

# 24 CFR 965 -Energy Audits, Metering, Allowances, LBP & Fire Safety

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## Subpart C - Energy Audits and Energy Conservation Measures

<< Source: 61FR 7969, Feb 29 1996, unless otherwise noted. >>

### **965.301 - Purpose and applicability.**

- (a) Purpose. The purpose of this subpart C is to implement HUD policies in support of national energy conservation goals by requiring PHAs to conduct energy audits and undertake certain cost-effective energy conservation measures.
- (b) Applicability. The provisions of this subpart apply to all PHAs with PHA-owned housing, but they do not apply to Indian Housing Authorities. (For similar provisions applicable to Indian housing, see part 950 of this chapter.) No PHA-leased project or Section 8 Housing Assistance Payments Program project, including a PHA-owned Section 8 project, is covered by this subpart.

### **965.302 - Requirements for energy audits.**

All PHAs shall complete an energy audit for each PHA-owned project under management, not less than once every five years. Standards for energy audits shall be equivalent to State standards for energy audits. Energy audits shall analyze all of the energy conservation measures, and the payback period for these measures, that are pertinent to the type of buildings and equipment operated by the PHA.

### **965.304 Order of funding.**

Within the funds available to a PHA, energy conservation measures should be accomplished with the shortest pay-back periods funded first. A PHA may make adjustments to this funding order because of insufficient funds to accomplish high-cost energy conservation measures (ECM) or where an ECM with a longer pay-back period can be more efficiently installed in conjunction with other planned modernization. A PHA may not install individual utility meters that measure the energy or fuel used for space heating in dwelling units that need substantial weatherization, when installation of meters would result in economic hardship for residents. In these cases, the ECMs related to weatherization shall be accomplished before the installation of individual utility meters.

### **965.305 Funding.**

- (a) The cost of accomplishing cost-effective energy conservation measures, including the cost of performing energy audits, shall be funded from operating funds of the PHA to the extent feasible. When sufficient operating funds are not available for this purpose, such costs are eligible for inclusion in a modernization program, for funding from any available development funds in the case of projects still in development, or for other available funds that HUD may designate to be used for energy conservation.
- (b) If a PHA finances energy conservation measures from sources other than modernization or operating reserves, such as a loan from a utility entity or a guaranteed savings agreement with a private energy service company, HUD may agree to provide adjustments in its calculation of the PHA's operating subsidy eligibility under the PFS for the project and utility involved based on a determination that payments can be funded from the reasonably anticipated energy cost savings (See Sec. 990.107(g) of this chapter).

### **965.306 Energy conservation equipment and practices.**

In purchasing original or, when needed, replacement equipment, PHAs shall acquire only equipment that meets or exceeds the minimum efficiency requirements established by the U.S. Department of Energy. In the operation of their facilities, PHAs shall follow operating practices directed to maximum energy conservation.

### **965.307 Compliance schedule.**

All energy conservation measures determined by energy audits to be cost effective shall be accomplished as funds are available.

### **965.308 Energy performance contracts.**

- (a) Method of procurement. Energy performance contracting shall be conducted using one of the following methods of procurement:
  - (1) Competitive proposals (see 24 CFR 85.36(d)(3)). In identifying the evaluation factors and their relative importance, as required by Sec. 85.36(d)(3)(i) of this title, the solicitation shall state that technical factors are significantly more important than price (of the energy audit); or
  - (2) If the services are available only from a single source, noncompetitive proposals (see 24 CFR 85.36(d)(4)(i)(A)).
- (b) HUD Review. Solicitations for energy performance contracting shall be submitted to the HUD Field Office for review and approval prior to issuance. Energy performance contracts shall be submitted to the HUD Field Office for review and approval before award.

## Subpart D--Individual Metering of Utilities for Existing PHA-Owned Projects

<< Source: 61 FR 7970, Feb. 29, 1996, unless otherwise noted. >>

### **965.401 - Individually metered utilities.**

- (a) All utility service shall be individually metered to residents, either through provision of retail service to the residents by the utility supplier or through the use of checkmeters, unless:
  - (1) Individual metering is impractical, such as in the case of a central heating system in an apartment building;
  - (2) Change from a mastermetering system to individual meters would not be financially justified based upon a benefit/cost analysis; or
  - (3) Checkmetering is not permissible under State or local law, or under the policies of the particular utility supplier or public service commission.
- (b) If checkmetering is not permissible, retail service shall be considered. Where checkmetering is permissible, the type of individual metering offering the most savings to the PHA shall be selected.

### **965.402 - Benefit/cost analysis.**

- (a) A benefit/cost analysis shall be made to determine whether a change from a mastermetering system to individual meters will be cost effective, except as otherwise provided in Sec. 965.405.
- (b) Proposed installation of checkmeters shall be justified on the basis that the cost of debt service (interest and amortization) of the estimated installation costs plus the operating costs of the checkmeters will be more than offset by reduction in future utilities expenditures to the PHA under the mastermeter system.
- (c) Proposed conversion to retail service shall be justified on the basis of net savings to the PHA. This determination involves making a comparison between the reduction in utility expense obtained through eliminating the expense to the PHA for PHA-supplied utilities and the resultant allowance for resident-supplied utilities, based on the cost of utility service to the residents after conversion.

### **965.403 - Funding.**

The cost to change mastermeter systems to individual metering of resident consumption, including the costs of benefit/cost analysis and complete installation of checkmeters, shall be funded from operating funds of the PHA to the extent feasible. When sufficient operating funds are not available for this purpose, such costs are eligible for inclusion in a modernization project or for funding from any available development funds.

#### **965.404 - Order of conversion.**

Conversions to individually metered utility service shall be accomplished in the following order when a PHA has projects of two or more of the designated categories, unless the PHA has a justifiable reason to do otherwise, which shall be documented in its files.

- (a) In projects for which retail service is provided by the utility supplier and the PHA is paying all the individual utility bills, no benefit/cost analysis is necessary, and residents shall be billed directly after the PHA adopts revised payment schedules providing appropriate allowances for resident-supplied utilities.
- (b) In projects for which checkmeters have been installed but are not being utilized as the basis for determining utility charges to the residents, no benefit/cost analysis is necessary. The checkmeters shall be used as the basis for utility charges, and residents shall be surcharged for excess utility use.
- (c) Projects for which meter loops have been installed for utilization of checkmeters shall be analyzed both for the installation of checkmeters and for conversion to retail service.
- (d) Low- or medium-rise family units with a mastermeter system should be analyzed for both checkmetering and conversion to retail service, because of their large potential for energy savings.
- (e) Low- or medium-rise housing for the elderly should next be analyzed for both checkmetering and conversion to retail service, since the potential for energy saving is less than for family units.
- (f) Electric service under mastermeters for high-rise buildings, including projects for the elderly, should be analyzed for both use of retail service and of checkmeters.

#### **965.405 - Actions affecting residents.**

- (a) Before making any conversion to retail service, the PHA shall adopt revised payment schedules, providing appropriate allowances for the resident-supplied utilities resulting from the conversion.
- (b) Before implementing any modifications to utility services arrangements with the residents or charges with respect thereto, the PHA shall make the requisite changes in resident dwelling leases in accordance with 24 CFR part 966.
- (c) PHAs must work closely with resident organizations, to the extent practicable, in making plans for conversion of utility service to individual metering, explaining the national policy objectives of energy conservation, the changes in charges and rent structure that will result, and the goals of achieving an equitable structure that will be advantageous to residents who conserve energy.
- (d) A transition period of at least six months shall be provided in the case of initiation of checkmeters, during which residents will be advised of the charges but during which no surcharge will be made based on the readings. This trial period will afford residents ample notice of the effects the checkmetering system will have on their individual utility charges and also afford a test period for the adequacy of the utility allowances established.

- (e) During and after the transition period, PHAs shall advise and assist residents with high utility consumption on methods for reducing their usage. This advice and assistance may include counseling, installation of new energy conserving equipment or appliances, and corrective maintenance.

**965.406 - Benefit/cost analysis for similar projects.**

PHAs with more than one project of similar design and utilities service may prepare a benefit/cost analysis for a representative project. A finding that a change in metering is not cost effective for the representative project is sufficient reason for the PHA not to perform a benefit/cost analysis on the remaining similar projects.

**965.407 - Reevaluations of mastermeter systems.**

Because of changes in the cost of utility services and the periodic changes in utility regulations, PHAs with mastermeter systems are required to reevaluate mastermeter systems without checkmeters by making benefit/cost analyses at least every 5 years. These analyses may be omitted under the conditions specified in Sec. 965.406.

Subpart E--Resident Allowances for Utilities

<< Source: 61 FR 7971, Feb. 29, 1996, unless otherwise noted. >>

**965.501 - Applicability.**

- (a) This subpart E applies to public housing, including the Turnkey III Homeownership Opportunities program. This subpart E also applies to units assisted under sections 10(c) and 23 of the U. S. Housing Act of 1937 (42 U.S.C. 1437 et seq.) as in effect before amendment by the Housing and Community Development Act of 1974 (12 U.S.C. 1706e) and to which 24 CFR part 900 is not applicable. This subpart E does not apply to Indian housing projects (see 24 CFR part 950).
- (b) In rental units for which utilities are furnished by the PHA but there are no checkmeters to measure the actual utilities consumption of the individual units, residents shall be subject to charges for consumption by resident-owned major appliances, or for optional functions of PHA-furnished equipment, in accordance with Sec. 965.502(e) and 965.506(b), but no utility allowance will be established.

### **965.502 - Establishment of utility allowances by PHAs.**

- (a) PHAs shall establish allowances for PHA-furnished utilities for all checkmetered utilities and allowances for resident-purchased utilities for all utilities purchased directly by residents from the utilities suppliers.
- (b) The PHA shall maintain a record that documents the basis on which allowances and scheduled surcharges, and revisions thereof, are established and revised. Such record shall be available for inspection by residents.
- (c) The PHA shall give notice to all residents of proposed allowances, scheduled surcharges, and revisions thereof. Such notice shall be given, in the manner provided in the lease or homebuyer agreement, not less than 60 days before the proposed effective date of the allowances or scheduled surcharges or revisions; shall describe with reasonable particularity the basis for determination of the allowances, scheduled surcharges, or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances or scheduled surcharges; shall notify residents of the place where the PHA's record maintained in accordance with paragraph (b) of this section is available for inspection; and shall provide all residents an opportunity to submit written comments during a period expiring not less than 30 days before the proposed effective date of the allowances or scheduled surcharges or revisions. Such written comments shall be retained by the PHA and shall be available for inspection by residents.
- (d) Schedules of allowances and scheduled surcharges shall not be subject to approval by HUD before becoming effective, but will be reviewed in the course of audits or reviews of PHA operations.
- (e) The PHA's determinations of allowances, scheduled surcharges, and revisions thereof shall be final and valid unless found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

### **965.503 - Categories for establishment of allowances.**

Separate allowances shall be established for each utility and for each category of dwelling units determined by the PHA to be reasonably comparable as to factors affecting utility usage.

### **965.504 - Period for which allowances are established.**

- (a) PHA-furnished utilities. Allowances will normally be established on a quarterly basis; however, residents may be surcharged on a monthly basis. The allowances established may provide for seasonal variations.
- (b) Resident-purchased utilities. Monthly allowances shall be established. The allowances established may provide for seasonal variations.

### **965.505 - Standards for allowances for utilities.**

- (a) The objective of a PHA in designing methods of establishing utility allowances for each dwelling unit category and unit size shall be to approximate a reasonable consumption of utilities by an energy- conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.
- (b) Allowances for both PHA-furnished and resident-purchased utilities shall be designed to include such reasonable consumption for major equipment or for utility functions furnished by the PHA for all residents (e.g., heating furnace, hot water heater), for essential equipment whether or not furnished by the PHA (e.g., range and refrigerator), and for minor items of equipment (such as toasters and radios) furnished by residents.
- (c) The complexity and elaborateness of the methods chosen by the PHA, in its discretion, to achieve the foregoing objective will depend upon the nature of the housing stock, data available to the PHA and the extent of the administrative resources reasonably available to the PHA to be devoted to the collection of such data, the formulation of methods of calculation, and actual calculation and monitoring of the allowances.
- (d) In establishing allowances, the PHA shall take into account relevant factors affecting consumption requirements, including:
  - (1) The equipment and functions intended to be covered by the allowance for which the utility will be used. For instance, natural gas may be used for cooking, heating domestic water, or space heating, or any combination of the three;
  - (2) The climatic location of the housing projects;
  - (3) The size of the dwelling units and the number of occupants per dwelling unit;
  - (4) Type of construction and design of the housing project;
  - (5) The energy efficiency of PHA-supplied appliances and equipment;
  - (6) The utility consumption requirements of appliances and equipment whose reasonable consumption is intended to be covered by the total resident payment;
  - (7) The physical condition, including insulation and weatherization, of the housing project;
  - (8) Temperature levels intended to be maintained in the unit during the day and at night, and in cold and warm weather; and
  - (9) Temperature of domestic hot water.
- (e) If a PHA installs air conditioning, it shall provide, to the maximum extent economically feasible, systems that give residents the option of choosing to use air conditioning in their units. The design of systems that offer each resident the option to choose air conditioning shall include retail meters or checkmeters, and residents shall pay for the energy used in its operation. For systems that offer residents the option to choose air conditioning, the PHA shall not include air conditioning in the utility allowances. For systems that offer residents the option to choose air conditioning but cannot be checkmetered, residents are to be surcharged in accordance with Sec. 965.506. If an air conditioning system does not provide for resident option, residents are not to be charged, and these systems should be avoided whenever possible.

### **965.506 - Surcharges for excess consumption of PHA-furnished utilities.**



- (a) For dwelling units subject to allowances for PHA-furnished utilities where checkmeters have been installed, the PHA shall establish surcharges for utility consumption in excess of the allowances. Surcharges may be computed on a straight per unit of purchase basis (e.g., cents per kilowatt hour of electricity) or for stated blocks of excess consumption, and shall be based on the PHA's average utility rate. The basis for calculating such surcharges shall be described in the PHA's schedule of allowances. Changes in the dollar amounts of surcharges based directly on changes in the PHA's average utility rate shall not be subject to the advance notice requirements of this section.
- (b) For dwelling units served by PHA-furnished utilities where checkmeters have not been installed, the PHA shall establish schedules of surcharges indicating additional dollar amounts residents will be required to pay by reason of estimated utility consumption attributable to resident-owned major appliances or to optional functions of PHA-furnished equipment. Such surcharge schedules shall state the resident-owned equipment (or functions of PHA-furnished equipment) for which surcharges shall be made and the amounts of such charges, which shall be based on the cost to the PHA of the utility consumption estimated to be attributable to reasonable usage of such equipment.

#### **965.507 - Review and revision of allowances.**

- (a) Annual review. The PHA shall review at least annually the basis on which utility allowances have been established and, if reasonably required in order to continue adherence to the standards stated in Sec. 965.505, shall establish revised allowances. The review shall include all changes in circumstances (including completion of modernization and/or other energy conservation measures implemented by the PHA) indicating probability of a significant change in reasonable consumption requirements and changes in utility rates.
- (b) Revision as a result of rate changes. The PHA may revise its allowances for resident-purchased utilities between annual reviews if there is a rate change (including fuel adjustments) and shall be required to do so if such change, by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rates on which such allowances were based. Adjustments to resident payments as a result of such changes shall be retroactive to the first day of the month following the month in which the last rate change taken into account in such revision became effective. Such rate changes shall not be subject to the 60 day notice requirement of Sec. 965.502(c).

#### **965.508 - Individual relief.**

Requests for relief from surcharges for excess consumption of PHA-purchased utilities, or from payment of utility supplier billings in excess of the allowances for resident-purchased utilities, may be granted by the PHA on reasonable grounds, such as special needs of elderly, ill or disabled residents, or special factors affecting utility usage not within the control of the resident, as the PHA shall deem appropriate. The PHA's criteria for granting such relief, and procedures for requesting such relief, shall be adopted at the time the PHA adopts the methods and procedures for determining utility allowances. Notice of the availability of such procedures (including

identification of the PHA representative with whom initial contact may be made by residents), and the PHA's criteria for granting such relief, shall be included in each notice to residents given in accordance with Sec. 965.502(c) and in the information given to new residents upon admission.

Subpart G--[Reserved]

## Subpart H--Lead-Based Paint Poisoning Prevention

<< Source: 51 FR 27789, Aug. 1, 1986, unless otherwise noted. >>

### **965.701 - Purpose and applicability.**

The purpose of this subpart is to implement the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) by establishing procedures to eliminate as far as practicable the immediate hazards from the presence of paint that may contain lead in PHA-owned housing assisted under the United States Housing Act of 1937. This subpart applies to PHA-owned lower-income public housing projects, including Turnkey III, conveyed Lanham Act and Public Works Administration projects, and to section 23 Leased Housing Bond-Financed projects. This subpart does not apply to projects under the Section 23 and Section 8 Housing Assistance Payments programs, or to Indian Housing. This subpart is promulgated pursuant to the authorization granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements prescribed by subpart C of 24 CFR part 35.

[57 FR 28358, June 24, 1992]

### **965.702 - Definitions.**

- **Applicable surface** - All intact and nonintact interior and exterior painted surfaces of a residential structure.
- **Defective lead-based paint surface** - Paint on applicable surfaces having a lead content of greater than or equal to 1 mg/cm<sup>2</sup>, that is cracking, scaling, chipping, peeling or loose.
- **Defective paint surface** - Paint on applicable surfaces that is cracking, scaling, chipping, peeling or loose.
- **Elevated blood lead level or EBL** - Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.
- **Family project** - Any project assisted under section 9 of the U.S. Housing Act of 1937 which is not an elderly project. For this purpose, an elderly project is one which was designated for occupancy by the elderly at its inception (and has retained that character) or, although not so designated, for which the PHA gives preference in tenant selection (with HUD approval) for all units in the project to elderly families. A building within a mixed-use project which meets these qualifications shall, for purposes of this subpart, be excluded from any family project. Zero bedroom units, for purposes of this subpart, are excluded from any family project.
- **Lead-based paint** - A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1.0 mg/cm<sup>2</sup>, or .5% by weight.

[51 FR 27789, Aug. 1, 1986, as amended at 53 FR 20802, June 6, 1988; 56 FR 15174, Apr. 15, 1991]

### **965.703 - Notification.**

(a) General LBP Hazard Notification for all Residents. Tenants in PHA-owned low income public housing projects constructed prior to 1978 shall be notified:

- (1) That the property was constructed prior to 1978;
- (2) That the property may contain lead-based paint;
- (3) Of the hazards of lead-based paint;
- (4) Of the symptoms and treatment of lead-based paint poisoning;
- (5) Of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards); and
- (6) Of the advisability and availability of blood lead level screening for children under seven years of age.

Tenants shall be advised to notify the PHA if an EBL condition is identified.

(b) Lead-Based Paint Hazard Notification for Applicants and Prospective Purchasers. A notice of the dangers of lead-based paint poisoning and a notice of the advisability and availability of blood lead level screening for children under seven years of age shall be provided to every applicant family at the time of application. The applicant family shall be advised, if screening is utilized and an EBL condition identified, to notify the PHA.

(c) Notification of Positive Lead-Based Paint Test Results. In the event that a PHA-owned low income public housing project constructed or substantially rehabilitated prior to 1978 is tested and the test results using an x-ray fluorescence analyzer (XRF) are identified as having a lead content greater than or equal to 1.0 mg/cm<sup>2</sup>, or is tested by laboratory chemical analysis (atomic absorption spectroscopy (AAS)) and found to contain .5% lead by weight or more, the PHA shall provide written notification of such result to the current residents, applicants, prospective purchasers, and homebuyers of such units in a timely manner. The PHA shall retain written records of the notification.

[51 FR 27789, Aug. 1, 1986, as amended at 56 FR 15174, Apr. 15, 1991]

### **965.704 - Maintenance obligation.**

In family projects constructed prior to 1978 or substantially rehabilitated prior to 1978, the PHA shall visually inspect units for defective paint surfaces as part of routine periodic unit inspections. If defective paint surfaces are found, covering or removal of the defective paint spots as described in Sec. 35.24(b)(2)(ii) of this title shall be required. Treatment shall be completed within a reasonable period of time.

[53 FR 20802, June 6, 1988]

### **965.705 - Insurance coverage.**

For the requirements concerning a PHA's obligation to obtain reasonable insurance coverage with respect to the hazards associated with testing for and abatement of lead-based paint, see Sec. 965.215.

[59 FR 31930, June 21, 1994]

### **965.706 - Procedures involving EBLs.**

(a) Procedures where a current resident child has an EBL. When a child residing in a PHA-owned low income family project has been identified as having an EBL, the PHA shall: (1) Test all surfaces in the unit and applicable surfaces of the PHA-owned or operated child care facility if used by the EBL child for lead-based paint and abate the surfaces found to contain lead-based paint. Testing of exteriors and interior common areas (including non-dwelling PHA facilities which are commonly used by the EBL child under seven years of age) will be done as considered necessary and appropriate by the PHA and HUD; or (2) assign the family to a post-1978 or previously tested unit which was found to be free of lead-based paint hazards or in which such hazards have been abated as described in this section.

(b) Procedures where a non-resident child using a PHA-owned or operated child care facility has an EBL. When a non-resident child using a PHA-owned or operated child facility has been identified as having an EBL, the PHA shall test all applicable surfaces of the PHA-owned or operated child care facilities and abate the surfaces found to contain lead-based paint.

(c) Testing. Testing shall be completed within five days after notification to the PHA of the identification of the EBL child. It is strongly recommended, but not required, that PHAs use the testing methods outlined in the Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (Lead-Based Paint Interim Guidelines) for the Comprehensive Improvement Assistance Program (CIAP), and other Public and Indian Housing programs, and issued and published at 55 FR 14555, April 18, 1990, part II, with an amendment of chapter 8 and typographical clarifications at 55 FR 39874, as periodically amended or updated, and other future official departmental issuances related to lead-based paint. A qualified inspector or laboratory shall certify in writing the precise results of the inspection. Testing services available from State, local or tribal health or housing agencies or an organization recognized by HUD shall be utilized to the extent available. If the results equal or exceed a level of 1 mg/cm<sup>2</sup> or .5% by weight, the results shall be provided to the tenant or the family of the EBL child using PHA owned or operated child care facilities. Testing will be considered an eligible modernization cost under part 968 only upon PHA certification that testing services are otherwise unavailable.

(d) Hazard abatement requirements

(1) Abatement actions. Hazard abatement actions shall be carried out in accordance with the following requirements and order of priority:

(i) Unit housing a child with an EBL. Any surface in the unit found to contain lead-based paint shall be treated. Where full treatment of a unit housing an EBL child cannot be completed within five days after positive testing, emergency intervention actions (including removing defective lead-based paint and scrubbing surfaces after such removal with strong detergents) shall be taken within such time. Full treatment of a unit housing an EBL child shall be completed within 14 days after

positive testing, unless funding sources are not immediately available. In such event, 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.

(ii) PHA owned or operated child care facilities used by a child with an EBL. Any applicable surface found to contain lead-based paint shall be treated.

(iii) Interior common areas (including non-dwelling PHA facilities which are commonly used by EBL children under seven years of age) and exterior surfaces of projects in which children with EBLs reside. Abatement shall be provided to all surfaces containing lead-based paint.

(2) Abatement methods. PHAs shall select a safe and cost effective treatment for surfaces found to contain lead-based paint, including clean-up procedures, and are strongly encouraged, but not required, to follow those methods specified in the Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (Lead-Based Paint Interim Guidelines), and other future official departmental issuances relating to lead-based paint abatement in effect at the time the surfaces are to be abated. Certain prohibited abatement methods are set forth in 24 CFR 35.24(b)(2)(ii). Final inspection and certification of the treatment shall be made by a qualified inspector, industrial hygienist, or local health official based on clearance levels specified in HUD departmental issuances and guidelines.

[53 FR 20803, June 6, 1988, as amended at 56 FR 15175, Apr. 15, 1991]

### **965.707 - Tenant protection.**

The PHA shall take appropriate action in order to protect tenants, including children with EBLs, other children, and pregnant women, from hazards associated with abatement procedures, and is strongly encouraged, but not required, to take actions more fully outlined in the Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (Lead-Based Paint Interim Guidelines) and other future official Departmental issuances related to tenant protection in effect at the time the abatement procedure is undertaken. Tenant relocation may be accomplished with CIAP assistance.

[56 FR 15175, Apr. 15, 1991]

### **965.708 - Disposal of lead-based paint debris.**

The PHA shall dispose of lead-based paint debris in accordance with applicable local state or Federal requirements. (See e.g., 40 CFR parts 260 through 271.) Additional information covering disposal practices is contained in the Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (Lead-Based Paint Interim Guidelines) and other future official departmental issuances relating to lead-based paint. In any event, EPA has primary responsibility for waste disposal regulations and procedures.

[53 FR 20803, June 6, 1988, as amended at 56 FR 15175, Apr. 15, 1991]

### **965.709 - Records.**

The PHA shall maintain records on which units, common areas, exteriors and PHA child care facilities have been tested, results of the testing, and the condition of painted surfaces by location in or on the unit, interior common area, exterior surface or PHA child care facility. The PHA shall report information regarding such testing, in accordance with such requirements as shall be prescribed by HUD. The PHA shall also maintain records of abatement provided under this subpart, and shall report information regarding such abatement, and its compliance with the requirements of 24 CFR part 35, subpart A and Sec. 965.703 of this part, in accordance with such requirements as shall be prescribed by HUD. If records establish that a unit, PHA owned or operated child care facility, exterior or interior common area was tested or treated in accordance with the standards prescribed in this subpart, such units, child care facilities, exterior or interior common areas are not required to be re-tested or re-treated.

(Information collection requirements contained in this section were approved by the Office of Management and Budget under control number 2577-0090)

[53 FR 20803, June 6, 1988, as amended at 56 FR 15175, Apr. 15, 1991]

### **965.710 - Compliance with state and local laws.**

(a) PHA responsibilities. Nothing in this subpart H is intended to relieve a PHA of any responsibility for compliance with state or local laws, ordinances, codes or regulations governing lead-based paint testing or hazard abatement. The PHA shall maintain records evidencing compliance with applicable state or local requirements, and shall report information concerning such compliance, in accordance with such requirements as shall be prescribed by HUD.

(b) HUD responsibility. If HUD determines that a state or local law, ordinance, code or regulation provides for lead-based paint testing or hazard abatement in a manner which provides a comparable level of protection from the hazards of lead-based paint poisoning to that provided by the requirements of this subpart and that adherence to the requirements of this subpart would be duplicative or otherwise cause inefficiencies, HUD may modify or waive the requirements of this subpart in such manner as may be appropriate to promote efficiency while ensuring such comparable level or protection.

(Approved by the Office of Management and Budget under control number 2577-0090)  
[51 FR 27789, Aug. 1, 1986. Redesignated at 53 FR 20803, June 6, 1988]

### **965.711 - Monitoring and enforcement.**

PHA compliance with the requirements of this subpart will be included in the scope of HUD monitoring of PHA operations. Noncompliance with any requirement of this subpart may subject a PHA to sanctions provided under the Annual Contribution Contract or to enforcement by other means authorized by law.

[51 FR 27789, Aug. 1, 1986. Redesignated at 53 FR 20803, June 6, 1988]

## **Subpart I--Fire Safety**

<< Source: 57 FR 33853, July 30, 1992, unless otherwise noted. >>

### **965.800 - Applicability.**

This subpart applies to all PHA-owned or -leased housing housing, including Mutual Help and Turnkey III.

### **965.805 Smoke detectors.**

#### **(a) Performance requirement.**

(1) After October 30, 1992, each unit covered by this subpart must be equipped with at least one battery-operated or hard-wired smoke detector, or such greater number as may be required by state or local codes, in working condition, on each level of the unit. In units occupied by hearing-impaired residents, smoke detectors must be hard-wired.

(2) After October 30, 1992, the public areas of all housing covered by this subpart must be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors to serve as adequate warning of fire. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

#### **(b) Acceptability criteria.**

(1) The smoke detector for each individual unit must be located, to the extent practicable, in a hallway adjacent to the bedroom or bedrooms. In units occupied by hearing-impaired residents, hard-wired smoke detectors must be connected to an alarm system designed for hearing-impaired persons and installed in the bedroom or bedrooms occupied by the hearing-impaired residents. Individual units that are jointly occupied by both hearing and hearing-impaired residents must be equipped with both audible and visual types of alarm devices.

(2) If needed, battery-operated smoke detectors, except in units occupied by hearing-impaired residents, may be installed as a temporary measure where no detectors are present in a unit. Temporary battery-operated smoke detectors must be replaced with hard-wired electric smoke detectors in the normal course of a PHA's planned CIAP or CGP program to meet the required HUD Modernization Standards or state or local codes, whichever standard is stricter. Smoke detectors for units occupied by hearing-impaired residents must be installed in accordance with the acceptability criteria in paragraph (b)(1) of this section.

(c) Funding. PHAs shall use operating funds to provide battery-operated smoke detectors in units that do not have any smoke detector in place. If operating funds or reserves are insufficient to accomplish this, PHAs may apply for emergency CIAP funding. The PHAs may apply for CIAP or CGP funds to replace battery-operated smoke detectors with hard-wired smoke detectors in the normal course of a planned modernization program.