

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**

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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	<ul style="list-style-type: none"> · LBP inspection and risk assessment. · Abatement of LBP hazards. · Notice to occupants of inspection/abatement results.
		1960-1977	<ul style="list-style-type: none"> · LBP inspection and risk assessment. · Notice to occupants of results.
D	Project-Based Assistance by Federal Agency Other Than HUD	Pre-1978	<ul style="list-style-type: none"> · Provision of pamphlet. · Risk assessment. · Interim controls. · Notice to occupants of results. · Response to EIBLL child.
F	HUD-Owned Single Family Sold With a HUD-Insured Mortgage	Pre-1978	<ul style="list-style-type: none"> · Visual assessment. · Paint stabilization. · Notice to occupants of clearance.
G	Multifamily Mortgage Insurance:		
	1. For properties that are currently residential	Pre-1960	<ul style="list-style-type: none"> · Provision of pamphlet. · Risk assessment. · Interim controls. · Notice to occupants. · Ongoing LBP maintenance.
		1960-1977	<ul style="list-style-type: none"> · Provision of pamphlet. · Ongoing LBP maintenance.
	2. For conversions and major renovations.	Pre-1978	<ul style="list-style-type: none"> · Provision of pamphlet. · LBP inspection. · Abatement of LBP. · Notice to occupants.
H	Project-Based Assistance (HUD Program):		
	1. Multifamily property Receiving more than \$5,000 per unit per year	Pre-1978	<ul style="list-style-type: none"> · 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
	Pre-1978	<ul style="list-style-type: none"> · Provision of pamphlet. · Visual assessment. · Paint stabilization. · Notice to occupants. · Ongoing LBP maintenance. · Response to EIBLL child.
I	Pre-1978	<ul style="list-style-type: none"> · Provision of pamphlet. · LBP inspection and risk assessment. · Interim controls. · Notice to occupants. · Ongoing LBP maintenance and reevaluation. · Response to EIBLL child.
J		Rehabilitation Assistance:
	Pre-1978	<ul style="list-style-type: none"> · 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.
	Pre-1978	<ul style="list-style-type: none"> · 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.
	Pre-1978	<ul style="list-style-type: none"> · 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	Pre-1978	<ul style="list-style-type: none"> · Provision of pamphlet. · Visual assessment. · Paint stabilization. · Notice to occupants. · Ongoing LBP maintenance.
L	Pre-1978	<ul style="list-style-type: none"> · 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	<ul style="list-style-type: none"> · Provision of pamphlet. · Visual assessment. · Paint stabilization. · Notice to occupants. · Ongoing LBP maintenance. · Response to EIBLL child.
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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.

<u>Source of Funding for Activity:</u>	<u>Subject to LBP rule?</u>
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: Yes
(This includes revolving loan fund program income that is transferred to the newly-funded activity)
- 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 rehabilitation work be done by a certified lead paint abatement contractor?

Those parts of the rehabilitation that are conducted with the express intent to permanently eliminate lead-based paint hazards, particularly those documented in HUD regulations, job specifications, cost allocation document, or local agency or court order requiring abatement, must be done by a certified lead-based paint abatement contractor. HUD also requires abatement when Federal rehabilitation assistance exceeds \$25,000 per unit, and interim controls when costs are between \$5,000 and \$25,000. Costs are calculated as described in question J3 below. Abatement is an option when costs are less, but is not required by HUD. Regardless of whether or not abatement or interim controls is conducted, occupant protection, lead-safe work practices, and clearance are required whenever lead-based paint hazards are above de minimis levels (see the joint HUD/EPA letter of April 19, 2001 at www.hud.gov/offices/lead).

J3. Calculation of Average Federal Assistance and Average Rehabilitation Costs: In the instructions in section 35.915 for calculating the Federal rehabilitation assistance per unit for a given project, what is “rehabilitation assistance?” Does it include Federal funds to acquire a property that is to be rehabilitated? If so, please explain how the calculation is made for a multifamily property.

Section 1012(a)(3) of Title X amended the Lead Based Paint Poisoning Prevention Act to require, among other things, that procedures established by HUD require “reduction of lead-based paint hazards in the course of rehabilitation projects receiving less than \$25,000 per unit in Federal funds” . . . and “abatement of lead-based paint hazards in the course of substantial rehabilitation projects receiving more than \$25,000 per unit in Federal funds” (emphasis added). This statutory language allows for the fact that Federal funds are used to assist various costs associated with rehabilitation projects. For example, Federal assistance is often used for acquisition or soft costs associated with rehabilitation. Such projects are considered rehabilitation projects for program purposes, regardless of the specific costs paid with Federal

funds. To ensure that both the level of average Federal assistance per unit and the extent of rehabilitation are accurately measured for purposes of triggering lead-based paint requirements, the regulation calls for a dual-threshold method of the applicable set of lead-based paint requirements for a rehabilitation project.

Under the dual-threshold approach to calculating the level of rehabilitation assistance, the designated party makes two calculations and uses the lesser of the two to determine the applicable requirements. One calculation is of average Federal assistance per unit; the other is of average rehabilitation hard costs per unit, regardless of whether the source of funds is Federal or non-Federal.

For the purpose of calculating average Federal assistance per dwelling unit, Federal assistance per unit includes all Federal funds, including program income generated by Federal funds are counted. (Note: Proceeds of the sale of Low-Income Housing Tax Credits and proceeds from rehabilitation mortgage insurance, such as a 203(k) loan are not considered Federal assistance for this purpose. Funds provided under the Department of Energy's Weatherization Program are not counted as Federal assistance or covered by this regulation because it is not considered a housing assistance program. However, Weatherization performed with CDBG and HOME funds is covered by the regulation and therefore should be included when calculating average Federal assistance). All Federal funds must be included in this calculation regardless of how the Federal funds are used in the project. For example, in a project involving acquisition and rehabilitation, all Federal funds received by the project are included in the calculation even if the Federal funds were used to pay for the acquisition or other non-rehabilitation costs.

The average Federal assistance per unit is the total Federal assistance divided by the total number of federally assisted dwelling units in the project.

The average rehabilitation hard costs per dwelling unit are the actual costs, regardless of the source of funds, associated with the physical development of a unit (i.e., total per unit project costs minus "soft" costs, administrative costs, relocation costs, environmental review costs, acquisition costs, etc.), not including lead hazard evaluation and reduction costs. Soft costs include financing fees, credit reports, title binders and insurance, recordation fees, transaction taxes, impact fees, legal and accounting fees, appraisals, architectural and engineering fees. Lead hazard evaluation and reduction costs include costs associated with site preparation, occupant protection, relocation, interim controls, abatement, clearance, and waste handling attributable to lead-based paint hazard reduction.

If all the units in a multi-unit project are Federally-assisted, the average rehabilitation hard cost per unit is calculated as follows:

Average Per Unit Rehab Hard Cost = Total rehab hard costs for project / Total number of units

For multi-unit projects with both Federally-assisted and non-assisted units, calculate the total rehabilitation hard costs per unit using the following formula:

$$a/c + b/d,$$

where:

a = Rehabilitation hard costs, as defined above, for all assisted dwelling units (not including common areas and exterior surfaces),

b = Rehabilitation hard costs, as defined above, for common areas and exterior surfaces,

c = Number of federally assisted dwelling units in the project, and

d = Total number of dwelling units in the project.

Example: A 20-unit property is undergoing rehabilitation. Total rehabilitation hard costs for the project are \$650,000, including \$150,000 for repairs to the exterior and common areas of the building, \$250,000 to rehabilitate 10 HOME-assisted dwelling units, and \$250,000 for repairs to the unassisted units. The average rehabilitation hard costs per unit are:

$\$250,000/10 \text{ units} + \$150,000/20 \text{ units} = \$25,000 + \$7,500 = \$32,500 \text{ per unit.}$

(Remember that the above formula applies to the calculation of the average rehabilitation hard costs per unit, not to the Federal funds per unit.)

The category into which a rehabilitation job falls is determined by the lesser of the two threshold numbers (i.e., average Federal assistance per unit or average the rehabilitation hard costs per unit.)

If, in the example above, total Federal assistance to the project is \$200,000, then the applicable requirements would be those for the \$5,000 - \$25,000 category (average Federal assistance per unit (\$20,000) would be the lesser number and would determine the applicable requirements).

If in the example, total Federal assistance to the project is \$300,000, then the applicable requirements would be those for the over \$25,000 category (average Federal assistance per unit (\$30,000) is again the lesser number and would determine the applicable requirement).

J3a. CALCULATING AVERAGE REHABILITATION HARD COSTS FOR SINGLE-FAMILY PROPERTIES: Can you clarify the average Federal assistance and average rehabilitation cost for single-family properties. How do I use the dual threshold approach if I'm only rehabilitating one unit?

Average Federal assistance per unit

For the purpose of calculating Federal assistance per dwelling unit, Federal assistance includes all Federal funds, including program income generated by Federal funds.

The per unit Federal assistance is the total Federal assistance divided by the total number of federally assisted dwelling units in the project.

Example 1: The city spends \$40,000 of CDBG funds to rehabilitate a single family home. The city is rehabilitating one home. The per unit federal assistance for this project will be \$40,000 divided by 1, or \$40,000.

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, not including the additional costs of complying with this rule” (64 FR 50174, emphasis added). The term “lead-based paint hazard reduction” does not include rehabilitation activities that would have been conducted in the absence of the regulatory requirements.

For each lead-based paint hazard reduction activity for which costs are subtracted, designated parties should: (1) document what the activity is, its scale or extent, and where in the building it is conducted, (2) document that the surface affected is a known or presumed lead-based paint hazard prior to the rehabilitation, (3) document that the activity is a reasonable and acceptable method of eliminating or controlling the hazard, and (4) determine that the cost of the activity is reasonable.

The most authoritative way to provide documentation of items 1 through 3 above is to conduct a risk assessment of the subject property before the rehabilitation. The risk assessment report should document the nature and location of the hazard and should indicate acceptable methods for controlling the hazard. Paint testing results may also be helpful.

If the standard treatments option is taken, the designated party should record the results of a visual assessment that documents the conditions being treated, e.g., deteriorated paint; rough, pitted or porous horizontal surfaces; and bare soil. These conditions become presumed lead-based paint hazards. Remember that standard treatments must be conducted throughout the assisted part of the property, including common areas, because the option is in lieu of a risk assessment and interim controls, which is a property-wide requirement.

The most questionable way to establish the existence of lead-based paint hazards is to presume their existence without any risk assessment, paint testing or lead-based paint inspection, and without taking the standard treatments option. Much old paint is not lead-based paint. However, a presumption may be acceptable if a designated party has a sound factual basis for it, such as positive paint testing data from similar surfaces on the same property or on structures of a similar construction period in the same neighborhood, combined with a documented visual assessment finding deteriorated paint on the subject surfaces. Guidance on this approach is given in the HUD *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*.

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 and paint testing for rehabilitation projects over \$5,000? Isn't paint testing included as part of a risk assessment?

The statute requires an inspection to determine the presence of lead-based paint. A risk assessment is required to identify lead-based paint hazards which the law requires to be abated. A risk assessment usually includes paint testing of a sampling of deteriorated painted surfaces, plus dust and soil testing. The paint testing requirement is for all deteriorated painted surfaces plus all painted surfaces to be disturbed or replaced during rehabilitation. However, there is no need to retest painted surfaces that have already been tested to comply with the risk assessment or paint testing requirements of the rehabilitation subpart.

J10. EXEMPTIONS AND PROJECT REHABILITATION COSTS: Does the exemption for rehabilitation that does not disturb a painted surface (at section 35.115(a)(8)) apply regardless of the project cost?

Yes.

J11. FUNDS FROM FEDERAL AGENCIES OTHER THAN HUD: When calculating average Federal assistance per unit, should I include funds from all Federal agencies?

Yes, but only if the Federal program is considered a housing assistance program. 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 than 6 years of age. . .” Does this mean that the subpart applies to a unit with a family that includes a pregnant woman but no other children?

Yes. If the designated party knows that the family includes a pregnant woman, the regulation applies, because it is known that the unit is “to be occupied” by a family with a child of less than 6 years of age. This interpretation is consistent with the definition of the term “expected to reside” (in section 35.110), where the regulation states that, “if a resident woman is known to be pregnant, there is actual knowledge that a child will reside in the dwelling unit.”

M2. RESPONSIBILITIES OF OWNERS AND DESIGNATED PARTIES: Under the new HUD lead-based paint regulation, what are the responsibilities of the designated party administering tenant-based rental assistance versus the owner of the property?

Below is a list of: (1) activities that may be required in housing occupied or to be occupied by families with children of less than 6 years of age under subpart M of the regulation and (2) the corresponding responsible party. According to 35.1200(b)(2)(ii), for purposes of the Section 8 tenant-based certificate and voucher programs the PHA shall be the designated party. For purposes of the HOPWA and Shelter Plus Care programs, the grantee shall be the designated party. For the purposes of the HOME program, the participating jurisdiction shall be the designated party. For the Indian Housing Block Grant program, the IHBG recipient shall be the designated party.

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 if another family with tenant-based rental assistance moves into the unit. Does this mean any assisted family, or only one with a child under 6?

The requirements apply to the unit regardless of whether or not the new assisted family has a child under 6. If HUD funds continue to assist the unit, a risk assessment must be conducted and if lead hazards are found they must be corrected.

M4. LONG-TERM AND SHORT-TERM RENTAL ASSISTANCE: Section 33.115(a)(11) provides an exemption for emergency assistance lasting less than 100 days. It specifically mentions rental assistance but exempts it only from the requirements of Subpart K. However, rental assistance is discussed in Subpart M. This seems inconsistent.

Short-term, emergency rental assistance is covered by subpart K. The rental assistance to which subpart M applies is longer term assistance, usually involving a one-year lease. The same is true with project-based rental assistance, which is covered by subpart H (see 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?

No. Removal of deteriorated paint to prepare the surface for repainting is part of paint stabilization, which is an interim control.

R25. When is the use of certified abatement personnel required?

Those activities that are conducted with the express intent to permanently eliminate lead-based paint hazards must be done by certified abatement personnel. Intent would in virtually all circumstances be established when HUD regulations require abatement, when abatement is specified in job specifications, job writeups, cost allocation or similar documents, or when abatement is expressly ordered by a responsible state or local agency or court order. HUD requires abatement when Federal rehabilitation assistance covered by subpart J exceeds \$25,000 per unit, and interim controls when costs are between \$5,000 and \$25,000. Costs are calculated as described in question J3 above. Abatement is an option when costs are less, but is not required by HUD. Abatement is also required in conventional public housing during modernization covered by subpart L and for conversions covered by subpart G. Regardless of whether or not abatement or interim controls is conducted, occupant protection, lead-safe work practices, and clearance are required whenever lead-based paint hazards are above de minimis levels (see the joint HUD/EPA letter of April 19, 2001 at www.hud.gov/offices/lead).

S. QUESTIONS PERTAINING TO MORE THAN ONE SUBPART

S1. VISUAL ASSESSMENT AND CLEARANCE: In housing for which the requirement is a visual assessment for deteriorated paint followed by stabilization of any deteriorated paint and clearance, if the visual assessment finds no deteriorated paint, is clearance still required?

No, because no paint stabilization work will be done.

S2. MOVE-IN BY A LEAD-POISONED CHILD: If the designated party knows that a family moving into an assisted unit has a child with an environmental intervention blood lead level, is it necessary to take any special action before the child moves in?

Yes. For the purposes of subparts H, I, L, and M, a designated party (i.e. owner, HUD, public housing agency or participating jurisdiction) must conduct a risk assessment and control any lead-based paint hazards before a child with an environmental intervention blood lead level moves into the unit. This will ensure that the child will be protected from further exposure. Also, normally it is easier to conduct the risk assessment and, if required, hazard reduction before rather than after the family is in residence.

S3. VERIFICATION OF BLOOD LEAD LEVEL: What exactly is a designated party expected to do to verify a report that a child has an environmental intervention blood lead level?

If a designated party (e.g., property owner or housing agency) receives a report from a source that is not a public health department or another medical health care provider that a resident child has an environmental intervention blood lead level, the designated party must verify the report. This verification is typically obtained by asking the person who provided the report to obtain written documentation of the child's blood lead level from the health department or another medical health care provider (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.