9: Sample Evaluation Reports
Module C — Handout #C2: Exercise — Presume Lead-Based Paint or Evaluate?
Module D — Handout #D1: Worksheet 1
Handout #D1: Worksheet 2

ANSWERS TO EXERCISE 4-1– CALCULATING THE LEVEL OF ASSISTANCE

Three Levels of Rehabilitation Assistance		
A	≤ $5000	Visual evaluation and have a safe work place
B	$5000 - $25,000	Risk assessment and interim controls
C	> $25,000	Risk assessment and abatement

1. In the examples below, families receive Federal funds to help purchase and rehabilitate a home. The table summarizes the amount of Federal assistance received and the hard costs of the planned rehabilitation.

Federal Assistance	*Rehabilitation Costs (Hard Costs Only)*	*Level of Rehabilitation Assistance (A, B, or C)*
$2,000	*$10,000*	*A*
$10,000	*$20,000*	*B*
$5,000	*$50,000*	*A*
$26,000	*$10,000*	*B*

2. The Newtown Community Development Corporation (NCDC) is acquiring and rehabilitating a property to develop 20 rental units.

NCDC has applied for and received a low interest loan through the HOME program as well as some foundation funding. Of the 20 units, 10 will be HOME-assisted. The rest will be market rate units. The projects sources and uses are listed below.

Sources		*Uses*	
HOME	*300,000*	*Acquisition*	*200,000*
Foundation	*60,000*	*Hard Costs*	*170,000*
NCDC Equity	*20,000*	➢ *HOME-assisted units*	*75,000*
	$380,000	➢ *Market-rate units*	*75,000*
		➢ *Common areas*	*20,000*
		Soft Costs	*10,000*
			380,000

Per Unit Rehabilitation Hard Costs = A/NU + B/TU

Where:

A = Federal Rehabilitation Assistance for all assisted units
B = Federal Rehabilitation Assistance for common areas and exterior painted surfaces
NU = Number of Federally assisted units
TU = Total number of units in the property

Calculate the hard costs for rehabilitation per unit using the information provided above.

75,000/10 units + 20,000/20 units = 7,500 + 1,000 = $8,500

(Note: The source of funds is not relevant to this calculation)

b) Calculate the per unit Federal Assistance using the information provided above.

Total Federal Contribution is $300,000. $300,000/10 units = $30,000 per unit

(Note: the uses of funds is not relevant to this calculation)

c) What is the level of assistance?

Take the lesser of $30,000 and $8,500 – the level of assistance is $8,500 (or Category B).

ANSWERS TO REHABILITATION — SELF TEST EXERCISES (CHAPTER 4)

Exercise # 1: Rehabilitation Of A Rental Property

The Scenario:

A three-unit property, built in 1954 in a mostly residential neighborhood is occupied by three families. Two of the units have families with children under age six and the third is occupied by and elderly woman who lives alone.

The kitchen and the bathroom in each unit are long overdue for improvements and there is peeling paint on various components throughout the units. All of the units have the original casement windows. The unit on the first floor has water stains on the ceiling.

The owner estimates that it will cost $45,000 to repair the building and has applied to the city's CDBG program for a $40,000 loan to cover the majority of the costs. The owner will contribute the remaining $5,000.

Questions**:**

1. What is the level of rehabilitation assistance to these units?

   $13,333

2. What are the lead hazard evaluation and reduction requirements for these units? Are there any alternatives?

   Paint testing/risk assessment and interim controls OR standard treatments

3. If a lead hazard evaluation is performed and lead hazards are found, what are the activities required to meet the new requirements?

   Notification to the tenants, interim controls using safe work practices, clearance. Relocation may be necessary.

4. Without considering lead hazard reduction, what items is the owner likely to have identified for repair?

   New cabinetry, new appliances, new floors, repainting, plumbing

5. What other repairs are likely to be needed due to the lead requirements?

   Friction and impact treatments on windows and doors.

   Repainting (paint stabilization) should be done in a safe manner

   Treat accessible surfaces by removing paint, covering, or removing old components and replacing with new ones.

6. What extra steps must the property owner take when performing this work?

   Hire a qualified contractor

   Work site containment (and possibly relocation)

   Safe work practices

   Clean-up using HEPA vacuum and wet methods

   Hire a clearance inspector

Exercise # 2: The Yorktown Rental Rehabilitation Program

The Scenario:

The City of Yorktown offers a Rental Rehabilitation Program that uses HOME funds to make low interest loans to owners of rental properties of less than 12 units.

The Rental Rehabilitation Program typically makes 25 loans each year. The average size of the loan is $22,000. The average per unit rehabilitation costs for the program is $6,000.

The Rental Rehabilitation Program has a staff of 4 including 2 rehabilitation specialists, an HQS inspector, 2 compliance staff. Yorktown has many contractors who perform rehab work. Three contractors, in particular, have worked extensively on Rental Rehabilitation Program projects. Yorktown has one risk assessor and two abatement contractors.

Lead-based paint is known to be common in both the single-family and multifamily housing stock in Yorktown. Just over one- third of the multifamily buildings were built before 1940. The City's health department offers a blood lead screening program and has a team that goes out to evaluate homes for lead when a child is found to have unsafe levels of lead in his or her blood.

Questions:

The staff at Yorktown's Rental Rehabilitation Program must prepare to implement the new lead-based paint requirements. They have called you to ask for advice on the following:

These questions are for discussion purposes. There are no right answers. Make sure that as you debrief the exercise, the following items are touched on.

1. In planning to meet the new lead-based paint requirements, what additional information should they gather? Indicate some possible sources.

   Some ideas include: Availability of contractors, training opportunities, prevalence of lead, the health department's efforts and what they have learned.

2. Are there aspects of their program design that they should reexamine? If so, indicate which aspects and the types of changes that they should examine.

   The size of their rehabilitation loans, the use of contractors vs. in-house people to perform various functions, their communications with the property owners.

3. Should they continue to target the same type of property? Make the same size loans?

   This is question is debatable. Weigh housing needs vs. costs of hazard reduction.

4. Do any of the program staff need training? If so, make specific recommendations about courses.

   Yes. Rehabilitation specialist should get some training (as risk assessors or abatement supervisors). HQS inspector might want to get trained in clearance.

ANSWERS TO
TENANT-BASED RENTAL ASSISTANCE – SELF- TEST EXERCISES

Scenario One:

Four families are moving into a two-story apartment building constructed in 1958 and owned by Interstate Housing. The kitchens in units 1 and 2 have peeling paint. The Cross Village Housing Corporation administers a tenant-based rental assistance (TBRA) program supported with HOME funds. The agency has agreed to provide TBRA to all four families.

Unit 1	A couple with one 5-year-old and one 7-year-old.
Unit 2	A single woman, age 30.
Unit 3	An elderly couple.
Unit 4	A single woman with one 11-year-old.

Please answer the following questions:

1. Which unit/s must be notified about lead-based paint hazards?

   All units must be notified about lead-based paint hazards under disclosure requirements for housing receiving federal assistance.

2. Which unit/s must be assessed for deteriorated paint?

   All units must comply with HQS or equivalent standards, which require an assessment for deteriorated paint.

3. In which unit/s must clearance be performed?

   Clearance is a new requirement that must be performed in Unit 1, which has a child under age six.

4. When, from whom, and in what form (written, oral, etc.) do occupants first receive information about lead-based paint hazards?

   Interstate Housing (the owner) must provide occupants with the written lead-based paint hazard information pamphlet before move-in. The Cross Village Housing Corporation also can provide this pamphlet and additional education during the occupant briefing, which takes place when occupants receive their coupons.

5. During unit approval, what activities must the Cross Village Housing Corporation ensure happen in the appropriate unit to identify and correct potential lead-based paint hazards?

   The Cross Village Housing Corporation must ensure that the property inspection includes a visual assessment for deteriorated paint. If deteriorated paint is identified, the Cross Village Housing Corporation should instruct the owner to stabilize the paint.

6. What instructions should the Cross Village Housing Corporation provide to the property owner about these lead-based paint hazard activities during unit approval?

   The Cross Village Housing Corporation should instruct the owner to use safe work practices during any lead hazard reduction. Safe work practices include occupant protection, worksite preparation, safe treatment methods and cleanup. The Cross Village Housing Corporation also should inform the owner that lead hazard reduction must be complete and clearance achieved within 30 days of notice of visual assessment results.

7. What recourse does the Cross Village Housing Corporation have if the owner refuses to comply with instructions regarding lead-based paint hazards?

   The Cross Village Housing Corporation can terminate TBRA assistance for owners who do not comply with requirements. Since this action requires relocation of occupants, TBRA administering agencies can help prepare the occupants and assist with identification of another appropriate unit.

8. How do occupants learn about lead-based paint activities that occur during unit approval?

   Interstate Housing (the owner) is responsible for notifying occupants about any lead hazard evaluation, lead hazard reduction and clearance activities that occur during unit approval

9. What activity signifies that lead-based paint hazard reduction is complete?

   Completion of a successful clearance inspection signifies that lead hazard reduction is complete.

10. What three activities relating to lead-based paint hazards should occur on an ongoing basis after move-in? (Hint: One activity is the property owner's responsibility and two are the TBRA agency's responsibility.)

    Interstate Housing (the property owner) is responsible for ongoing maintenance that ensures housing safe from lead hazards. The Cross Village Housing Corporation is responsible for ongoing inspections that include a visual assessment for deteriorated paint. The Cross Village Housing Corporation has an additional responsibility to help prevent and respond to children with an environmental intervention blood lead level . Specific environmental intervention blood lead level requirements are explained in detail in scenario 2.

Scenario Two:

Nicole and her 5-year-old daughter Sally use Shelter Plus Care TBRA funds at Bedrock Garden apartments. The City of Paint Branch administers the TBRA program.

Nicole just received a call from the secretary at Sally's school explaining that a recent blood test shows Sally has lead in her blood that exceeds the environmental intervention blood lead level. Nicole reports this information to staff at Paint Branch.

Paint Branch staff recently learned about changes required when identifying and responding to children with an environmental intervention blood lead level. The new requirements seek to protect children who are exposed to lead-based paint hazards.

Please answer the following questions:

1. Since neither Sally nor the school secretary is a medical health care provider, what should Paint Branch staff do to verify the information about the blood sample?

   Paint Branch staff should verify the information with the public health department.

2. To whom and when must Paint Branch report the name and address of the child with the environmental intervention blood lead level?

   Paint Branch staff should report the name and address of the environmental intervention blood lead level child to the public health department within five days of receiving notice from another source.

3. What activity should Paint Branch staff begin in the unit in response to the environmental intervention blood lead level and within what timeframe?

   Paint Branch staff must conduct a risk assessment within 15 days of notification of the environmental intervention blood lead level child. At this time, the city also may inform the Bedrock Garden property owner about its responsibility for potential lead hazard reduction activities.

4. What happens in the unit if Nicole and her daughter move out of Bedrock Gardens after the blood samples were taken?

   If another family receiving TBRA has moved into the unit or plans to move into the unit, the same requirements apply as if Nicole and her daughter were still living in the unit (e.g. risk assessment and potential lead hazard reduction activities).

5. Once Paint Branch receives a risk assessment report in a unit occupied by a child with an environmental intervention blood lead level, what are the city's obligations to the owner and the occupants?

   Paint Branch staff should provide the Bedrock Garden property owner with a copy of the risk assessment report and the owner should provide occupants notice of this report.

6. Who should perform lead hazard reduction activities if the risk assessment report identifies lead-based paint hazards in the apartment and within what timeframe?

   The Bedrock Garden property owner must conduct and complete lead hazard reduction (either interim controls or abatement) within 30 days of receiving the assessment report.

7. What activity signifies that lead-based paint hazard reduction activities are complete?

   Lead hazard reduction is complete when clearance is achieved.

8. What three activities are required of Paint Branch regarding matching TBRA program data with environmental intervention blood lead level children?

   At least quarterly, Paint Branch should

   1) *Request environmental intervention blood lead level data from their public health department*
   2) *Send list of families receiving TBRA data to their public health department*
   3) *Compare environmental intervention blood lead level data with TBRA data to see if a match occurs. A match exists when a child identified as having an environmental intervention blood lead level is part of a family receiving TBRA funds from the agency. If a match occurs, the city must begin environmental intervention blood lead level activity requirements (e.g. reporting the match to the public health department, conducting a risk assessment, etc.).*

   Note: Paint Branch does not need to send TBRA data to the health department if the health departments states it does not want the information. Also, the city does not need to conduct the match if the public health conducts the match.

Sharing and Comparing Data.

As part of the quarterly sharing and comparing requirement to identify poisoned children, the AnyState Department of Health (a TBRA administering agency) has received List A from the Public Health Department and has prepared List B from its TBRA files. The lists include:

- Addresses from the public health department of children less than six years old with an identified environmental intervention blood lead level
- Addresses of households with children under age six receiving TBRA assistance from AnyState Department of Health

Please complete the following:

- Compare the lists.
- Identify any matches.
- Describe next steps required.

A. Public Health Department data	B. Units receiving TBRA with children under age six
1700 K Street, SW, Apt. 25 Hometown, AS 33333 333 University Place., Apt. 210 Hometown, AS 33347 4200 Main Street, Apt. 7 Silver City, AS 33201 12 Jessup Lane, Apt. 17 Silver City, AS 33556 1901 West Street, Apt. 3 Hometown, AS 33306 222 Fort Rigg Drive, Apt. 377 Silver City, AS 33215	Marigold family 333 Porter Street, Apt. 36 Silver City, AS 33215 Holden family 1700 K Street, SW, Apt. 30 Hometown, AS 33333 Natcher family 4200 Main Street, Apt. 10 Silver City, AS 33201 Smith family 12 Jessup Lane, Apt. 17 Silver City, AS 33556 Tenley family 222 Foster Lane, Apt. 12 Hometown, AS 33310

1. Compare the lists.

   Note: The Public Health Department decided not to use names of children with an identified environmental intervention blood lead level to maintain privacy. The Department could have sent names without addresses or sent both names and addresses.

   The AnyState TBRA data is a subset that includes only applicable families with children under age six.

2. Identify any matches.

   One match exists: The Smith Family at 12 Jessup Lane, Apt, 17 in Silver City, AS is on both lists.

3. Describe next steps required.

   The TBRA must 1) notify the health department of the match within 5 days, 2) conduct a risk assessment in the unit within 15 days and 3) instruct the property owner to correct potential lead-based paint hazards within 30 days of receiving

ANSWERS TO HOMEBUYER PROGRAM – EXERCISE

Lead-Based Paint Requirements for Homeownership Programs

Answer the following questions.

1. Mary and Matt have been trying to buy a home for several years. They are referred to your downpayment assistance program by a local lender. They are qualified for your program and soon after select a home. Mary and Matt have read the information pamphlet provided by your program staff. Since they hope to start a family soon, they have decided to conduct a risk assessment. During the risk assessment lead-based paint hazards are identified. What are their options as the potential homeowners? What are your options as the administering agency? What guidance can you give them?

   Homeowner:

   - *Select another home*
   - *Renegotiate contract for repairs and responsibility*

   Agency:

   - *Provide assistance for lead hazard reduction and rehabilitation*
   - *Help homebuyer to select another home*

2. Sam and Sally are participating in a HOME-funded homebuyer program. They have identified a home and it has just gone through inspection. During the inspection the inspector found deteriorated paint in the kitchen. The homebuyer hires Paint Plus Contractors to conduct the paint stabilization.

   Does the individual doing the paint stabilization need any special training?

   This person must be supervised by a certified abatement supervisor or have successfully completed one of the courses listed on p. 6-11. (Further, as in any work place, the worker must have been informed about the hazards of lead-based paint, in accordance with OSHA's Hazard Communications rule.)

   Can this same individual conduct clearance?

   No. Paint Plus cannot perform the work and the clearance. Sam and Sally should hire an independent clearance inspector.

   Can another individual from Paint Plus conduct clearance?

   No. See previous answer.

   Suppose you have an agency employee conduct the paint stabilization for Sam and Sally. Can this agency employee also conduct clearance?

   No. The agency may use in-house employees to do the paint stabilization and the clearance but the same person may not do both.

   Can another individual from the administering agency conduct clearance?

   Yes. See previous answer.

3. Tasha and Tom are participating in your downpayment assistance program. They have identified a home and it has just gone through inspection. During the inspection, the inspector found deteriorated paint in the bathroom, some leaky pipes, and some damage to the staircase.

Since the home is suitable otherwise, your agency has decided to provide the applicant with a low interest loan of $4,000 to make the repairs. Does the provision of this rehabilitation loan affect the lead-based paint requirements? If so, how?

No. Because the rehabilitation assistance is less than $5000, there are not additional requirements.

Suppose the damage was more extensive and rehabilitation loan was for $6,000. Would this affect the lead-based paint requirements? How?

Yes, they must now follow the more extensive requirements of Subpart J Rehabilitation.

4. Indicate whether the following are true or false.

Using a water mister when sanding is a prohibited method of paint removal	__*F*___
Paint that is loose but not chipped or cracked does not need to be stabilized	__*F*___
Safe work practic es are not required when treating areas smaller than a total of two square feet per room.	__*T*___
The administering agency has 30 calendar days in which to notify the Homebuyer of the results of the clearance examination.	__*F*___

5. The city of Dodge provides HOME funds to ABC Housing Opportunities Inc., a nonprofit, to run a homebuyer program that provides downpayment and closing cost assistance to low income borrowers. Dodge has a reasonable supply of affordable homes but many need small repairs to meet HOME Program property standards. Accordingly, ABC also makes rehabilitation loans, up to $10,000 to qualifying homebuyers.

   ABC contracts with a home inspector to perform home inspections for all program participants. In cases where repairs are needed, ABC encourages the homebuyers to hire their own contractors for the work, however, ABC does maintain a list of contractors and will assist the homebuyers in finding contractors.

   As the City of Dodge prepares to implement the new lead-based paint requirements, what do they need to tell ABC about the changes and what recommendations should they make to ABC about the design of their program?

   Some items to think about:

   What do ABC staff need to know about the lead requirements?

   The staff need to know what the lead requirements are, how to oversee interim controls and standard treatments, how to enforce safe work requirements and clearance.

Will ABC need additional capacity to address the lead-based paint requirements? Should they hire new staff or use new contractors?

They don't need new staff but the staff need training. They may want to train staff as lead sampling technicians (called clearance technicians in the HUD regulation) or even as abatement supervisors.

They might choose to hire lead sampling technicians as contractors. They will also have to make sure that homebuyers hire appropriately trained contractors to perform risk assessments and interim controls or standard treatments.

What does the home inspector need to know about lead requirements?

The home inspector needs to be able to identify deteriorated paint.

Can ABC continue to use the same list of contractors?

No. Contractors must be qualified to perform interim controls.

Should ABC continue to make housing rehabilitation loans?

This is a question for debate. Point out that loans less than $5,000 do not create new requirements but loans over.

ANSWERS TO CHAPTER 8 EXERCISES – MODULE A

HANDOUT #A2: CASE STUDY – ASSESSING CAPACITY IN HOMEVILLE

Homeville Background

Homeville is a mid-size metropolitan city (population 140,000) that has had a redevelopment program for over 30 years. Most of the housing stock that is rehabilitated by the city was built before 1950. The City of Homeville has a rental program that normally has a production rate of 120 rental units per year.

Staffing

Homeville's Neighborhood Development Division has a staff of ten individuals, four of whom are construction rehabilitation specialists. The construction staff is responsible for initial walkthroughs, developing and creating work item lists and monitoring the work during construction. The construction specialists also perform all necessary HQS and Minimum Property Standards inspections. They are well versed in the BOCA standards and the city's codes. Most projects are completed by local contractors who understand the complexities of working with federal funds and are sensitive to low-income clients' needs.

Homeville's Rental Program

Homeville's rental program is funded by the CDBG program and operated by the city. The program provides up to $8,000 in rehabilitation funds per unit to supplement the owner's contribution. The funds are forgiven over a five-year period after the date of completion. The owner must keep the property up to code and rent the apartments at affordable rents as defined by HUD during the five-year period.

Planning for Next Year

Homeville is putting together the budget for next year and expects to rehabilitate the same number of units as last year (120) with the same budget amounts and match caps per unit.

Discuss the following:

1. What additional personnel and contractors does Homeville need? Check all that apply:

- ❑ Inspectors trained in visual assessment
- ❑ Lead-based paint inspectors
- ❑ Risk assessors
- ❑ Trained workers
- ❑ Relocation specialist
- ❑ _____
- ❑ _____
- ❑ _____
- ❑ Abatement workers
- ❑ Abatement supervisors
- ❑ Clearance examiners
- ❑ Project designers
- ❑ _____
- ❑ _____
- ❑ _____
- ❑ _____

2. Think about the different certified personnel needed for various lead jobs.

a. Do you think the city should train in-house staff, contract for these services, or both? Why?

Some are appropriate jobs for staff – e.g. visual assessments – others for contractors– e.g. risk assessments.

b. What activities would you decide to use in-house staff for and why? Which in-house staff?

Aspects to consider are: which of these jobs are appropriate for in-house staff, which ones do you want to be able to perform quality control on, which ones fit well with current staff responsibilities. E.g. One rehab specialist trained as a risk assessor or abatement supervisor can perform quality control over contractors.

c. Why is it important for Homeville to determine their process and staff roles now?

Homeville needs to have trained staff or agreements with contractors in place before the requirements take affect on September 15, 2000.

3. What should Homeville do to make sure they have enough qualified contractors and workers to handle their production? What can they do to build capacity?

Consider:

- ❑ *Quantity of housing affected by the new regulation (age and type of housing)*
- ❑ *Number of staff needed to address lead-based paint issues*
- ❑ *Whether to hire certified lead professionals or train in-house staff*

ANSWERS TO CHAPTER 8 – MODULE B

HANDOUT #B3: EXERCISE – INTERPRETING EVALUATION RESULTS

Review the evaluation results outline below and answer the questions that follow each evaluation.

A. **Paint testing**. A paint test found the following lead levels in paint.

Surface	Level
Front Door	0.8 mg/cm^2
Baseboards – living room	1.5 mg/cm^2
Window sill	2.5 mg/cm^2

1. Which of these surfaces has lead-based paint?

   The baseboards and window sill have lead-based paint (the lead levels in the paint exceed the threshold of 1 mg/cm^2).

2. You plan to sand the living room floor and the front door. Where do you need to be careful? Why?

   You want to take precautions when working on both the floor and the front door. Even though the front door does not have enough lead to be called "lead-based paint," it does have lead and large amounts of sanding could cause contamination.

B. **Visual assessment**. A visual assessment identified the following conditions.

Visual Assessment Results:

- Deteriorated paint on exterior doors
- Visible bite marks on interior stairway railing
- Hanging paint from water stain on kitchen ceiling

1. Why are these items potential lead-based paint hazards?

   The deteriorated doors reveal a hazardous impact surface that may expose potential lead-based paint. Bite marks on the stairway railing may indicate a child's chewing and suggest exposure of potential lead-based paint and/or ingestion of potential lead-based paint. The moisture on the kitchen ceiling could expose potential lead-based paint.

2. Which have lead-based paint?

   Lead levels cannot be determined by a visual assessment. This method identifies <u>hazards</u> only and does not determine lead levels.

3. If the unit is going to receive TBRA, what actions do you recommend in this unit to address these conditions?

   Fix the deteriorated paint. You may also want to cover, remove or make the railing inaccessible.

C. **Lead hazard screen**. A home in relatively good condition has to meet the requirements for a risk assessment. The owner has opted to conduct a lead hazard screen instead and has found the following lead levels in dust.

Surface	Level*
Floors	38 µg/ft^2
Window sills	300 µg/ft^2

(*levels based on composite samples)

1. Based on these results, which surface has a lead-based paint hazard?

   The windowsill has a dust lead level that exceeds the threshold of 125 mg/ft^2 and the bedroom floor exceeds the threshold of 25 mg/ft^2. Both are lead-based paint hazards.

2. What do you have to do next?

   A full risk assessment must be conducted in the unit.

D. **Risk assessment**. The risk assessment in this unit included the following test results:

Dust sampling results:	
Floor – bedroom	38 µg/ft^2
Windowsill	300 µg/ft^2
Soil sampling results:	
Dripline	1,000 µg/g
Under swing set	1,500 µg/g
Paint sampling results:	
Door – bedroom	0.7 mg/cm^2
Door – Exterior	0.1 mg/cm^2
Window – bedroom	2.0 mg/cm^2

1. Which of these results indicate hazards?

   The hazards are summarized below:

   - *The dust results indicate lead-contaminated dust on the window sill*
   - *The soil results show lead-contaminated soil under the swing set (a child's play area)*
   - *The paint testing results show lead-based pain on the bedroom window.*

ANSWERS TO CHAPTER 8 – MODULE B

HANDOUT #B9: SAMPLE EVALUATION REPORTS

The following pages include samples reports from the following:

- Risk Assessment
- Paint Testing
- Clearance

As you read them, see if you can answer the following questions.

For all:

1. Based on your reading of this report, what types of hazards are in this unit and where are they located?

   Window trough, floor

2. Where did you find this information?

   Control plan, dust examination, summary of paint condition

3. Does the report clearly summarize the results? *Yes*

4. Who signed the report? *No one*

For the risk assessment only:

1. Does the assessment ask questions about current maintenance painting protocols?

   Yes

2. Does the risk assessment include soil, dust, and paint chip sampling?

   Yes

3. How many dust wipe samples were taken?

   8

4. Where are the results listed for these types of sampling?

   Deteriorated Paint – Form 5.3; Dust – Form 5.4; Soil – Form 5.5

5. Can you tell by looking at the results which samples represent hazards?

   Yes

6. What method of paint sampling was used?

   XRF

7. Where are the paint test results?

   Form 5.3 on page 8.1-14

8. What were the results of the soil sampling?

   Results were all below HUD thresholds of hazards.

9. How does the risk assessment tell you to address those hazards?

   Interim controls or abatement

10. Does the plan include both interim controls and abatement options for the same property?

    Yes

11. Where do you find information on costs for interim control and abatement options for this one property?

    Costs are listed in Part 17 on page 8.1-21.

ANSWERS TO CHAPTER 8 – MODULE C

HANDOUT #C2: EXERCISE – PRESUME LEAD-BASED PAINT OR EVALUATE?

Scenario 1. You are doing a small exterior repainting job (<$5,000) where neighborhood volunteers, supervised by a certified abatement supervisor, will be scraping and repainting the exterior trim, soffits, and porches. You have worked in this neighborhood a lot and you know that past evaluations have shown lead-based paint on the exterior and interior of most homes.

Should you conduct paint testing or simply assume lead-based paint?

This is a small job in a neighborhood where you have done a lot of work before and you know where the lead is generally found. Therefore, presume lead-based paint.

1. How does your previous answer affect your work practices?

   Presuming lead-based paint means that you will have to use safe work practices on all surfaces where you work.

2. Would you consider doing additional evaluation? If so, what and why?

   There is no reason to do additional evaluation in this case.

Scenario 2. You are doing a small plumbing job (<$5,000) in a house in the same neighborhood. You know from past evaluations that many of these homes have lead-based paint, mostly in the kitchens and on the exterior. Your plumbing job will involve going behind a wall, fixing the pipes, and then repairing the wall.

Should you conduct paint testing or assume lead-based paint?

This is a similar scenario, however, you know from past experience that there probably is no lead in the areas you are working. Unfortunately, you cannot assume that there is no lead. So,

- *You can test to show that there is no lead*
- *Or, you can skip the testing, act as if there is lead there (even though you believe there is none)*

1. How does your previous answer affect your work practices?

   You can test to show that there is no lead and do the work without safe work practices. Or, you can skip the testing, act as if there is lead there (even though you believe there is none) and use safe work practices (containment, safe-work methods, cleanup and clearance).

2. Would you consider doing additional evaluation? If so, what and why?

   The answer depends on whether it is cheaper to test or cheaper to use safe work methods even though they are probably unnecessary.

Scenario 3. You are doing a medium sized job ($15,000) that involves laying vinyl floor covering in the kitchen and bathroom, stripping wallpaper, repainting walls and rehanging doors.

1. Should you perform a risk assessment or should you simply presume lead-based paint hazards?

   - *You can presume lead-based paint and do all the work you planned in a lead safe manner.*
   - *Or you can do a risk assessment and address only identified hazards.*

2. Should you perform paint testing on the surfaces you are working on or simply presume lead-based paint?

   In this case, the planned work is so close to standard treatments, it may make sense to do standard treatments.

3. How do your previous answers affect the scope of you work in the unit?

   You will have to address a few more surfaces than planned to do all standard treatments.

4. How do your previous answers affect your work practices?

   If you presume lead-based paint, you must use safe work practices. If you perform a risk assessment, you must use safe work practices when you address identified hazards.

Scenario 4. You are doing another medium sized job ($10,000) that includes repairing stair railings, adding storm windows, some repainting of walls and removing carpeting from the living room floor. You did a small job one year ago and clearance revealed lead-contaminated dust on the window sills.

1. Should you perform a risk assessment or should you simply presume lead-based paint hazards?

This case is a close call. Let the students debate it.

2. Should you perform paint testing on the surfaces you are working on or simply presume lead-based paint?

3. How do your previous answers affect the scope of you work in the unit?

4. How do your previous answers affect your work practices?

Scenario 5. You are doing a job that involves extensive plumbing and electrical work as well as structural work on the roof and stairs. Because the level of assistance will be $30,000, abatement is required.

Should you perform a risk assessment or should you simply presume lead-based paint hazards?

In abatement cases, it rarely makes sense to presume lead-based paint. Have students identify all the surfaces they would have to abate if they did not do any testing or evaluation: every surface disturbed during rehabilitation, every friction, impact, accessible, and deteriorated paint surface.

1. Should you perform paint testing on the surfaces you are working on or simply presume lead-based paint?

2. How do your previous answers affect the scope of you work in the unit?

3. How do your previous answers affect your work practices?

ANSWERS TO CHAPTER 8 – MODULE D

HANDOUT #D1 : WORKSHEET 1

Program issues addressed for : _____

Area	Potential Issue
Budgeting	➢ Hire certified lead professionals or train in-house staff to meet new requirements? ➢ Cost of lead hazard evaluation and reduction ➢ Change orders—Discuss the implications of when a change order "bumps" up the rehabilitation job to another lead-hazard reduction required strategy. For example your job had been costed to include federal funds at $24,000 allowing for interim controls. A discovery has been made ½ way through the job that has created a $1,500 change order. The federal funds committed now require abatement. What do you do?
Contractor Issues	➢ Bidding the work---Addressing lead requirements ➢ Contractor selection—Selecting certified workers ➢ Contract language to address new requirements
Scheduling and Coordinating Work	➢ Coordinating the work – if several contractors/subcontractors are involved, how is their work sequenced and coordinated? How do you make sure that they all have the information they need about where lead based paint and lead hazards are? For example, how will the electrician know which walls have lead and should not be disturbed without safe work practices? ➢ Pre-construction conference ➢ Handling potential conflicts
Relocation	➢ Cost in time and money ➢ Resident response
Oversight/Monitoring	➢ Daily Monitoring—Address safe work practices and other lead-based paint requirements ➢ When to stop a job ➢ Enforcement of contracts
Closing out a project	➢ When is a project complete?
Recordkeeping	➢ Records required ➢ Time required to maintain records ➢ Procedures to maintain records
Other Administrative and Operational Issues	

HANDOUT #D1: WORKSHEET 2

Program issues addressed for :_____

Issue	Possible Solutions
Budgeting	➢ Perform cost benefit analysis that compares the cost of training with the cost of local contractors to determine whether to hire certified lead professionals or train in-house staff. ➢ Build into the budget the potential costs for lead hazard evaluation and reduction ➢ Change orders—Cost benefit analysis of scenario addressed under "Possible issues"
Contractor Issues	➢ Bidding the work---you need a good RFP that specifies lead-related qualifications. ➢ Contractor selection—Contractors must possess the required certifications to perform the work that will be done. ➢ Contracts---Language should be added to the contract that is specific that the work is not complete until clearance has been successfully completed and that contractors are responsible for cleaning. ➢ Enforcement of Contracts—Enforcing a contract for lead hazard reduction work is the same as enforcing any other contract, but make sure, up front, that the contract says what you want it to.
Scheduling and Coordinating Work	➢ Coordinating the work – Develop communication process among contractors/subcontractors to inform all about where lead based paint and lead hazards are and coordinate work. ➢ Pre-construction conference—This is where you will discuss how work is coordinated and the procedures for communication among different contractors and subcontractors on the job ➢ Conflict—Conflict does not differ much from regular rehabilitation, however if a job is stopped or delayed there may be complications. For example, occupants might have to be relocated.
Relocation	➢ Consider changing the worksite design to alleviate the need for relocation
Oversight/Monitoring	➢ Daily monitoring—Rehab specialists or project inspectors should be familiar with safe work practices and be able to identify when rehabilitation projects should be stopped. (See handout D2 for red flags.) ➢ Stopping a job—Stress safe work practices here again. ➢ Enforcement of contracts—Enforcing a contract for lead hazard reduction work is the same as enforcing any other contract, but make sure, up front, that the contract says what you want it to.
Closing out a project	➢ Project completion—Job is not complete until unit passes clearance. Unit should be tested for clearance as soon as one hour has passed after the work has been completed and the site cleaned. (See Module A for more detail on clearance results and interpretation of the results.)
Recordkeeping	➢ Develop procedure, place and staff to maintain records.
Other Administrative and Operational Issues	

APPENDIX M

EXTRA COPY OF ACTION PLAN

DEVELOPING A LEAD-BASED PAINT ACTION PLAN FOR
STATE & LOCAL HOUSING PROGRAMS RECEIVING FEDERAL FUNDS

The following questions identify key actions and decisions facing grantees in preparing to meet the requirements of the new Federal lead-based paint regulation. Please answer the questions in the chart below. For every question with a "NO" answer, indicate the actions that need to be performed to "make this decision" or "implement this step" in the third column. After completing the chart, use your responses to develop an action plan by answering the questions on the last page.

QUESTION	ANSWER			IF NO, WHAT ACTIONS ARE NEEDED (Note who is responsible and projected completion date)
	Y	N	NA	
INITIAL PLANNING				
1. Have all key staff for each of the Agency's affected programs been briefed on the new lead-based paint requirements?				
2. Has your Agency identified a point of contact on lead-based paint matters at each partner organization?				
A. REHABILITATION PROGRAMS				
A-1. Has the program application form and procedures been revised to gather the necessary lead-based paint information about potential projects?				
A-2. Do program application materials provide prospective applicants with adequate information about their responsibilities under the new lead-based paint requirements?				
A-3. Have program procedures been established to identify projects that are exempt under the new lead-based paint requirements?				
A-4. Has the program established procedures for determining the level of Federal rehabilitation assistance?				

QUESTION	ANSWER			IF NO, WHAT ACTIONS ARE NEEDED (Note who is responsible and projected completion date)
	Y	N	NA	
A-5. Have program documents been revised to establish the recipient's responsibilities regarding: ➢ Notices to occupants ➢ Lead-based paint evaluation ➢ Lead hazard reduction ➢ Safe work practices ➢ Clearance ➢ Ongoing maintenance?				
A-6. Have program staff assessed the local supply of contractors qualified to perform lead-based paint evaluation, lead hazard reduction, and clearance testing services?				
A-7. If the assessment reveals an inadequate supply of contractors, does the program have a plan and procedures for ensuring that an adequate supply will be available when the requirements take effect?				
A-8. Have the program's contractor selection procedures been revised to ensure that risk assessments and paint testing are performed when required and in accordance with the standards in the new regulation?				
A-9. Does the program have procedures to ensure that required lead hazard reduction work and protections are incorporated into rehabilitation specifications?				

QUESTION	ANSWER			IF NO, WHAT ACTIONS ARE NEEDED (Note who is responsible and projected completion date)
	Y	N	NA	
A-10. Does the program have adequate procedures to ensure that lead hazard reduction work is effectively coordinated with other rehabilitation work?				
A-11. Does the program have adequate procedures for monitoring construction to ensure that lead hazard reduction work and clearance is performed in accordance with the specifications and requirements?				
A-12. Do existing program procedures ensure that the rental property owners distribute the lead hazard information pamphlet, disclosure form, and required notices to occupants in the property?				
A-13. Has a plan been developed to assess and address staff training needs regarding lead-based paint?				
A-14. Have program recordkeeping procedures been revised to ensure that required lead-based paint documentation is maintained as required?				
B. TENANT-BASED RENTAL ASSISTANCE				
B-1. Do program application materials enable staff to identify applicants with one or more children under age six?				
B-2. Have the program's inspectors received proper training on how to perform a visual assessment?				

QUESTION	ANSWER			IF NO, WHAT ACTIONS ARE NEEDED (Note who is responsible and projected completion date)
	Y	N	NA	
B-3. Are the program's existing procedures and inspection reports sufficient to document visual assessment results and promptly convey them to the owner?				
B-4. Will the program's existing procedures for confirming that owners correct identified deficiencies be sufficient to ensure that they stabilize deteriorated paint surfaces using qualified work crews and the unit passes a proper clearance exam?				
B-5. Have the program procedures been revised to ensure that owners perform and document required ongoing maintenance work?				
B-6. Do the program's current procedures include monitoring to ensure that owners provide occupants with the required lead-based notices?				
B-7. Has the program established procedures to implement the EIBLL match requirements?				
B-8. Has the program established adequate procedures to respond promptly and effectively to notification of an EIBLL child?				
C. HOMEOWNERSHIP PROGRAMS				
C-1. Have the program application procedures been revised to ensure that occupants receive the required information about lead-based paint?				

QUESTION	ANSWER			IF NO, WHAT ACTIONS ARE NEEDED (Note who is responsible and projected completion date)
	Y	N	NA	
C-2. Has the program established procedures for properly determining what units are exempt?				
C-3. Do the program's procedures enable staff to obtain a proper visual assessment?				
C-4. Has the program established adequate procedures to ensure that paint stabilization is properly performed and implemented by trained workers?				
C-5. Do existing procedures document that homebuyers received the required lead-based paint information materials?				
SPECIAL NEEDS HOUSING PROGRAMS				
D-1. Have special needs housing staff identified the full range of activities performed with special needs housing funds?				
D-2. For program activities other than rehabilitation and TBRA, have program procedures been established to ensure that activities required prior to assistance have been properly performed?				
D-3. For these same activities, have procedures been put into place to ensure that post-assistance activities have been properly performed?				
D-4. Has a plan been developed to assess and address staff training needs regarding lead-based paint?				

QUESTION	ANSWER			IF NO, WHAT ACTIONS ARE NEEDED (Note who is responsible and projected completion date)
	Y	N	NA	
D-5. Have program recordkeeping procedures been revised to ensure that required lead-based paint documentation is maintained as required?				
D-6. Have program documents been revised to establish the recipient's responsibilities under the new regulation?				

CREATING THE ACTION PLAN

Based on your responses to the questions in the chart above, please fill out the action plan below. Indicate the actions that need to be taken within the specified timeframes, as well as the people involved and the projected completion date for the action.

Lead-Based Paint Action Plan for _____

1. What actions need to be taken in the next 30 days?

Action	Staff and Others Involved	Completion Date

2. What actions need to be taken in the next 90 days?

Action	Staff and Others Involved	Completion Date

3. What actions need to be taken in the next six months?

Action	Staff and Others Involved	Completion Date

1. What actions need to be taken in the next 30 days?

Action	Staff and Others Involved	Completion Date

2. What actions need to be taken in the next 90 days?

Action	Staff and Others Involved	Completion Date

3. What actions need to be taken in the next six months?

Action	Staff and Others Involved	Completion Date