

CHAPTER 6

ENVIRONMENTAL REVIEWS/ LEAD-BASED PAINT/ AND OTHER FEDERAL/ COUNTY REQUIREMENTS

PART I - Environmental Reviews:

- I. **PURPOSE** - The County is responsible for meeting a number of Federal and Local requirements and conducting reviews regarding Environmental issues, Lead Based Paint Program Regulations, and following County Standards in dealing with Sub-Recipients. These requirements are included in Sub-Recipient Agreements set forth in this Manual for all federally funded projects.
- II. **GENERAL** - Federal Environmental (24 CFR Part 58) and Lead Based Paint (24 CFR Part 35) are discussed in this Chapter. Sub-Recipients are to identify, at the earliest possible time, activities and sites where projects will be carried out in order for the County to complete the Environmental Review (for HUD to Release the Funds) or provide advice regarding Lead Based Paint hazard control. The County Department of Housing and Community Development (DHCD) is required to review sites (a process that takes 10 days to two weeks) to determine if a Project is located in a flood plain, an airport clear zone, or a coastal management zone. In addition, DHCD and the Department of Planning and Zoning must determine if buildings are historic (over 50 years old) and may be required to consult with the State Historic Preservation Officer (SHPO), a process that takes at least 30 to 45 days. Other Miami-Dade County requirements are included as Attachment A at the end of this Chapter.
- III. **ENVIRONMENTAL**
- The National Environmental Policy Act of 1969 (NEPA) is the basic national charter for the protection of the environment. In addition to providing policies, goals, and tools for its administration, NEPA also established the Council on Environmental Quality (CEQ) as the principal agency responsible for its implementation, CEQ then developed general regulations that Federal agencies must follow in order to comply with NEPA's broader aims. In turn, many Federal agencies, including HUD, have since applied the goals and policies of NEPA to their own sets of agency-specific regulations. For HUD, these agency regulations are set forth in 24 CFR Part 50: Protection and Enhancement of Environmental Quality.
 - Under 24 CFR Part 50, HUD assumes responsibility for conducting environmental reviews for any HUD programs which may impact, or be impacted upon by the environment. Although HUD is responsible

For environmental reviews under these regulations, statutory authority allows other qualified entities to assume this responsibility for certain programs.

- The rules governing reviews by Miami-Dade County, referred to as a qualified entities, are found in 24 CFR Part 58, 'Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities.' Groups which may assume responsibility for environmental reviews include State, Local, and Native American units of general local government. Such groups are referred to as the Responsible Entities (RE) for their designated projects. While the RE may also be the Recipient of HUD assistance, which is the group which will actually receive HUD funds for their program, they are not necessarily one and the same.

IV. KEY FEDERAL REGULATIONS

There are several regulations which govern the process of environmental reviews in HUD-assisted programs. The following is a list of some of the key regulations:

- 24 CFR Part 50: Protection and Enhancement of Environmental Quality (HUD only)
 - 24 CFR Part 58: Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities. (This applies to Miami-Dade County.)
 - 24 CFR Part 51: Environmental Criteria and Standards
 - 24 CFR Part 55: Floodplain Management
 - 36 CFR Part 800: Protection of Historic Properties
 - 40 CFRs Part 1500-1508: Council on Environmental Quality Implementation of NEPA Procedural Provisions
 - 7 CFR Part 658: Farmland Protection Policy Act
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- Certain activities are defined in Part 58 (as well as Part 50) as exempt from environmental review or not subject to NEPA and other environmental laws and authorities. (Other laws and authorities include historic preservation, clean air, floodplain management, etc.) Documentation of these exemptions and exclusions must be included in the project's file. (See Sec. 50.20 and 58.35(a) for the list of such categorical exclusions subject to Federal laws and Secs. 50.4, 58.5, and 58.6 for "other" laws and authorities) Even though certain activities are defined as categorically excluded from NEPA, some of these still require compliance actions for their specific category of environment, e.g. historic preservation, clean air, flood management, etc. (see 24 CFR Part 58.35).

 - Projects that are not exempt or categorically excluded require an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) that considers a broad range of impacts in addition to compliance with the specific laws and authorities mentioned above.

An Environmental Assessment concludes with either a "Finding A No Significant Impact" (FONSI) or a "Finding a Significant Impact" (FOSI). In the latter case, the review would move on to preparation of a full EIS. However, most HUD projects do not require the preparation of an EIS.

- Once the environmental review is completed, the Responsible Entity (i.e. a State, Local, or Native American government) must notify the public of its intent to request a release of funds from HUD for projects that re categorically excluded or that required an EA or EIS.

V. ENVIRONMENTAL REVIEW

Sub-recipients are responsible for assisting the County in undertaking environmental reviews in accordance with the requirements imposed in 24 CFR 58.5. Sub-Recipient assisted County reviews must be completed, and Requests for Release of Funds (RROF) submitted to HUD before CDBG/HOME/ESG funds are committed. The Sub-Recipient Agreement includes the following section "Environmental Review" - The Contractor immediately upon locating or determining a site for each of the "Unspecified Site" activities to be carried out pursuant to this contract, shall submit information detailing the location of each site for which an Environmental Review Record will be prepared as described in Section II, Paragraph E.4 of the contract as set forth below. The Environmental Review is to be prepared on information contained in Attachment D, "Information for Environmental Review Form." The Contractor shall obtain a written Environmental Approval Letter from DHCD prior to expending CDBG or other federal funds. Failure to comply with this requirement shall result in the revocation of this agreement.

- Private citizens and organizations can object to the release of funds for CDBG/HOME/ESG projects on certain procedural grounds relating to environmental review (see CFR 58.70-58.77). To avoid challenges, sub-recipients should be diligent about meeting procedural requirements.
- Overview of the Environmental Review Process:
 - Initiate the environmental review process as soon as proposed activities are determined.
 - Review activities to the extent possible.
 - Continue and amend reviews as more information becomes available.
 - Establish and maintain a written Environmental Review Record (ERR) for each project and project group that:
 - o Describes the specific activities in that project or project group;
 - o identifies the certifying officer and include determinations signed by the certifying officer;
 - o contains supporting evidence and all relevant documents, notices, determinations and other information pertaining to the review; and is available for public review
- Classify activities and determine the level of review required. A basic description of the levels of review is given below.

- Aggregate activities that are related either geographically or functionally (project aggregation). For example, a sub-recipient may perform an environmental review for all its moderate rehabilitation projects in five neighborhoods. Note that individual site-specific reviews will be required to assure compliance with historic preservation, flood plain insurance, runaway zone notification and any other site-specific requirements. If a proposed project does not fit within an aggregated review because it is functionally or geographically different, a sub-recipient must undertake additional environmental responsibilities.
- Follow the appropriate review formats for each project or group of activities. Contact the appropriate State and local agencies for determinations on specific aspects of your review. Certify all determinations and include all determinations and supporting evidence in the ERR.
- Publish public Notices of Intent (NOI) as required, and documents the publication and any comments received. See below for details.
 - a. Submit Requests for Release of Funds (RROF) to HUD or relevant State agency and certifications of site-specific reviews as needed.
- Wait for approval from HUD or your relevant State agency and document approvals before committing funds.
- Update the ERRs as specific sites are determined or new information is gathered about an existing site.

VI. LEVEL OF REVIEW

The level of environmental review required is determined based on the type of activity funded with federal funds. The categories are described below.

- **Exempt Activities** - Certain activities are declared exempt by HUD, the administering agency for the various federal Programs, and, thus, are not subject to NEPA or statutory/regulatory review. Examples of exempt activities include:
 - o administrative and planning activities
 - o environmental studies or assessments; and
 - o payment of reasonable engineering and design costs
- **Categorically Excluded/Exempt Activities** - Certain activities which result only in provision of services or a change of tenancy or ownership of existing structures and do not result in physical changes to structures are excluded from NEPA and, after adequate review, may be considered exempt from some statutory review requirements. These activities include:
 - o information services
 - o feasibility studies, environmental studies and testing, and other planning and coordination

- o operating expenses including maintenance, security,
 - o insurance, utilities; and
 - o financial assistance to homebuyers not tied to physical changes in the property
- **Categorically Excluded Activities** - The following other activities are categorically excluded from NEPA, but not from the statutory/regulatory requirements:
 1. Public facility or infrastructure improvement projects:
 - o Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g. replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).
 2. ADA accessibility projects:
 - o Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.
 3. Rehabilitation projects:
 - o In the case of a building for single-family residential use (with one to four units):
 - The density is not increased beyond four units;
 - The land use is not changed; and
 - The footprint of the building is not increased in a floodplain or in a wetland.
 - o In the case of multifamily residential buildings:
 - Unit density is not changed more than 20 percent;
 - The project does not involve changes in land use from residential to non-residential; and
 - The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.
 - o In the case of non-residential structures, including commercial, industrial, & public buildings:
 - The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and

- 4. Single-Family new construction projects:
 - o An individual action on a one to four family dwelling up to four dwelling units where there is a maximum of four units on any one site; or
 - o An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.

- **Activities Requiring an Environmental Assessment** - Activities not exempt or categorically excluded and any activities not in compliance with the statutory requirements require that the responsible public entity prepare an environmental assessment of the project's impact on the human environment. If no significant environmental impact will occur, then:

- o Publish a public Finding of No Significant Impact (FONSI) and a Notice of Intent to Submit a Request for Release of Funds;
- o Allow a public comment period; and
- o Submit a RROF to HUD.

- If a significant impact is anticipated, then the sub-recipient must publish a Notice of Intent to complete an Environmental Impact Statement (EIS) and proceed to complete the EIS.

VII. DOCUMENTATION REQUIREMENTS

- The ERR for all types of activities must contain the following documentation:

- Description of the activities that the sub-recipient has determined to be part of that project. Include detailed information such as project address(es) grant number and project number, and name of the person completing each document.

Written determination specifying whether the project is:

- o exempt
- o categorically excluded/exempt
- o categorically excluded
- o subject to environmental assessment; or
- o subject to Environmental Impact Statement

- All relevant documents, notices, determinations and other information pertaining to the environmental review and determination.

Requirements for Environmental Review, Public Notice and RROF

LEVEL OF ENVIRONMENTAL REVIEW	REVIEW FORM REQUIRED	TYPE OF PUBLICATION
EXEMPT - 24 CFR §58.34	Document the Environmental Review Record (ERR)	No Public Notice/No RROF
CATEGORICAL EXCLUSION 24 CFR §58.35 Compliance Action "triggered" on Statutory Checklist	Statutory Checklist No Finding is Made	Publish NOVRRROF - Wait 7 days Submit RROF 7015.15 to HUD and wait 15 days. HUD issues Release of Funds
CATEGORICAL EXCLUSION 24 CFR §58.35(a) Subject to 24 CFR §58.5 No Compliance "triggered" on the Statutory Checklist	Statutory Checklist/Document the Environ. Review Record - No Finding is made	No Public Notice/No RROF
CATEGORICAL EXCLUSION 24 CFR §58.35 Not Subject to 24 CFR §58.5	Document the Environmental Review Record (ERR)	No Public Notice/No RROF
ENVIRONMENTAL ASSESSMENT	EIS required if project(s) meets any conditions in §58.37(a) & §58.37(b)	Publish FONSI and NOI/RROF, wait 15 days; RROF to HUD and wait 15 days. HUD issues Release of Funds HUD-7015.16
ENVIRONMENTAL IMPACT STATEMENT	HUD should be contacted by the responsible entity	

GLOSSARY TERMS:

EA	Environmental Assessment
EIS	Environmental Impact Statement
ERR	Environmental Review Record (the environmental file)
Finding	A determination that the project action will or will not affect the quality of the human environment (58.40 - (1) FONSI and (2) FOSI)
FOSI	Finding a Significant Impact. An EIS is required. Call HUD (made at the end of EA)
FONSI	Finding a No Significant Impact (made at the end of EA)
NOI	Notice of Intent
NOI/RROF	Notice of Intent to Request Release of Funds
Public Notice	A publication in the newspaper. Obtain format from HUD Miami Field Office
ROF	Release of Funds notice in writing from HUD Miami Field Office
RROF	Request for Release of Funds on HUD Form 7015.15 with copy of advertisement

NOTE: Refer to 24 CFR Part 58 for complete instructions

ENVIRONMENTAL REVIEW REQUIREMENTS					
ACTIVITIES	24 CFR	EXEMPT*	CE & NST**	CEST***	EA****
SINGLE FAMILY REHABILITATION				X	
MULTI-FAMILY REHABILITATION				X ¹	X ²
NEW CONSTRUCTION				X ⁴	X ⁴
HANDICAPPED ACCESS	§58.35(a)(2)			X	
PUBLIC FACILITIES	§58.35(a)(1)			X ⁴	X ²
HOMEOWNERSHIP ASSISTANCE - EXISTING (58.35(B)(5A)):	§58.35(b)(5)				
<i>CLOSING COSTS</i>			X		
<i>DOWN PAYMENT</i>			X		
<i>INTEREST BUYDOWN</i>			X		
TENANT BASED RENTAL ASSISTANCE (58.34(A)(4))	§58.35(b)(1)		X		
ACQUISITION OR DISPOSITION OF LAND				X ¹	
INFORMATION SERVICES		X			
PUBLIC SERVICES - NOT PHYSICAL	§58.34(a)(4)	X			
ENVIRONMENTAL, FEASIBILITY AND OTHER STUDIES		X			
SUPPORTIVE SERVICES	§58.35(b)(2)		X		
PAYMENT OF HUD LOAN GUARANTEE		X			
OPERATING COSTS			X		
ADMINISTRATIVE SERVICES AND COSTS		X			
PURCHASE OF TOOLS		X			
ECONOMIC DEVELOPMENT ACTIVITIES			X ³		

X ¹	If for continued use, <20% change in density (or size) or cost
X ²	If for change in use, or change in density (or size) > 20% or cost
X ³	Not associated with Construction or expansion
X ⁴	Level of environmental review required is dependent on the number of units in each project funded. See 24 CFR §58.35(a)(4)
*	Exempt - Exempt Activity(ies)
**	CE/NST - Categorically Excluded and Not Subject to §58.35 Related Laws and Authorities
***	CEST - Categorically Excluded Subject to §58.5; Categorically Excluded from NEPA (Statutory Checklist)
****	Environmental Assessment (Format II)

Refer to 24 CFR Part 58 for complete instructions

VIII. FLOOD INSURANCE

- Section 202 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) - Requires that only CDBG funds shall not be provided to an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

- The community is participating in the National Flood Insurance Program, or it has been less than a year since the community was designated as having special flood hazards; and
- Proof of flood insurance must be obtained.

PART II - LEAD BASED PAINT:

I. LEAD BASED PAINT

- 24 CFR Part 35 (effective 9/15/00) and Section 401(b) of the Lead-based Paint Poisoning Prevention Act apply to federally funded acquisition, rehabilitation, maintenance and construction. However, many states and localities have rules far more stringent than federal requirements. Where more than one set of requirements is applicable, the more stringent requirements must be followed.
- First and foremost, the use of lead-based paint is prohibited.
- Applicants for federally funded assistance and tenants and prospective purchasers of property built before 1978 must be notified of the following before rehabilitation, purchase or rental:
 - that the property may contain lead-based paint
 - the hazards of lead-based paint
 - the symptoms and treatment of lead-based paint poisoning
 - the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for removing such hazards)
 - the advisability and availability of blood lead level screening for children of six years old; and
 - that in the event lead-based paint is found on the property, appropriate abatement measures must be undertaken and are an eligible use of federal funds
- In federally funded assisted programs, lead-based hazards must be eliminated to the extent practicable. Note, however, that rehabilitation does not include :
 - Emergency repairs
 - Weatherization
 - Water/sewer hookups
 - Installation of security devices

- Facilitation of tax-exempt bonds for rehabilitation projects
- Other similar types of single purpose rehab programs that do not include physical repairs or renovations to interior or exterior painted surfaces

In rehabilitation projects, sub-recipients are required to:

- Examine all painted surfaces in housing structures which were constructed before 1978 and are occupied by children of six years of age or younger for defective area (cracking, scaling, peeling, chipping or loose paint). Where defective surfaces are found, these surfaces must be covered or removed in accordance with the requirements of 24 CFR Part 35
- Test "chewable surfaces" of any home occupied by a child under seven years old who has an identified elevated blood lead level for lead content using an X-ray fluorescence analyzer (XRF) or other HUD-approved method. If chewable surfaces are found to contain lead-based paint, the surfaces must be covered or removed in accordance with the requirements at 24 CFR Part 35
- Forgo testing and abate all applicable surfaces in accordance with 24 CFR Part 35

Other important lead-based paint requirements:

- Provisions for inspection and treatment must be included in all contracts and subcontracts. Treatment must be performed before the sub-recipient conducts a final inspection and approves the work.
- If abatement is necessary, occupants must be protected from lead hazards associated with abatement. This includes temporary relocation, if necessary.
- Lead-based paint and related debris must be disposed of in accordance with all applicable federal, state and local laws governing such disposal. Sub-recipients should include provisions to this effect in construction/abatement contracts.

Records of inspections and testing must be maintained for at least five years.

**HUD LEAD BASED PAINT REGULATIONS
24 CFR PART 35**

Requirements for notification, evaluation and reduction of lead-based paint hazards in housing receiving federal assistance and federally-owned residential property being sold.

QUESTIONS AND ANSWERS

These questions and answers are organized in four parts:

- A. Introduction
- B. Requirements and Organization of the Regulation
- C. Definitions
- D. Additional Sources of Information

Following the questions and answers are a summary of requirements and a list of HUD housing assistance program covered by each subpart of the rule within 24 CFR Part 35.

A. INTRODUCTION

A1. 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, when lead-based paint was banned nationwide for consumer use.

This 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-based paint policies in one place, instead of having to look through each program-specific part of the CFR.

More importantly, this regulation implements concepts and terminology established by the Residential Lead-Based Hazard Reduction Act of 1992, which is Title X ("ten") of the Housing and Community Development Act of 1992. The regulation retains the existing fundamental requirement of repairing deteriorated paint and controls 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. Previous regulations did not require cleanup or clearance. (See Question B8, information on clearance.)

Also, this regulation uses the framework of trained and certified lead-based paint professionals developed by the U.S. Environmental Protection Agency (EPA) in cooperation with most States.

A2. When does the regulation take effect?

Prohibitions against using dangerous methods of removing paint tools took effect on November 15, 1999 with final program implementation effective on September 15, 2000 one year after publication. The purpose of the one-year phase-in period was to provide time for owners and managers of housing and local administrators to learn about the requirements and plan and budget for compliance. HUD provides training and technical assistance on a routine basis.

A3. What kinds of properties are exempted from the regulation?

The following properties are not covered by this regulation, either because lead-based paint is unlikely to be present, or because children will not occupy the house in the future.

- Housing built after January 1, 1978 (when lead paint was banned for residential use)
- Housing exclusively for the elderly or people 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 where all lead-based paint has been removed
- 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 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 (as for the homeless) unless the assistance lasts more than 100 days, in which case the rule does apply.

A4. What are the benefits and costs of the regulation?

See the Economic Analysis accompanying the rule 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 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.

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). Many units will have no costs at all because they have been well maintained and have no deteriorated lead-based paint. Other units may have significant costs.

A5. 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. You can obtain copies of that issue by downloading from the Federal Register website, www.access.gpo.gov by name or by mail, for a fee, from the Government Printing Office at 1-866-512-1800 (this is a toll-free number). There is no difference between the copies available from the HUD website, the National Lead Information Center, the Federal Register website, or the Government Printing Office.

B. REQUIREMENTS AND ORGANIZATION OF THE REGULATION

B1. What are the requirements of the regulation?

In accordance with Congressional intent, 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.

You can find a summary of requirements for each type of housing assistance at the end of these questions and answers. 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 or other detailed material (see Question D1 below, on training).

To illustrate the nature of the requirements, following 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 there has been satisfactory cleanup of dust, paint chips and other debris (clearance includes scientific testing of settled dust for lead) and
- Ongoing maintenance of the paint 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 re-evaluation to ensure that lead-based paint hazards do not reappear

The terms, "risk assessment," lead-based paint hazards," and "interim controls" are explained in questions C1-C3.

B2. Do I have any options?

Yes. When the regulation requires a risk assessment and interim controls, you can opt to do a "standard treatment," which assumes that lead-based paint is present on all surfaces. This option can reduce costs by bypassing up-front risk assessments, but it could also increase costs because some surfaces may be treated for lead hazards unnecessarily, that is, where no lead hazard is actually present. (See Question C4, below, for further discussion of "standard treatments.")

You also have other options. You have the option to test any deteriorated paint surface or surface to be distributed by rehabilitation. If that surface is found to not contain lead-based paint, the requirements do not apply. Also, a less expensive lead hazard screen can be done as a first step of a risk assessment. If the housing passes the screen, a full risk assessment is not needed. You also have the option to conduct abatement, instead of interim controls and paint stabilization. Finally, when the regulation requires abatement of lead-based paint, a lead-based paint inspection is not required if all paint is assumed to be lead-based paint and all paint is abated.

B3. What dangerous methods of paint removal are prohibited under the rule?

Certain methods of removing paint are known to be dangerous, and/or produce very high levels of lead dust, and are prohibited. They are:

- Open-flame burning or torching;
- Abrasive blasting without high efficiency ("HEPA") vacuum local exhaust;

- Machine sanding or grinding without HEPA vacuum local exhaust;
- Heat guns at temperatures above 100 degrees Fahrenheit;
- Dry scraping (wet scraping should be done instead, except near electrical outlets, where use of water could result in electrocution hazards and except for very small areas of deteriorated paint, such as nail holes and hairline cracks);
- Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance (according to regulations of the Consumer Product Safety Commission or the Occupational Safety and Health Administration) such as methylene chloride.

B4. 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. A list of these subparts and related requirements is provided at the end of these questions and answers. If you are uncertain which subpart applies to a particular program, you should examine the list of program covered by each subpart at the end of these questions and answers.

B5. 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 generally means sale) 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 their programs and practices.

B6. 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 Partnership 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 decide 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.

B7. 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 based 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.

B8. Is clearance required after all lead hazard control activities in all HUD programs?

Yes, except for single-family mortgage insurance and small jobs (see question B11, below, for what constitutes a "small job", that is, a job for which safe work practices are not required). Clearance provides assurance to occupants and owners that the dwelling is safe for children. The clearance examination must be done by a person who did not perform the hazard control work and who is certified (or licensed) to perform lead-based paint inspections, risk assessments or clearance examinations in the State or Indian Country in which the housing is located. It involves (1) a visual assessment to assure that there aren't any deteriorated paint surfaces or visible amounts of dust or debris remaining on the property, and (2) dust testing to assure that the standards for lead in dust have been complied with. Dust testing cannot occur until after the housing has passed the visual assessment. If dust lead levels equal or exceed the standards, there should be another cleaning of the spaces and surfaces represented by the failing dust samples. The clearance examiner must prepare and sign a report documenting that the housing passed clearance.

B9. Who can do clearance examinations and other lead-based paint activities?

A clearance examination must be done by a person who was not involved in performing the hazard control work and who is certified (or licensed) as a lead-based paint inspector, risk assessor, or clearance technician in the State or Indian Country in which the housing is located. (There are some limitations on the extent of clearances in multifamily housing that can be done by certified clearance technicians.) A clearance examination can also be done by a person who has been trained but not certified as a clearance technician, provided a certified lead-based paint inspector or risk assessor approves the work of the clearance technician and signs the report of the clearance examination.

Paint testing and full lead-based paint inspections must be done by a certified lead-based paint inspector. A risk assessment must be done by a certified risk assessor. (See Question C2, below, for the difference between a lead-based paint inspection and a risk assessment.) Abatement of lead-based paint or lead-based paint hazards must be done by a certified abatement worker, and the work must be supervised by a certified lead-based paint abatement supervisor. Interim controls of lead-based paint hazards must be done by a person who is trained in accordance with the hazard communication (OSHA) and who is either supervised by a certified abatement supervisor or has completed one of several training courses that explain how to conduct work safely so as not to contaminate the environment or expose occupants to lead. (See Question C3, below, for the difference between "abatement" and "interim controls," as those terms are used in the regulation.)

B10. Do the requirements apply to exterior surfaces and common areas as well as to painted surfaces within a dwelling unit?

Yes. The requirements apply to exterior surfaces and in multi-unit buildings, common areas that are associated with the dwelling units covered by the regulation. Children can be exposed to high levels of lead dust in, for example, hallways or laundry rooms, as well as in their own homes. Lead-based paint was often used on exterior surfaces, and deteriorated exterior lead-based paint often contaminates window sills as well as the soil around the home - all easily accessible to young children.

B11. How large does an area of deteriorated paint have to be before this rule requires action?

The rule requires that a deteriorated paint must be stabilized or abated, except when the paint is found not to be lead-based paint or when the deterioration is limited to hairline cracks or small nicks, scratches or nail holes. In addition, "safe work practices" (that is occupant protection, worksite preparation and specialized cleaning) must be used during stabilization or abatement only when the area of paint being disturbed is greater than:

- 20 square feet on exterior surfaces; or
- 2 square feet in an interior room; or
- 10% of a building component with a small surface area (such as a painted window frame)

B12. When can the application of the regulation be delayed?

If adverse weather does not permit required hazard reduction work to be completed according to the normal schedule, the work can be delayed until the weather clears.

B13. Do occupants always need to be relocated out of their dwelling unit during lead hazard control work?

No. However, occupants (especially children) are never permitted to enter a room or hallway while work is underway there. Many jobs may

be performed without relocation if the work area is contained so that dust generated by the work does not migrate to the rest of the living area during the work, cleanup and clearance. Generally, it is safer to relocate occupants until the work has been completed.

B14. What does the regulation require for dwellings where a lead-poisoned child has been identified?

In most cases in which there is continuing HUD assistance, a risk assessment of the child's dwelling must be completed within 15 days after the owner is notified of the presence of a lead-poisoned child by a health department or other medical health care provider. If lead-based paint hazards are identified, they must be corrected within 30 days after the risk assessment has been completed. For the purposes of this requirement, a lead-poisoned child is defined as a child of less than 6 years of age with a blood lead level of 20 mg/dL (micrograms per deciliter) or greater for a single test or 15-19 mg/dL in two tests taken at least three months apart. This is called an "environmental intervention blood lead level" in the regulation. It follows the guidelines on blood lead screening and environmental investigation from the Centers for Disease Control and Prevention (CDC).

C. DEFINITIONS

C1. What are lead-based paint hazards?

Title X defines "lead-based paint hazards" as including deteriorated lead-based paint, lead-based paint on friction surfaces, impact surfaces and accessible (chewable) surfaces; and dust and soil that is contaminated with lead above specified standards. The regulation states further that friction, impact and chewable surfaces must show signs of paint abrasion, damage or teeth marks to be considered lead-based paint hazards. Lead-based paint that is intact and in good condition is usually not considered a hazard.

C2. What is the difference between lead-based paint inspections and risk assessments?

Inspections determine whether or not lead-based paint is present and, if it is, where it is located, regardless of whether or not it is currently a hazard. Risk assessments determine whether or not lead-based paint hazards exist and, if they do, where they are located.

C3. What is the difference between abatement and interim controls?

Abatement, as the term is used in the regulation, corrects hazards for at least 20 years. Abatement methods include removal of paint, replacement of painted building components, and enclosure or encapsulation of painted surfaces. If enclosure or encapsulation is used, the application must have an expected life of at least 20 years. Interim controls correct lead-based paint hazards for a

shorter period of time. The most common interim control is paint stabilization, which is described in questions B1 and C4. If interim controls are used, ongoing maintenance of lead-based paint surfaces is necessary to ensure that the housing remains lead-safe. If performed properly, both abatement and interim controls result in a lead-safe dwelling for children.

C4. What are "standard treatments?"

Under standard treatments, all deteriorated paint is stabilized (as described below), all horizontal surfaces are made smooth and cleanable to prevent accumulation of lead dust, all friction and impact surfaces (that could generate lead dust and/or paint chips) are corrected, all bare soil is covered, and a final clearance test is passed.

Stabilizing paint is repairing any physical defect in the material beneath the painted surface that is causing deterioration, removing loose paint and other material from the surface to be treated using wet methods to reduce dust generation, and applying a new protective coating or paint.

D. ADDITIONAL SOURCES OF INFORMATION

D1. Will HUD provide training and technical assistance on the regulation?

Yes. The Department will provide extensive training nationwide for organizations administering the Community Development Block Grant (CDBG) program, the HOME program, programs for the homeless and other special needs and other federal programs. Training, self-instructional materials, and technical assistance will also be made available for owners of housing receiving project-based assistance public housing agencies, and other grantees.

You will be able to download much of these training and technical assistance materials, as they are developed, from the HUD Internet site at www.hud.gov/lea.

D2. Where can I find certified lead-based paint risk assessors, inspectors, abatement contractors, and laboratories that are accredited for analysis of samples for lead?

HUD maintains a listing of certified firms and recognized laboratories for every State. The listing also includes accredited providers of training in lead-based paint activities. You can access the Lead Listing on the Internet at www.leadlisting.org or by telephone toll free at 1-888-LEADLIST. This information is also available from the National Lead Information Center at 1-800-424-LEAD, and it also includes a list of accredited providers of training in lead-based paint activities.

D3. Where can I get information on how to do lead hazard evaluation and control work safely?

You can obtain HUD's "Lead Paint Safety: A Field Guide for Painting, Home Maintenance, and Renovation Work" from the National Lead Information Clearinghouse, at 1-800-424-LEAD, or by downloading from www.hud.gov/lea. You can also obtain the EPA's "Reducing Lead Hazards when Remodeling Your Home" from the Clearinghouse or by downloading from www.epa.gov/opptintr/lead. Finally, you can obtain HUD's comprehensive document, *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* by downloading from www.hud.gov/lea or by mail from HUD USER at 1-800-245-2691.

D4. Where can I call for more information?

You can call the National Lead Information Clearinghouse, at 1-800-4-LEAD for publications or answers to specific lead-related questions. The clearinghouse provides information in English and Spanish. For technical information, you can call the HUD Office of Lead Hazard Control, at (202) 755-1785 ext. 7698; or you can e-mail HUD at leadrermlations@hud.gov.

Final HUD regulation setting requirements for notification, evaluation and reduction of lead-based paint hazards in housing receiving federal assistance and federally-owned residential property being sold.

SUMMARY REQUIREMENTS

Note: Clearance is always required after abatement, interim controls, paint stabilization or standard treatments.

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 hazard • 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 EBL 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.	Multi-family mortgage insurance		
	If for properties that Are currently residential	Pre-1960	<ul style="list-style-type: none"> • Provision of pamphlet • Risk assessment • Interim controls
		1960-1977	<ul style="list-style-type: none"> • Notice to occupants of results • 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 re-evaluation • Response to EBL child
	2. Multifamily property - Receiving less than or equal to \$5,000 per unit per year; and single family properties	Pre-1978	<ul style="list-style-type: none"> • Provision of pamphlet • Visual assessment • Paint stabilization • Notice to occupants • Ongoing LBP maintenance • Response to EBL child

I.	HUD-owned multifamily property	Pre-1978	<ul style="list-style-type: none"> • Provision of pamphlet • LBP inspection and risk assessment • Interim controls • Notice to occupants • Ongoing LBP maintenance • Response to EBL child
J.	Rehabilitation assistance		
	1. Property receiving less than or equal to \$5,000 per unit	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 rehabilitation • Repair disturbed paint • Notice to occupants
	2. Property receiving more than \$25,000 and up to \$25,000	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 CLIP
	2. Property receiving more than \$25,000 per unit	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
K.	Acquisition, leasing, support services, or operation	Pre-1978	<ul style="list-style-type: none"> • Provision of pamphlet • Visual assessment • Paint stabilization • Notice to occupants • Ongoing LBP maintenance
L.	Public Housing	Pre-1978	<ul style="list-style-type: none"> • Provision of pamphlet • LBP inspection • Risk assessment • Abatement of LBP • Risk assessment if LBP not yet abated • Interim controls if LBP not yet abated • Notice to occupants • Response to EBL child
M.	Property receiving more than \$25,000 per unit	Pre-1978	<ul style="list-style-type: none"> • Provision of pamphlet • Visual assessment • Paint Stabilization • Notice to occupants • Ongoing LBP maintenance • Response to EBL child

Final HUD regulation setting requirements for notification, evaluation and reduction of lead-based paint hazards in housing receiving federal assistance and federal-owned residential property being sold

**LIST OF HOUSING ASSISTANCE PROGRAMS COVERED BY EACH
SUBPART OF THE RULE WITHIN 24 CFR PART 35**

Note: This list of programs may not be complete and is subject to change. Some housing is exempt; see 24 CFR Part 35.115.

Subpart G. Multifamily Mortgage Insurance (statutory section numbers refer to the National Housing Act unless otherwise specified)

This subpart applies to housing for which a HUD or FHA commitment is made on or after September 15, 2000 under the following programs:

Multifamily Rental Housing (Section 207,12 U.S.C. 1713)

Cooperative Housing (Section 213,12 U.S.C. 1715e)

Mortgage and Major Home Improvement Loan Insurance for Urban Renewal Areas (Section 220,12 U.S.C. 1715k(a)and (h))

Multifamily Rental Housing for Moderate-Income Families (Section 221(d)(3) and (4), 12 U.S.C. 1715(1)(d)(3) and (4))

Existing Multifamily Rental Housing (Section 223(1), 12 U.S.C. 1715n(f))

Mortgage Insurance for Housing for the Elderly (Section 231,12 U.S.C. 1715~)

Condominium Housing (Section 234,12 U.S.C. 1715~)

Mark-to-Market Program (12 U.S.C. 1701); and

Supplemental Loan for Project Mortgage Insurance (12 U.S.C. 1715n)

Subpart H. Project-Based Rental Assistance

This subpart applies to housing that is receiving project-based rental assistance on or after September 15, 2000 under the following programs:

Section 8 Project-Based Housing Assistance Programs (41 U.S.C. 1437f)

The Rent Supplement Payment Program (12 U.S.C. 1701s)

Rental Assistance Payments Program (Section 236 of the National Housing Act, 12 U.S.C. 17152-1)

Indian Housing Block Grant Program (25 U.S.C. 4101 et seq.)

Shelter Plus Care Project and sponsor-based rental assistance (Title IV of the McKinney Homeless Assistance Act, 42 U.S.C. 11403 et seq.)

Supportive housing for the elderly or direct loans for housing for the elderly or handicapped (Section 202 of the Housing Act of 1959, 12 U.S.C. 1701q); and

Supportive housing for persons with disabilities (42 U.S.C. 8013)

Subpart J. Rehabilitation

This subpart applies to housing receiving assistance for rehabilitation under the following programs (the effective date for a project in the pipeline varies with the program; see 24 CFR, Part 35.900)

Community Development Block Grant Program (42 U.S.C. 5301 et seq.)

Home Investment Partnerships Program (HOME) (42 U.S.C. 12701-12840)

HOPE for Homeownership of Single Family Homes (HOPE 3) (42 U.S.C. 12891-12898)

Indian Housing Block Grant Program (25 U.S.C. 4101 et seq.)

Indian Community Development Block Grant Program (42 U.S.C. 5301 et seq.)

Housing Opportunities for Persons with AIDS (HOPWA) (42 U.S.C. 12901-129 12)

Homeownership of Multifamily Units (HOPE 2) (42 U.S.C. 12871-12880) and Emergency Shelter Grants (42 U.S.C. 11371-11378)

Supportive Housing (42 U.S.C. 11381-1 1389)

Interest Reduction Payment (IRP) Grant program (12 U.S.C. 17152-1)

Flexible Subsidy-Capital Improvement Loan Program (CILP) (12 U.S.C. 17 152-1) and

Mark-to-Market Program (12 U.S.C. 1701)

Subpart K Acquisition, Leasing, Support Services, or Operation

This subpart applies to housing receiving assistance for acquisition (e.g., down payment assistance), leasing (e.g. homelessness prevention), support services (e.g., health, child care, or training), or operation (e.g., emergency shelter) under the following programs (the effective date for a project in the pipeline varies with the program; see 24 CFR, Part 35.1000):

Community Development Block Grant (42 U.S.C. 5301 et seq.)

Home Investment Partnerships Program (HOME) (42 U.S.C. 12701-12840)

Homeownership of Multifamily Units (HOPE 2) (42 U.S.C. 12871-12880)

HOPE for Homeownership of Single Family Homes (HOPE 3) 42 U.S.C. 1289 1-1 2898)

Indian Community Development Block Grant Program (42 U.S.C. 5301 et seq.)

Indian Housing Block Grant Program (25 U.S.C. 4101 et seq.)

Housing Opportunities for Persons with AIDS (HOPWA) (42 U.S.C. 1290 1-129 12)

Permanent Housing for Handicapped Homeless Persons (42 U.S.C. 11381 et seq.) and

Supportive Housing Program (42 U.S.C. 11381-1 1389)

Subpart L. Public Housing

This subpart applies to housing owned by public housing authorities and assisted under the United States Housing Act of 1937, except for Section 8 of that Act. Covered programs include the following:

Public Housing Development (42 U.S.C. 1437b, 1437~and 1437g)

Public Housing Operating Subsidy (42 U.S.C. 143713)

Public Housing Authority (PHA) Owned or Leased Projects Maintenance and Operation (42 U.S.C. 1437d and 1437g)

Public Housing Modernization (Comprehensive Grant Program, CGP) (42 U.S.C. 14371)

Public Housing Modernization (Comprehensive Improvement Assistance Program; CIAP) (42 U.S.C. 14371)

Homeownership and Opportunity for People Everywhere (HOPE 1) (42 U.S.C. 1437aaa et seq.)

Urban Revitalization Demonstration (HOPE VI)

PHA-owned lower-income public housing projects, including Turnkey III, Mutual Help, conveyed Lanham Act and Public Works Administration projects, and

Section 23 Leased Housing Bond-Financed projects

This subpart does not apply to projects under the Section 23 and Section 8 Housing Assistance Payments programs.

Subpart M. Tenant-Based Rental Assistance

This subpart applies to housing that is occupied by a family with a child of less than 6 years of age and receives tenant-based rental assistance under the following programs:

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 14370)

HOME Tenant-Based Rental Assistance Program (42 U.S.C. 12701-12840)

Indian Housing Block Grant program (25 U.S.C 4101 et seq.)

Shelter Plus Care Tenant-Based Rental Assistance (42 U.S.C. 11403 et seq.)
and

Housing Opportunities for Persons with AIDS (HOPWA) 42 U.S.C. 12901-12912)

Part III - Environmental Protection Agency Renovation, Repair, and Painting Rule (40 CFR Part 745):

On April 22, 2008, the EPA issued a rule requiring the use of lead-safe practices and other actions aimed at preventing lead poisoning. Under the rule, beginning in April 2010, contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination. Until that time, HUD and EPA recommend that anyone performing renovation, repair, and painting projects that disturb lead-based paint in pre-1978 homes, child care facilities and schools follow lead-safe work practices.

There are some differences between the EPA RRP Rule and the HUD Lead Safe Housing Rule (LSHR). A major difference is that the LSHR requires clearance examinations. All housing receiving federal assistance must still comply with the LSHR. HUD provides Information on complying with the LSHR and EPA RRP, and Frequently-asked Questions from Grantees.

All contractors should follow these three simple procedures:

- Contain the work area.
- Minimize dust.
- Clean up thoroughly.

From December 2008, the rule has required that contractors performing renovation, repair and painting projects that disturb lead-based paint provide to owners and occupants of child care facilities and to parents and guardians of children under age six that attend child care facilities built prior to 1978 the lead hazard information pamphlet Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools (PDF) en español (PDF)

Starting on April 22, 2010, the rule will affect paid renovators who work in pre-1978 housing and child-occupied facilities, including:

- Renovation contractors
- Maintenance workers in multi-family housing
- Painters and other specialty trades

Under the rule, child-occupied facilities are defined as residential, public or commercial buildings where children under age six are present on a regular basis. The requirements apply to renovation, repair or painting activities. The rule does not apply to minor maintenance or repair activities where less than six square feet of lead-based paint is disturbed in a room or where less than 20 square feet of lead-based paint is disturbed on the exterior. Window replacement is not minor maintenance or repair.

Read EPA's Lead Renovation, Repair and Painting Program Rule.

Additional information on becoming an EPA-certified renovator or training provider is available on EPA's Renovator and Trainer Tool Box site.